

After recording return to:
Fanno Creek Townhomes
Owner's Association
PO Box 23892
Tigard, OR 97281

Washington County, Oregon
03/20/2019 10:52:48 AM
D-R/BAM Cnt=2 Stn=6 M FERNANDES
\$75.00 \$5.00 \$5.00 \$11.00 \$60.00 - Total = \$156.00



02466589201900162290150150

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

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



RESTATED and AMENDED DECLARATION of COVENANTS, CONDITIONS and RESTRICTIONS for FANNO CREEK TOWNHOMES

Danchok Investment Group, Inc. filed of record certain Covenants, Conditions and Restrictions for Fanno Creek Townhomes ("CC&R"), which were recorded March 9, 2001, as Document No. 2001019531.1 in Washington County Deed of Records. Subsequently all rights were transferred to the homeowners during a Turnover meeting. The governing CC&R's for Fanno Creek Townhomes are hereby amended by seventy-five percent (75%) of the homeowners as successors to Danchok Investment Group, Inc., as approved by their signatures found on the petition circulated to approve this document.

NOW THEREFORE, the Prior Declaration is hereby amended and revoked in its entirety and the provisions of this restated and amended Declaration are hereby imposed upon the Property.

ARTICLE I - DEFINITIONS

As used in this declaration the terms set forth below will have the following meanings:

1. "Articles" refers to and refer to the Articles of Incorporation of the Association.
2. "Assessment" refers to the share of Association Expenses assessed against a Lot and the Owner(s) of that Lot.
3. "Association" refers to Fanno Creek Townhomes Owner's Association, Inc., a corporation not-for-profit, organized and existing under the laws of the State of Oregon, its successors and assigns.
4. "Association Expenses" refers to the expenses and charges described in this Declaration, incurred or to be incurred by the Association and charged to the Lots and the Owners of those Lots through Assessments.
5. "Association Insurance" refers to all policies of insurance as may be maintained by the Association.
6. "Board" or "Board of Directors" refers to the governing body of the Association elected in accordance with its Bylaws.
7. "Bylaws" refers to a standing rule governing the regulation of the Association's internal affairs as adopted by the Board.
8. "Common Areas" refers to that portion of the Property which is owned by the Association and which is intended for the common use and enjoyment of the Owners, specifically that area shown as Tract A, Tract B, Tract C, Tract D and Tract E on the plat of Fanno Creek Townhomes.
9. "Common Expenses" refers to and includes the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Lots within the Association, including any reasonable reserve, as the Board may find necessary or appropriate pursuant to this Declaration, the By-Laws, and the Articles.
10. "Declaration" refers to the easements, covenants, conditions, restrictions, and all other terms set forth in this document, and may be amended in the manner set forth in this document.

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11. "Director" refers to a member of the Board.
12. "Living Unit" refers to a building or portion of a building, including (without limitation) a single or multi-family residence located upon a lot and designated for separate residential occupancy.
13. "Lot" refers to a partitioned portion within the Property, but does not include the Common Area or any other tracts not designated for residential use as shown on the Plat.
14. "Member" refers to all Owners of Lots, who by virtue of such ownership, hold membership in the Association pursuant to the provisions of this instrument.
15. "Mortgage" refers to a deed to secure a debt, or any form of security deed.
16. "Mortgagee" refers to the holder of a Mortgage against a Lot.
17. "Mortgagor" refers to one who gives a Mortgage.
18. "Owner" refers to one (1) or more Persons (defined below) who hold the recorded title to any Lot, excluding any party holding an interest merely as security for the performance of an obligation.
19. "Party Wall" refers to a wall common to two adjoining buildings or rooms.
20. "Person" refers to a natural person, a corporation, a partnership, a trustee, or other legal entity.
21. "Property" refers to the real property described in this document.
22. "Rules and Regulations" refers to statements governing the Property, including the use of Lots and Common Areas, that may be promulgated by the Board in accordance with this Declaration and the Association Bylaws.
23. "Special Assessment" refers to assessments levied in accordance with the terms specified in this Declaration.

ARTICLE II - DESCRIPTION OF PROPERTY

The Property which is subject to the easements, covenants, conditions, and restrictions imposed by this Declaration is the recorded plat of Fanno Creek Townhomes, the 9th day of March 2001, Document No. 2000008245, Book 128, Pages 13-14, Records of the County of Washington and State of Oregon ("Property").

ARTICLE III - PROPERTY RIGHTS IN LOTS

1. **Use and Occupancy.** Except as otherwise expressly provided in this Declaration or in the Plat, the Owner of a Lot will be entitled to the exclusive use and benefit of that Lot.
2. **Restriction on Lot Division.** All Owners are prohibited from dividing any and all Lots subject to this Declaration.
3. **Easements Reserved.**
 - a. **The Association.** In addition to any easements shown on the Plat, the Association hereby reserves the following easements for the benefit of the Association.
 - i. **Right of Entry.** The Association will have the right, but not the obligation to enter upon any Lot for emergency, security, and safety reasons:
 - (1) To perform maintenance pursuant to this Declaration, and to inspect for the purpose of ensuring compliance with this Declaration, any Subsequent Amendment, By-Laws, and the Rules and Regulations, which right may be exercised by any member of the Board, its officers, agents, employees, and managers, and all policemen, firemen, emergency medical personnel, and similar emergency personnel in the performance of their duties.
 - (2) Except in an emergency situation, entry will only be during reasonable hours and after notice to the Owner.

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- (3) This right of entry will include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after a written request of the Board, but will not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.
 - (4) No such entry will be deemed to constitute a trespass or conversion or otherwise create any right of action in the Owner of such Lot.
- ii. **Utility Easements.** The Association or any public authority or utility provider will have an easement on the Property for the installation, maintenance and development of utilities and drainage facilities. The easement area of each Lot and all improvements therein will be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility provider is responsible.

ARTICLE IV - ASSOCIATION

1. **Formation of Association.** Fanno Creek Townhomes Owners Association is a corporation organized not for profit under the laws of the State of Oregon. The Corporation was organized to promote the health, safety and welfare of its Members, being the property owners of real property located in Fanno Creek Townhomes as described in Article II of this Declaration. In the event of any conflict or inconsistency between this Declaration and Association Bylaws or rules, this Declaration will control. The Association will have the right and authority to enforce the restrictions contained in this Declaration and described in the Oregon Revised Statutes governing Planned Communities.
2. **Power, Duties and Obligations.** The Association is charged with the duties and invested with the powers prescribed by law as set forth in Oregon Revised Statutes governing Planned Communities, the Bylaws and this Declaration. The Bylaws will not, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration or the Planned Community Statutes.
3. **Membership.** Every Owner of a Lot will be a Member of the Association. Such membership will commence, exist and continue simply by virtue of such ownership; it will expire automatically upon termination of such ownership; and it need not be confirmed or evidenced by any certificate or acceptance of membership.
 - a. When more than one person holds an interest in any Lot, all such persons will be members.
 - i. All co-Owners will share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in this Declaration and in the By-Laws.
 - ii. All such co-Owners will be jointly and severally obligated to perform the responsibilities of Owners.
 - b. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.
4. **Transfer of Membership.** Membership in the Association will pertain to each Lot and a membership in the Association will not be transferred, pledged, hypothecated, conveyed or alienated in any way, except upon the sale and transfer of title to said Lot and then only to the Purchaser of the Lot in question, or by interstate succession, testamentary disposition, foreclosure of encumbrance of record or other legal process. Any attempt to make a prohibited transfer will be void and will not be reflected upon the books and records of the Association. Any transfer of title to such Lot will operate automatically to transfer the membership in the Association to the new Owner of said Lot. The Association will have the right to charge a reasonable transfer fee to the new owner in connection with any transfer of a Lot.
5. **Board of Directors and Officers.** The affairs of the Association will be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Bylaws. The Board may also appoint various committees and appoint a manager who will be responsible for the day-to-day operation of the Association, subject to the direction of the Board. The Board will determine the compensation to be paid to the manager or any other employee of the Association. Unless this Declaration specifically requires a vote of the Members, approvals or actions to be given or taken by the Association will be valid if given or taken by the Board.
6. **Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, and no other employee or representative of the Association will be personally liable to any Member, or to any other person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, any representative or employee of the Association, or any committee, committee member, or officer of the

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Association; provided, however, the limitations set forth in this Section will not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

7. **The Association Rules and Regulations.** The Association's Board of Directors is granted the authority to make and amend reasonable rules and regulations for the maintenance, conservation, and use of the Lots and Common Areas and amenities within the Property, and for the health, comfort, safety, and welfare of the Owners.
- a. The Board may adopt, amend, and repeal rules and regulations pertaining to:
 - i. the management, operation, and use of the Common Areas including, but not limited to, any recreational facilities situated upon the Common Areas;
 - ii. minimum standards for any maintenance of Unit and Lots; or
 - iii. the health, safety, or welfare of the Owners and Residents.
 - b. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration will prevail. The Association Rules will be enforceable in the same manner and to the same extent as the covenants, conditions, and restrictions set forth in this Declaration.
 - c. All Owners, their invitee, guests, family members, and tenants are subject to the Rules and Regulations and the Association's governing documents.
8. **Voting Rights.** Each Owner will be entitled to one vote for each Lot held by such Owner.
- a. **Right to Vote.** No change in the ownership of a Lot will be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided a copy of the recorded title transfer. The vote for each Lot must be cast as a unit, and fractional votes will not be allowed. In the event that a Lot is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes will be cast, they will lose their right to vote on the matter in question. If any Owner casts a vote representing a Lot with multiple Owners, it will be presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection is made at the time the vote is cast. In the event more than one vote is cast for a particular Lot, none of said votes will be counted and all said votes will be deemed void.
 - b. **Joint Owners.** In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration will be a joint and several responsibility and the act or consent of any one or more of such persons will constitute the act or consent of the entire ownership interest provided however, that in the event such persons disagree among themselves as to the manner in which any vote or right or consent held by them will be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board of Directors, and the vote or right of consent involved will then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.
 - c. **Suspension of Voting Rights.** Any Member who fails to pay an Assessment provided herein within sixty (60) days of the due date thereof, will have all voting rights as provided herein suspended until such amounts plus any accrued interest, attorney's fees, and/or collection costs are paid in full.

ARTICLE V - ASSESSMENTS

1. **Creation of the Lien and Personal Obligation of Assessments.**
- a. For each Lot owned within the Properties each Owner of any Lot by acceptance of a deed thereof, whether or not it is expressed in such deed, is deemed to agree to pay to Fanno Creek Townhomes Association:
 - i. annual assessments or charges covering common expenses,
 - ii. special assessments as may be deemed necessary to conduct Association business,
 - iii. such annual assessment to be divided to a monthly rate and
 - iv. special assessments for capital improvements to be collected as established by the Board.
 - b. Each new Owner agrees to make an initial contribution to the working capital of the Association equal to three (3) months of the Association's current monthly assessment at the closing of any lot recorded in the public records of Washington County, Oregon.
 - c. These Assessments, together with interest, costs and reasonable attorneys' fees, will be a charge on the land and will be a

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continuing lien upon the property against which each Assessment is made.

- d. Each such Assessment, together with interest, costs and reasonable attorneys' fees, will also be the personal obligation of the person who was the owner of such property at the time when the Assessment came due. The personal obligation for delinquent assessments will not pass to the successors in title unless expressly assumed by them.
2. **Purpose of Assessments.** The Assessments levied by the Fanno Creek Townhomes Association will be used for the common expenses as described within this document.
3. **Special Assessments.** In addition to the annual and/or special assessments authorized above, the Fanno Creek Townhomes Association may levy, in any assessment year, special assessment(s) applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Fanno Creek Townhomes Common Areas or buildings described within this document. Any such assessment will be imposed on a uniform basis against all Owners.
4. **Uniform Rate of Assessment.** Assessments must be equal for all Lots and may be collected on a monthly, quarterly, or annual basis.
5. **Assessments Due Date.** Assessments are due the first day of the month for the period covered (i.e. for monthly payments the first of each month, for quarterly payments the first of January, April, July or October, for yearly payments January 1).
6. **Effect of Nonpayment of Assessments:** Any Assessment not paid within thirty (30) days after the due date will bear interest from the due date at the annual rate of twelve percent (12%).
 - a. The Fanno Creek Townhomes Association may bring an action at law against the Owner obligated to pay assessments, fines or other charges, or foreclose the lien against the property.
 - b. The Association may apply a late charge not to exceed five percent (5%) of the unpaid balance.
 - c. No Owner may waive or otherwise escape liability for the assessments by abandonment of his Lot.
 - d. Upon request in writing, the Board of Directors will provide any Lot Owner with a written statement of unpaid assessments.
 - e. The Board of Directors may waive interest and/or late fees when it is determined appropriate.
 - f. In any legal action to enforce payment of any Assessment as defined under this Declaration, the prevailing party will be entitled to a reasonable attorneys' fee, including attorneys' fees for appellate proceedings.
7. **Notification of First Mortgagee.** The Board of Directors will notify any first mortgagee of any individual Lot of any default in performance of the terms of this Declaration by the Lot Owner which is not cured within sixty (60) days.
8. **Enforcement of Lien.** If an assessment or other charge levied under this Declaration is not paid within thirty (30) days after its due date, such assessment or charge will become delinquent and will bear interest from the due date until paid at the rate set forth in this Declaration. In addition, the Association may exercise any or all of the following remedies:
 - a. **Suspension of Rights, Acceleration.** The Association may suspend the Owner's voting rights and right to use the Common Property until such amounts, plus other charges under this Declaration or the Bylaws, are paid in full and may declare all remaining periodic installments or any annual assessment or any other amounts owed by such Owner to the Association immediately due and payable. The Association will not deprive any owner of access to and from such Owner's Lot.
 - b. **Lien.** The Association may place a lien against each Lot for any assessment levied against such Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the assessment, fine or charge is due.
 - c. **Suit or Action.** The Association may bring an action to recover a money judgment for unpaid assessments, fines and charges under this Declaration or the Bylaws without foreclosing or waiving the lien described above. Recovery on any such action, however, will operate to satisfy the lien, or the portion thereof, for which recovery is made.
 - d. **Foreclosure of Liens for Unpaid Common Expenses.** In any suit brought by the Association to foreclose on a Lot because of unpaid assessments, the Owner will be required to pay a reasonable rental for the use of the Lot during the pendency of the suit; and the plaintiff in such foreclosure suit will be entitled to the appointment of a receiver to collect such rental.
 - e. The Association Board of Directors, acting on behalf of the Association, will have the power to purchase such Lot at the foreclosure sale and acquire, hold, lease, mortgage, vote the votes appurtenant to, convey, or otherwise deal with the Lot.

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- f. Arbitration, a suit, or any other action to recover a money judgment for unpaid common expenses will be maintainable without foreclosing the liens securing the same.
9. **Subordination of the Lien to Mortgages.** The lien of the Fanno Creek Townhomes Assessments provided for in this Declaration will be subordinate to the lien of any first mortgage as indicated in the Oregon Planned Community Statutes.
10. **Lot and Exterior Maintenance.** In the event an Owner of any Lot in the Properties fails to maintain his Lot and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Fanno Creek Townhomes Association, after approval the Board of Directors and thirty (30) days written notice to the Owner, will have the right, through its agents and/or employees, to enter upon said Lot to repair, clear, trim, maintain, and restore the Lot. The cost of such maintenance will be added to and become part of the Assessment to which such Lot is subject, which will be due and payable thirty (30) days from the date said assessment is made.
11. **Annual Budgets.** In accordance with Oregon Planned Community Statutes, the Board of Directors will prepare an annual operating budget for the Association, taking into account current costs of maintenance and service and future needs of the Association, any previous over-assessment and any common profits of the Association. The budget will provide for such reserve or contingency funds as the Association Board of Directors deems necessary or as may be required by this Declaration or by law. Within this annual budget, the Board of Directors will include Reserves amounts required for maintenance, repair and replacement requirements for Common Property. The method of adoption of such budget will be as provided in the Bylaws.
- a. **Determination of Common Expenses.** Common expenses will include:
- i. Expenses of administration;
 - ii. Expenses of maintenance, repair or replacement of Common Property; such Common Property includes, without limitation, private roadway, water retention ponds and all landscaping areas except individual Owner's private outdoor/living landscaped area; any Common Property will be charged to the Association;
 - iii. Cost of insurance or bonds obtained in accordance with this document;
 - iv. A general operating reserve;
 - v. Reserve for repair, replacements and deferred maintenance;
 - vi. Any deficit in common expenses applicable to the Association for any prior period;
 - vii. Any other items properly chargeable as an expense of the Association
- b. **Common Property Reserve Assessments Account.** A portion of the Assessments collected from each Lot Owner will be placed in an interest bearing account separate from the general operating account of the Association.
- i. The separate account is to be used only as a reserve account for major maintenance and replacement of the Common Property, all or part of which would normally require replacement in more than three (3) or less than thirty (30) years from the time the budget is determined by the respective Board of Directors.
 - ii. The amounts assessed will take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of those items.
 - iii. The Association is responsible for administering the account and for making periodic payments into it as needed.
 - iv. The Association will adjust the amount of the payments at regular intervals to reflect changes in current replacement cost.
 - v. The reserve account will be used only for the purposes outlined in this section; however, the Association Board of Directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from special assessments or maintenance fees. A written funds recovery plan must accompany any such action.
 - vi. The reserve account may be invested by the Board of Directors subject to normal prudent investment standards.
 - vii. Assessments paid into the reserve account will be the property of the Association and are not refundable to an Owner who sells or otherwise conveys a Lot.
- c. **Capital Improvement Assessments.** The Association may by resolution elect to purchase, construct or otherwise acquire additional equipment, facilities or other capital improvements for the general use and benefit of all the members of the Association, and for that purpose may impose a special assessment to be called a "Capital Improvement Assessment".

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- i. Any such assessment will be against the Lots within the Property will be levied to each Lot on a uniform basis;
- ii. No new Capital Improvement Assessment may be imposed under this section, for any one purchase, construction or other acquisition, or group of related purchases, constructions or other acquisitions, which in the aggregate exceeds \$20,000.00 unless approved by not less than seventy-five percent (75%) of the votes of members.

ARTICLE VI - PROPERTY AND USE RIGHTS IN COMMON AREA

1. **Alienation of the Common Area.** The Association will not, by act or omission, seek to abandon, partition, subdivide, sell or transfer the Common Area owned directly or indirectly by the Association unless at least seventy-five (75) percent of Association members have given their prior written approval.
 - a. The Association will treat proceeds of any sale under this Section as an asset of the Association.
 - b. The Board of Directors will have authority to approve the use of the Common Area as a security interest for loans or advances upon approval by seventy-five percent (75%) of Association members.
2. **Use of Common Area.** Use of the Common Area will be reserved for the Owners of Lots to which such Common Area provides vehicular and pedestrian ingress and egress and those Owners' respective family members, tenants, invitee, and contractors. The Association will control all appropriate rights, duties and obligations relating to the Common Area.
 - a. Every Owner will have a right and easement of enjoyment in and to the Common Area, subject to this Declaration or as it may be amended, and subject to any restrictions or limitations contained in this Declaration or in any deed conveying such property to the Association.
 - b. Any Owner may delegate his or her right of enjoyment to the members of his or her family, tenants, and social invitees subject to reasonable regulation by the Board, and in accordance with procedures that the Board may adopt.
 - c. An Owner who leases his or her Unit will be deemed to have delegated all such rights to the Unit's lessee.
 - d. The rights and easements of enjoyment created within this Declaration will be subject to the following:
 - i. The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real and personal property as security for money borrowed or debts incurred.
 - ii. The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure.
 - iii. The right of the Association to suspend:
 - (1) the rights of any Owner to use Recreational Facilities within the Common Areas for any period during which an Assessment or any other charge against such Owner's Unit remains delinquent; and
 - (2) the rights of any Owner to use Recreational Facilities within the Common Areas for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation of this Declaration, any applicable Subsequent Amendment, the Articles, the By-Laws, or the Rules and Regulations of the Association after notice and hearing pursuant to the By-Laws;
 - (3) other than a delinquent Assessment.
 - iv. The right of the Association to maintain the Common Area and of the Board to adopt rules and regulations affecting the use and enjoyment of the Common Area, including, without limitation, rules restricting use of Recreational Facilities within the Common Area to occupants of Lots and their guests and rules limiting the number of guests who may use the Common Area.
 - v. The restrictions contained on any plat, or filed separately, with respect to all or any portion of the Property.
 - vi. All of the provisions of this Declaration, the Articles, and By-Laws of the Association and all Rules, Regulations, and Policies adopted by the Association.
 - e. The Owners' easements of enjoyment will be subject to easements, hereby reserved over, through and underneath the Common Area, and the Lots for present and future utility services to the Property, including, but not limited to, easements for water pipes, sanitary sewer pipes, drainage pipes, irrigation pipes, electric lines, telephone lines, cable television lines, telecommunication lines and other utility services.
 - f. In case of any emergency originating in, or threatening the Property or any Lot, regardless of whether the Owner is present at the time of such emergency, the Board, or any other Person authorized by the Board, or a management agent under a management

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agreement, will have the right to enter the Property or such Lot, for the purpose of remedying, or abating, the cause of such emergency, and such right of entry will be immediate.

- g. The Association will be responsible for the management, maintenance, and operation of the Common Areas, and for the payment of all real estate taxes and other charges against the Common Area.
- 3. **Extent of Owners' Rights.** The rights of enjoyment in the Common Areas will be subject to the following:
 - a. **Rights of the Association.** The Association will have the right to enter upon the Common Area for construction, maintenance, repair and use of the Common Area and any facilities located in or on the Common Area.
 - b. **Utilities and Municipal Easements.** The Association may grant easements to utility providers or municipalities installing utility services within the Common Areas and may grant free access to police, fire and other public officials.
- 4. **Condemnation.** The Association Board of Directors will have the sole authority to negotiate with any public or private body or person having the power of eminent domain, and to sue or defend in any litigation, involving such bodies or persons with respect to the Common Areas.

ARTICLE VII - USE, ARCHITECTURAL AND LANDSCAPING RESTRICTIONS

- 1. **Association Authority to Enforce Use Restrictions.** Notwithstanding the specific restrictions contained in this Article, the Association and Board of Directors will have the authority to implement and enforce additional rules and regulations consistent with this Declaration and the Bylaws.
- 2. **Structures Permitted.** Except to the extent expressly provided in this Declaration, no improvements will be erected or permitted to remain on any Lot except improvements containing Living Units and improvements normally accessory thereto.
 - a. Only one Living Unit will be permitted on any Lot.
 - b. No outdoor overhead wire or service drop for the distribution of electricity or for telecommunication purposes, nor any pole, tower, or any other supporting structure, will be erected or maintained on a Lot.
- 3. No Lot will be used except for residential purposes. No other business venture will be conducted in or about any property within Fanno Creek Townhomes Property except for home offices which are not designated by exterior sign(s), create increased traffic and which do not become an undue burden on or nuisance to the neighborhood. No home office will exist or operate in violation of the Municipal Code of the City of Tigard or any other governing jurisdiction.
- 4. **Offensive or Unlawful Activities.** No noxious or offensive activities will be allowed on any Lot nor will 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 of the Property. No unlawful use will be made of a Lot in any manner. All laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Property will be observed.
- 5. **Maintenance of Improvements**
 - a. **Association's Responsibility** The necessary work to maintain, repair, or replace the exterior of all Living Units will be the responsibility of the Board of Directors of the Association.
 - i. Such maintenance will include, without limitation;
 - (1) maintenance of all exterior surfaces except repair and/or replacement of exterior doors;
 - (2) maintenance, repair and/or replacement of the roof of all Living Units;
 - (3) painting and staining of exterior window casements, sashes and frames;
 - (4) maintenance of all exterior lighting fixtures, exterior portions of chimneys, rain gutters, down spouts, sprinkler timing devices and exterior surfaces of skylights.
 - b. **Owners' Responsibility.**
 - i. It will be the responsibility of each Owner to;
 - (1) maintain, repair and replace all portions of his or her Lot and Living Unit with the exception of the areas stated above;
 - (2) maintain and keep in a neat, clean and sanitary condition any patio, landscaping or improvement located within the

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boundaries of his or her Lot.

- ii. In the event the Board of Directors determines that any Owner has failed and refused to discharge properly his or her obligations with regard to maintenance, repair or replacement of items for which he or she is responsible, the Association, its agents and representatives may after ten (10) day written notice to the Owner, enter upon any Lot for the purpose of performing such maintenance as the Board, in the exercise of its sole discretion, deems necessary or advisable.
 - iii. Such Owner will be responsible and liable to the Association for all direct and indirect costs of the maintenance which will be added to and become a part of the assessment to which the Lot is subject.
 - iv. Damage caused by fire, flood, storm, earthquake, riot, vandalism or other causes will be the responsibility of each Owner and will be restored within a reasonable period of time.
 - v. Each Owner will be responsible to repair damage from and to maintain his Lot free of excessive accumulations of debris, water, ice, snow and the like.
6. **Freestanding Structures.** No freestanding structure, including, without limitation, sheds or other outbuilding will be permitted on any Lot unless in compliance with City Code.
7. **Landscaping.**
- a. Each Owner, at his or her expense will maintain back yard landscaping on his or her Lot.
 - b. Maintenance of the balance of the landscaping on the Property, including the landscaping strip running parallel to the Living Unit entry, will be the responsibility of the Board of Directors of the Association.
8. **Private Roadway.** The necessary work to maintain the private roadway on the Property will be the responsibility of the Board of Directors of the Association.
9. **Signs.** No signs are permitted that a reasonable and prudent person would deem detrimental to property values within Fanno Creek Townhomes Owner's Association. No sign will exceed five square feet.
10. **Leasing and Rental of Living Units.**
- a. No Owner may lease or rent his entire Living Unit or less than his entire Living Unit for a period of less than thirty (30) days.
 - b. All leases or rentals will be by written lease agreement, which will provide that the terms of the lease will be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Association Bylaws, Rules, Regulations or Policies of the Association and that any failure by the lessees or tenant to comply with the terms of such documents will be a default under the lease.
 - c. Notification to the Board of Directors is required with the following information, name and contact information for the lessee, carrier of the tenant's renter insurance including coverage, and name of property manager to insure proper property maintenance.
11. **Maintenance and Repair.** All maintenance, repairs, and replacements to any Common Area will be made by the Association and charged to all Lot Owners as a common expense.
12. **Restrictions and Requirements for Use of the Property.** The following restrictions and requirements are in addition to all other restrictions and requirements contained in this Declaration.
- a. No Owner will permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot parking space for a period in excess of 48 hours.
 - i. A vehicle will be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines its presence offends the occupants of adjoining Lots.
 - ii. If the Owner fails to remove the vehicle within five (5) days following the date a notice is mailed or emailed to the Owner by the Board, the Board may have the vehicle removed from the Property and charge the Owner the expense of removal and storage incurred by the Association.
 - b. Other Restrictions:
 - i. No Lot will be used as a dumping ground for trash or rubbish of any kind.
 - ii. All garbage and other debris and waste will be kept in appropriate sanitary containers for proper disposal and out of public view.

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- iii. No animals of any kind will be raised, bred or kept or permitted within any Living Unit other than household pets which are controlled so as not to be a nuisance. Any damage caused by such animals will be the responsibility of the respective Owner(s).
- iv. No hedge, shrub, or bush on a Lot will be allowed to grow to a height which unduly restricts the view from an adjoining Lot, and the Association, in its sole discretion after due investigation, may require any offending hedge, shrub or bush to be pruned, trimmed, or removed.
- v. Members and other residents will not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other members, residents, guests, occupants, invitee, or directed at management, its agents, its employees, or vendors.
- vi. Increased Insurance Cost Violation.
 - (1) Nothing will be done or kept on any Lot or Common Area which will increase the cost of insurance on the Lots or Common Area without written approval from the Board of Directors.
 - (2) No Owner will permit anything to be done or kept in his/her Lot or in the Common Area which will result in cancellation of insurance on any Lot or any part of the Common Area.
- c. A written notice of any violation specified under this Article will be mailed or emailed to the Owner by the Board of Directors.
- d. If the violation exists for a period longer than ten (10) days after notice is given, the board will have, in addition to any other rights under this Declaration, or at law or inequity, the remedies specified under this Declaration.

ARTICLE VIII - CONSTRUCTION, MAINTENANCE, UTILITIES AND SERVICES

- 1. **General Description of Project.** The project consists of a total of eleven (11) living units.
- 2. **Living Unit Boundaries.**
 - a. **Party Walls.**
 - i. Each wall which is built as party of the original construction of the townhomes within Fanno Creek Townhomes and placed on the dividing line between two (2) or more townhomes will constitute a party wall and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions will apply thereto.
 - ii. Except as otherwise provided in the Declaration, the cost of reasonable repair and maintenance of a party wall will be shared by the owners who make use of the wall in proportion to such use.
 - iii. If a party wall is destroyed by fire or other casualty, any owner who has used the wall may restore it and if the other owners thereafter make use of the wall, they will contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
 - iv. Notwithstanding any other provision of this section, an owner who, through negligence or willful acts or omissions, causes the party wall to be exposed to the elements will bear the entire cost of furnishing the necessary protection against such elements.
 - v. The right of any owner to contribution from any other owner under this section will be appurtenant to the land and will pass to such owners' successors in title.
 - vi. In the event of any dispute concerning such party wall or under the provisions of this section, the rights and obligations of each party will be decided by the majority vote of the Board of Directors.
 - b. **Interior Surfaces.**
 - i. The living unit interiors will include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and other materials constituting any part of its finished surfaces and the interior surfaces so described.
 - ii. All other portions of the exterior walls, floors or ceilings and interior load bearing partitions will be a part of the common elements.
 - iii. In addition, each unit will include the following:

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- (1) all spaces, non-bearing interior partitions, windows, window frames, exterior and interior doors, doorframes and all other fixtures and improvements within the boundaries of the unit, and
 - (2) all outlets of utility service lines including, but not limited to, power, light, gas, hot and cold water, heating, refrigeration, air conditioning, rain drains and waste disposal within the boundaries of the living unit including any part of such lines or ducts themselves; and
 - (3) all fireplaces and chimneys.
- c. **Construction and Maintenance of Common Area.** The Association is authorized and will perform all construction within and maintenance upon the General Common Area and upkeep of landscaping and other improvements within such areas, including but not limited to grass, trees, pavement, walkways, trails, water retention pond, fences and private roadway and will perform such construction, maintenance, and upkeep unless the same is assumed by a public body or other third party.
- d. **Public Rights-of-way.** If for any reason the Association fails to adequately maintain the landscaping of any public right-of-way located within the Property, the City is hereby authorized to assess the Association and/or individual Owners for necessary maintenance of such landscaping of such rights-of-way. This section of the Declaration will not be amended without the prior written consent of the City.
- e. **Maintenance of Utilities.** The Association will be responsible for maintaining utility lines on the Property, including those lines located on individual Lots, except for those lines for which a public authority or utility provider is responsible and those lines under the building footprint of each living unit.

ARTICLE IX - INSURANCE

- I. **Types of Insurance.** For the benefit of the Association and Lot Owners, the Board of Directors will obtain and maintain at all times and will pay for out its common expense funds the following insurance:
- a. **Property Damage Insurance.**
 - i. The Association will maintain a policy or policies of insurance covering loss or damage from fire, with standard extended coverage and "all risk" endorsements, and such other coverages as the Association deem desirable.
 - ii. The amount of the coverage will be for not less than One Hundred Percent (100%) of the current replacement cost of the Living Units and any improvements on the Common Areas (exclusive of land, foundation, excavation and other items normally excluded from coverage), subject to a maximum deductible of the lesser of Ten Thousand Dollars (\$10,000.00) or One Percent (1%) of the policy amount.
 - iii. The policy or policies will include all fixtures and building service equipment to the extent that they are part of the Common Areas and all personal property and supplies belonging to the Association and will include the structure, roof and exterior of each Living Unit.
 - b. **Liability Insurance.**
 - i. The Association will maintain comprehensive general liability insurance coverage insuring the Association, the Board of Directors, against liability to the public or to Owners and their invitee or tenants, incident to the operation, maintenance, ownership or use of the Property, including legal liability arising out of lawsuits related to employment contracts of the Association. There may be excluded from such policy or policies coverage of an Owner (other than as a member of the Association or Board of Directors) for liability arising out of acts or omission of such Owner and liability incident in the ownership and/or use of the part of the property as to which such Owner has the exclusive use or occupancy.
 - ii. Limits of liability under such insurance will not be less than One Million Dollars (\$1,000,000.00) on a combined single-limit basis.
 - iii. **Insurance by Living Unit Owners.** Each Living Unit Owner will maintain, at his own expense, insurance covering the portion of his Living Unit and his personal property not insured under this Declaration and liability insurance with respect to such Lot in an amount not less than Three Hundred Thousand Dollars (\$300,000.00) on a combined single-limit basis.
 - iv. No insurance coverage obtained by a Living Unit Owner (or such Owner's mortgagee) will be brought into contribution with insurance obtained by the Association.

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- v. All policies required by this Article will provide that they may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each holder of a first mortgage which is listed as a scheduled holder of a first mortgage in the insurance policy. Evidence of insurance will be issued to each Owner and mortgagee upon request.
 - (1) Prior written approval of the Board of Directors is required for an Owner to make any improvements to his Living Unit, the value of which is in excess of Twenty-Five Hundred Dollars (\$2,500.00).
 - (2) Any Owner who obtains individual insurance policies covering any portion of the property other than his personal property and fixtures is required to file a copy of such individual policy or policies with the Association within thirty (30) days after the purchase of such insurance.

c. **Fidelity Insurance.**

- i. The Association will maintain blanket fidelity insurance for all officers, directors, trustees and employees of the Association and all other persons handling and responsible for funds of, or administered by, the Association. In the event the Association has retained a management agent, the Board of Directors will require such agent to maintain fidelity insurance for its officers, employees and agents handling or responsible for funds of, or administered on behalf of the Association.
- ii. The total amount of fidelity coverage required will be based upon the average annual operating budget.
- iii. The insurance will provide that it may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) day's prior written notice to the Association.
- iv. The Board of Directors will make every effort to secure insurance policies that will provide to the extent appropriate and available at reasonable cost, the Association will maintain additional coverages against such other risks as are customarily covered with respect to projects similar in construction, location and use.
- v. **Fannie Mae and GNMA Requirements.** The Association will continuously maintain in effect such casualty, flood, liability insurance and fidelity insurance as required for planned unit development projects established by FannieMae and Government National Mortgage Association, if any, so long as either is a mortgagee or Owner except where such coverage is not available or has been waived in writing by FannieMae or Government National Mortgage Association.
- vi. **Planned Community Act Requirements.** The insurance maintained by the Association will comply with the requirements of the Oregon Planned Community Act, ORS 94.550 to 94.980.

2. **Damage and Destruction**

- i. **Insurance Proceeds Sufficient to Cover Loss.** In case of fire, casualty, or any other damage and destruction the insurance proceeds of the master policy, if sufficient to reconstruct any buildings damaged or destroyed, will be applied to such reconstruction.
 - (1) Reconstruction of any damaged or destroyed buildings, as used in this Article, refers to restoring the buildings to substantially the same condition in which they existed prior to the fire, casualty or disaster.
 - (2) Such reconstruction will be accomplished under the direction of the Board of Directors.
- ii. **Insurance Proceeds Insufficient to Cover Loss.** If the insurance proceeds are insufficient to reconstruct the damaged or destroyed buildings, the damage to or destruction of such buildings will be promptly repaired and restored by the Board of Directors using the proceeds of insurance, if any, on such buildings for that purpose; and all the Lot Owners will be liable for assessment for any deficiency for such reconstruction.

ARTICLE X - ENFORCEMENT

- 1. **Violation by Owners.** In the event any Owner violates any provision of this declaration, the Association Bylaws, or any rules or regulations adopted by the Association governing the use of Lots and Common Property, then the Association, acting through its Board of Directors, must notify the Owner in writing the violations exist and such Owner is responsible for them.
 - a. After affording the Owner reasonable notice and opportunity to be heard, the Board of Directors acting on behalf of the Association may do any or all of the following:
 - i. Suspend the Owner's voting rights and right to use the Common Property for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any infraction of its rules and regulations.
 - ii. Impose reasonable fines upon the Owner, in the manner and amount the Board deems appropriate in relation to the violation,

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which fines will be paid into the Maintenance and Operations Fund, or

- iii. Utilize any enforcement remedy provided in this Declaration. Nothing in this section gives the Association the right to deprive any Owner of access to and from such Owner's Lot.
- b. **Mediation and Arbitration** Any dispute among Owners concerning the provisions of this Declaration, the Bylaws, or any rule or regulation adopted by the Board of Directors of the Association will be referred to the Board of Directors for resolution.
 - i. The Board of Directors has the option to hear the dispute or decline to hear the dispute and require the disputing Owners to seek resolution through binding arbitration as provided herein.
 - ii. The Board's decision not to hear the dispute will be effective either upon written notice to the Owners involved or if no such notice is given by the Board, at thirty (30) days after the dispute has been reported to the Board.
 - iii. If the Board chooses to hear the dispute, any decision by the Board will be binding upon the parties.
 - iv. Any dispute between the Owner(s) and the Association concerning this Declaration, the Bylaws or any rule or regulation adopted by the Board of Directors of the Association will first be subject to mediation at the election of either party to the dispute and in such a situation mediation will be a mandatory prerequisite to arbitration.
 - v. Unsuccessful mediation of disputes between any Owner(s) and the Association, and all disputes between owners which the Board declines to hear, will be settled by mandatory arbitration before a single arbitrator, using the rules of commercial arbitration of the American Arbitration Association.
 - vi. Arbitration will occur in Washington County, Oregon.
 - vii. The parties will be entitled to conduct discovery in accordance with the Federal Rules of Civil Procedure, subject to limitation by the arbitrator to secure just and efficient resolution in the dispute.
 - (1) If the amount of the controversy exceeds \$2,500.00, the arbitrator's decision will include a statement specifying in reasonable detail the basis for and computation of the amount of the monetary award, if any.
 - (2) A party substantially prevailing in the arbitration will also be entitled to recover such amount for its costs and attorney fees incurred in connection with the arbitration as will be determined by the arbitrator.
 - (3) Judgment upon the arbitration award may be entered in any court having jurisdiction and there will be no opportunity for appeal in any court except as provided in ORS 36.355 to 36.365.
 - (4) Nothing herein, however, will prevent an Owner, the Association, or other interested party from resort to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.
2. **Non-qualifying improvements and Violation of General Protective Covenants.** In the event any Owner constructs or permits to be constructed on such Owner's Lot an improvement, or causes or permits any improvement, activity, condition or nuisance contrary to the provisions of this Declaration, the Bylaws, or rules, regulations, or guidelines adopted by the Association to remain uncorrected or unabated on such Owner's Lot, then the Association, acting through its Board of Directors, must notify the Owner in writing of any such specific violations and require the Owner to remedy or abate the same in order to bring the Owner's Lot, the improvement thereon and the Owner's use thereof into conformance with this Declaration, the Bylaws, and such rules, regulations, and guidelines. If the Owner is unable or unwilling to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree on a mutually acceptable solution within the framework and intent of this Declaration, after the Owner has been afforded notice and opportunity to be heard, within sixty (60) days after such notice, the Association, acting through its Board of Directors, will have, in addition to any other rights or remedies provided in the Declaration, at law or in equity, the right to do any or all of the following:
 - a. **Fines.** Impose reasonable fines against such Owner in the manner and amount the Board deems appropriate in relation to the violation.
 - b. **Remove Cause of Violation.** Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of the Declaration, Bylaws, or rules, regulations, or guidelines in such a manner as to make it conform thereto.
 - i. This entry will not subject the Association, the directors of the Association or any agent or representative thereof to liability of trespass, conversion or any other claim for damages.
 - ii. In any such case the Association will assess such Owner for the entire cost of the work done, which amount will be payable to the Maintenance and Operations Fund, provided that any alteration or demolition of any item of construction will be subject

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to the provisions of this Declaration; and/or

- c. **Arbitration or Suit for Injunction.** Utilize binding arbitration or resort to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

ARTICLE XI - MISCELLANEOUS PROVISIONS

1. **TERM.** This Declaration will run with the land and will be binding on all Owners of the described property and all persons claiming under them for a period of thirty (30) years from the date this Declaration is recorded after which time said Declaration will be automatically extended for successive periods of ten (10) years. This Declaration may be terminated upon approval by the vote or written consent of not less than one hundred percent (100%) of all Owners. Any such termination will become effective only if a certificate of the President or Secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required, is acknowledged and recorded in the deed records of Washington County, Oregon.
2. **SEVERABILITY.** Invalidation of any of these Covenants, Conditions or Restrictions contained in this Declaration by Judgment or court order will in no way affect any of the other provisions which will remain in full force and effect. As used in this document, the singular will include the plural and the plural the singular. The masculine and neuter will each include the masculine, feminine, and neuter, as the context requires. All captions used in this document are intended solely for convenience of reference and will in no way limit any of the provisions of this Declaration.
3. **CONFLICTS:** In case of any irreconcilable conflict, the Declaration will control over the Bylaws or any rules and regulations and the Planned Community Laws will control over any conflict of the Bylaws or Declaration.
4. **AMENDMENT.** This Declaration may be amended by an instrument signed by seventy-five percent (75%) of the current Lot Owners and recorded with the County Recorder, agreeing to change said Declaration in whole or in part.
 - a. No amendment may change the allocation of voting or the method of determining assessments without the approval of ninety percent (90%) of the Lot Owners to be affected by such amendment.
 - b. **Notice of Sale, Mortgage, Rental or Lease.** Immediately upon the sale, mortgage, rental or lease of any Lot, the Owner will promptly inform the Secretary of the Association of the name and address of said vendee, mortgagee, lessee, or tenant.
 - c. **Notices and Other Documents.** All notices and other communications under this Declaration will be in writing and will be deemed to have been given on the date of delivery when delivered by personal service, or three business days after delivery to the United States mails, certified or registered mail, return receipt requested, addressed to the party to which such notice is directed at its address determined as provided in this section.
 - i. **Addresses.** All notices and other communications under this Declaration will be given to an Owner, to the last address for such Owner shown in the Association's records.
 - ii. **Change of Address.** Any party may change the address to which notices will be directed by giving ten (10) days written notice of such change delivered to the Secretary of the Association.

Fanno Creek Townhomes Owner's Association

By 
President

Dated 2/28/19

STATE OF OREGON, County of Washington }ss

Personally appeared Matt Friesen who, being duly sworn, did say that he is the President of Fanno Creek Townhomes Owner's Association and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and members and acknowledges said instrument to be its voluntary act and deed.



Michael Paul Joseph
Notary Public for Oregon

My Commission expires: 01/04/2020