

(a) maintain in good condition and repair the Residence and other Improvements on its Lot;

(b) maintain in good condition and repair the sewer lines and appurtenant facilities within its Lot to the sewer cleanout as required by the City;

(c) maintain in attractive condition rear yard landscaping in accordance with the provisions of this Article;

(d) If the Board shall determine that any Improvements required to be maintained by the Association has been damaged by a particular Owner, the said Owner shall be responsible for repairing such damage in a timely manner and in accordance with such rules as the Board or Architectural Committee shall from time to time adopt; and

(e) construct and maintain in good condition and repair six foot high cedar yard fence.

Section 9.03 - Noncompliance by Owner. If an Owner fails to accomplish any installation, maintenance or repair required by this Article, the Board shall give notice to the Owner describing the deficiency and setting a date for a hearing before the Board or a committee selected by the Board for such purpose.

Section 9.04 - Standards for Maintenance and Installation.

(a) Maintenance of the exterior of the Residences, including, without limitation, walls, fences and roofs, shall be accomplished in accordance with the Architectural Standards and, if required by the Architectural Standards, only after approval of the Architectural Committee.

(b) Except for the portion of each Lot maintained by the Association as hereinabove provided, all portions of the yard of a Lot which are unimproved shall be landscaped by the Owner thereof on or before a date six (6) months from the original conveyance of such Lot by Declarant. Thereafter, such landscaping shall be maintained by the Owner in an attractive condition and according to any rules promulgated by the Board.

(c) All slopes and terraces on any Lot shall be maintained as to prevent any erosion thereof upon adjacent streets or adjoining property.

Section 9.05 - Maintenance of Public Utilities. Nothing contained herein shall require or obligate the Association to maintain, replace or restore aboveground or underground facilities or public utilities which are located within easements in the Community Property owned by such public utilities. However, the Association shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.



Section 9.06 - Transfer of Title and/or Control.

(a) The Community Property within the Initial Covered Property shall be conveyed to the Association prior to or concurrently with the first conveyance of a Lot located within the Initial Covered Property. Any real property denominated as Community Property in a Supplementary Declaration shall be conveyed to the Association prior to or concurrently with the first conveyance of a lot located within the Annexed Property described in such Supplementary Declaration. Declarant shall convey the Community Property to the Association free of all liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of conveyance), title exceptions of record and the covenants, conditions, reservations and restrictions contained in this Declaration and the instrument which conveys the Community Property to the Association.

(b) Declarant, its subcontractors, and the agents and employees of the same shall have the right to come on the Community Property to complete the construction of any landscaping or other improvement to be installed on the Community Property, and if any excess of Assessments collected over actual Common Expenses incurred by the Association is caused by reason of construction or maintenance pursuant to this Section, or otherwise, such excess shall be placed in reserve to offset the future expenses of the Association in any manner designated by the Board. Declarant shall repair any damage to and complete any restoration of the Covered Property caused or necessitated by such construction within a reasonable time after the occurrence of such damage or need for reconstruction.

ARTICLE X  
ARCHITECTURAL CONTROL

Section 10.01 - Architectural Committee.

(a) The Architectural Committee shall consist of not less than three (3) nor more than five (5) persons as fixed from time to time by resolution of the Board. The Declarant shall initially appoint the Architectural Committee. The Declarant shall retain the right to appoint, augment or replace a majority of the members of the Architectural Committee until the earlier of five (5) years after the date of the Final Plat Recording of Phase I or ninety percent (90%) of the Lots have been conveyed by the Declarant.

(b) Notwithstanding the foregoing, commencing one (1) year following such Final Plat Recording for Phase I, the Board shall have the right but not the obligation to appoint the remaining persons to the Architectural Committee. Five (5) years after the date of such Final Plat Recording, or when ninety percent (90%) of the Lots have been conveyed by Declarant, whichever shall first occur, the right to appoint, augment or replace all members of the



Architectural Committee shall automatically be transferred to the Board. Persons appointed by the Board to the Architectural Committee must be Members; however, persons appointed by Declarant to the Architectural Committee need not be Members.

(c) The address of the Architectural Committee shall be the address established for giving notice to the Association. Such address shall be the place for the submittal of plans and specifications and the place where the current Architectural Standards shall be kept.

Section 10.02 - Architectural Standards. The Board may, from time to time, adopt and promulgate Architectural Standards to be administered through the Architectural Committee. The Architectural Standards may include among other things those restrictions and limitations upon the Owners set forth below:

(a) Time limitations for the completion of the Improvements for which approval is required pursuant to the Architectural Standards.

(b) Conformity of completed Improvements to plans and specifications approved by the Architectural Committee; provided, however, as to purchasers and encumbrances in good faith and for value unless notice of noncompletion or nonconformance identifying the violating Residence and its owner and specifying the reason for the notice, executed by the Architectural Committee, shall be filed of record in the Official Records, and given to such Owner within one (1) year of the expiration of the times limitation described in subsection (a) above, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one (1) year period, the completed Improvements shall be deemed to be in compliance with plans and specifications approved by the Architectural Committee and in compliance with the Architectural Standards of the Association, only with respect to purchasers and encumbrances in good faith and for value. The Owner to whom a notice of noncompletion or noncompliance has been issued shall be bound by such notice regardless of whether such notice has been filed of record in Official Records. Each Owner hereby is deemed to have consented to and authorized the recordation against its Lot and Residence of such a notice of noncompletion or nonconformance executed only by the Architectural Committee or its delegate.

(c) Such other limitations and restrictions as the Board in its reasonable discretion shall adopt, including, without limitation, the regulation of the following: placement, construction, reconstruction, exterior addition, change or alteration to or maintenance of any Improvement including, without limitation, the nature, kind, shape, height, materials, exterior color, surface and location of any Improvement.

(d) A description of the types of such construction, reconstruction, additions, alterations or maintenance which, if completed in conformity with the Architectural Standards, do not require the approval of the Architectural Committee.



(e) Restrictions controlling the species, placement and height of any trees, plants, bush, ground cover or other growing thing placed or planted on the Covered Property.

Section 10.03 - Functions of Architectural Committee.

(a) It shall be the duty of the Architectural Committee to consider and act upon proposals or plans submitted pursuant to the terms of the Declaration or the Architectural Standards, and to perform such other duties delegated to it by the Board.

(b) The Architectural Committee may delegate its plan review responsibilities to one or more members of such Architectural Committee. Upon such delegation, the approval or disapproval of plans and specifications by such person(s) shall be equivalent to approval or disapproval by the entire Architectural Committee.

(c) The Architectural Committee may, from time to time, subject to the approval of the Board, adopt, amend and repeal Architectural Committee Rules and may assess a reasonable fee as appropriate for the type and nature of the Improvement, in connection with the review of plans and specifications for proposed Improvements, including without limitation, a procedure and approval of preliminary plans and drawings, as well as final approval, the number of sets of plans to be submitted, and may require such detail as it deems proper, including without limitation, floor plans, site plans, elevation drawings, and descriptions or samples of exterior material and colors. Unless any such rules are complied with, such plans and specifications shall be deemed not submitted.

(d) The establishment of the Architectural Committee and the systems herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain, repair, alter or modify or otherwise have control over the Lots and Residences as may otherwise be specified in the Association Management Documents.

Section 10.04 - Approval of Plans.

(a) No Improvement shall be constructed, installed, expanded, made, planted, commenced, erected or maintained upon the Covered Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Architectural Committee.

(b) The Architectural Committee shall review and approve or disapprove all plans and specifics submitted to it for any proposed Improvement solely on the basis of compliance with the Architectural Standards, aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Covered Property generally. The Architectural

Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of building, landscaping, color schemes, exterior finishes and materials, and similar features.

(c) The Architectural Committee shall approve plans and specifications submitted for its approval only if it deems that the proposed Improvement will not be detrimental to the appearance of the Covered Property as a whole; that the Improvement complies with the Architectural Standards; that the appearance of any Improvements will be in harmony with the surrounding Improvements; that the construction of any Improvement will not detract from the beauty and attractiveness of the Covered Property or the enjoyment thereof by the Members; that the upkeep and maintenance of any Improvement will not become a burden on the Association; and that no violations of the use restrictions set forth in the Article entitled "Use Restrictions" of this Declaration exist.

(d) The Architectural Committee may condition its approval of plans and specifications for any Improvement on such changes therein as it deems appropriate, may determine that such Improvement cannot be approved because of its effect on existing drainage, utility or other easements, or may condition its approval of such Improvement upon approval of such Improvement by the holder of any such easement, or may condition its approval upon approval of any such Improvement by the appropriate governmental entity, and may require submission of additional plans and specifications or other information or materials prior to approving or disapproving plans and specifications submitted. Any Architectural Committee approval conditioned upon the approval by a governmental entity shall not imply that the Association is enforcing any government codes or regulations, nor shall the failure to make such conditional approval imply that any such governmental agency approval is not required.

(e) In the event the Architectural Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the same have been duly submitted in accordance with any rules regarding such submission adopted by the Architectural Committee, such plans and specifications will be deemed approved.

(f) As long as Declarant is utilizing the easement described in the subsection entitled "Construction and Sales" of the Section entitled "Development Rights and Easements Reserved to Declarant" of the Article entitled "Rights of Ownership and Easements" of this Declaration, Declarant shall not be subject to the provisions of this Section, and any amendment to this Section shall require the prior written approval of Declarant.

Section 10.05 - Nonliability for Approval of Plans. Plans and specifications shall be approved by the Architectural Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, and other applicable statutes, ordinances or governmental rules or regulations, the requirements of

any public utility, or any easements or other agreement. By approving such plans and specifications neither the Architectural Committee, the members thereof, the Association, the Members, the Board nor Declarant nor agents, employees, attorneys or consultants of any of the foregoing, assume liability or responsibility therefor, or for any defect in any Improvement constructed from such plans and specifications.

Section 10.06 - Appeal. If plans and specifications submitted to the Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board. The written request shall be received by the Board not more than fifteen (15) days following the final decision of the Architectural Committee. The Board shall submit such request to the Architectural Committee for review, whose written recommendations are to be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the appellant.

Section 10.07 - Inspection and Evidence of Approval.

(a) The Architectural Committee shall cause an inspection to be undertaken within forty-five (45) days of a request therefor from any Owner as to its Improvement, and if such inspection reveals that the Improvement has been completed in compliance with this Article, the President and the Secretary of the Association, or any other officer or officers authorized by resolution of the Board, shall provide to such Owner a notice of such approved completion in recordable form which shall be conclusive evidence of compliance with the provisions of this Article as to the Improvement described in such notice, but as to such Improvement only.

(b) If for any reasons the Architectural Committee fails to cause an inspection to be made within forty-five (45) days of being notified by the Owner of the completion of an Improvement or fails to notify the Owner of any noncompliance within thirty (30) days after an inspection, the Improvement shall be deemed to be completed in substantial conformance with approved plans and specifications. In such event, the Owner shall be entitled to receive a notice of compliance in recordable form upon request, executed by the President and the Secretary of the Association, or any other officer or officers authorized by resolution of the Board. Such notice of compliance shall be conclusive evidence of compliance with the provisions of this Article as to the Improvement described in the notice.

Section 10.08 - Failure to Submit Plans; Nonconformity. The Association has the right to enter the Lot and Residence for the purpose of inspecting an Improvement constructed or being constructed upon such Lot or Residence. If an Improvement was commenced without the required approval of the Architectural Committee, or, if such Improvement was not completed in substantial conformance with the approved plans and specifications, the Architectural Committee shall give notice of the violation to the violating Owner, which notice shall briefly



describe the violation and shall set a date for a hearing before the Board, or a committee selected by the Board for such purpose.

Section 10.09 - Variances. If the Board finds in favor of the Architectural Committee upon appeal of a disapproval of plans and specifications pursuant to the Section entitled "Appeal" of this Article or if the Board finds noncompliance with the provisions of this Article upon review of a decision by the Architectural Committee after an inspection pursuant to the Section entitled "Failure to Submit Plans; Nonconformity" of this Article, the Board may authorize a variance from compliance with the architectural controls set forth in this article when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental consideration may require; provided, however, that no variance from the use restrictions contained in the Article entitled "Use Restrictions" of this Declaration may be granted. Such variances must be evidenced in writing, must be signed by a majority of the members of the Architectural Committee. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Lot or Residence and particular provision of this Article covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all government laws and regulations affecting his use of its Lot or Residence including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by any governmental or municipal authority.

## ARTICLE XI INSURANCE

The Association shall obtain and maintain in effect a comprehensive public liability insurance policy insuring the Association against any liability incident to the ownership or use of the Community Property or any other areas under the supervision of the Association.

## ARTICLE XII EMINENT DOMAIN

Section 12.01 - Definition of Taking. The term "taking" as used in this Article shall mean condemnation by eminent domain, or by sale under threat thereof, of all or part of the Community Property.

Section 12.02 - Representation by Board in Condemnation Proceedings. In the event of a taking, the Members hereby appoint the Board and such persons as the Board may delegate to represent

all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action.

Section 12.03 - Award for Community Property. Any awards received on account of the taking of Community Property shall be paid to the Association and shall be retained in the general funds of the Association subject to the prior rights of any mortgagee holding an encumbrance upon any Community Property for which such award has been paid.

Section 12.04 - Inverse Condemnation Proceedings. In the event that any Community Property and any Improvements thereto or any portion thereof is made the subject of any condemnation proceedings in eminent domain, is otherwise sought to be acquired by a condemning authority, or is otherwise subject to a taking, the Board shall promptly notify all Owners and any Requesting Mortgagee, Insurer or Guarantor affected by such taking or threatened taking. As used herein, "taking" shall have the meaning set forth in the subsection entitled "Mortgagee Protection" of this Declaration.

### ARTICLE XIII PARTY WALLS

Section 13.01 - Definition of Party Wall. Each wall or fence which is placed on the dividing line between two (2) Lots shall constitute a party wall, and any wall or fence other than a building wall that is placed on the boundary line of the Sideyard Easement area within a Servient Tenement Lot shall be deemed to be a party wall notwithstanding that such wall or fence is not located on a boundary line separating two Lots and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. A party wall shall be considered to adjoin and abut against the property line dividing the Lots from the bottom of the foundation over the full length and height of the wall. The party walls as initially constructed are depicted in Exhibits C and D. If approved by the Architectural Committee, an Owner of a Servient Tenement Lot shall be permitted to remove (i) any portion of a party wall that is replaced by a building wall; or (ii) any portion of a building wall located on the boundary of a Sideyard Easement area that is replaced by a party wall. Any construction of additional walls or fences or any repair, restoration or reconstruction of any party walls as the result of either of the foregoing changes shall be accomplished by such Owner of the Servient Tenement at its sole expense. The quality of workmanship and materials used in the construction, repair, restoration, or reconstruction of such walls and fences shall be equal to that of the remainder of the party wall located between the Dominant and the Servient Tenement Lots and thereafter any such walls and fences shall be party walls as defined in this Article.



Section 13.02 - Use of Party Wall or Fence. Owners whose Residences are separated by a party wall or fence shall equally have the right to use such party wall, except that each shall have the right to the exclusive use of the surface of the wall on its side. Neither such Owner shall use any portion of such party wall so as to interfere with the use and enjoyment of the other Owner.

Section 13.03 - 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 13.04 - Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged 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 shall 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.

Section 13.05 - Right to Contribution Runs With Land. The right of an 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.

Section 13.06 - Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, said dispute shall be submitted to the Board for a resolution thereof. In the event the Board cannot or will not resolve such dispute, it shall employ an arbitrator for said purpose. Said arbitrator shall be selected at the discretion of the Board but shall be a member of the American Arbitration Association. The arbitrator who is chosen by the Board shall resolve said dispute pursuant to the prevailing rules of the American Arbitration Association and the requirements of the law of the State of Washington.

#### ARTICLE XIV ANNEXATIONS

Real property may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article, as follows:

Section 14.01 - Annexation Pursuant to Approval. Upon approval in writing of the Association, pursuant to the vote or written assent of sixty-seven percent (67%) of the total voting power of Members other than the Declarant, any person who desires to add real property to the plan of this Declaration and to subject such property to the jurisdiction of the Association, may file or record a Supplementary Declaration. The certificate of the officer or officers authorized by resolution of the Board, attached to any Supplementary Declaration recorded pursuant to this Section

certifying that the required voting power of the Association has approved the recordation of such Supplementary Declaration shall be deemed conclusive proof thereof.

Section 14.02 - Effectuation of Annexation. Upon the satisfaction of all of the conditions contained in the Section entitled "Annexation Pursuant to Approval" of this Article, the recordation of a Supplementary Declaration shall constitute and effectuate the annexation of the real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said annexed real property shall be part of the Covered Property and all of the Owners of Lots or Residences in said Annexed Property shall automatically be Members. In no event, however, shall any such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration or by any prior Supplementary Declaration with respect to property covered by this Declaration at the time of the recording of the said Supplementary Declaration.

Section 14.03 - Mergers or Consolidations. Upon a merger or consolidation of the Association with another association which merger or consolidation must be approved by the vote or written assent of sixty-seven percent (67%) of the total voting power of Members other than the Declarant, the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the Covered Property, together with the covenants, conditions and restrictions established upon any other property as one plan.

Section 14.04 - Annexation by the Declarant. If at any time or times prior to January 1, 2012, Declarant or its successors or assigns should develop any additional property or properties contiguous to the Covered Property, (including subsequently Annexed Property), then such additional Property or Properties may at the sole discretion of the Declarant, or its successors and assigns, be annexed to the Covered Property and become subject to the provisions of the Declaration without requiring, needing or obtaining the approval of the Association, the Board or any Owners. The recordation of a Supplementary Declaration shall constitute and effectuate the annexation of the real property described therein, making said property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said annexed real property shall be part of the Covered Property and all of the Owners of Lots or Residences in said Annexed Property shall automatically be Members. In no event, however, shall any such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration or by any prior Supplementary Declaration with respect to property covered by this Declaration at the time of the recording of the said Supplementary Declaration.



ARTICLE XV  
MORTGAGEE PROTECTION

Section 15.01 - Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions, nor the enforcement of an lien provisions contained in this Declaration, shall affect, impair, defeat or render invalid the lien or charge of any First Mortgage made in good faith and for value encumbering any Lot or Residence, but all said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Residence.

Section 15.02 - Curing Defaults. A Mortgagee, or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is noncurable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is noncurable or not practical or feasible to cure shall be final and binding on all Mortgagees.

Section 15.03 - Resale. It is intended that any loan to facilitate resale of any Lot or Residence after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

Section 15.04 - Vote of Eligible Mortgage Holders and Owners. Seventy-five percent (75%) written approval of the total voting power of Eligible Mortgage Holders and sixty-seven percent (67%) of the voting power of the Association is required to amend a material provision of the Association Management Documents shown under subsection (a) of this Section, or to take such other actions shown under subsection (b) of this Section.

(a) Material Amendment of Association Management Documents. A material provision in any of the Association Management Documents shall be defined as those provisions governing the following subjects:

- (i) Voting rights;
- (ii) Assessments, assessment liens, or subordination of such liens;
- (iii) Reserves for maintenance, repair and replacement of the Community Property;
- (iv) Responsibility for maintenance and repair of the Covered Property;
- (v) Right to use of the Community Property;

- (vi) Boundaries of any Lot;
- (vii) Convertibility of Lots into Community Property or of Community Property into Lots;
- (viii) Expansion or contraction of the Covered Property or the addition, annexation or withdrawal of property to or from the Covered Property;
- (ix) Insurance or fidelity bonds;
- (x) Leasing of Residences;
- (xi) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey such Owner's Lot or Residence;
- (xii) Any provision, which by its terms, is for the express benefit of Mortgagees or insurers or guarantors.

An amendment or addition shall not be considered material under this Section if it is for the purpose of correcting technical errors, or for clarification only. An Eligible Mortgage Holder who receives a written request to approve additions or amendments which are not considered material who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

(b) Actions and Decisions.

- (i) Effectuate any decision to assume self-management of the Covered Property when professional management had been previously required by an Eligible Mortgage Holder;
- (ii) Restoration or repair of the Covered Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Association Management Documents;
- (iii) Termination of the legal status of the Covered Property for any reason, including without limitation, the substantial destruction or condemnation of the Covered Property;
- (iv) By any act or omission, abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Community Property; provided,

however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Community Property shall not require such approval;

(v) Change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner;

(vi) Use hazard insurance proceeds for losses to any Community Property, for other than repair, replacement or reconstruction;

(vii) Fail to maintain fire and extended coverage insurance on the Community Property and the improvements thereto in an amount less than one hundred percent (100%) of the insurable value based on current replacement cost.

(viii) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Residences, the exterior maintenance of Residences, the maintenance of the Community Property including, without limitation, the party walls or common fences and driveways, or the upkeep of lawns and plantings.

Section 15.05 - Rights of Requesting Mortgagees, Insurers and Guarantors. A Requesting Mortgagee, Insurer or Guarantor shall be entitled to timely written notice of:

(a) Destruction or Taking. Destruction, taking or threatened taking of any Community Property and any improvements thereto or any portion thereof affecting the Mortgage held, insured or guaranteed by such Requesting Mortgagee, Insurer or Guarantor. As used in this Declaration, "damaged" or "taking" shall mean damage to or taking of the Community Property exceeding Ten Thousand Dollars (\$10,000). If requested in writing by such Requesting Mortgagee, Insurer or Guarantor, the Association shall evidence its obligations under this subsection in a written agreement in favor of such Requesting Mortgagee, Insurer or Guarantor;

(b) Default in Performance. Default in the performance of the obligations imposed by the Declaration on the Owner whose Residence is encumbered by a Mortgage held, insured or guaranteed by such Requesting Mortgagee, Insurer or Guarantor which default remains uncured for a period of sixty (60) days;

(c) Lapse, Cancellation or Modification of Insurance. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Action Requiring Consent. Any proposed action which under the Declaration or the Bylaws requires the consent of a specified percentage of the voting power of Eligible Mortgage Holders.

Section 15.06 - Mortgagees Furnishing Information. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage.

Section 15.07 - Right of First Refusal. Except to impose reasonable limitations that restrict occupancy to persons of particular age groups, this Declaration cannot be amended to provide for any right of first refusal in the Association. In the event this Declaration provides or is amended to provide for any right of first refusal to purchase or lease a Residence in the Association, such right of first refusal shall not impair the right of a First Mortgagee to (a) foreclose or take to a Residence pursuant to the remedies provided in its Mortgage; or (b) accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage, or (c) sell or lease a Residence acquired by the said Mortgagee. In addition, conveyances to and from mortgage insurers and guarantors shall be exempt.

Section 15.08 - Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

Section 15.09 - Priority of Mortgagee. Nothing in the Declaration, Articles or Bylaws shall give an Owner, or any other party, priority over the rights of a First Mortgagee in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of any Community Property.

Section 15.10 - Payment of Taxes or Premiums. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Community Property unless such taxes or charges are separately assessed against the Owners, in which case the rights of Mortgagees shall be governed by the provisions of their Mortgages. Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Community Property. Mortgagees making payments pursuant to this Section shall be owed immediate reimbursement therefore from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Mortgagee which requests the same to be executed by the Association.

ARTICLE XVI  
ENFORCEMENT OF BONDED OBLIGATIONS

In the event that the improvements to the Community Property have not been completed prior to Final Plat Recording, and the Association is obligee under a bond or other arrangement (the "Bond") to secure performance of the commitment of Declarant to complete such improvements, the following shall apply:



(a) The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which completion has not occurred within sixty (60) days after the completion date specified for such improvements in the planned construction statement appended to the Bond. If the Association has given an extension in writing for the completion of any Community Property improvement, the Board shall consider and vote on the aforesaid question if completion has not occurred within thirty (30) days after the completion of such extension.

(b) In the event that the Board determines not to initiate action to enforce the obligations under the Bond, or in the event the Board fails to consider and vote on such question as provided above, Members representing not less than five percent (5%) of the total voting power of the Association may present a signed petition to the Board or to the President or Secretary of the Association demanding a meeting for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the Bylaws dealing with meetings of the Members, but in any event such meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such meeting.

(c) The only Members entitled to vote at such meeting of Members shall be the Owners other than Declarant. A vote at such meeting of a majority of the voting power of such Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

## ARTICLE XVII GENERAL PROVISIONS

Section 17.01 - Enforcement. The Association or any Owner shall have the right of action against any Owner, and any Owner shall have a right of action against the Association to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration or any amendment hereto, including the right to prevent the violation of such restrictions, condition, covenants or reservations and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement with respect to Assessment liens. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles or Bylaws and any amendments thereto. With respect to architectural control and Association Rules, the Association shall have the exclusive right to the enforcement thereof unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise had standing shall have the right to undertake such enforcement.



Section 17.02 - No Waiver. Failure by the Association or by any Member to enforce any covenant, condition, restriction or reservation herein contained, or the Articles, Bylaws or Association Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same or any other covenant, condition, restriction or reservation.

Section 17.03 - Cumulative Remedies. All rights, options and remedies of Declarant, the Association, the Owners or Mortgagees under this Declaration are cumulative, and no one of them shall be exclusive of any other, and Declarant, the Association, the Owners and the Mortgagees shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in the Declaration.

Section 17.04 - Severability. Invalidation of any one or a portion of these covenants, conditions, restrictions or reservations by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 17.05 - Covenants to Run with the Land; Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by not less than sixty-seven percent (67%) of the then Owners and not less than seventy-five percent (75%) of the Eligible Mortgage Holders has been recorded at least one (1) year prior to the end of any such period, agreeing to terminate said covenants, conditions and restrictions in whole or in part.

Section 17.06 - Construction. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a plan for the development of a residential community or tract and for the maintenance of the Covered Property. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 17.07 - Singular Includes Plural. Whenever the context of this Declaration requires the same, the singular shall include the plural and the masculine shall include the feminine and the neuter.

Section 17.08 - Nuisance. The result of every act or omission where any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, shall be applicable against every



such result, and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

Section 17.09 - Attorneys' Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto reasonable attorneys' fees and costs of such suit as determined by the court or by arbitration as part of the judgment.

Section 17.10 - Notices. Any notice given to an Owner, the Association, an Eligible Mortgage Holder or a Requesting Mortgagee, Insurer or Guarantor under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to an Owner shall be deemed to have been properly delivered when personally delivered or delivered to a common carrier for personal delivery to the addressee, or delivered to a person giving such notice by electronic means, or when deposited in the United States mail, first class, postage prepaid and directed to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Residence. In the case of co-Owners any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivery on all such co-Owners.

(b) Notice to the Association shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished by the Association or the address of its principal place of business.

(c) Notice to an Eligible Mortgage Holder or Requesting Mortgagee, Insurer or Guarantor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Association by such Eligible Mortgage Holder or Requesting Mortgagee, Insurer or Guarantor for the purpose of notice.

The affidavit of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, to any Mortgagee or Mortgagees, to any insurer or guarantor or to all Members or all Mortgagees, or all insurers or all guarantors to the address or addresses shown on the records of the Association, shall be deemed conclusive proof of such mailing, whether or not such notices are actually received.

Section 17.11 - Conflicts Between Association Management Documents. In the event of a conflict between any provisions of any of the Association Management Documents with the provisions of another Association Management Document, the provisions of the Controlling Document named below in the left column shall be deemed to supersede the provisions of the Subordinate Documents named below in the right column to the extent of any such conflict.



CONTROLLING DOCUMENTS

SUBORDINATE DOCUMENTS

- |                 |  |
|-----------------|--|
| (a) Articles    | Declaration, Bylaws, and Association Rules |
| (b) Declaration | Bylaws and Association Rules               |
| (c) Bylaws      | Association Rules                          |

Section 17.12 - Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals to this Declaration and Declarant makes no warranties or representations, express or implied as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

Section 17.13 - Personal Covenant. To the extent the acceptance of conveyance of a Residence creates a personal covenant between the Owner of such Residence and Declarant or other Owners, such personal covenant shall terminate and be of no further force or effect from or after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

Section 17.14 - Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the Architectural Committee, nor other committees of the Association nor any Member or the Association shall have any liability for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

Section 17.15 - Construction by Declarant. Nothing in this Declaration shall limit the right of Declarant to alter the Community Property or the Residences still owned by Declarant, or to construct such additional Improvements as Declarant deems advisable prior to completion of Improvements upon and sale of the entire Covered Property. Such right shall include but shall not be limited to erecting, constructing and maintaining on the Covered Property such structures and displays as may be reasonably necessary for the conduct of the business of completing the work and disposing of the same by sale, lease or otherwise. Declarant shall repair any damage to and complete any restoration of the Covered Property caused or necessitated by such activities of Declarant within a reasonable time after the occurrence of such damage or need for restoration. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title by a purchase from Declarant to establish on the Covered Property (or any portion thereof) additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Covered Property. Declarant reserves the right to alter its construction plans and designs as it deems



appropriate. The rights of Declarant under this Declaration may be assigned in whole or in part to any successor or successors by an express assignment incorporated in a recorded instrument including but not limited to a deed, lease, option agreement, land sale contract or assignment as the case may be, transferring such interest to such successor. Declarant shall exercise its rights contained in this provision in such a way as not to unreasonably interfere with the Members' rights to use and enjoy the Covered Property.

Section 17.16 - Inapplicability to Government Property. The provisions of this Declaration shall not be applicable to any portion of the Covered Property owned by a governmental entity, authority or agency and held for a public purpose, but shall apply to any Residence owned by such governmental agency, authority or agency.

Section 17.17 - Termination of Status of Covered Property. The Association shall have no right to abandon or terminate the maintenance of the Community Property, or any part thereof, by the Association, except as expressly set forth in this Declaration.

#### ARTICLE XVIII AMENDMENT PROVISIONS

Section 18.01 - Vote of Association. Subject to the other provisions of this Declaration, including, without limitation, the rights of Mortgagees, this Declaration may be amended as follows:

(a) Until such time as there is a Class A Membership pursuant to this Declaration, amendments or modifications shall be effective when executed by Declarant and when recorded in the Official Records. Thereafter, any amendments shall require the vote or written assent of sixty-seven percent (67%) of the voting power of Members other than Declarant. Notwithstanding the above, any material amendment must have the vote or approval of the voting power of the Association and Eligible Mortgage Holders, as prescribed in the Section entitled "Vote of Eligible Mortgage Holders and Owners" of the Article entitled "Mortgagee Protection" of this Declaration.

(b) An amendment or modification that requires the vote and written assent of the Members as hereinabove provided shall be effective when executed by the President and Secretary of the Association, or any other officer or officers authorized by resolution of the Board, who shall certify that the amendment or modification has been approved as hereinabove provided, and when recorded in the Official Records. The notarized signatures of the Members shall not be required to effectuate an amendment of this Declaration.



(c) Notwithstanding the foregoing, any provision of the Association Management Documents which expressly requires the approval of a specified percentage of the voting power of the Association for action to be taken under said provision can be amended only with the affirmative vote or written assent of not less than the same percentage of the voting power of the Association.

Section 18.02 - Petition to Amend. The Association or any Owner may petition the superior court of the County for an order reducing the percentage of affirmative votes necessary.

IN WITNESS WHEREOF, the undersigned is the Owner of the properties described herein subject to these covenants, conditions and restrictions.

AVONLEA TWO, LLC

By: [Signature]  
Roy C. Rice, Jr. Member/Manager

STATE OF WASHINGTON )

COUNTY OF THURSTON )

) ss.  
)

On this 13<sup>th</sup> day of January, 2006 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Roy C. Rice, Jr. to me known to be the Manager, of Avonlea Two, LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the use and purpose therein mentioned, and on oath stated that he was authorized to execute the said instrument.

Witness my hand and official seal thereto affixed the day and year in this certificate above written.



NOTARY PUBLIC in and for the State of  
Washington, residing in Olympia  
My commission expires 6-18-2008



EXHIBIT A - LEGAL DESCRIPTION  
KENSINGTON DIVISION 1

THAT PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 18 NORTH, RANGE 1 WEST, W.M. LYING SOUTHERLY OF 45<sup>TH</sup> AVENUE SE, AS CONVEYED TO THE CITY OF LACEY BY DEED RECORDED JANUARY 24, 1994 UNDER AUDITOR'S FILE NO.9401240335 AND LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SOUTHEAST QUARTER A DISTANCE OF 473.00 FEET SOUTH 88°18'07" EAST OF THE SOUTHWEST CORNER THEREOF; THENCE NORTH 01°41'53" EAST 100.79 FEET; THENCE NORTH 01°24'52" WEST 50.00 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT, THE RADIUS POINT OF WHICH BEARS SOUTH 01°24'52" EAST 2904.38 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0°15'49" AN ARC LENGTH OF 13.36 FEET; THENCE NORTH 01°37'36" EAST 963.69 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, THE RADIUS POINT OF WHICH BEARS NORTH 04°46'59" EAST 2085.75 FEET; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°53'42" AN ARC LENGTH OF 32.59 FEET; THENCE NORTH 01°15'13" EAST 168.77 FEET TO THE SOUTHERLY LINE OF RIGHT-OF-WAY OF 45<sup>TH</sup> AVENUE SE, AS CONVEYED TO THE CITY OF LACEY BY DEED RECORDED JANUARY 24, 1994 UNDER AUDITOR'S FILE NO. 9401240335 AND THE TERMINUS OF THIS DESCRIBED CENTER LINE.

