

AFTER RECORDING RETURN TO:
Vial Fotheringham LLP
6000 Meadows Road, Suite 500
Lake Oswego, OR 97035

GRANTOR: Battlecreek Commons Association

GRANTEE: Public

MARION COUNTY RECORDS

2024-18182

D-COCO

06/17/2024 03:25 PM

\$90.00 \$11.00 \$10.00 \$60.00

\$171.00



I, Bill Burgess, County Clerk for Marion County, Oregon, certify that the instrument identified herein was recorded in the Official Records.

A handwritten signature in black ink, appearing to read "Bill Burgess".

Pgs=18 DEB

**2024 AMENDED AND RESTATED DECLARATION OF COVENANTS AND
RESTRICTIONS
FOR
BATTLECREEK COMMONS
A PLANNED UNIT DEVELOPMENT**

These 2024 Amended and Restated Declaration of Covenants and Restrictions for Battlecreek Commons is made by the Battlecreek Commons Association, an Oregon nonprofit corporation (“Association”).

RECITALS

- A. Battlecreek Commons (the “Planned Community”) is a planned community, located in Marion County, Oregon. The Planned Community was created by the following documents:
1. *Declaration of Covenants and Restrictions for Battlecreek Commons*, recorded December 22, 1970, as Document No. 906824 in Book 695, Pages 521 through 538, in the Records of Marion County, Oregon (“Original Declaration”).
 2. *Bylaws of Battlecreek Commons*, adopted December 21, 1971, by the Board of Directors (“Bylaws”).
 3. Plat of *Battlecreek Commons*, recorded December 22, 1970, in Book 25, Page 12, in the Plat Records of Marion County, Oregon.
- B. The Planned Community was expanded pursuant to the Declaration and Bylaws by the recording of supplemental declarations and plats in the Records of Marion County, Oregon in accordance with the Act. The property currently subject to the Declaration and the jurisdiction of the Association is set forth in **Exhibit 1** (Exhibit A to the Original Declaration) and each of the Supplemental Declarations.

1. *Declaration of Covenants and Restrictions for Battlecreek Commons Phase 2*, recorded January 7, 1972, as Document No. 942340, in Book 718, Page 840.
 2. *Battlecreek Commons Phase II*, recorded December 22, 1971, as Document No. 941055, in Book 26, Page 23, Plat Records.
 3. *Declaration of Covenants and Restrictions for Battlecreek Commons Phase 2A*, recorded December 26, 1972, in Book 741, Pages 662 through 664.
 4. *Battlecreek Commons Phase III*, recorded February 9, 1973, as Document No. 980890, in Book 27, Page 42, Plat Records.
 5. *Declaration of Covenants and Restrictions for Battlecreek Commons Phase 3*, recorded February 9, 1973, as Document No. 980891, in Book 744, Pages 700 and 701.
 6. *Battlecreek Commons Phase IV*, recorded April 23, 1973, as Document No. 988712, in Book 28, Page 6, Plat Records.
 7. *Declaration of Covenants and Restrictions for Battlecreek Commons Phase 4*, recorded May 8, 1973, as Document No. 991057, in Book 751, Pages 709 through 711.
 8. *Battlecreek Commons Phase V*, recorded July 3, 1973, as Document No. 996785, in Book 28, Page 23, Plat Records.
 9. *Amended Declaration of Covenants and Restrictions for Battlecreek Commons Phase 5* for Battlecreek Commons recorded October 10, 1973, as Document No. 6833, in Volume 726, Page 712, recorded in the Records of Marion County, Oregon.
 10. *Declaration of Covenants and Restrictions for Battlecreek Commons Phase 6*, recorded October 10, 1973, as Document No. 6958, in Book 762, Pages 777 through 780.
 11. *Battlecreek Commons Phase VI*, recorded October 3, 1973, as Document No. 6181, in Book 28, Page 39, Plat Records.
- C. Battlecreek Commons Association, was formed pursuant to the Declaration and incorporated as an Oregon Nonprofit Corporation by Articles of Incorporation filed November 17, 1970, as Registry No. 091278-12, in the office of the Oregon Secretary of State, Corporation Division.
- D. NOW, THEREFORE, in accordance with Article XIV, Section 3 of the Declaration, the Association hereby amends and restates the Declaration in the manner set forth below.

ARTICLE I

Definitions. The following words, when used in the Declaration, or any subsequent or supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

Section 1

"**Association**" shall mean and refer to the Battlecreek Commons Association, a nonprofit corporation organized and existing under the laws of the State of Oregon.

Section 2

"**Association of Members**" means all the owners and other persons entitled to vote acting as a group in accordance with the Declaration and Bylaws.

Section 3

"**Building**" means a multiple unit building or a single unit building, or any combination thereof, comprising a part of the property.

Section 4

"**Common expenses**" means the expenses of administration, maintenance, repair or replacement of the private commons, expenses agreed upon as common by the owners, and expenses declared common by the Declaration, or the Bylaws of this Association

Section 5

"**Declaration**" means These 2024 Amended and Restated Declaration of Covenants and Restrictions for Battlecreek Commons a Planned Unit Development plus amendments and supplements thereto.

Section 6

"**Lot**" means a part of the property, including a building of one or more rooms intended for any type of independent use, and with a direct exit to a public street or highway or to a common area or areas leading to a public street or highway.

Section 7

"**Lot designation**" means the number, letter or combination thereof designating a unit in the Declaration.

Section 8

"**Majority of Members**" means those persons or entities holding fifty-one percent (51%) of the votes in accordance with the percentages and voting rights assigned in the Declaration.

Section 9

"**Manager**" means the manager of Board of Managers or other person or persons in charge of the administration of, or managing, the Association and the properties.

Section 10

"**Member**" means that person or entity having a voting right in the Association pursuant to the Declaration and the Articles of Incorporation, and Bylaws.

Section 11

"**Owner**" shall mean the record owner, or contract purchaser, whether one or more persons or entities, of a fee simple title to any lot, plot, or living unit situated upon the properties, but notwithstanding any applicable theory of the mortgage, shall not mean or refer to the

mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 12

"Private Commons" means parks, commons, streets, footways, building, structures, personal properties, and any and all other properties owned and maintained by the Association for the common benefit and enjoyment of all of the members of the Association.

Section 13

"Properties" or **"Property"** means the land, whether leasehold or in fee simple, all buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which are under this Declaration, Articles, and Bylaws of the Association, plus additions thereto.

ARTICLE II PROPERTIES SUBJECT TO THE DECLARATION

Section 1

Existing Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to the Declaration, is located in Marion County, Oregon, and is more particularly described as set forth upon that document attached hereto and made a part hereof as though fully set forth herein, and marked **Exhibit 1** (Exhibit A from the Original Declaration), all of which said real property shall hereinafter be referred to as "existing property".

Section 2

Supplemental Declaration. The Developer shall have the right to bring within the scheme of this Declaration additional properties in future stages of the development, consisting of other portions of properties not a part of the existing property, but which abut it or which abut property abutting it which has been or will be brought within the terms of this Declaration, provided, however, that such additions are in accord with the general plan of development prepared and made known to every purchase (which may be done by brochure delivered to each such purchaser) prior to such sale. The total number of lots upon the additional properties shall not exceed 160 lots for the rest of the entire development. Such other properties shall be limited to that area set forth upon the attached **Exhibit 2** (Exhibit B to the Original Declaration).

Section 3

General Plan of Development. The general plan of development shall show the matters contained in this Declaration and the general scope and area of the additional properties which shall ultimately be made a part of this Declaration and it shall set forth a general indication of the size and location and proposed land uses in the entire development; the general major proposed common facilities and improvements and the statement that the proposed additions, if made, will become subject to assessment for their just share of association expense. Unless otherwise stated therein, such general plan shall not bind Developer or their heirs or assigns to make the proposed additions, and the general plan shall contain a conspicuous statement to this effect.

Section 4

Recording of Subsequent Declaration. Additional properties may be added to this

Declaration by the filing of record of a declaration of covenants and restrictions for such additional properties; which shall extend the scheme of the covenants and restrictions in detail throughout the entire anticipated development. The Developer may construct the commons and additional lots, and by the filing of a final declaration for each parcel of adjoining add the properties in such adjoining area set forth upon **Exhibit 2** hereto attached, and so, by such staged construction, complete the entire planned development. The new properties shall not be added to the property until a final declaration for the completed area shall have been filed in accordance with the terms of this Declaration. Such final declarations shall contain such complimentary additions and modifications of the covenants and restriction contained in this Declaration as many be necessary to reflect the different character, if any, of the properties, and such as are not inconsistent with the general scheme of this Declaration. In no event, however, shall such supplemental declaration revoke or modify the covenants established by this Declaration within the existing property, and upon the completion of the entire development, this Declaration plus the subsequent final declarations shall jointly and severally contain each and all of the covenants and restrictions relating to the entire development.

ARTICLE III

Section 1

Power of Attorney. In order to expedite the completion of the project, the owners, and each of them, and all purchasers of lots in the future, hereby nominate and appoint the Developer, their true and lawful attorney, for them, and in their respective names and stead's, to execute and record subsequent declarations as set forth in this Declaration. Because of the interest of the Developer in the project, the power of attorney hereby granted is coupled with an interest and is irrevocable until the completion of the entire project and the filing of a final declaration of completion by the Developer. As additional lots are created, the lots shall be subjected to the filing of declarations in substantially the form of this Declaration. Each such declaration of ownership shall include the lots constructed on the property subsequent to the filing of this Declaration. All additional lots shall be constructed in accordance with this Declaration.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1

Membership. Every person or entity which is an owner shall be a member, and the Developer shall be a member.

Section 2

Voting Rights. The association shall have two (2) classes of voting membership:

Class A Class A Members shall be all of the lot owners.

Proportionate shares of the separate owners in the common revenues and expenses in connection with the private commons, and the proportionate representation for voting purposes in the association of all of the owners shall be equal. Each Class A owner shall have one vote whether the owner is a corporation, an association, a partnership, or *domestic partners*. When more than one person holds such interest in any lot, all such persons shall exercise their vote a unit as they among themselves shall determine.

Class B The Class B Member shall be the Developer.

The Class B member shall be entitled to two times the votes for each lot owned by a Class A member for the lots contained upon this Declaration and one vote for each lot owned by a Class A member for the lots set forth upon subsequent declarations; provided, however, that the Class B membership shall cease and become converted to Class A membership upon the happening of any of the following events, whichever occurs earlier:

- (a) When fifty percent (50%) of the lots set forth upon the last declaration to be filed have been sold; or
- (b) On the 5th day of July, 1980.

From and after the happening of these events, whichever occurs earlier, the Class B member, shall be deemed to be a Class A member entitled to such number of votes as are contained in the constructed lots then unsold and in which the Developer holds the interest required for membership under this Declaration.

ARTICLE V

PROPERTY RIGHTS IN PRIVATE COMMONS

Section 1

Members Easements of Enjoyment. Subject to the provisions of Section 3 of this Article V, every member shall have a right and easement of enjoyment in and to the private commons and such easement shall be appurtenant to and shall pass with the title to every lot or living unit.

Section 2

Title to Private Commons. The Developer may retain the legal title to the private commons until such time as improvements have been completed thereon and until such times as, in the opinion of the Developer, the Association is able to maintain the same, but notwithstanding any provision herein, the Developer hereby covenants for itself and its heirs and assigns, that it shall convey the private commons to the Association not later than ten (10) years after the filing of this Declaration.

Section 3

Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, as provided in its Articles of Incorporation and Bylaws, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

(b) The right of the Association to charge reasonable admission and other fees for the use of the private commons; and

(c) The right of the Association and Developer to dedicate or transfer all or any part of the private commons to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, or determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by the members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or

condition, and unless written notice of the proposed agreement and action thereof is sent to every member at least ninety (90) days in advance of any action taken.

ARTICLE VI COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1.

Creation of the Lien and Personal Obligation of Assessments. Developer, for each developed lot and living unit owned by it within the properties, hereby covenants with, and each owner of any lot or living unit by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided shall also be the personal obligation of the person who is the owner of such property at the time when the assessment fell due.

Section 2.

Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the properties and in particular for the improvement and maintenance of the properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the private commons which may include, but is not limited to garbage collections, utilities, and other personal services to the owners, insurance upon the private commons and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof, and the accumulation of reasonable reserves for any and all of such purposes.

In addition to the annual assessment payable monthly as provided herein, the Board of Directors shall annually bill and assess each owner for the owner's pro rata share of the property taxes-assessed against the private commons, if any. The share of taxes to be payable by each owner shall be based upon the number of lots which each owner has in relation to the total number of lots outstanding. The annual billing for such purpose shall be billed separately to each owner and shall contain on it the notice that the billing is for the owners pro rata share of such property taxes.

Section 3.

Basis and Maximum of Annual Assessments. Until January 1, 1972, the maximum annual assessment shall be THREE HUNDRED NINETY DOLLARS (\$390.00) per lot. From and after January 1, 1972, the maximum annual assessment may be increased each year not more than 8% above the assessment for the previous year without a vote of the membership. From and after January 1, 1972, the maximum annual assessment may be increased above that hereinabove provided by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for the purpose. The Board of Directors may fix the

annual assessment at an amount not in excess of the maximum herein provided.

Section 4.

New Purchaser Transfer Assessment.

(a) As used in this Section 4, "Transfer" means:

- i. the recordation of a deed, contract of sale, or any other instrument which transfers the possession and equitable ownership,
- ii. any change in ownership or control of the owner,
- iii. any transfer or assignment by operation of law.

(b) **Transfer Assessment.** In addition to the annual and special assessments authorized above, a transfer assessment ("Transfer Assessment") is hereby levied upon the Transfer of any Lot subject to this Declaration. The initial Transfer Assessment shall be one percent (1%) of the sales price of the Lot. The Transfer Assessment is the personal obligation of the purchaser of the Lot and a lien upon the Lot.

(c) **Exemptions.** Upon written application for exemption, the Board of Directors shall grant an exemption from the Transfer Assessment for:

- i. any Transfer made without consideration, for estate planning purposes;
- ii. any Transfer made solely for gift purposes;
- iii. any Transfer to beneficiaries of an estate, or testamentary trust; or
- iv. any Transfer pursuant to a foreclosure of a security interest or deed in lieu of foreclosure.

(d) **Use of Transfer Assessment.** The Transfer Assessment shall be used by the Association for constructing and maintaining capital items and for major repairs, remodeling, renovation, additions to or replacement of common facilities, or other Association operating costs. The Transfer Assessment is not an advance payment of any annual or special assessment due under this Declaration.

Section 5.

Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy for any three-year period a special assessment, applicable to that period only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the private commons, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purposes of the meeting.

Section 6.

Date of Commencement of Assessments: Due Dates, Uniform Rate. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors to be the date of commencement. The first annual assessment shall be made for the balance of the calendar year, unless the Board of Directors determines that such first annual assessment shall be made for the balance of a fiscal year. The

annual assessments for the first and all subsequent years shall be payable in monthly installments on or before the tenth day of each month during the year, or in such other reasonable manner as the Board of Directors shall determine.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessments shall be an amount which bears the same relationship to the annual assessment provided for in Section 3, hereof, as the remaining number of months in that year bear to 12. The same reduction in the amount of the assessment shall apply to the first assessment levied against any additional property which is added to the properties subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section 4, hereof shall be fixed in the resolution authorizing such assessment.

Both annual and special assessments shall be fixed at a uniform rate for all lots.

Section 7.

Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each lot or living unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessment applicable thereto which shall be kept in that office of the Association and shall be open to inspection by any owner. Written notice of the assessment shall thereupon be sent to every owner subject thereto.

The Association shall, upon demand at any time, furnish to any owner liable for said assessment a certificate in writing, signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8.

Effect of Nonpayment of Assessment. The Personal Obligation of the Owner; the Lien; Remedies of Association. If the assessments are not paid on the date when due (being the date specified in Section 5. hereof) then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection hereof as hereinafter provided thereupon become a continuing lien of the property which shall bind such property in the hands of the then owner, *their* heirs, devisees, personal representatives and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain *their* personal obligation and shall not pass to a successor in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten (10) percent per annum, and the Association may bring an action at law against the owner personally obligated to pay the same, or to foreclose the lien against the property, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by a court at either a trial or appellate court levied together with the costs and disbursements incurred.

Section 9.

Effect of Failure of Board of Directors to Set Assessment. The omission by the Board of Directors, before the time set herein, to fix the assessments hereunder shall not be deemed a waiver or modification in any respect of the provision of the Declaration or a release of an owner from the obligation to pay an assessment of any installment thereof, but the assessment

fixed for the preceding year shall continue until a new assessment is fixed.

Section 10.

Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now, or hereafter, placed upon the properties subject to the assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a Decree of Foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 11.

Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created hereunder:

(a) All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use:

(b) All private commons as defined in Article I, Section 12, hereof.

Notwithstanding any provisions herein, no land or improvement devoted to dwelling use shall be exempt from said assessments, charges or liens.

**ARTICLE VII
PARTY WALLS**

Section 1

General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the properties and placed on the dividing line between the lots or units shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2.

Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 3.

Weather Proofing. Notwithstanding any other provision of this Article, an owner who, by *their* negligent or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 4.

Right to Contribution Runs with Land. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title. In the event of any dispute between owners, the Board of Directors shall determine the matter.

ARTICLE VIII
ARCHITECTURAL CONTROL COMMITTEE

Section 1.

Review by Committee. No building, fence, wall or other structure shall be commenced, erected, or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated Committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it or in any event, if no suit to enjoin the addition alteration or change has been commenced prior to the completion thereof, approval will not be required, and this Article will be deemed to have been fully complied with. The provision set forth in this section shall not apply to the developer or its successors or assigns as long as its rights as a Class B member shall remain in effect.

ARTICLE IX
EXTERIOR MAINTENANCE

Section 1.

Exterior Maintenance in General. In addition to the maintenance upon the private commons, the Association shall provide exterior maintenance upon each, or any, lot and living unit which is subject to assessment under Article VI hereof, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces except exterior glass and screens, trees, shrubs, grass, walks and other exterior improvements. The cost of such exterior maintenance shall be considered a common expense in all respects as provided in Article VI hereof.

Section 2.

Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance required by the Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any lot or exterior of any living unit at reasonable hours on any day except Sunday.

ARTICLE X

The owner, and the Developer, and their respective heirs, successors and assigns, and all future owners, by their acceptance of their deeds, covenant and agree as follows:

Section 1.

That the general private commons shall remain undivided; and no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the properties.

Section 2.

The owners of the respective multiple units shall not be deemed to own pipe, wires, conduits or other public utility lines running through said respective multiple units or other jointly used properties which are utilized for, or serve more than one family, except as tenants in common with the other joint users.

Section 3.

The owners of the respective units and lots agree that if any portion of the private commons encroaches upon their respective units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. In the event the multi-family structure is partially or totally destroyed, and then rebuilt, the owners of units agree that minor encroachment on parts of the common elements due to construction shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 4.

The owner of a unit or lot shall automatically, upon becoming such, be a member of the Home Owner's Association, and shall remain a member of said Association, until such time as *their* ownership ceases for any reason, at which time *their* membership in said Association shall automatically cease.

Section 5.

The owners of units covenant and agree that the administration of the properties shall be in accordance with the provision of this Declaration, the subsequent Declaration and the Bylaws of the Association.

Section 6.

Each owner, tenant or occupant of a unit shall comply with the provisions of this Declaration, the Declaration for additional property to the extent applicable, the Bylaws, the decision and resolutions of the Association and the Oregon law, and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action or suit to recover sums due, for damages, or for injunctive relief.

Section 7.

This Declaration shall not be revoked or any of the provisions herein amended unless all of the owners and mortgagees of all of the mortgages covering the lots or units unanimously agree to such revocation or amendment by duly recorded instruments.

Section 8.

No owner of a unit or lot may exempt *themselves* from liability for *their* contribution towards the common expenses by waiver of the use or enjoyment of any of the private commons or by the abandonment of *their* lot or unit.

ARTICLE XI

Obsolescence, Damage or Destruction of the Properties. In the event the property subject to this preliminary declaration is totally or substantially damaged or destroyed, or is rendered obsolete, the repair, reconstruction or disposition of the properties shall be as provided by law.

ARTICLE XII

INSURANCE

The Board of Directors of the Association, or the Management Agent, may obtain and continue in effect blanket property and liability insurance, but without prejudice to the right of the owner of the unit to obtain individual unit insurance, in excess of the blanket coverage. Insurance premiums for any such blanket coverage shall be a common expense to be paid by assessments levied by the Association as provided in the Bylaws of the Association, and charged pro rata to the various unit owners in accordance with the instructions from the unit owner as to the amount of coverage requested by the owner. The Board of Directors shall obtain and continue in effect blanket property and liability insurance as to all improvements and properties on the private commons as an association expense but the responsibility for the determination of adequate coverage upon the lot or properties belonging to the owner or member shall be in accordance with written instructions furnished by the owner or member and any written determination by the owner or member as to adequate coverage shall relieve the association of any obligation to acquire or maintain the coverage upon the members separate interest in excess of that so determined by the owner or member.

ARTICLE XIII EASEMENTS

There are hereby specifically reserved for the benefit of the Association, for the lot owners in common, and for each lot owner severally, as their respective interest shall appear, the easements, reciprocal negative easements, secondary easements, and rights of way, as particularly identified in the paragraph.

(a) There is reserved for the benefit of each lot, and the lot owners thereof, as a dominant tenement:

1. A non-exclusive easement for utility services at reasonable places over, under and through the property and each other lot, jointly as the servient tenement;
2. A non-exclusive easement for egress and ingress over the streets and the private commons; and
3. An easement for encroachment, occupancy and use of such portion of the property and each other lot, jointly as the servient tenement, as shall be encroached upon, used and occupied by the lot owner of the dominant tenement as a result of any alluvion, accretion, erosion, subsidence, landslide or collapse, deterioration, decay, construction errors, overhanging structures, necessary repair and maintenance, movement or subsidence of buildings or structures, or any portion thereof.

(b) There is reserved to the Association, its agents and servants, an easement in gross of which all of the lots shall be jointly subject, an easement to entry and of access for the installation and maintenance of utility lines, utility meter boxes, landscaping and common areas, and for the performance generally of its rights and duties as provided in the Declaration.

(c) The dimensions of each lot are set forth upon the attached "Exhibit A", and shall be similarly set forth upon the subsequent declarations to be filed hereinafter. In addition to the exclusive rights which each owner shall have within *their* lot, each owner shall have the right to appropriate from the private commons, not to exceed four hundred and fifty (450) square feet of area abutting the owner's lot for a patio or deck area which may be covered but not enclosed. Any such appropriation shall be accomplished at the sole initial expense of the

owner and only after the prior written consent of the Architectural Control Committee or the Board of Directors or the Developer.

**ARTICLE XIV
GENERAL PROVISIONS**

Section 1.

Enforcement. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2.

Severability. Invalidation of any one of these covenants or restriction by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3.

Amendment. The covenants, easements and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, and their respective representative, heirs, successors and assigns, for a period of twenty-five (25) years from the date of this Declaration is recorded after which time said covenants shall be automatically extended for successive periods of ten years. The covenants and restriction of this declaration may be amended during the first twenty-five (25) year period by an instrument signed by not less than 90% of the lot owners, and thereafter, by an instrument signed by not less than 75% of the lot owners. Any amendment must be properly recorded. Easements herein granted and reserved shall not be amended except by instrument signed and acknowledged by 100% of the owners of said property, including the Developer.

Battlecreek Commons Association

By: Sharon Grassetto
Chairman

By: Supreet Kaur
Secretary

Certification

The undersigned President and Secretary of the Battlecreek Commons, an Oregon nonprofit corporation, hereby certify that this foregoing 2024 Amended and Restated Declaration was adopted in accordance with the Declaration and Bylaws.

By: *Sharon Grasett*
Chairman

By: *Suzanne Harris*
Secretary

STATE OF OREGON)
) ss.
County of MARION)

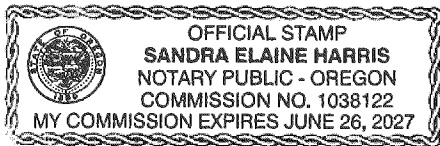
The foregoing instrument was acknowledged before me this 7 day of JUNE, 2024, by SHARON GRASSETT, Chairman of Battlecreek Commons Association, an Oregon nonprofit corporation, on its behalf.



Sandra Elaine Harris
Notary Public for Oregon

STATE OF OREGON)
) ss.
County of MARION)

The foregoing instrument was acknowledged before me this 7 day of JUNE, 2024, by SUZANNE HARRIS, Secretary of Battlecreek Commons Association, an Oregon nonprofit corporation, on its behalf.



Sandra Elaine Harris
Notary Public for Oregon

Exhibit 1

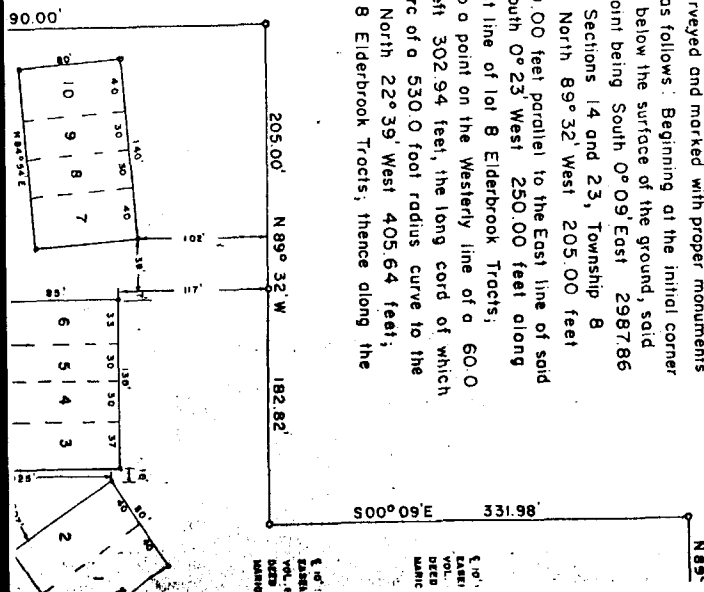
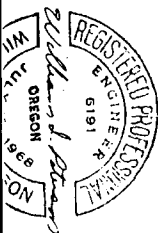
IN SECTION 23, TOWNSHIP 8 SOUTH, RANGE MARION COUN

EXHIBIT "A"

SURVEYOR'S CERTIFICATE

I, William L. Peterson, being duly sworn, depose and say that I have surveyed and marked with proper monuments the land hereon shown as BATTLE CREEK COMMONS which is described as follows: Beginning at the initial corner of this subdivision which is marked by a 2" by 3/8" galvanized iron pipe set 6" below the surface of the ground, said initial corner being the Northeast corner of lot 10, Elderbrook Tracts, said point being South 0° 09' East 2987.86 feet and North 89° 32' West 182.82 feet from the 1/4 corner common to Sections 14 and 23, Township 8 South, Range 3 West, Willamette Meridian, Marion County, Oregon; thence North 89° 32' West 205.00 feet to a point on the North line of said lot 10; thence South 0° 23' West 390.00 feet parallel to the East line of said lot 10; thence East 205.00 feet to a point on said East line; thence South 0° 23' West 250.00 feet along said East line to a point; thence East 664.62 feet to a point on the East line of lot 8 Elderbrook Tracts; thence North 0° 23' East along the East line of said lot 8, 278.68 feet to a point on the Westerly line of a 60.0 foot road; thence along the arc of a 566.62 foot radius curve to the left 302.94 feet, the long cord of which bears North 29° 50' West 299.33 feet to a P.R.C; thence along the arc of a 530.0 foot radius curve to the right 416.26 feet to the P.T. of said curve, the long cord of which bears North 22° 39' West 405.64 feet; thence North 0° 09' West 53.49 feet to a point on the North line of lot 8 Elderbrook Tracts; thence along the North line of said lot 8 North 89° 08' West 175.00 feet to an angle point thereon; thence South 0° 09' East 331.98 feet to a point; thence North 89° 32' West 182.82 feet to the point of beginning containing 12.244 acres of land

William L. Peterson
Registered Engineer No. 6191



7228906

VOL 693
PAGE 53
7228906

5' 0" 1/2
EARS
VOL.
DEED
MARK

EXHIBIT "A"

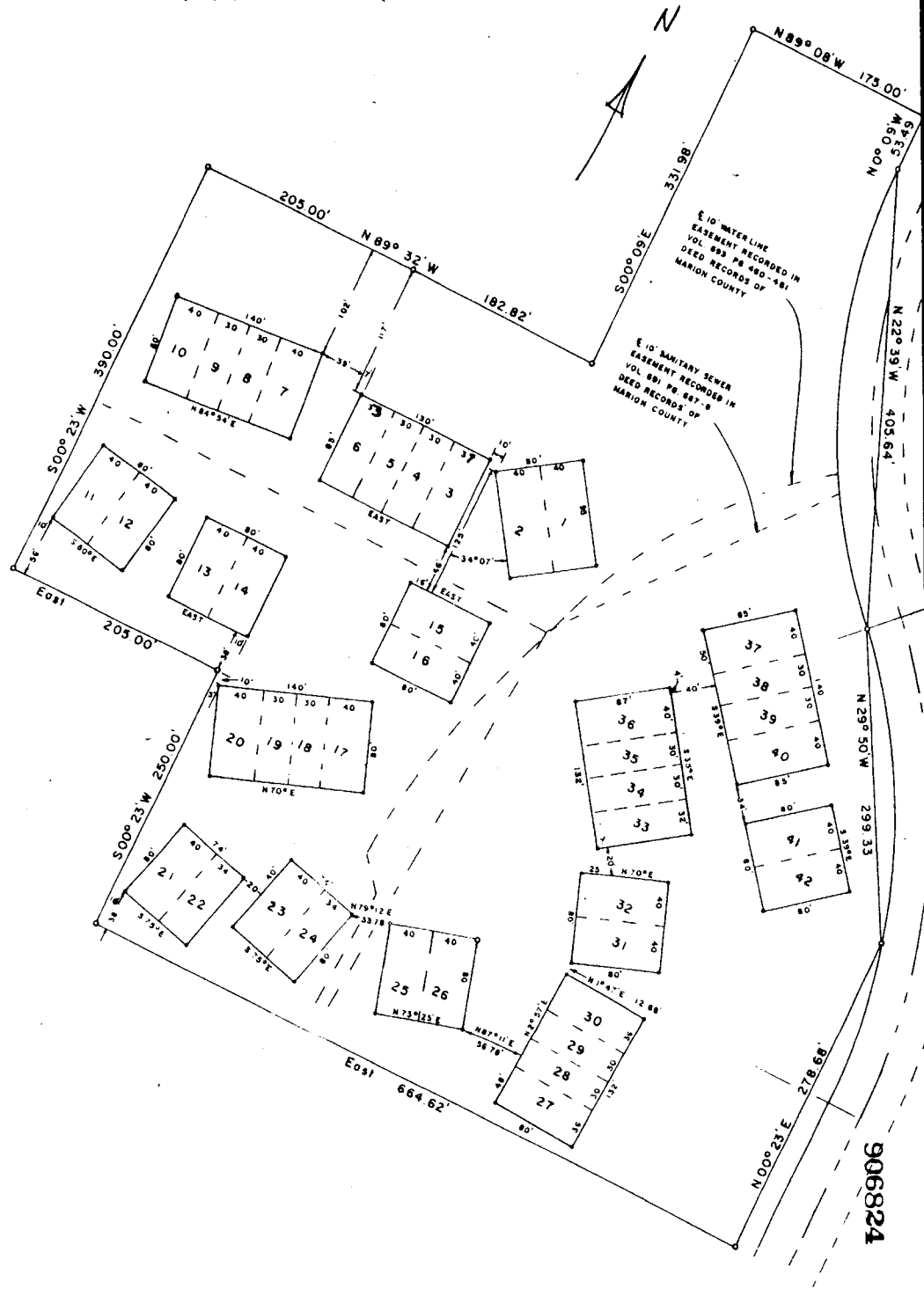


Exhibit 2

VOL 695 PAGE 538

LEGAL DESCRIPTION - EXHIBIT "B"

(See Article II, Section 2, Declaration for Battlecreek Commons)

Lots 8, 9, 10, 11 and 12 respectively of Elderbrook Tracts, in Sections 14 and 23, Township 8 South, Range 3 West of the Willamette Meridian in Marion County, Oregon.

SAVE AND EXCEPT that portion of Lot 8 which lies East of a certain dedicated road known as Fairway Avenue, S.E., and shown on the Plat for Battlecreek Commons.

SAVE AND EXCEPT that portion of the above property lying within public roads.

906824

J.P.
25-12

695

521

1937

B

3116

Ron Jones & Co.
445 Union NE
Salem 97301
(503) 355-5555
(see plat)

906824

2/12

Marion County
Document Separator Page

Instrument # 2024-18182

June 17, 2024 03:25 PM

State of Oregon
County of Marion

I hereby certify that the attached
instrument was received and duly
recorded by me in Marion County
records:

Fee: \$171.00

Bill Burgess
Marion County Clerk

This is not an invoice.