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AMENDED AND RESTATED DECLARATION ESTABLISHING COVENANTS, CONDITIONS,  
RESTRICTIONS, AND EASEMENT FOR TOUCHMARK AT GRAPETREE

Reference# (if applicable): 5495950

Grantor(s):

1. Lexington Homes, Inc.
2. Waterford on South Hill, L.P.
3. Touchmark at Grapetree Homeowners Association

Grantee(s):

1. Lexington Homes, Inc.
2. Touchmark at Grapetree Homeowners Association

Abbreviated Legal Description L1-30 B1; L1-10 B2; L1-18 B3; Tracts A, B, C; Private Streets;  
WATERFORD AT GRAPETREE  
Full legal description on Exhibit "A"

Parcel Numbers:

35284.4001-35284.4030; 35284.4101-35284.4110; 35284.4201-35284.4206; 35285.4207;  
35285.4208; 35283.4209-35283.4214; 35285.4215-35285.4217; 35283.4218; 35284.4031-  
35284.4033

AMENDED AND RESTATED DECLARATION ESTABLISHING COVENANTS,  
CONDITIONS, RESTRICTIONS, AND EASEMENT FOR TOUCHMARK AT  
GRAPETREE

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS ("Restated Declaration") is made effective as of the date of recording by LEXINGTON HOMES, INC., a Washington corporation ("Declarant"), WATERFORD ON SOUTH HILL, L.P., a Washington limited partnership, by its general partner Touchmark Living Centers, Inc., an Oregon corporation ("Original Declarant"), and TOUCHMARK AT GRAPETREE HOMEOWNERS ASSOCIATION, a Washington nonprofit corporation ("Association"). This Restated Declaration amends and supersedes, in entirety, the Declaration of Covenants, Conditions, Restrictions, and Easements for Waterford at Grapetree recorded December 2, 2007 in the Office of the Spokane County, Washington Auditor under Recording Number 5495950 ("Original Declaration"). The Original Declaration is entirely superseded and replaced by this Restated Declaration, as follows:

ARTICLE 1: GENERAL PROVISIONS

1.1. Real Property Description. This Restated Declaration covers the real property and improvements now or hereafter located on the real property described on Exhibit "A" hereto ("Property"), located in Spokane County, Washington, commonly known and marketed under the name "Touchmark at Grapetree," and which real property was legally described in and covered by the Original Declaration. The Association was previously known as Waterford at Grapetree Homeowners Association. The Property was previously marketed and generally known as Waterford at Grapetree prior to the Association's name being changed. All of the real property and improvements covered by the Original Declaration is covered by and governed under this Restated Declaration.

1.2. Property Governed by Restated Declaration. Upon recordation of this Restated Declaration, the entire Property shall be submitted and subjected to all of the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained in this Restated Declaration, all of which shall run with the land.

1.3. Conditions. Each Owner and any purchaser of a Building Lot within the Property acknowledges that said Building Lot is subject to zoning and subdivision ordinances and regulations, building codes, and such other governmental ordinances and regulations, and approvals hereunder as may be in effect or as may from time to time be imposed. It is solely the purchaser's obligation to become familiar and comply with the same. Approval of any construction, alteration or improvement by the Architectural Review Committee or compliance with any requirement of the Architectural Design Guidelines shall not constitute a warranty of quality or any other form of warranty, nor shall such approval and/or compliance constitute a representation of compliance with any applicable requirements imposed by law.

ARTICLE 2: DECLARATION

The entire Property, and each Building Lot, parcel or portion thereof, and all improvements now or hereafter existing on any of the foregoing, is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the terms, covenants, conditions, easements and restrictions in this Restated Declaration, all of which are declared and agreed to be in furtherance of a general plan in the mutual interests of all present and future owners of any

portions of the Property. The terms, covenants, conditions, easements and restrictions set forth in this Restated Declaration shall run with the land; shall be binding upon all persons having or acquiring any right, title or interest in any portion of the Property, including Declarant and any Owner of any Building Lot; and shall inure to the benefit of the Declarant, all present Owners of any portion of the Property, and their respective successors in interest.

Notwithstanding the foregoing, no provision of this Restated Declaration shall be construed so as to eliminate Declarant's right to complete development of the Property and to construct improvements thereon, nor Declarant's right to maintain model homes, construction, sales or leasing offices or similar facilities (temporary or otherwise) on any portion thereof, nor Declarant's right to post signs incidental to construction, sales or leasing.

In the event of any conflicts or inconsistencies between the provisions contained in this Restated Declaration and the Articles, Bylaws or Rules and Regulations that may be adopted in accordance with the provisions in this Restated Declaration, the provisions contained in this Restated Declaration shall control in all respects.

### ARTICLE 3: DEFINITIONS

3.1. "Architectural Review Committee" shall mean the committee created by the Association pursuant to Section 8.2.14 hereof, and may be referred to herein as the "ARC."

3.2. "Articles" shall mean the Articles of Incorporation of the Association or other organizational or charter documents of the Association.

3.3. "Assessments" shall mean those payments required of Owners or Association Members, including Regular, Special and Limited Assessments of the Association as further defined in this Restated Declaration.

3.4. "Association" shall mean Touchmark at Grapetree Homeowners Association, a Washington nonprofit corporation, its successors and assigns, established to exercise the powers and to carry out the duties set forth in this Restated Declaration or any Supplemental Declaration.

3.5. "Board" shall mean the Board of Directors or other governing board or individual, if applicable, of the Association.

3.6. "Building Lot" shall mean a lot as specified or shown on any Plat, upon which a dwelling may be constructed; but will not include a lot or tract designated on any Plat as a Common Area tract. At the time of execution of this Restated Declaration, there are fifty-eight (58) Building Lots in the Property.

3.7. "Commencement of Construction" shall mean the date upon which the Owner, or someone on the Owner's behalf, has obtained a building permit authorizing construction of a dwelling on a Building Lot belonging to that Owner.

3.8. "Common Area" shall mean those tracts, private streets, sidewalks, and any easement areas designated as such on any Plat, or in Section 5.1 of this Restated Declaration, or any Supplemental Declaration.

3.9. "Declarant" shall mean Lexington Homes, Inc., a Washington corporation. Declarant is the successor declarant to the original declarant designated under the Original Declaration, Waterford on South Hill, LP., a Washington limited partnership ("Original Declarant"); to the extent declarant status has not previously been effectively assigned to Declarant, Original Declarant hereby assigns all of its rights as declarant under the Original Declaration. Declarant shall also mean any

person or entity to whom any or all of the rights, duties, interests, and obligations as Declarant have been assigned in a writing signed by the then-serving Declarant or Successor Declarant, as applicable. Apart from assigning rights, duties, interests, and obligations, Declarant or any duly designated Successor Declarant may delegate to an agent, lessee, or designee, some or all of its rights, interests, duties, and obligations as Declarant.

3.10. "Declarant Assessment" shall mean the charge levied against the Declarant or Original Declarant and the Building Lots owned by them, pursuant to Section 13.3, as their allocated share of the regular and anticipated costs of operation of the Association.

3.11. "Governing Documents" shall mean this Restated Declaration, the Articles and Bylaws of the Association, any Rules or Regulations adopted and authorized by any of the foregoing, and all amendments, modifications and supplements to any such documents.

3.12. "Limited Assessment" shall mean any charge levied against a particular Owner and such Owner's Building Lot, imposed as a result of noncompliance with the Governing Documents by such Owner, family member, guest, agent, invitee, or other visitor, occupant or resident of such Owner's Building Lot or for damage to any improvement on the Property by such Owner or such Owner's family member, guest, agent, invitee, or other visitor, occupant or resident of such Owner's Building Lot, under Sections 8.4.1, 8.4.2, or 13.5, or as otherwise authorized by the Governing Documents, including without limitation, costs, attorney's fees, fines or other monetary penalties, late charges, and interest.

3.13. "Member" shall mean each person or entity holding a membership in the Association. Only an Owner of a Building Lot may be a Member.

3.14. "Owner" shall mean the person or persons, and/or entity or entities, including Declarant, which acquire(s) fee simple interest of record to a Building Lot that is covered by this Restated Declaration, as well as one or more purchasers of a Building Lot under a real estate contract.

3.15. "Plat" shall mean the Final Plat of Waterford at Grapetree, recorded December 11, 2006 under Spokane County Auditor's Recording File Number 5471328, Book 33 of Plats, pages 50-51, as amended by any duly executed and recorded amendment thereto.

3.16. "Regular Assessment" shall mean the portion of the regular and anticipated costs of operation of the Association, including funding of capital improvements or replacements, equipment purchases, establishment and maintenance of reserves, and performance of other Association functions that are authorized and to be paid by Owners to the Association, pursuant to the terms of this Restated Declaration or a Supplemental Declaration.

3.17. "Restated Declaration" shall mean this Restated Declaration as it may be amended from time to time.

3.18. "Special Assessment" shall mean the portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in funding other Association expenses that are authorized and to be paid by Owners to the Association, pursuant to the provisions of this Restated Declaration or a Supplemental Declaration.

3.19. "Upper Lots" shall mean the Building Lots identified as Lots 20 through 30 in Block 1 of the Plat, and any additional Building Lots created by subdivision or replatting of such Building Lots. As of the Effective Date of this Restated Declaration, the Upper Lots are not served with street or infrastructure improvements.

#### ARTICLE 4: PROPERTY SUBJECT TO THESE COVENANTS

All real property and improvements described herein as part of the Property are subject to the terms and provisions of this Restated Declaration and shall be owned, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the provisions of this Restated Declaration, and the terms hereof shall run with the land and be binding upon and inure to the benefit of the heirs, successors and assigns of the present Owners.

#### ARTICLE 5: PROPERTY RIGHTS IN COMMON AREAS

5.1. Designation of Common Areas. The Common Areas consist of, but are not limited to, perimeter fencing, entry gates, planter beds at the entrance, the North sidewalk adjacent to Pinecrest Road; private streets, all private utility improvements (including but not necessarily limited to sanitary sewer, water, and stormwater), and Tracts A, B and C, all of which are identified on the Plat. Additionally, if the Association accepts a transfer of title to any Building Lot, or portion thereof, which is not improved with a dwelling, the Board may designate such Building Lot or portion thereof to be Common Area. No transfer to the Association of title to any real property will be effective without written consent of the Association; provided, the Association hereby consents to any transfer pursuant to a foreclosure, or deed-in-lieu of foreclosure, for delinquent Assessments. The Common Areas do not include utility installations not owned by the Association, such as natural gas, electric, and telecommunications facilities, which are installed pursuant to easement rights granted to the service providers, which providers retain ownership and maintenance obligations for such facilities.

5.2. Title to the Common Areas. Title to all of the Common Areas, including title to Common Area improvements located within Easements, is and shall be held in the name of the Association.

5.3. Owner's Easements of Enjoyment. Subject to the provisions of this Article, every Owner and Owner's invitees shall have a right and easement of enjoyment in and to the Common Area, which easement shall be appurtenant to and shall pass with the title to every Building Lot.

5.4. Extent of Owners' Rights. The rights and easements of enjoyment in the Common Areas created hereby shall be subject to the following and all other provisions of this Restated Declaration:

5.4.1. Easements. The Association grants to Declarant, all Owners of Building Lots within the Property and utility and service providers now or hereafter providing utilities and services to all or any portion of the Property the following easements over, under and upon the Common Areas:

A. An easement on all Common Areas for underground installation and maintenance of power, natural gas, electricity, water, fiberoptic and other utility and communication lines and services now or hereafter customarily provided in residential communities to provide utilities and services to the Property, including all Building Lots in the Property and any additional real property hereafter made a part of the Property; with the intent that any such easement is or will be shown on the Plat or be referred to in a separate recorded instrument;

B. An easement over all roadways for vehicular access within the Property; and

C. An easement for construction, maintenance, repair and use of Common Areas, including common facilities thereon.

The Common Areas are subject to private utility easements for the installation and maintenance of sanitary sewers, waterlines, surface water management, storm drainage, and access over their entirety, which easements are hereby reserved, created and confirmed. In addition, Declarant or the Association may (and to the extent required by law, shall) grant or assign easements on all Common Areas to governmental bodies or other utilities performing utility services and to communications companies, and may grant free access over the Common Areas to police, fire and other public officials and to employees of utility companies and communication companies serving the Property.

5.4.2. Use of the Common Areas. The Common Areas shall not be partitioned or otherwise divided into parcels for residential use. Except as otherwise provided in this Restated Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners subject to the Governing Documents and no private use may be made of the Common Areas, except that private use may be made of the recessed curbed spaces and other designated parking areas as provided in Article 7. Wetlands, conservation areas, bio-swales, and water quality ponds, if any, shall be protected from detrimental use of fertilizers, herbicides, and insecticides. The Common Areas and facilities thereon shall be used for the purposes for which the same are reasonably intended, and their use, operation, and maintenance shall not be obstructed, damaged, or unreasonably interfered with by any Owner. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas stating the name of the Property or the Association, or identifying items of interest, including directional or traffic signs, provided such signs comply with any applicable sign ordinances. The Association shall have authority to abate any trespass or encroachment upon the Common Areas at any time, by any reasonable means and with or without having to bring legal proceedings. The Association, upon approval in writing of at least 50 percent of the Association voting rights may dedicate or convey any portion of the Common Areas to a park district or other public body.

5.4.3. Alienation of the Common Areas. The Association shall not by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Areas owned directly or indirectly by the Association for the benefit of any of the Building Lots; provided this prohibition will not limit the right to dedicate a portion of the Common Areas to a public body as provided elsewhere in this Article.

5.5. Delegation of Use. Any Owner may, in accordance with the Bylaws of the Association, share the Owner's right of enjoyment to the Common Areas with the members of Owner's family, whose shared use of the Common Areas shall be subject to this Restated Declaration and the other Governing Documents.

5.6. Easements Reserved for Declarant. So long as Declarant owns any Building Lot, the Association grants to Declarant an easement over, under, and across the Common Areas in order to carry out sales activities necessary or convenient for the sale of Building Lots, including, without limitation, use of one dwelling on a Building Lot as a sales office. In addition, Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Area and the right to store materials thereon and to make such other uses thereof as may be reasonably necessary or incident to the construction and maintenance of improvements on the Property; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use or enjoyment of, or access to, an Owner's Building Lot by that Owner or Owner's family, tenants, employees, guests, or invitees. Declarant will promptly restore to its prior condition any portion of

the Common Areas disturbed or damaged by Declarant's development or construction within the Property.

5.7. Easements Reserved for Association. Easements for utilities and drainage facilities are reserved for the Association, which utility and drainage facilities and areas are generally depicted on the Plat. Easements for construction, completion, maintenance, repair and operation of improvements for the benefit of the Common Areas and/or Property (such as potential construction and/or completion of perimeter fencing along and within Common Area Tracts as well as Building Lots) are also reserved for the Association. The easements reserved and created in this Section are granted to and reserved for the Association over, on, under and across Tracts A, B, and C, as well as appropriate areas within Building Lots lying along the perimeter of the Property for the construction, maintenance, repair and use of improvements now or hereafter created or placed in any of these easements. No structure shall be placed or permitted to remain on Tracts A, B, and C or the easement(s) which may damage or interfere with the installation and maintenance of utilities, or which may change the direction and/or flow of drainage channels in the easement(s).

#### ARTICLE 6: PROPERTY RIGHTS IN BUILDING LOTS

6.1. Use and Occupancy. The Owner of a Building Lot in the Property shall be entitled to the exclusive use and benefit of such Building Lot, except as otherwise expressly provided in this Restated Declaration, but the Building Lot shall be bound by, and each Owner and the Declarant shall comply with, the restrictions contained in this Restated Declaration, including those stated in Article 7 below, for the mutual benefit of all Owners.

6.2. Utility Easements. The Association and Owners grant and reserve easements to the fullest extent necessary to permit Association to enter, or have a utility or service company or provider enter any part of the Property to install, operate, repair, replace and generally maintain all utility and service lines and installations to the extent located outside buildings, including dwellings, and/or to the extent constituting parts of the Common Areas. To the extent practicable, the Association shall give Owners reasonable notice of entry onto Building Lots. The Owners grant the Association the right to grant to utility or other service providers non-exclusive easements over, under, across and through any part of the Property, exclusive of the interior of any dwelling or other building on a Building Lot, for purposes of installing, maintaining, repairing, replacing, and operating utilities or other services for the use or benefit of the Owners.

6.3. Easement in Favor of the Association. Each Building Lot is hereby subject to an easement in favor of the Association, its employees and agents to enter such Building Lot as may be necessary to carry out the duties imposed upon or permitted to the Association under this Restated Declaration.

#### ARTICLE 7: RESTRICTIONS ON USE

7.1. Residential Use. Not more than one dwelling unit may be located on any Building Lot. Except for Declarant, no Owner may divide any Building Lot without the written approval of the Board and compliance with any conditions to such approval the Board may impose, in its sole discretion. Except as provided below, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Building Lot (including, without limitation any yard or garage sale, but not including estate sales as described below), nor shall any goods, equipment, vehicles, materials, or supplies used in connection with any trade, service, or business be kept or stored on any Building Lot. The mere parking on a Building Lot of a vehicle bearing the

name of a business shall not, in itself, constitute a violation of this provision. Nothing in this Section shall be deemed to prohibit (a) activities relating to the or sale of Building Lots; (b) the right of Declarant to construct improvements on any Building Lot, to store construction materials and equipment on any Building Lot in the normal course of construction, and to use any Building Lot for a sales office or model home for purposes of sales within the Property; or (c) the right of an Owner of a Building Lot to maintain the Owner's professional personal library; to keep the Owner's personal business or professional records or accounts; to handle the Owner's personal business or professional telephone calls; or confer with business or professional associates, clients or customers; or to occasionally meet with an Owners clients or customers in the Owner's dwelling by appointment only, and only so long as such meetings do not reasonably make it appear that such dwelling is being used as a commercial business office with regular and ongoing customer and/or client meetings. An estate sale may be conducted entirely within a dwelling on a Building Lot in the event the Building Lot is to be sold due to death of the Owner or the Owner's move to a nursing home or other senior care facility; provided, written approval of the Board shall be required for any such estate sale, and on a case-by-case basis or through the Rules and Regulations, the Board may impose reasonable requirements and/or conditions on the conduct of estate sales, including without limitation, requiring professional management of the sale and payment of an administrative fee (and establishing criteria for any exceptions to such fee), and imposing terms and restrictions on duration, time, frequency, traffic, parking, signage, and gate access.

7.2. Age Requirement. Touchmark at Grapetree is a development designed to provide housing to persons fifty-five (55) years of age or older, and the Association shall at all times ensure compliance by the Association and the Owners with applicable legal requirements for such housing. Absent an exception being granted, at least one resident in each dwelling on each Building Lot must be fifty-five (55) years of age or older. Further, to the extent permitted under applicable legal requirements for such housing, absent an exception being granted, no person under age 21 may reside, except temporarily within any Building Lot, including any dwelling thereon. The provisions of this Section shall be administered by the Board, which shall have full right and authority to adopt and revise, from time to time, Rules and Regulations to implement, define, and assure compliance with applicable legal requirements for maintenance of housing for persons fifty-five (55) years of age or older. Provided, nothing in this Section 7.2 shall prohibit any person under age twenty-one (21) years from being the temporary guest of the primary resident(s); for purposes of this Section, "temporary" shall mean no more than sixty (60) days in any period of twelve (12) consecutive months. Nor shall anything in this Section prohibit occupancy of any Building Lot by a live-in caregiver of suitable age to an over-55 years of age occupant. Nor shall anything in this Section prohibit the granting of exceptions to the foregoing restrictions by the Board in circumstances in which undue hardship would otherwise result, so long as the exceptions are granted in accordance with the Rules and Regulations now or hereafter adopted by the Board, and provided, no exception may be granted that would individually or by cumulative effect cause the Property to fail to qualify as housing for persons fifty-five (55) years of age or older under applicable legal requirements. Without limiting the types of circumstances in which the Board may grant exceptions, the Board is explicitly authorized to grant exceptions to persons under the age of fifty-five (55) years who became a co-owner and co-occupant of a Building Lot with a spouse who was age fifty-five (55) or older, but who becomes the sole Owner of such Building Lot due to the death of the older spouse or due to divorce or dissolution of the marriage; provided, domestic partners in a registered domestic partnership shall be treated as spouses for purposes of this sentence.



7.2.1. Notice of Age Restriction and Age Verification. Any Owner selling or offering for sale a Building Lot, whether or not improved with a dwelling, shall: a) include in any advertising materials a statement advising prospective purchasers that Touchmark at Grapetree is housing for persons fifty-five (55) years of age or older, using language set forth in the Rules and Regulations; b) at or before closing of any such sale, obtain and provide to the Association written verification of the age of the purchaser and any intended occupants of the Building Lot, including using any forms and obtaining any evidence of age as required by the Rules and Regulations. Each Owner shall comply with any and all Association requests for age verification of any occupants of the Owner's Building Lot, including without limitation, upon initial occupancy and periodic surveys.

7.2.2. Confirmation of Residency. The Association may require an Owner to provide proof that the Building Lot remains or will remain the Owner's legal residence in the event the Owner is or intends to be absent from the Owner's Building Lot for a period of six (6) or more months in any 12-month period, during which period one or more persons under age fifty-five (55), and no other person age fifty-five (55) or older, resides or will reside on such Building Lot.

7.3. Construction and Alterations. Except with the prior written permission of the ARC and in compliance with the Architectural Design Guidelines, Owners are expressly prohibited from: (a) constructing any dwelling or other improvement on any portion of the Property, including within any Building Lot; (b) installing or constructing or replacing any other improvement that is visible from the outside of the dwelling or any other previously permitted structure on an Owner's Building Lot; or c) changing the appearance, design, materials, color, or other exterior feature of their dwelling or other improvement on their Building Lot. Notwithstanding the first sentence of this Section 7.3, an Owner may repair or reconstruct any dwelling or other improvement on their Building Lot that existed on the date of recordation of this Restated Declaration, or that is hereafter approved by the ARC, using the same appearance, design, materials, color, and other exterior features (collectively, "features"); provided, if there is any question as to the features of any such dwelling or other improvement as of the date of recordation of this Restated Declaration or as to the features approved by the ARC, the burden shall be on the Owner to prove the same to the reasonable satisfaction of the ARC. As used in this Restated Declaration, the word "improvement" includes landscaping, unless the context clearly requires otherwise. Any Owner seeking the ARC's permission shall do so by submitting a written application pursuant to the requirements of the Architectural Design Guidelines. Owners shall be responsible for the cost of all materials, labor, approvals, and permits required to make such additions and/or changes.

7.3.1. The Board has adopted, or will adopt, Architectural Design Guidelines, which shall include detailed requirements for the design, materials, appearance, and other aspects of dwellings and other improvements visible from outside of a Building Lot, including without limitation, landscaping, paving, and fencing. The Architectural Design Guidelines shall also contain detailed instructions and requirements for applications for ARC approval and for the ARC's response to applications. The Architectural Design Guidelines are part of the Rules and Regulations of the Association, and shall be adopted, amended and enforced as Rules and Regulations. Without limiting other enforcement options in any manner, the Architectural Design Guidelines shall be specifically enforceable.

7.3.2. The Architectural Design Guidelines may contain provisions supplemental to, but not conflicting with the following:

A. The development of below-grade structures (including basements) is subject to review of a geotechnical evaluation for foundation design.

B. All dwellings shall be constructed with cement board siding, or the equivalent, on all sides (no TI-11 allowed); and a 30-year architectural composition or better roof.

C. Within one hundred twenty (120) days of an Owner other than the Declarant or the Original Declarant becoming the Owner of any Building Lot not then improved with a dwelling, such Owner shall cause the Commencement of Construction and thereafter diligently pursue completion of construction. The Owner shall notify the Board of Commencement of Construction within five (5) days thereafter. Each dwelling shall be completed and a certificate of occupancy shall be obtained, within eight (8) months from the Commencement of Construction. Landscaping shall be completed within three (3) months from date of certificate of occupancy. In its sole discretion, the Architectural Review Committee may relax or allow variances from the provisions above in this Section 7.3 if it determines good cause exists, such as a weather-related delay.

7.4. Offensive or Unlawful Activities. No noxious or offensive activities are permitted on any Building Lot or Common Area nor shall anything be done or placed upon any Building Lot or Common Area which interferes with or jeopardizes the enjoyment of other Building Lots or the Common Areas, or which is a source of annoyance to residents. Building Lot occupants shall exercise extreme care not to make noises that may disturb other Building Lot occupants. No unlawful use shall be made of the Building Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

7.5. Boats, Motor Homes, Recreational Vehicles, Etc. No boat, motor home, recreational vehicle, trailer, camper, or similar item shall be parked in any part of the Property, except in designated parking areas (as provided in Article 5), and for a period not to exceed 48 hours. No such item shall be used as a residence temporarily or permanently on any portion of the Property. No vehicle of any kind may impede the flow of traffic, especially emergency vehicles, on any street or road within the Property. The Board may promulgate Rules and Regulations to further regulate parking of the types of vehicles, trailers, and other items described in this paragraph.

7.6. Vehicles in Disrepair. No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any Building Lot or other part of the Property, including within any portion of the Common Area, for a period in excess of 48 hours, unless kept within a garage. A vehicle shall be deemed to be in an "extreme state of disrepair" when, in the opinion of the Board, its appearance, continued inoperability, or presence reasonably offends one or more Owners of any part of the Property. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is given to said Owner by the Board, the Board may have the vehicle removed from the Property and charge the expense of such removal to the Owner in addition to other Assessments made upon the Owner in accordance with this Restated Declaration, which charge may result in imposition of a Limited Assessment against such Owner and such Owner's Building Lot if not timely paid.

7.7. Maintenance of Building Lots, Landscaping and Other Improvements. Each Owner shall maintain the dwelling, any permitted fences or other structures, and any and all other improvements (other than the landscaping and landscape irrigation system) now or hereafter placed on such Owner's Building Lot in a clean, neat, well maintained, and good and proper

condition, condition free of weeds, debris and garbage, as determined by the Board in its sole discretion, and in accordance with all legal requirements. Exterior areas such as decks, patios, porches and the like shall be kept free of clutter and excess items, except for reasonable amounts of patio furniture, equipment such as barbeque equipment, and other items deemed reasonable and appropriate by the Board in its sole discretion. The Association shall, as part of the common obligations for the benefit of all Owners, and except as provided in the next sentence, maintain the landscaping improvements and irrigation equipment and apparatus on the Common Areas and on all Building Lots and include the cost therefore as part of the Regular and/or Special Assessments imposed on Owners in the Property. In the event an Owner desires to create a landscaped or planted area in addition to those provided and maintained by the Association, or add a material number of plant to an existing planted area (collectively, "new plantings"), such Owner must obtain prior written approval for such improvement from the ARC under Section 7.3, and if, in the opinion of the Board, such new planting does or will increase the overall maintenance expense for that Owner's Building Lot to an amount materially higher than that incurred on other Building Lots, then the Board may assess to the Owner as a periodic Limited Assessment the reasonably estimated added cost of such maintenance by the Association's landscaping maintenance contractor. Each Owner will likewise maintain in good working order any water, sanitary sewer, or stormwater facilities serving only the Owner's Building Lot whether located within or without the Building Lot, and any natural gas, electrical, or telecommunications (including without limitation telephone, cable television, and internet) connections between the Building Lot and/or the dwelling thereon and the service provider's facilities.

7.8. Antennas and Service Facilities. Exterior antennas and satellite receivers and transmission dishes are prohibited, except to the extent expressly mandated by rules adopted by the Federal Communication Commission. Specifically, ham radio antennas, satellite dishes one meter or larger, television antennas on masts 12 feet or higher, and multi-point distribution antennas more than one meter or on masts 12 feet or higher are prohibited. To the extent permitted by Federal Communication Commission rules, the Board may require all other antennas and dishes to be hidden from view from streets and adjacent dwellings. No outside clotheslines or similar items or service facilities, as determined by the Architectural Review Committee in its sole discretion, are permitted.

7.9. Signs and Flags. Except as provided in this Section, no signs shall be erected or maintained on any Building Lot. An Owner other than the Declarant may place or allow to be placed on their Building Lot not more than one "For Sale" sign not exceeding 24 inches high and 36 inches long, which sign may be temporarily displayed on their Building Lot while the Owners are actively marketing their Building Lot for sale. The Declarant may place not more than two such signs on any Building Lot during the course of initial construction of improvements on such Building Lot and/or marketing of such Building Lot for sale. This Section shall also not prohibit the temporary display of political signs placed and maintained in accordance with law. Unless such a restriction is expressly prohibited by applicable law, however, no political signs shall be placed on any Building Lot earlier than three weeks prior to an election day. No political sign will exceed three square feet in size, no more than three political signs shall be displayed on any one Building Lot at a time, and all political signs shall be removed from all Building Lots and other portions of the Property within 48 hours after the applicable election date. The United States flag may be displayed in a manner consistent with the Federal Flag Display Law, 4 U.S.C. § 1 et seq. and as regulated and permitted under RCW 64.38.055.

7.10. Animals/Pets. No animals, livestock, poultry or birds of any kind shall be raised, bred or kept in any Building Lot or dwelling, or on any portion of the Property; except that no more than

two (2) usual and ordinary household pets, such as dogs, cats, or birds may be kept in an Owner's Building Lot, provided that they are not kept, bred or maintained for any commercial purposes, and that they are kept under reasonable control at all times. Keeping dogs under reasonable control shall include keeping dogs contained within the Owner's Building Lot, when not on a leash, by an "invisible fence" type restraint system or other equally effective means of containing the dog within the Building Lot as approved by the Architectural Review Committee in its sole discretion. Outside an Owner's Building Lot, all dogs must be restrained on leashes. Owners shall be responsible for promptly cleaning up all of their animals' waste, both inside and outside their Building Lot.

7.10.1. Owners shall keep their dogs from barking excessively in any area where such barking can be heard from outside the Building Lot. Continued barking after receipt of three warnings from the Board and/or an owner of another Building Lot who is being affected by the noise of such barking shall be considered excessive barking and a nuisance, entitling such affected Owner and/or the Board to take appropriate action to assure that such excessive barking is eliminated. Barking no more than occasionally to alert the Owners of the need to let the dog into a dwelling, to warn of strangers coming to the Building Lot, and the like shall be permitted. Leaving a dog outside the dwelling for prolonged periods while the dog is frequently barking will also be considered excessive.

7.10.2. The Board may promulgate Rules and Regulations not conflicting with this Section 7.10 further regulating animals on the Property. After notice and an opportunity to be heard, the Board may order the removal from the Property of any individual animal kept in violation of the Rules and Regulations or found to be a nuisance, including without limitation, as a result of aggression or other antisocial behavior, excessive barking, or the Owner's repeated failure to control the animal in Common Areas, contain the animal on the Owner's Building Lot, or clean up the animal's waste in a timely manner.

7.10.3. Notwithstanding anything in this Restated Declaration to the contrary, companion animals, service animals, and any similar class or category of animals covered by the Federal Fair Housing act, Washington's Law Against Discrimination, or any similar provision under law regarding accommodation of persons with disabilities (collectively, "service animals"), shall be permitted within the Property to the full extent required to be allowed within the Property under applicable law, rule, regulation, or other legal requirement. The foregoing is not to be construed to exempt the owners of service animals from complying with the Association's reasonable Rules and Regulations regarding cleanup of animal waste and prohibiting nuisance animals.

7.11. Seasonal Lighting. Seasonal holiday lighting and decorations are permissible and shall be removed within 30 days after the celebrated holiday, unless removal is reasonably delayed due to inclement weather conditions as determined by the Board in its sole discretion.

7.12. Insurance. Nothing shall be done or kept in any Building Lot or portion of the Common Area that will increase the cost of insurance on the Common Areas. No Owner shall permit anything to be done or kept on the Owner's Building Lot or in the Common Areas which will result in cancellation of insurance on any Building Lot or any part of the Common Areas.

7.13. Leasing of Building Lots. No Owner may lease or rent such Owner's Building Lot or any portion of such Owner's residence thereon without prior written consent of the Board, which may be withheld in the Board's sole discretion; the Building Lots are intended to be purchased and held primarily for owner occupancy. Leasing may be permitted only in exigent circumstances and for limited periods of time, including time periods when an Owner may be required to relocate to

another area in connection with the Owner's employment, a requirement that an Owner temporarily move from the Property to obtain medical or convalescent care, or temporarily after an Owner moves from the Property and while the Property is being marketed for sale. The Board, in its discretion, may develop rules and regulations detailing, limiting, and defining the circumstances under which a Building Lot in the Property may be rented in whole or part.

7.14. Parking. Vehicles owned, leased, operated, or otherwise within the control of any Owner or resident of a Building Lot shall be parked in the garage of the dwelling on the Owner's Building Lot; provided, the Rules and Regulations may permit short-term parking of Owner or resident vehicles in the driveway of the Owner's Building Lot on a temporary or occasional basis. No vehicle of any kind shall be parked on the roads or drives within the Property, except for parking by guests in designated areas in accordance with Rules and Regulations promulgated by the Board. Under no circumstance may an Owner or Owner's family member or guest park any vehicle in any location or manner that will impede traffic flow, including travel by emergency and safety vehicles. Vehicles parked in violation of this Restated Declaration may be towed and stored at the direction of the Association, with the entire expense thereof to be assessed to the Owner who violates, or whose guest violates, this Section or the Rules and Regulations relating to parking. The Board may promulgate Rules and Regulations to further regulate parking within the Property, whether within the Building Lots or Common Areas.

7.15. Owners' Insurance Requirements. Notwithstanding provisions of this Restated Declaration regarding insurance the Association is to maintain, each Owner is responsible for obtaining insurance on their Building Lot and improvements, as well as their contents. The Rules and Regulations may set minimum requirements for Owners' property insurance, including without limitation, minimum coverages and limits on deductibles. Neither the Declarant nor the Association will be responsible for any damage or loss to the Building Lot and improvements or personal property belonging to Owners due to any cause, with the exception of a loss caused by the Declarants' or Association's sole negligence, as the case may be.

Further, each Owner is responsible for carrying their own liability insurance coverage. The Rules and Regulations may set minimum requirements for Owners' liability insurance, including without limitation, per-occurrence and aggregate coverage amounts and naming the Association as an additional insured. Each Owner will be solely responsible for any loss or damage that they or their family members or guests cause to the Common Areas, Building Lots, or improvements thereon. Neither the Association nor the Declarant is responsible for any bodily injury or personal injury incurred by any Owner, resident, or family member or guest of any Owner, unless the injury is the result of sole negligence of agents or representatives of the Association or Declarant, as the case may be.

7.16. Declarant's Rights. To the extent of any conflict between this Article 7 and Article 11, the terms of Article 11 shall control.

## ARTICLE 8: HOMEOWNERS ASSOCIATION

8.1. Organization of Association. The Association is a Washington nonprofit corporation whose Articles of Incorporation were filed in 2006 in the office of the Secretary of State of Washington. The Articles of Incorporation of the Association provide for its perpetual existence; but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name, whose membership is comprised by all Owners of all Building Lots in the Property. In that event, the assets of the Association shall be distributed to said unincorporated association, if it is able to accept those

funds and, if not, to the then Owners in equal shares, allocated one share for each Building Lot in the Property. At that point, all of the powers and obligations of the terminated incorporated Association shall automatically vest in a successor unincorporated nonprofit association. Such vesting shall thereafter be confirmed and evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Association, as well as this Restated Declaration, as if they had been made to constitute the governing documents of the unincorporated association; and the rights, duties, interests, obligations, and qualification requirements for its membership shall be identical to those governing members and membership in the Association. The foregoing notwithstanding, if the incorporated Association was inadvertently allowed to dissolve, but may be reinstated, the last duly elected Board of the Association shall cause the Association to be reinstated. Furthermore, if the incorporated Association may not be reinstated due to the passage of time, the board elected by the unincorporated association may incorporate a new nonprofit Washington corporation and transfer all powers and duties of the Association hereunder to such corporation, which shall thereafter be the Association hereunder for all purposes.

8.2. Powers and Duties of Association. The Association is charged with the duties and vested with the powers set forth in the Association's Articles of Incorporation and Bylaws, including the duties, powers and limitations listed below. Without limiting the generality of the foregoing, the Association shall have the following powers and duties:

8.2.1. To obtain and maintain at least the insurance policies as provided below, as well as any additional insurance coverage as deemed necessary or desirable by the Board to protect the interests of the Association, the Members, and Declarant.

A. Casualty insurance on the Common Areas and fixtures, building service equipment, and personal property and supplies owned by the Association, insuring against all risks of direct physical loss normally insured against under a standard fire and extended coverage endorsement, and all other perils customarily covered for similar types of projects, including those covered by a standard "all risk" endorsement. The total amount of insurance coverage as to improvements and fixtures to real property after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from casualty policies and subject to deductibles. The total amount of insurance coverage as to any personal property shall be as reasonably determined by the Board;

B. Comprehensive general liability insurance for the Association that provides coverage for bodily injury and property damage resulting from the operation, maintenance, or use of the Property in an amount of at least One Million Dollars (\$1,000,000) for any single occurrence and that contains a specific endorsement to preclude the insurer's denial of a Building Lot Owner's claim because of the negligent act of the Association or other Building Lot Owners;

C. Directors' and officers' liability insurance covering the Board and members of the ARC;

D. Workers' compensation insurance to the extent required by applicable laws;

E. If required by the Board, a fidelity bond naming the members of the Board, the manager and its employees, and such other persons as may be designated by the Board as principals and the Association as obligee, in an amount at least equal to the greater of (i) three (3) months' aggregate Assessments for all Building Lots plus reserves, or (ii) the maximum funds that are expected to be within the Association's custody or control. The bond shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definitions of "employee" or similar expression. The bond shall cover all persons who handle or are responsible for funds that the Association holds or administers, whether or not such person receives compensation for services and shall name the Association as the obligee. The bond shall cover the maximum funds that will be in the custody of the Association at any given time during the period in which the bond is enforced. Additionally, the Board shall ensure that any Manager is covered by its own fidelity bond paid for by the Association; and

F. Insurance against loss of personal property of the Association by fire, theft and other losses with deductible provisions as the Board deems advisable.

8.2.2. To authorize the rebuilding of the Common Areas after certain uninsured losses and to participate in negotiations regarding the apportionment of any condemnation award as to Common Areas, as provided more fully in Section 12.3 below.

8.2.3. To operate, repair, replace, and maintain, all to the extent the Association determines to be advisable, the Common Areas and all improvements thereon as now existing or hereafter constructed.

8.2.4. To pay the cost of water, sanitary sewer, and trash collection service to each Building Lot; provided, the Association shall not be responsible for initial installation of any improvement or equipment required to provide any such service to any Building Lot. The Association does not guaranty uninterrupted utility service, and is not liable for any failure of any utility service, whether or not such service utilizes pipes or other facilities owned by the Association.

8.2.5. To enter into contracts with qualified contractors or service providers, and pay the cost thereof, for lawn and landscaping maintenance (including without limitation, mowing, fertilizing, weed management, and care of basic plantings in planting beds, subject to the limitations of Section 7.7), landscaping irrigation system maintenance and repair, and snow and ice removal from roads, driveways, and sidewalks, on Common Areas and, to the extent required by other sections of this Restated Declaration, the Building Lots. The scope and frequency service under such contracts shall be determined by the Board in its reasonable discretion.

8.2.6. To approve any construction or purchase of any improvement to the Common Areas.

8.2.7. To set an annual budget, including funds for reserves for capital improvements, repairs and replacements of improvements to Common Areas, whether or not based upon a reserve study.

8.2.8. To determine the amount of and to levy Regular Assessments, Special Assessments and, when appropriate, Limited Assessments, and other fees and amount permitted pursuant to the Governing Documents, and to expend the same. The Association shall levy Assessments sufficient to discharge its duties and obligations under



the Governing Documents. In the event that any Owner fails to pay any Assessment, the Association may exercise its lien powers and other enforcement remedies as set forth in Article 13 and Article 14 to collect such unpaid Assessment amounts.

8.2.9. To establish and maintain accounts into which Regular, Special and Limited Assessments shall be deposited, including amounts set aside as reserves for capital improvements, repairs and replacements. The approval of the Board shall be required prior to the expenditure of any reserves.

8.2.10. To employ or contract with a manager or other person(s) to perform all or part of the Association's duties and responsibilities with respect to the Property, except the initiation and execution of disciplinary proceedings against Members in accordance with Section 8.4 of this Restated Declaration.

8.2.11. To pay all real and personal property taxes and assessments levied against the Association or against the real or personal property owned by the Association.

8.2.12. To discharge any obligation which, in the opinion of the Board, may become a lien against the Common Areas, and to assess the costs thereof as a monetary penalty against the Owner responsible for the lien, as determined by the Board after notice and a hearing in accordance with the Bylaws.

8.2.13. To adopt, amend, or revoke, by majority vote of the Board, reasonable Association Rules and Regulations consistent with the other Governing Documents for the use of the Common Areas and Building Lots, for the conduct of Owners and their family members, licensees, invitees and guests on the Property, and as necessary to ensure compliance with the requirements and regulations under Federal and State law to qualify as housing for persons fifty-five (55) years of age or older. Such Rules and Regulations shall be binding upon all Owners, their guests, and invitees upon adoption. The Board's power to adopt, amend, or revoke Rules and Regulations shall not be limited in any way by the inclusion in this Amended Declaration of any statement of the Board's authority to promulgate Rules and Regulations with regard to specific subjects.

8.2.14. To establish an Architectural Review Committee and appoint its members, and to adopt and amend from time to time reasonable Architectural Design Guidelines in the same manner as Rules and Regulations.

8.2.15. To commission reserve studies on a schedule as required by law or as determined in the Board's discretion to be in the best interests of the Association.

8.2.16. To defend, prosecute and settle, as deemed necessary in the discretion of the Board, all lawsuits involving the Association in the Association's own name as the real party and without joining with it the individual Owners.

8.2.17. To perform other acts that the Association deems reasonably necessary to perform its duties under this Restated Declaration, subject to all limitations contained in this Restated Declaration, and the other Governing Documents and as limited by applicable law.

8.3. Board Duties. The Board, acting for the Association as set forth in the Governing Documents, is required and authorized to carry out the duties and responsibilities cited in this Article and to establish all necessary Association Rules and Regulations, subject to this Restated Declaration and all other Governing Documents.



#### 8.4. Enforcement of Governing Documents.

8.4.1. Sanctions for Noncompliance. In addition to any other enforcement rights described in the other Governing Documents or authorized by law, and subject to any restrictions on the Association's enforcement rights, including any due process requirements imposed by the Governing Documents or applicable law, the Association may take any of the following actions against any person or entity whose act or failure to act violates or threatens to violate any provision of the Governing Documents:

- A. impose Limited Assessments for violations, which may include monetary penalties, including late charges and interest;
- B. suspend or revoke membership or voting rights in the Association;
- C. commence any action, at law or in equity, for damages, declaratory relief, injunctive relief and/or other relief;
- D. enforce payment of Assessments by imposing assessment liens and take all other actions allowed under the Governing Documents; and/or
- E. enforce compliance with the Governing Documents in any manner permitted under this Restated Declaration or other applicable laws, including foreclosure and sale of the Building Lot.

8.4.2. Commencement of Legal Action. The Association shall determine, in its discretion, whether to impose one or more of the sanctions described in Section 8.4.1 above. Any legal action that the Association is entitled to take may be brought in the name of the Association on its own behalf and on behalf of any consenting Owner. The Association may, in its discretion, take more than one of the foregoing enforcement actions against any actual or threatened violation, and it may resolve or settle any dispute, including any legal action, under terms and conditions that it deems appropriate.

8.4.3. Limitations on Abridgment of Owners' Rights. The Association may not cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Building Lot, except: (i) by judgment of a court; or (ii) by a decision arising out of arbitration.

8.4.4. Due Process Requirements. Before any of the sanctions described in Section 8.4.1 above is imposed against any Owner, the Board must act in good faith and must satisfy each of the following requirements:

- A. The Owner must be given fifteen (15) days' prior notice of the discipline or potential action to be imposed and the reasons for imposition of the discipline (except that prior notice will not be required in the event of a repeated violation of the same or a similar provision in the Governing Documents). Any notice shall be given in accordance with Section 16.6.
- B. The Owner must be given an opportunity to be heard by the Board, orally or in writing, no less than five (5) days before the effective date of imposition of the discipline (unless a prior right to hearing has been granted with respect to a repeated violation of the same or a similar provision in the Governing Documents).

8.5. Owners' Voting Rights. All Owners (and Declarant with respect to each Building Lot it owns) are automatically entitled to exercise the right to vote as Members of the Association, subject to the procedural requirements set forth in Article 9 below.

8.6. Inspection of Association's Books and Records. Any Member, or that Member's duly appointed representative, shall have access to the Association's Membership register, books of account, and minutes from any meeting of the Members, the Board, or any committee of the Board in order to inspect and copy such records for any purpose reasonably related to his or her interest as a Member. Access shall be at any reasonable time at the office of the Association or such other place as the Board prescribes. The Board shall establish rules regarding the notice that Members must give to the custodian of the records to obtain access, the hours and days of the week when the records may be inspected and copied, and the charges imposed by the Association for copying records requested by Members. Any member of the Board may at any reasonable time inspect, copy, or make extracts of any books, records, or documents of the Association and inspect the physical properties owned or controlled by the Association.

#### ARTICLE 9: MEMBERSHIP AND VOTING RIGHTS

9.1. Membership Appurtenant to Ownership. Every Owner (and Declarant, as long as Declarant owns one or more Building Lots) shall be a Member of the Association. One Membership shall be appurtenant to each Building Lot, and each Membership shall have one vote in the Association. Membership is dependent upon and non-severable from ownership of a Building Lot. If any Owner ceases to be an Owner, such Owner's membership in the Association shall automatically transfer to and vest in the new Owner of that Building Lot. Any attempted transfer of a Membership in the Association in violation of this Section 9.1 shall be null and void.

#### 9.2. Voting.

9.2.1. Majority Approval Required. Except as otherwise provided in the Governing Documents, all matters requiring the approval of the Members shall be deemed approved if approved by a vote of Members holding a majority of the total voting power of Members present in person or by proxy at a meeting of the Members at which a quorum is present; or if approved in writing by Members holding a majority of the total voting power of all Members. A quorum will be present at any meeting if at least 30% of the Members' voting power is present in person or by proxy.

9.2.2. Vesting of Voting Rights. Voting rights with respect to each Owner of a Building Lot shall vest at the time that such Owner qualifies as an Owner of such Building Lot.

9.2.3. Secret Ballots. Voting for the Board Members shall be conducted by secret ballot. Voting on other matters may be conducted in any manner permissible under applicable law, the Articles and Bylaws.

#### ARTICLE 10: TERMINATION OF RESIDENCY AGREEMENTS

Prior to adoption of this Restated Declaration, Owners customarily executed and received services under Residency and Service Agreements ("Residency Agreements") with Original Declarant. All Residency Agreements between any Owners and Original Declarant are hereby terminated, and neither Declarant nor the Association shall have any right, duty or responsibility in connection with such Residency Agreements. No Residency Agreements shall be entered into between Original Declarant or Declarant and any Owner after the Effective Date hereof.

#### ARTICLE 11: DECLARANT'S RIGHTS

11.1. Reserved Rights. Notwithstanding other provisions in this Restated Declaration to the contrary, Declarant shall have the following reserved rights while initial improvements on Building Lots are being completed in the Property:

11.1.1. To maintain a portable job trailer and similar items on a Building Lot within the Property that are reasonable and customary for a builder or developer in a residential property subdivision, such portable job trailer and similar items to be kept in good order and repair by Declarant.

11.1.2. To maintain signs, including advertising signs and signs reasonable and appropriate in connection with construction and marketing of homes and other improvements in the Property; and to conduct business reasonable and appropriate to complete construction of improvements and market and sell portions of the Property.

11.1.3. To further divide any Building Lot under its ownership ("Building Lot Division"); provided there shall not be more than sixty-four (64) Building Lots in the Property, including no more than sixteen (16) Building Lots in the area of the Upper Lots, which is platted as eleven (11) Building Lots as of the Effective Date of this Restated Declaration. This Building Lot Division shall be subject to the then-current zoning and platting regulations imposed by the City of Spokane, Washington. In the event the Declarant obtains final, non-appealable approval from the City of Spokane for a Building Lot Division, and completes the Building Lot Division by recording the applicable documents regulated by the City of Spokane and/or Washington State with the Spokane County Auditor, a reallocation of the then-current Assessment shall be performed among all Building Lots, including the newly divided Building Lot(s).

#### ARTICLE 12: MAINTENANCE AND CONDEMNATION OF COMMON AREAS

12.1. Maintenance of Common Areas. The Association's right and authority to maintain improvements now or hereafter existing in the Property shall include:

12.1.1. Maintenance of Private Streets and Private Improvements. The Association shall provide for the maintenance of the private streets (including snow removal) and for maintenance of all private utility improvements (sanitary sewer, water, and stormwater facilities) located therein, and any additional easements shown on the Plat. The Association's duty to provide for the maintenance of sanitary sewer, water, and stormwater facilities on the Property is limited to those facilities serving more than one Building Lot; facilities serving exclusively a single Building Lot shall be maintained at the expense of the Owner thereof, provided the Association may cause such maintenance to be performed and the cost thereof assessed to the Owner if the Owner does not cause such maintenance to be performed within a reasonable time after notice from the Association. The City of Spokane shall bear no responsibility for such maintenance and shall not be a party to any legal action for failure to provide street, sanitary sewer, or water service within the private streets within the boundaries of this planned unit development. In addition to the private streets, Association shall be responsible for street maintenance of 25th Avenue from Crestline Street to the plat boundary as shown on the face of the final plat. Street maintenance activities include, but are not limited to, snow removal, street cleaning, sweeping, flushing, and sign maintenance. As indicated on the final plat, the City will operate and maintain all underground utilities owned by the City in that portion of the 25th Avenue right-of-way (from Crestline Street to the plat boundary), including public sanitary

sewer, water mains, and public storm lines, and will provide pavement replacement in that portion of the 25th Avenue right-of-way.

12.1.2. Maintenance of Drainage Tracts. The Association will operate and maintain Tracts A, B, and C, including all detention ponds, drainage facilities, and stormwater pump stations, as well as all storm water lines and structures located in this planned unit development. Association will also maintain drainage swales and planting strips in the right-of-way, adjacent to the Property, with a permanent live cover of lawn turf, with additional shrubbery and/or trees, which do not obstruct the flow and percolation of runoff in the drainage swale, as indicated on the plat.

12.2. Completion of Perimeter Fence. Declarant and Original Declarant agree to complete construction of the perimeter fence, causing it to entirely enclose the Property, within a reasonable time after street and utilities infrastructure is completed to the Upper Lots. Declarant and Original Declarant may allocate the cost of constructing the perimeter fence among themselves as they may agree, but the Association shall bear none of the cost thereof, and the obligation of Declarant and Original Declarant under this Section is joint and several. After the perimeter fence is complete, and without waiving or limiting the authority of the Association to levy Limited Assessments, the cost of maintenance, repair, and replacement thereof will be a common expense. Until the perimeter fence is complete: Commencement of Construction is prohibited on any Building Lot within the Upper Lots; and, the then-owner of the Upper Lots is responsible for ensuring the gate on the road into the Upper Lots is closed at night and at any other time workers are not present within the Upper Lots.

12.3. Condemnation. If any portion of the Common Areas is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, notice of the proceeding or proposed acquisition shall promptly be given to each Owner and to each first mortgagee. The Association shall represent the Owners in any condemnation proceeding or in negotiations, settlements and agreements with the condemning authority for acquisition of any portion of the Common Areas and each Owner appoints the Association to act as the Owner's other attorney-in-fact for such purposes. All compensation, damages or other proceeds of the taking of Common Areas shall be payable to the Association. Proceeds shall first be applied to restore or repair any remaining Common Area, including a structure on Common Area that may be required to permit the continued enjoyment of such Common Area. Thereafter, the Association shall deposit such sums in the operations fund or apply these sums to such capital improvements as shall be authorized pursuant to this Restated Declaration.

### ARTICLE 13: ASSESSMENTS

13.1. Covenant to Pay Assessments. By acceptance of a deed or real estate contract for any Building Lot in the Property, each Owner of such Building Lot hereby covenants and agrees to pay when due appropriate General Assessments, Declarant Assessments, Special Assessments and Limited Assessments made by the Association.

13.1.1. Assessment Constitutes Lien. Such Assessments together with interest, costs and reasonable attorney fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Owner's Building Lot(s), and against which each such Assessment or charge is made.

13.1.2. Assessment is Personal Obligation. Each such Assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the Owner of

such Building Lot beginning with the time when the Assessment falls due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them, and no such assumption shall relieve any Owner from personal liability to the Association therefore. All Assessments, once made, shall remain such Owner's personal obligation regardless of whether he or she remains an Owner.

13.1.3. No Abatement of Fees or Assessments. The Association shall not enter into any agreement with any Owner or any other person or entity which could have the effect of abating or otherwise modifying any Regular or Special Assessment payable by any Owner under this Article 13.

13.2. Regular Assessments. Except as provided in Section 13.3, all Owners are obligated to pay Regular Assessments to the treasurer of the Association on a schedule of payments established by the Board.

13.2.1. Purpose of Regular Assessments. The proceeds from Regular Assessments are to be used to pay for all costs and expenses incurred by the Association, including legal and attorney fees and other professional fees incurred, costs and expenses for insurance and other actions associated with maintaining the Association or performing its authorized rights and functions, maintenance of the Common Areas and landscaping within Building Lots as provided in this Restated Declaration, and similar items and expenses reasonably related to any of the foregoing.

13.2.2. Computation of Regular Assessments. The Association shall establish an annual budget each year, by computing the amount of its permitted expenses, including but not limited to accrual of reserves, and all reasonably anticipated income, including but not limited to Declarant Assessments. The difference between the Associations permitted expenses and its reasonably anticipated income from sources other than Regular, Special or Limited Assessments shall be the "Total Regular Assessments."

13.2.3. Amounts to be Paid and Allocated Among Building Lots. The Board can require, in its discretion or as provided in the Articles or Bylaws, payment of Regular Assessments in monthly, quarterly, semi-annual or annual installments. The Regular Assessment amount attributable to each Building Lot subject to the imposition of Regular Assessments shall be equal to the Association's Total Regular Assessments, divided by the total number of Building Lots then subject to Regular Assessments, divided by the number of periodic payments of Regular Assessments to be made during the period covered by the budget.

13.3. Declarant Assessments. In lieu of Regular Assessments, Declarant and Original Declarant are obligated to pay Declarant Assessments as described in this Section 13.3 with respect to Building Lots owned by them. When every Building Lot has become subject to Regular Assessments, this Section 13.3 shall be of no further force or effect.

13.3.1. Classes of Declarant Assessments. There will be two classes of Declarant Assessments: Class 1 and Class 2. For ease of reference, a Building Lot subject to Declarant Assessments may be referred to in this Section 13.3 as a "Class 1 Declarant Lot" or "Class 2 Declarant Lot," as the case may be.

A. Class 1 Declarant Assessments apply to each Building Lot: i) with respect to which Commencement of Construction has not occurred; and, ii) owned by Declarant, Original Declarant, or a bulk purchaser of the Upper Lots from Original Declarant; and, iii) not a Class 2 Declarant Lot. Failure to meet any of the foregoing qualifications shall cause a Building Lot to be subject to Regular Assessments

under Section 13.1 from and after the date of the event resulting in such failure; provided, commencement of Regular Assessments will be delayed in circumstances in which a Spec Home Fee is payable under Section 13.3.2. No Building Lot may become a Class 1 Declarant Lot which is not either a Class 1 or Class 2 Declarant Lot on the Effective Date of this Restated Declaration, and no Building Lot may become a Class 1 Declarant Lot again after it has become subject to Regular Assessments.

B. Class 2 Declarant Assessments apply to the Upper Lots. No other Building Lot may become a Class 2 Declarant Lot. The following are "triggering events" as that term is used in the remainder of this paragraph: i) completion of street and utilities infrastructure and common area landscaping to the Class 2 Lots; or, ii) Commencement of Construction on any Class 2 Lot; or, iii) any Class 2 Lot ceases to be owned by Declarant, Original Declarant, or a bulk purchaser of the Upper Lots from Original Declarant. In the event of triggering event i, all Class 2 Declarant Lots shall become Class 1 Declarant Lots. In the event triggering events ii or iii, the individual Building Lot or Lots to which the triggering event relates shall be subject to Regular Assessments after the triggering event, subject to application of Section 13.3.2, and all other Class 2 Declarant Lots shall become Class 1 Declarant Lots. No Building Lot may become a Class 2 Declarant Lot again after any triggering event.

C. From the Effective Date of this Restated Declaration through December 31, 2019, the Class 1 Declarant Assessment shall be \$58 per month per Class 1 Declarant Lot; provided, the foregoing in no way guaranties that there will still be any Class 1 Declarant Lots at any given time, whether before, on, or after December 31, 2019. From the Effective Date of this Restated Declaration through December 31, 2020, the Class 2 Declarant Assessment shall be \$24 per month per Class 2 Declarant Lot; provided, the foregoing in no way guaranties that there will still be any Class 2 Declarant Lots at any given time, whether before, on, or after December 31, 2020. After the dates stated in the foregoing sentences, and annually thereafter, the Class 1 Declarant Assessment and the Class 2 Declarant Assessment may each be adjusted by the Board, in its sole discretion, to the same percentage of the then-current Regular Assessment that they bear to the Regular Assessment in effect on the Effective Date, which is \$295 per month per lot. As of any adjustment date, the adjusted Class 1 Declarant Assessment will be calculated by multiplying the then-current Regular Assessment by \$58, and dividing the product by \$295. As of any adjustment date, the adjusted Class 2 Declarant Assessment will be calculated by multiplying the then-current Regular Assessment by \$24, and dividing the product by \$295.

i. The foregoing notwithstanding, if it remains unimproved with a dwelling on or after December 31, 2019, the Association may from time to time adjust the Assessment on Lot 7, Block 1 of the Plat to reflect the full cost of maintaining the landscaping on such Lot, in addition to the then-applicable Class 1 Declarant Assessment.

D. Any new Building Lots resulting from Building Lot Division by Declarant shall be assessed in the same manner as the original Building Lot was being assessed immediately prior to the Building Lot Division, until the occurrence of an event triggering a change in the assessment type applicable to either such Building Lot.

The effective date of such Building Lot Division shall be the date of recording of any short plat or amendment to the Plat reflecting such Building Lot Division. The foregoing notwithstanding, as of the Effective Date of this Restated Declaration, Declarant has received preliminary approval for a Building Lot Division of Lot 19, Block 1 of the Plat. In the event Declarant receives a building permit to construct a dwelling (i.e. Commencement of Construction) on any part of such Building Lot prior to recording of the short plat or Plat amendment, Lot 19 will be treated as two (2) Building Lots for assessment purposes from the date of Commencement of Construction, unless Declarant notifies the Association in writing that its application for the Building Lot Division of Lot 19 has been terminated, abandoned or expired, which notice shall be accompanied by evidence of such termination, abandonment or expiration.

13.3.2. Declarant Spec Home Fee. In the event of Commencement of Construction by Declarant, as the Owner, on any Class 1 Declarant Lot or Class 2 Declarant Lot, Declarant will pay to the Association a one-time "Spec Home Fee" of \$2,000 within 60 days of Commencement of Construction. The Spec Home Fee is in lieu of Regular or Developer Assessments during the period of construction of the subject dwelling; provided, any Building Lot for which a Spec Home Fee has become due will become subject to Regular Assessments effective on the first day of the next calendar month after the earlier of: (a) 12 months from Commencement of Construction; or, (b) upon transfer of title to an Owner other than Declarant. No other Owner may pay a Spec Home Fee in lieu of Regular Assessments after Commencement of Construction. Declarant shall notify the Board of Commencement of Construction within five (5) days thereafter.

13.4. Special Assessments. In the event that the Board shall determine that its Regular Assessment for a given calendar year is or will be inadequate to meet the permitted expenses of the Association for a permitted reason (including but not limited to costs of construction, reconstruction, unexpected repairs or replacement of Common Areas, attorney fees and/or litigation costs, any shortfall resulting from Owner delinquencies in failing to pay Assessments, or for other similar reasons), the Board shall determine the approximate amount necessary to defray such expenses and levy a Special Assessment against the Property which shall be allocated to the Owners and Building Lots, in the same manner as Regular Assessments. The foregoing notwithstanding, during the period in which Declarant Assessments are payable under Section 13.3.1, Special Assessments shall be levied against Class 1 and Class 2 Declarant Lots as follows: (a) for Special Assessments to pay for repair or replacement of Common Area improvements, Class 1 and Class 2 Declarant Lots shall be assessed an amount equal to the Special Assessment levied on each other Building Lot; and, (b) for all other Special Assessments, Class 1 Declarant Lots shall be assessed an amount calculated by multiplying the Special Assessment assessed against non-Declarant Lots by \$58, and dividing the product by \$295, and the Class 2 Declarant Lots shall be assessed an amount calculated by multiplying the Special Assessment assessed against non-Declarant Lots by \$24, and dividing the product by \$295. No Special Assessment shall be levied which exceeds twenty percent (20%) of the budgeted gross expenses of the Association for the fiscal year, without the vote or written assent of the Owners representing a majority of the votes of the Members of the Association. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid.

13.5. Limited Assessments. In addition to Regular and Special Assessments, the Board may levy a Limited Assessment against any Owner as a remedy to reimburse the Association for costs incurred in bringing the Owner and/or such Owner's Building Lot into compliance with the



provisions of this Restated Declaration or other Governing Documents for the Property. The amount of the Limited Assessment shall include all actual costs, consultant charges and attorney fees incurred by the Association in connection with such violation and/or any actions taken to correct such violation and/or any actions taken to bring such Owner(s) and/or Building Lot(s) into compliance with this Restated Declaration or other Governing Document. In addition to a Limited Assessment in the full amount of all actual costs and expenses as referred to above in this Section 13.5, the Limited Assessment may also include an additional amount of up to \$50.00 per day (or its equivalent value as compared with January 1, 2016 dollars, as adjusted periodically by the Board in its reasonable discretion utilizing changes in a published consumer price index of its choosing to take into account the impact of inflation), for each violation which remains uncorrected after thirty (30) days' written notice given to such Owner from the Association. Any such notice shall be given in accordance with Section 16.6. In addition, the Board, in its discretion, may shorten or eliminate the prior notice requirement prior to imposing this additional Limited Assessment amount in the event of any repeat violation or violations of this Restated Declaration by an Owner. Notwithstanding anything above to the contrary, a Limited Assessment may also be assessed against an Owner for damage to any improvement, including but not limited to landscaping, fencing, or dwelling, on any Building Lot or portion of the Common Area within the Property caused by reason of the negligence or willful misconduct of such Owner, such Owner's family member(s), guest(s), or other visitor, occupant or resident of such Owner's Building Lot, both minor and adult. Additionally, any fine, late charge, or other charge or cost payable by any Owner as a result of a violation of any Governing Document or delinquent payment of any Assessment shall automatically constitute a Limited Assessment against such Owner and the Owner's Building Lot(s).

13.6. New Owners. The first Regular Assessment amount and any then-approved Special Assessment amount shall be pro-rated as of the date of closing for the then-current assessment payment period, typically one month, and payable at closing when an Owner becomes the new Owner of a Building Lot.

13.7. Notice and Assessment Due Date. At least ten (10) days prior to the due date of the first installment of a newly established Regular Assessment amount or payment schedule or the first installment of any Special Assessment, the Association shall cause notice thereof to be sent the Owner of every Building Lot subject thereto in accordance with Section 16.6. The due dates for installment payments of the Regular Assessment and any Special Assessment shall be the first day of each calendar month unless the Board establishes some other due date or payment schedule, such as quarterly, semi-annual, or annual installments, or in the case of Special Assessments, a single installment. The Board may, through the Rules and Regulations, establish grace periods and set late charges for delinquent payments for Assessments of any type. In addition to any such late charges, each installment payment which is delinquent for more than twenty (20) days shall accrue interest at twelve percent (12%) per annum calculated from the date of delinquency to and including the date full payment is received by the Association. The Association may bring an action against the delinquent Owner and may foreclose the lien against such Owner's Building Lot as more fully provided in Article 14. Each Owner is personally liable for Assessments levied against such Owner's Building Lot(s), together with all interest, late charges, costs and attorney fees, and no Owner may exempt themselves or any other Owner from such liability by a waiver of the use and enjoyment of the Common Areas, or by lease or abandonment of such Owner's Building Lot.

13.8. Estoppel Certificate. The Association, upon at least ten (10) days prior written request, shall execute, acknowledge and deliver to the party making such request, a statement in writing



stating whether or not, to the knowledge of the Association, a particular Building Lot is in default under the provisions of this Declaration, and further stating the dates to which any Assessments have been paid by the owner. Any prospective purchaser or mortgagee of the Owner's Building Lot may rely upon any such certificate delivered pursuant to this Section.

#### ARTICLE 14: ENFORCEMENT OF ASSESSMENTS; LIENS; PROCEEDINGS

14.1. Right to Enforce. The Association has the right to collect and enforce its Assessments pursuant to the provisions hereof. Each Owner of a Building Lot, upon becoming an Owner of such Building Lot, shall be deemed to covenant and agree to pay each and every Assessment provided for in this Restated Declaration and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorney fees and costs in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative may enforce the obligations of the Owners to pay such Assessments by nonjudicial foreclosure or judicial foreclosure, or by suit for a money judgment, in the sole discretion of the Board. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

#### 14.2. Assessment Liens.

14.2.1. Creation. There is hereby created a lien with power of sale on each and every Building Lot to secure payment of any and all Assessments levied against such Building Lot pursuant to this Declaration together with interest thereon and late charges under Section 13.7 and all costs of collection which may be paid or incurred by the Association, including costs and attorney's fees incurred, whether or not suit is filed. Each assessment shall constitute a lien on each respective Building Lot prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any mortgage or deed of trust of record made in good faith and for value prior to the due date of the delinquent Assessment(s).

14.2.2. Notice of Lien. Upon default of any Owner in the payment of any Assessment issued hereunder, the Association may, but need not, cause to be recorded in the office of the Spokane County Auditor a Notice of Lien. Failure to record a Notice of Lien shall not impair the Association's ability to foreclose its lien or otherwise collect any delinquent sum. If recorded, the Notice of Lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such Notice of Lien), a sufficient description of the Building Lot(s) against which the same have been assessed, and the name of the record Owner thereof. Each delinquency shall constitute a separate basis for a Notice of Lien. After recordation of a Notice of Lien, upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction or relief of such delinquent sums and charges and a release of the Notice(s) of Lien. The Association may demand and receive the cost of preparing and recording such release before recording the same.

14.3. Method of Foreclosure. Such lien, when delinquent, may be enforced by sale by the Association, its attorney, or other person authorized by this Declaration, or by law, to make the sale, after failure of the Owner to pay such Assessment, in accordance with the provisions of Washington law applicable to the exercise of powers of sale in deeds of trust, or by judicial

foreclosure as a mortgage, or in any other manner permitted by law. The Association, acting on behalf of the Owners, shall have the power to bid for the Building Lot at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. The Board is hereby authorized to appoint an attorney, title company or any other person or entity qualified to act as a Trustee in the State of Washington as trustee for the purpose of conducting such sale or foreclosure. No Building Lot or other portion of the Property is used primarily for agricultural purposes.

14.4. Required Notice. Notwithstanding anything contained in this Restated Declaration to the contrary, no action may be brought to foreclose the lien created by this Restate Declaration, whether judicially, by power of sale or otherwise, until the expiration of thirty (30) days after the following have been completed: a written notice of the delinquency, together with copy of the Notice of Lien, if any, has been deposited in the United States mail, certified or registered, postage prepaid to the delinquent Owner; and to any person in possession of such Building Lot(s); and, the Notice of Lien, if any, is recorded by the Association in the Office of the Spokane County Auditor. Any such notice sent to the Owner(s) and persons in possession shall be sufficient if sent as provided above to the address for the applicable Building Lot(s) or to the Owner's last known address.

14.5. Transfer of Building Lot by Sale or Foreclosure. The voluntary sale or transfer of any Building Lot shall not affect the Assessment lien provided for herein, on account of the Assessments becoming due before, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Restated Declaration. However, the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure shall extinguish the liability for and lien of such Assessments as to payments which became due prior to such sale or transfer (except for Assessment liens arising prior to recordation of the mortgage or deed of trust). Such unpaid Assessments and related charges shall be deemed to be common expenses collectible from the Owners all of the Building Lots including such mortgagee. The foregoing notwithstanding, the extinguishment of the Assessment lien by foreclosure of a mortgage or deed of trust shall not relieve the Owner of personal liability for the delinquent Assessments, and interest, late charges, attorney's fees, and costs related thereto coming due prior to such foreclosure.

#### ARTICLE 15: ENFORCEMENT AND DISPUTE RESOLUTION PROCEDURES

15.1. Violation of Protective Covenants. The Association may enforce the covenants provided for in this Restated Declaration and the Governing Documents, including rights and obligations associated with Assessments as provided in Article 13 and Article 14 above. Any Owner shall have the right to enforce, by any proceeding at law or in equity, the Governing Documents, including all restrictions, conditions, and covenants of this Restated Declaration, other than the provisions of Article 13 and Article 14.

15.2. Mediation/Arbitration. Any claim, controversy or dispute by or among Declarant, Association, or one or more Owners, or any of them, arising out of or related to this Restated Declaration or any other Governing Document, other than a matter related to Assessments as provided for in Article 13 or Article 14, shall be first subject to mediation and, if not timely settled by mediation, resolved by arbitration in accordance with this Article.

15.2.1. Mediation. The parties to any dispute are encouraged to attempt in good faith to resolve such disputes through informal negotiation, without direct involvement of legal representation. If the parties are unable to resolve the dispute by way of such informal negotiation, then the dispute shall be submitted for formal mediation where both parties,

with or without legal representation, submit the dispute to a mutually agreeable mediator. Such formal mediation shall occur in Spokane County, Washington and the mediator fees and expenses associated with such mediation process shall be shared equally by the parties to the dispute, except as stated in the following sentence. If the parties are unable to agree upon a mediator, each party will designate a preferred mediator, and the two designated mediators will select a third mediator, who shall thereafter serve as the sole mediator; each party shall be solely responsible for any fees of the preferred mediator selected by it, and the parties shall share equally the fees of the third mediator.

15.2.2. Arbitration. If the dispute cannot first be settled by mediation as described above, then any dispute, controversy, or claim arising out of or relating to the Governing Documents shall be settled by arbitration. Unless the parties otherwise agree, the arbitration shall be administered by a mutually agreeable arbitrator in accordance with the Washington State Superior Court Mandatory Arbitration Rules in effect at the time of the arbitration, without regard to any restrictions on amount in controversy contained therein. In the event the parties are unable to agree upon an arbitrator, the either party may request that the mediator chosen under Section 15.2.1 select an arbitrator, and the mediator's choice of arbitrator shall be final. Judgment on the award rendered by the arbitrator may be entered in the Spokane County Superior Court, and the resolution of the disputed matter as determined by the arbitrator shall be binding on the parties. Any arbitration shall be conducted in the Spokane County, in accordance with the following provisions:

A. Without the express consent of all parties, arbitration proceedings under this Article may not be consolidated with arbitration proceedings pending between other parties even if the arbitration proceedings arise out of the same transaction or relate to the same subject matter. Furthermore, no party may participate in a class action against the other party with respect to any matter related to the Governing Documents.

B. The arbitrator shall have authority to issue preliminary and other equitable relief.

C. Discovery proceedings of the type provided by the Washington State Superior Court Rules of Civil Procedure shall be permitted both in advance of and during recesses of the arbitration hearings. Any dispute relating to such discovery shall be resolved by the arbitrator.

D. The arbitrator shall have the discretion to order a prehearing exchange of information by the parties and an exchange of summaries of testimony of proposed witnesses.

E. The arbitrator shall have the authority to award any remedy or relief that a court in the county in which the arbitration occurs could order or grant, including, without limitation, specific performance of any obligation created under the Governing Documents, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process.

15.2.3. Statute of Limitations. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statute of limitations or for purposes of filing a notice of pending action ("lis pendens") and the statute of limitations that would apply to institution of a court action with regard to the claim or matter at issue shall be applied to the matter sought to be submitted to arbitration.

15.3. Costs and Attorney Fees. Except as provided elsewhere in this Article, in the event the Association, the Declarant or an Owner shall commence any action or arbitration to enforce this Restated Declaration or any Governing Document, with or without bringing suit, or in the event the Association brings suit or action to enforce any Governing Document, or to collect any money due thereunder or to foreclose a lien, the substantially prevailing party or parties shall be entitled to recover their actual attorney fees and costs, including a litigation guaranty report issued by a title company doing business in Spokane County, Washington, at trial and upon any appeal or petition for review thereof, from the party or parties that do not substantially prevail,

15.4. Non-exclusiveness and Accumulation of Remedies. Except to the extent expressly limited above, an election by the Association, Declarant, or any Owner to pursue any remedy provided for violation of this Restated Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies provided in this Restated Declaration or any other Governing Document are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Restated Declaration or any other Governing Document by appropriate legal proceedings.

#### ARTICLE 16: MISCELLANEOUS PROVISIONS

##### 16.1. Amendment and Repeal.

16.1.1. By the Board. The Board may, by at least a two-thirds vote of the directors, amend this Restated Declaration to correct any unintended error or omission, or to conform this Restated Declaration to requirements imposed under applicable law, including provisions of the Washington Homeowners' Association Act, RCW 64.38.005, et seq.

16.1.2. By the Owners. This Restated Declaration may be added to, amended, revised and/or revoked (each a "Revision"), in whole or part, by the vote or written consent of a majority of the voting power of the Members (including Declarant with respect to each Building Lot it owns).

Any Revision to this Restated Declaration shall: (i) be evidenced by an instrument acknowledged by the president of the Association; (ii) make appropriate reference to this Restated Declaration and its amendments; (iii) be acknowledged; and (iv) be recorded with the Auditor of Spokane County.

16.2. Regulatory Amendments. Notwithstanding the provisions of Section 16.1 above, the Board, on behalf of the Association and all Members, shall have the right to amend this Restated Declaration or any Governing Document of the Association in order to comply with the requirements of the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Washington, or any corporation wholly owned, directly or indirectly, by the United States or the State of Washington which insures, guarantees or provides financing for a planned community or Building Lots in a planned community.

16.3. Joint Owners. In any case in which two or more persons share the ownership of any Building Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Restated Declaration and any other Governing Document of the Association shall be a

joint and several responsibility, and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association, or in the event of in-person voting at a meeting of the Members may verbally notify the officer of the Association presiding over the meeting, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

16.4. Lessees and Other Invitees. Authorized lessees (recognizing that leasing is not contemplated), invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Restated Declaration and any other Governing Document of the Association restricting or regulating the Owner's use, improvement or enjoyment of Owner's Building Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

16.5. Construction; Severability; Number; Caption. This Restated Declaration shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Restated Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision. As used herein, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used in this Restated Declaration are intended solely for convenience of reference and shall not limit any provision of this Restated Declaration.

16.6. Notices. Except as expressly provided elsewhere in this Restated Declaration, any notice permitted or required by this Restated Declaration or any other Governing Document may be delivered personally, by mail, or electronically. Delivery by mail shall be deemed made three days after having been deposited in the United States mail, first class postage prepaid addressed as follows: If to Declarant, at P.O. Box 141749, Spokane Valley, Washington 99214; if to an Owner, at the address given by the Owner at the time of the Owner's purchase of a Building Lot, or to the address of the Building Lot if no other address is given; if to the Association, to the mailing address of the Association as stated in the Rules and Regulations, as amended from time to time. The mailing and electronic delivery address of a party may be changed by the party at any time by notice in writing delivered to the Association as provided herein. Notice provided by personal delivery shall be complete when delivered to any one officer of the Association, or any one Owner or person in possession of a Building Lot, as applicable, or to any officer or the registered agent of Declarant. Notice provided electronically shall be deemed received when sent; provided, except for notices of meetings, all other notice provided electronically shall be ineffective unless it is also sent by United States mail, first class postage prepaid within one business day after sending of such notice electronically.

This Restated Declaration has been approved to amend the Original Declaration and the First Amendment by the vote or written consent of Owners representing at least a majority of the voting power of the Association, recognizing that there is no longer any Class "B" Membership; all in accordance with Section 16.1.3 of the Original Declaration. This Restated Declaration shall be effective on the date of its recordation with the Spokane County Auditor (the "Effective Date").

**DECLARANT:**

LEXINGTON HOMES, INC.

By: 

David Nerren, President

**ORIGINAL DECLARANT:**

WATERFORD ON SOUTH HILL, L.P.:

By TOUCHMARK LIVING CENTERS, INC., Its General Partner

By: 

Its: Director of Operations

**ASSOCIATION:**

TOUCHMARK AT GRAPETREE HOMEOWNERS ASSOCIATION

By: 

Judy Cole, President

By: 

Dean Moorehouse, Secretary

STATE OF WASHINGTON )  
 )  
 COUNTY OF SPOKANE ) ss.

I certify that I know or have satisfactory evidence that **David Nerren** is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the **President** of **LEXINGTON HOMES, INC.**, to be the free and voluntary act of such party for the uses and purposes stated therein.

Dated 8-24-17



Nicole Hunnel  
 Print Name: Nicole Hunnel  
 NOTARY PUBLIC, State of Washington  
 My appointment expires Aug 05, 2018

STATE OF WASHINGTON )  
 )  
 COUNTY OF SPOKANE ) ss.

I certify that I know or have satisfactory evidence that Jeffrey P. Bair is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Dir. of Operations (title) of **TOUCHMARK LIVING CENTERS, INC.**, to be the free and voluntary act of such party for the uses and purposes stated therein.

Dated 8-25-17

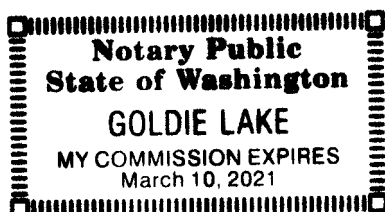


Cindy Ann Garvin  
 Print Name: Cindy Ann Garvin  
 NOTARY PUBLIC, State of Washington  
 My appointment expires 09-02-2017

STATE OF WASHINGTON )  
 )  
 COUNTY OF SPOKANE ) ss.

I certify that I know or have satisfactory evidence that **Judy Cole** is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the **President of TOUCHMARK AT GRAPETREE HOMEOWNERS ASSOCIATION** to be the free and voluntary act of such party for the uses and purposes stated therein.

Dated August 24, 2017

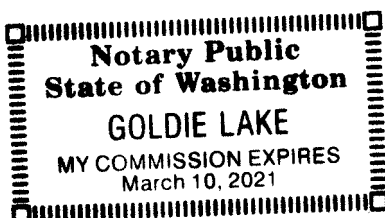


Goldie Lake  
 Print Name: Goldie Lake  
 NOTARY PUBLIC, State of Washington  
 My appointment expires March 10, 2021

STATE OF WASHINGTON )  
 )  
 COUNTY OF SPOKANE ) ss.

I certify that I know or have satisfactory evidence that **Dean Moorehouse** is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the **Secretary of TOUCHMARK AT GRAPETREE HOMEOWNERS ASSOCIATION** to be the free and voluntary act of such party for the uses and purposes stated therein.

Dated August 24, 2017



Goldie Lake  
 Print Name: Goldie Lake  
 NOTARY PUBLIC, State of Washington  
 My appointment expires March 10, 2021



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

Lots 1 through 30, Block 1; Lots 1 through 10, Block 2; Lots 1 through 18, Block 3; Tracts A, B, and C; and Private Streets; WATERFORD AT GRAPETREE, according to the Plat thereof recorded in Volume 33 of Plats, Page 50, in the City of Spokane, Spokane County, Washington.

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Restated August 2017

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Restated August 2017

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