

**AFTER RECORDING MAIL TO:**

**Developer Entity**  
**Developer Address**

**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR THE  
ELLENSBURG FLATS PHASE-1 SUBDIVISION**



**TABLE OF CONTENTS**

	<u>Page</u>
<b>ARTICLE 1 SELECT DEFINITIONS.....</b>	<b>1</b>
<b>ARTICLE 2 ELLENSBERG LANDING HOMEOWNERS ASSOCIATION .....</b>	<b>4</b>
2.1 Organization of the Association.....	4
2.2 Membership .....	4
2.3 Membership Meetings; Voting .....	4
2.4 Board of Directors.....	4
2.5 Meeting Minutes .....	5
2.6 Delegation of Authority .....	5
2.7 Financial Disclosures .....	5
2.8 Powers of the Association.....	5
2.9 Association Records; Owner Inspection .....	9
2.10 Immunity; Indemnification .....	10
2.11 Waiver of Consequential Damages.....	10
<b>ARTICLE 3 GENERAL AND SPECIFIC OBLIGATIONS AND RESTRICTIONS .....</b>	<b>10</b>
3.1 Residential Use .....	10
3.2 Leasing.....	10
3.3 Exterior Maintenance Obligations .....	11
3.4 Nuisances .....	11
3.5 Vehicles and Equipment .....	12
3.6 Animals/Pets .....	12
3.7 Assistance Animals.....	13
3.8 Construction and Temporary Structures .....	13
3.9 Drainage.....	13
3.10 Grading .....	13
3.11 Irrigation District Assessments .....	13
3.12 Energy Devices .....	13
3.13 General Signs .....	13
3.14 Political Signs .....	14
3.15 Flags.....	14
3.16 Antenna.....	14
3.17 No Further Subdivision.....	14
3.18 Holiday Lights .....	14
3.19 Trash Cans .....	14
3.20 Marijuana .....	14
3.21 Harassment Prohibited.....	15
<b>ARTICLE 4 ARCHITECTURAL REVIEW.....</b>	<b>15</b>
4.1 Design Requirements .....	15
4.2 Design Review Required .....	15
4.3 Board Expenses.....	16
4.4 Variances.....	16

4.5	Board Approvals .....	16
4.6	Immunity; Indemnification .....	16
<b>ARTICLE 5 ASSESSMENTS .....</b>		<b>16</b>
5.1	Covenant to Pay Assessments.....	16
5.2	Regular Assessments .....	16
5.3	Special Assessments .....	17
5.4	Limited Assessments .....	17
5.5	Transfer Assessments.....	17
5.6	Assessment Procedures.....	17
5.7	Assessment Liens.....	18
5.8	Exemptions .....	18
<b>ARTICLE 6 RIGHTS TO COMMON AREAS .....</b>		<b>18</b>
6.1	Use of Common Area .....	18
6.2	Delegation of Right to Use .....	19
6.3	Association’s Responsibility.....	19
<b>ARTICLE 7 EASEMENTS .....</b>		<b>19</b>
7.1	Easements of Encroachment.....	19
7.2	Easements of Access.....	19
7.3	Improvements in Drainage and Utility Easements .....	19
7.4	Easements Deemed Created.....	19
7.5	Emergency Easement.....	19
7.6	Maintenance Easement .....	19
7.7	Developer’s Rights Incident to Construction.....	20
<b>ARTICLE 8 PRIVATE STREETS AND COMMON DRIVES .....</b>		<b>20</b>
8.1	Private Streets .....	20
8.3	Utilities.....	20
8.4	Maintenance.....	20
8.5	Legal Requirements .....	21
8.6	Private Road Study .....	21
<b>ARTICLE 9 RESOLUTION OF DISPUTES .....</b>		<b>21</b>
9.1	Agreement to Avoid Litigation.....	21
9.2	Exemptions .....	21
9.3	Dispute Resolution.....	21
9.4	Jury Trial Waiver .....	23
<b>ARTICLE 10 INITIAL DEVELOPMENT PERIOD.....</b>		<b>23</b>
10.1	Community Management.....	23
10.2	General Exemptions.....	23
10.3	Water Rights Appurtenant to Community Lands .....	23
10.4	Developer’s Exception from Assessments.....	23
10.5	Assignment of Developer’s Rights .....	24

<b>ARTICLE 11</b>	<b>TERM</b> .....	<b>24</b>
<b>ARTICLE 12</b>	<b>ANNEXATION AND DE-ANNEXATION</b> .....	<b>24</b>
<b>ARTICLE 13</b>	<b>AMENDMENTS</b> .....	<b>25</b>
13.1	Amendment.....	25
13.2	Financing Amendments .....	25
13.3	Effect of Amendment; Mortgagee Protection.....	25
13.4	No Amendment of Required Provisions .....	25
<b>ARTICLE 14</b>	<b>NOTICES</b> .....	<b>25</b>
<b>ARTICLE 15</b>	<b>MISCELLANEOUS</b> .....	<b>26</b>
15.1	Interpretation.....	26
15.2	Governing Law .....	26
15.3	Severability .....	26
15.4	Entire Agreement .....	26
15.5	No Third Party Beneficiaries .....	26
15.6	No Waiver.....	26
15.7	Enforcement; Remedies .....	26
15.8	Consents and Approvals .....	27
15.9	Recitals and Exhibits.....	27



**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR THE  
ELLENSBURG FLATSPHASE-1 SUBDIVISION**

This Declaration of Covenants, Conditions, Restrictions and Easements for the Ellensburg Flats Phase-1 Subdivision (this “**Declaration**”) is made effective as of the date this Declaration is recorded in the real property records of the county where the Community is located (the “**Effective Date**”) by **Developer Entity, an \_\_\_\_\_ limited liability company** (“**Developer**”). Capitalized terms not otherwise defined in the text hereof are defined in Article 1.

WHEREAS, Developer own that certain real property legally described as follows (collectively, the “**Community**”):

All of Ellensburg Flats Phase-1 Subdivision, according to the official plat thereof recorded in the real property records of Kittitas County, Washington in Volume \_\_\_\_\_ of Plat on Pages \_\_\_\_\_, a copy of which is attached hereto as Exhibit A (the “**Plat**”).

WHEREAS, Developer desires to record this Declaration to set forth the basic restrictions, covenants, conditions, restrictions, easements and equitable servitudes that will apply to the Community, all of which are designed to protect, enhance and preserve the value, desirability and attractiveness of the Community, and to ensure that the Community is developed in a well-integrated and high-quality manner.

NOW, THEREFORE, Developer hereby declares that the Community, and each Lot and portion thereof, will be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved in accordance with this Declaration. This Declaration: (a) runs with the land; (b) is binding upon, and inures to the benefit of, any person or entity having or acquiring any right, title or interest in any Lot or portion of the Community; and (c) inures to the benefit of and is binding upon Developer.

**ARTICLE 1 SELECT DEFINITIONS**

In addition to the terms defined elsewhere in this Declaration, the following terms have the following meanings. Words not defined in this Declaration will have their ordinary meanings, except that words that have well-known real estate industry meanings will have the real estate industry meanings.

“**Articles**” means the current Articles of Incorporation of the Association (which are on file with the Washington Secretary of State).

“**Assessments**” means the Regular Assessments, Special Assessments, Limited Assessments and Transfer Assessments, and for each together with any late charges, interest and costs incurred in collecting the same, including attorneys’ fees.

“**Association**” means Ellensburg Landing Homeowners Association, Inc., a Washington nonprofit corporation, as organized by the Articles of Incorporation thereof filed with the Washington Secretary of State on \_\_\_\_\_ with reference number \_\_\_\_\_.

“**Board**” means the Board of Directors of the Association.

“**Budget**” has the meaning set forth in Section 5.6.

“**Building Envelope**” means the area within a Lot where a residential structure and accessory structures may be located. Unless otherwise designated on the Community Documents, the Building Envelope is that portion of the Lot that is not located within easements or setbacks.

“**Bylaws**” means the Bylaws of the Association.

“**Claims**” has the meaning set forth in Section 9.1.

“**Common Area**” means each of the following real property interests:

- (a) any real property interest designated as Common Area by Developer on any Supplemental Declaration (provided that Developer then owns the real property interest);
- (b) any real property interest conveyed to, and accepted by, the Association as Common Area; and
- (c) any lease, license or other right for amenities or facilities held by the Association.

“**Common Expenses**” has the meaning set forth in Section 5.2.

“**Common Improvements**” means any Improvements owned, maintained or managed by Association, whether or not the Improvements are located in Common Area.

“**Community Documents**” means this Declaration, any Plat, the Articles, the Bylaws, the Community Rules and the Design Requirements. The Community Documents are the “governing documents” for the Association, as defined by Washington law. The Community may also be marketed as “The Landing” and Community Documents may also reference such name.

“**Community Member**” has the meaning set forth in Section 9.1.

“**Community Rules**” has the meaning set forth in Section 2.8.2.

“**Design Requirements**” has the meaning set forth in Section 4.1.

“**Development Period**” means the period expiring on the date Developer informs the Board, in a writing recorded in the real property records of the county where the Community is located, that Developer no longer wishes to exercise its rights as Developer under this Declaration.

“**Home Occupation**” has the meaning set forth in Section 3.1.

“**Household Pets**” has the meaning set forth in Section 3.6.

“**Improvement**” means any structure, facility, system or object, whether permanent or temporary, which is installed, constructed, placed upon or allowed on, under or over any portion of the Community, including residential structures, club houses, pump or lift stations, fences, streets, drives, driveways, parking areas, sidewalks, bridges, bicycle paths, curbs, landscaping, walls, hedges, plantings, trees, wildlife habitat improvements, vegetation, rocks, signs, lights, mailboxes, electrical lines, pipes, pumps, ditches, recreational facilities, grading, road construction and utilities.



**“Irrigation System”** means the system for delivering seasonal irrigation water to the Community that may exist separate and apart from the potable water system. The Irrigation System, if applicable, may include the pump, pump station and related facilities, and may include all pipes, lines, sprinklers, controls and other irrigation equipment located in the Common Area. The Irrigation System does not include the pipes, lines, sprinklers, controls and other irrigation equipment located on each Lot to serve that Lot.

**“Levy Meeting”** has the meaning set forth in Section 2.8.5.

**“Limited Assessment”** means a charge against a particular Owner for an expense directly attributable to the Owner, equal to the cost incurred or estimated to be incurred by the Association in connection with corrective action or maintenance, repair, replacement and operation activities performed pursuant to the provisions of this Declaration, including correcting damage to or maintenance, repair, replacement and operation activities performed for any Common Area for the failure of an Owner to keep the Owner’s Lot in proper repair, and including interest thereon as provided in this Declaration or for any goods or services provided by the Association benefiting less than all Owners.

**“Lot”** means any lot depicted on any Plat.

**“Member”** means each Owner holding a membership in the Association, including Developer.

**“Mortgage”** means any mortgage, deed of trust, or other document pledging any portion of the Community or interest therein as security for the payment of a debt or obligation.

**“Occupant”** means any person that occupies a dwelling structure located on a Lot.

**“Owner”** means the record owner, whether one or more persons or entities, holding fee simple interest of record to a Lot, and buyers under executory contracts of sale, but excluding those persons or entities having the interest merely as security for the performance of an obligation, unless and until the person or entity has acquired fee simple title pursuant to foreclosure or other proceedings.

**“Owner Parties”** means, for each Owner, all of the Owner (including all persons or entities that comprise Owner), its Occupants, and the guests of any of them, and the Owner’s contractors and invitees.

**“Plat”** means the Plat and any future plat covering any portion of the Community that is lawfully recorded in the real property records of the county where the Community is located.

**“Regular Assessments”** means assessments that are regularly levied against each Owner and each Lot by the Association to fund the Common Expenses.

**“Released Party”** has the meaning set forth in Section 2.10.

**“Remedial Period”** has the meaning set forth in Section 2.8.5.

**“Special Assessment”** means an assessment that are levied against each Owner and each Lot by the Association to fund capital expenses (such as capital improvements or equipment purchases, or major repairs or replacements to Common Improvements) or shortages in Regular Assessments.

**“Supplemental Declaration”** has the meaning set forth in Article 12.

**“Transfer Assessment”** has the meaning set forth in Section 5.5.

“**Violation**” has the meaning set forth in Section 2.8.5.

## **ARTICLE 2 ELLENSBURG LANDING HOMEOWNERS ASSOCIATION**

- 2.1 **Organization of the Association.** Developer has organized the Association to manage the business and affairs of the Community in accordance with applicable law and the Community Documents.
- 2.2 **Membership.** The Association will have two (2) classes of membership as follows:
- 2.2.1 *Regular Members.* Each Owner, by virtue of being an Owner and for so long as the ownership is maintained, will be a regular member of the Association. No Owner will have more than one (1) membership in the Association for each Lot owned by the Owner. When more than one (1) person or entity holds an ownership interest in any Lot, all of them will be members. Memberships in the Association will be appurtenant to the Lot or other portion of the Property owned by the Owner. The memberships in the Association must not be transferred, pledged, assigned or alienated in any way except upon the transfer of Owner’s title and then only to the transferee of title. Any prohibited transfer or attempt to make a prohibited membership transfer will be void and will not be reflected on the books of the Association.
- 2.2.2 *Developer Member.* During the Development Period, Developer will be a special member of the Association with the sole voting power of the Association. Developer as special member will cease to exist on expiration of the Development Period.
- 2.3 **Membership Meetings; Voting.** The Association will hold a meeting of the members at least once each calendar year, and periodic special meetings of the members as set forth in the Bylaws. Prior to expiration of the Development Period, the regular members are not entitled to vote. Upon the expiration of the Development Period, each regular member will be entitled to one (1) vote for each Lot owned by the regular member; provided, however, the vote for any Lot with common ownership will be exercised as the Owners of the Lot determine, but in no event will more than one (1) vote be cast with respect to any Lot. All member meetings may be held in person or, with the approval of a simple majority of the members, be conducted through an electronic or hybrid meeting model (e.g., via telephone conference or video conference).
- 2.4 **Board of Directors.** The business and affairs of the Association will be managed by the Board. The Board will consist of not less than two (2) directors and no more than five (5) directors. Directors need not be Owners. During the Development Period, Developer, as the special member, has the exclusive right to appoint, remove and replace directors at any time and from time-to-time in Developer’s sole discretion. After the Development Period, the Owners have the right to elect, remove and replace directors as provided in the Bylaws; provided, however, any vacancies on the Board will be filled by a plurality vote of the remaining directors through a special election at any meeting of the Board. All Board meetings may, at the option of the Board or the President, be held in person and/or by through the use of, any means of communication by which all board members participating may simultaneously hear each other during the meeting (i.e., via telephone conference or video conference). All Board meets must be open to members, and to any representative or agent designated in a signed writing by a member to represent the member; provided, however, the Board may hold an executive sessions as permitted by applicable law.

- 2.5 **Meeting Minutes.** The Board must take minutes from all meetings of the Association, including membership meetings and Board meetings, and preserve the minutes for at least ten (10) years.
- 2.6 **Delegation of Authority.** The Board may delegate all or any portion of its powers and duties to committees, officers, employees or agents. The Association may employ or contract for the services of a professional manager or management company to manage its day-to-day affairs; provided, however, the employment or contract must not have a term of not more than two (2) years (with automatically renewable terms acceptable). If the manager is Developer or Developer's affiliate, then the contract must be subject to cancellation by the Association with or without cause, and without payment of a termination fee (but including all fees incurred through the date of termination), so long as the Association provides at least thirty (30) days' prior notice of termination.
- 2.7 **Financial Disclosures.**
- 2.7.1 Owner Accounts. The Association must provide on Owner and the Owner's agent, if any, a statement of the Owner's account no more than five (5) business days after a request by the Owner or the Owner's agent is received by an appropriate agent of the Association. The statement of account must include, at a minimum, the amount of the annual charges against the Owner's Lot, the date when the charges are due, and any unpaid assessments or other charges due and owing from the Owner at the time of the request.
- 2.7.2 Annual Statements. On or before January 1 of each year, the Association must provide the Owners with a disclosure of fees that will be charged to an Owner in connection with any transfer of ownership of the Owner's Lot. Fees imposed by the Association for the calendar year following the disclosure of fees may not exceed the amount set forth on the annual disclosure, and no surcharge or additional fees may be charged to any Owner in connection with any transfer of ownership of the Owner's Lot. No fees may be charged for expeditiously providing a member's statement of account as set forth in this Section 2.7.
- 2.7.3 Up-to-Date Statements. The Association must provide on Owner and the Owner's agent, if any, an up-to-date financial disclosure no more than ten (10) business days after a request by the Owner or the Owner's agent is received by an appropriate agent of the Association.
- 2.7.4 Annual Statements. Within sixty (60) days of the close of the fiscal year, the Association must provide the Owners and the Owners' agents, if any, with an up-to-date and reconciled financial disclosure for the fiscal year.
- 2.8 **Powers of the Association.** The Association has all the powers of a nonprofit corporation organized under Washington law and all of the powers and duties set forth in the Community Documents, including the power to perform any and all acts which may be necessary to, proper for, or incidental to the foregoing powers. The powers of the Association include, by way of illustration and not limitation:
- 2.8.1 Assessments. The power to levy Assessments against each Lot (except Common Area) and Owner thereof pursuant to the restrictions enunciated in this Declaration, and to enforce payment of the Assessments, all in accordance with the provisions of this Declaration. This power includes the right of the Association to levy Assessments against

the Lots and the Owners thereof to cover the operation and maintenance costs of Common Area.

- 2.8.2 Community Rules. The power to adopt, amend and repeal any rules as the Board deems reasonable and appropriate to govern the Community (the “**Community Rules**”), including rules regarding the use of the Common Area, the Common Improvements and the Irrigation System, and rules regarding the conduct of the business and affairs of the Association. Except when inconsistent with this Declaration, the Community Rules have the same force and effect as if they were set forth in this Declaration. Promptly after adoption of the Community Rules (or any amendment thereto or repeal thereof), the Association will publish the same to the Owners.
- 2.8.3 Common Area and Common Improvements. The power to acquire, construct, improve, modify and dispose of, and the duty to manage, operate, maintain, repair and replace, the Common Area and Common Improvements for the benefit of the Community (including the Irrigation System); provided, however, except as permitted under Section 2.8.6 hereof, no interest in the Common Area will be disposed of without the approval by the vote or written consent of Owners representing more than sixty-five percent (65%) of the total voting power in the Association.
- 2.8.4 Entry onto Lots. The power to enter upon any Lot (but not inside any building constructed thereon) in the event of any emergency involving potential danger to life or property or when necessary in connection with any maintenance or construction for which the Association is responsible. The entry will be made with as little inconvenience to the Owner of the Lot as practical under the circumstances, and any damage caused thereby will be repaired by and at the expense of the Association.
- 2.8.5 Fines. The power to impose reasonable monetary fines that will constitute a lien upon the Lot owned or occupied by the Owner or Occupant determined by the Board to be in violation of the Community Documents (individually, a “**Violation**”). Provided, however, the Association will not impose a fine on an Owner for a Violation unless: (a) the Board votes to impose the fine at any regular or special meeting of the Board or the Association (individually, a “**Levy Meeting**”); (b) the Owner is provided at least thirty (30) days advance written notice of the Levy Meeting by personal service or certified mail at the last known address of the Owner as shown in the records of the Association; and (c) the Owner may respond to the Violation by delivery of a written response that is received by the Board prior to the Levy Meeting. Provided further, the Association will not impose a fine on an Owner if the Owner, prior to the Levy Meeting, begins resolving the Violation and continues to address the Violation in good faith until the Violation is fully resolved (the “**Remedial Period**”). For purposes of this Section, the phrase “address the violation in good faith until the Violation is fully resolved” means the Owner must resolve the Violation within thirty (30) calendar days after the Notice; provided, however, if the nature of the Violation is such that more than thirty (30) calendar days are required for its resolution, then the Owner must diligently prosecute the same to completion as promptly as practical. All fines will be part of the Assessments to which the Owner’s Lot is subject under this Declaration. In all events, no portion of the fines may be used to increase the compensation to the Board or agent thereof.
- 2.8.6 Licenses, Easements and Rights-of-Way. The power to convey any easements and licenses to use the Common Area as may be necessary or appropriate for the maintenance, preservation, and enjoyment of the Common Area or Common

Improvements, or for the preservation of the health, safety, convenience and the welfare of the Community, or for the purpose of constructing, erecting, operating or maintaining any of the following:

- 2.8.6.1 Underground lines, cables, wires, conduits, or other devices for the transmission of electricity or electronic signals for lighting, heating, power, telephone, television, or other purposes, and the above-ground lighting stanchions, meters, and other facilities associated with the provision of lighting and services;
  - 2.8.6.2 Public and other sewers, storm drains, water drains and pipes, water supply systems, sprinkling systems, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; and
  - 2.8.6.3 Mailboxes and sidewalk abutments around mailboxes or any service facility, berm, fencing, and landscaping abutting Common Areas (if any), public and private (if any) streets or land conveyed for any public or quasi-public purpose including pedestrian and bicycle pathways.
- 2.8.7 Amenity Agreements. The power to enter into any lease, license, use or other agreements as the Board deems proper or convenient to secure the use of off-site amenities or facilities for the benefit of the Community. Without limiting the generality of the foregoing, and only by way of example, the Association may enter into agreements with others for the use of any recreational amenities or facilities by the Owners on any terms as the Association deems reasonable or prudent. Any costs incurred by the Association related thereto will be Common Expenses, and the Common Expenses will be included in the Regular Assessments.
- 2.8.8 Reserves. The power to fund operating reserves and capital reserves as the Board deems necessary or prudent.
- 2.8.9 Taxes. The power to pay all real and personal property taxes and assessments (if any) levied against the Common Area, the Association, or any other property owned by the Association. In addition, the Association will pay all taxes, including income, revenue, corporate or other taxes (if any) levied against the Association.
- 2.8.10 Enforcement. The power at any time and from time-to-time, on its own behalf or on behalf of any consenting Owners, to take any action, including any legal action, to prevent, restrain, enjoin, enforce or remedy any breach or threatened breach of the Community Documents. The power of enforcement includes:
- 2.8.10.1 The right to enter upon any Lot (but not inside any building constructed thereon) for the purpose of removing, altering, reconstructing, or restoring any Improvements constructed, reconstructed, refinished, added, altered, or maintained in violation of the Community Documents. If the Improvements are located on a Lot, then Association will first provide the Owner thereof with a notice specifying the default and a reasonable period to cure (no less than ten (10) days and no more than thirty (30) days), and if the Owner does not cure the default to the reasonable satisfaction of the Association within the cure period, the Owner of the Improvements will immediately reimburse the Association for all expenses incurred by the Association in connection with its removal, alteration, reconstruction, or restoration of the Improvements.

- 2.8.10.2 The right to enforce the obligations of the Owners to pay each and every Assessment or charge provided for in the Community Documents.
- 2.8.10.3 The right to perform any obligation of an Owner under the Community Documents if the obligation is not timely performed by the Owner. In that event, the defaulting Owner will immediately reimburse the Association for all costs reasonably incurred by the Association in performing the obligation. Except in the event of an emergency, the Association will provide the defaulting Owner with a notice specifying the default and a reasonable period to cure (no less than ten (10) days and no more than thirty (30) days) prior to exercising its power hereunder.

If the Association employs attorneys to collect any Assessment or charge, whether by suit or otherwise, or to otherwise enforce compliance with the Community Documents, the Association is entitled to recover its reasonable attorneys' fees in addition to any other relief or remedy obtained.

- 2.8.11 *Insurance.* The power to obtain any bonds and insurance required by applicable law and any further insurance as the Board deems necessary or prudent, including casualty insurance for any Common Area or Common Improvements (if any), public liability insurance related to the Association's operations and the use of the Common Area, directors and officers liability coverage, automobile insurance, worker's compensation insurance and fidelity bonds. Unless otherwise authorized by Developer, the Association will procure at least the following insurance policies to the extent the policies are available on commercially reasonable terms:

- 2.8.11.1 Casualty insurance on all insurable real and personal property for which the Association bears risk of loss, which insurance will be for the full replacement cost thereof without optional deductibles;

- 2.8.11.2 Worker's compensation and employer's liability coverage as required by law;

- 2.8.11.3 Broad form comprehensive public liability insurance insuring the Association, the Board, and their respective agents and employees against any liability incident to the ownership or use of the Common Area; which insurance will be for not less than One Million Dollars (\$1,000,000) per occurrence with respect to personal injury/sickness/death and One Million Dollars (\$1,000,000) per occurrence with respect to property damage; and

- 2.8.11.4 Full coverage directors' and officers' liability insurance with a limit of at least Two Hundred Fifty Thousand Dollars (\$250,000).

- 2.8.12 *Entitlement Obligations.* The power to fulfill any duties imposed by any governmental or other quasi-governmental agencies as part of the entitlements for the development of Community, including any requirements or obligations identified in the entitlements as the responsibility of the applicable homeowners association (aka the applicable community association), such as plat notes, development agreements or conditions of approval.

- 2.8.13 *Financing.* The power to enter into any agreements necessary or convenient to allow Owners to take full advantage of, or secure the full availability of, any financing

programs offered or supported by the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Housing Administration (FHA), the Veterans Administration (VA), the Federal Home Loan Mortgage Corporation (FHLMC) or any similar entity.

- 2.8.14 Estoppel Certificates. The power to execute a written statement stating (a) whether or not, to the knowledge of the Association, a particular Owner or Owner's Lot is in default of this Declaration; (b) the dates to which any Assessments have been paid by a particular Owner; and (c) any other matters as the Board deems reasonable. Any estoppel certificate may be relied upon by a bona-fide prospective purchaser or mortgagee of the Owner's Lot, but only to the extent the prospective purchaser or mortgagee has no knowledge to the contrary. The Association may charge a reasonable fee for the statements.
- 2.8.15 Improvements in the Public Right-of-Way. The power to enter into (or assume) any license and easement agreements with the City of Ellensburg or applicable highway authority (or assume the obligations under any license and easement agreements entered into by Developer) to install, maintain, improve, irrigate, trim, repair and replace improvements and landscaping in the public rights-of-way (including sidewalk easements and planter strips); provided, however, nothing herein limits, or requires the Association to assume, each Owner's obligations with respect to improvements and landscaping in the right-of-way adjacent to the Owner's Lot.
- 2.8.16 Open Space Corridors. The power to enter into agreements to improve, operate, maintain, repair or replace any corridor, open space, recreation facility, greenbelt or trail spaces, either for the benefit of the Community or the general public.
- 2.8.17 Stormwater Drainage and Retention System. The Association will be responsible for maintaining the storm drainage and retention system, if any, in accordance with applicable law, prudent industry practices and the current operation and maintenance plan, as the same is amended from time to time (the "**O&M Manual**"). A copy of the current O&M Manual will be available upon request from the Association.
- 2.8.18 Variances for Persons with Disabilities. The right to authorize variances from the requirements of the Community Documents when required by applicable law (such as the Fair Housing Act) or when needed to prevent the requirements would impose an undue hardship on an Owner that would be inequitable for the Owner to bear. The granting of a variance does not waive any element of the Community Documents for any purpose except as to the particular person, the particular Lot and the particular provision covered by the variance. Approval of a variance does not affect the Owner's obligation to comply with the other elements of the Community Documents or applicable law.
- 2.8.19 Other. Any other powers as the Association may have consistent with the Community Documents and applicable law.
- 2.9 **Association Records; Owner Inspection.** The Association will keep records of its business and affairs as is customary for homeowners associations, including a membership register, accounting records, financial statements, operating budgets, balance sheets and minutes of meetings of the Board, the Members and committees. The records will be available at the Association's regular offices for inspection and copying by any Owner at the Owner's expense. The Board may establish reasonable rules with respect to (a) notice to be given to the custodians of the records by persons desiring to make the inspection; (b) hours and days of the week when an inspection may

be made; and (c) payment of the cost of reproducing copies of documents requested pursuant to this Section 2.9. The Association's obligations hereunder may be fulfilled by making the records available to an Owner electronically, including delivery by electronic mail or by the posting the records on the Association's website. No Owner may request the inspection of records more than two times during any calendar year (and for this limitation, all persons or entities that own a Lot will be considered to be one Owner).

- 2.10 **Immunity; Indemnification.** Each Owner understands and agrees that Developer, the Association, the Association's manager (if any), and the directors, officers, agents, employees of any of them (each individually a "**Released Party**") are immune from personal liability to the Owner or any other person, and the Owner hereby knowingly and voluntarily waives and releases each Released Party, for the Released Party's actions or failure to act with respect to the Community Documents that does not constitute gross negligence or willful misconduct on the part of the Released Party. The Association will indemnify, defend and hold each Released Party harmless from any action, expense, loss or damage caused by or resulting from the Released Party's actions or failure to act with respect to the Community Documents; provided, however, the Association is not obligated to indemnify, defend and hold harmless any Released Party for their own gross negligence or willful misconduct.
- 2.11 **Waiver of Consequential Damages.** Neither Developer nor the Association is liable to any Owner for, and each Owner releases Developer and the Association from, any form of indirect, special, punitive, exemplary, incidental or consequential or similar costs, expenses, damages or losses arising from or related to the Community.

### ARTICLE 3 GENERAL AND SPECIFIC OBLIGATIONS AND RESTRICTIONS

- 3.1 **Residential Use.** All Lots (except Common Area) will be used exclusively for residential purposes and other uses incidental thereto as permitted by this Declaration and applicable law. Except for Home Occupations permitted pursuant to this Section, no Lot will be used at any time for commercial or business activity. A "**Home Occupation**" is any lawful, gainful occupation conducted on a Lot by an Occupant of the Lot. A Lot may be used for a Home Occupation provided that the home office or studio related thereto is not more than five hundred (500) square feet in size and located entirely within a dwelling, unless approved by the Board on a case-by-case basis. The Home Occupation must be conducted in accordance with the other terms and limitations of the Community Documents and applicable law. A Lot may be used for other Home Occupations only upon the specific approval of the Association, which approval may be subject to any conditions as the Association deems appropriate, and which Home Occupation must be conducted in accordance with the other terms and limitations of the Community Documents and applicable law. No Home Occupation may (a) involve highly combustible materials; (b) involve retail operations; (c) use equipment or tools where the dimensions, weight or power rating are beyond normal household equipment or tools; (d) cause abnormal automotive or pedestrian traffic in the Community; (e) be, in the reasonable opinion of the Board, objectionable due to unsightliness, odor, dust, smoke, noise, glare, heat, vibration or similar disturbances; (f) involve dispatch activities where employees meet in the Community and are sent to other locations; or (g) involve other uses that, in the reasonable opinion of the Association, would detract from the residential character of the Community, including vacation rentals. It is not a violation of this Section for an Owner to lease its Lot and the Improvements thereon in accordance with Section 3.2.
- 3.2 **Leasing.** Each Owner may lease its entire Lot to any tenant so long as the lease with that tenant is for a term of one (1) year or longer; provided, however, if the tenant is a member of the Owner's



family, then the one (1) year limitation will be one (1) month. Except as provided in the preceding sentence, no Owner may lease the Owner's Lot or the primary residential dwelling located thereon to any person or entity. For this Section 3.2, the term "lease" as applied to a Lot will be deemed to include any lease, rental or occupancy agreement of any kind, and the term a "member of the Owner's family" will be any person who is related to the Owner by blood, legal marriage or legal adoption. An Owner who leases a Lot is fully responsible for the conduct and activities of the Owner's tenant as if the Owner were the tenant. Any Owner who leases a Lot will comply with the Fair Housing Act, as applicable. If any Owner or the Owner's spouse is on military deployment or has had a change of station, then the one (1) year limitation in this Section 3.2 will be reduced to one (1) month for the duration of the deployment (if a deployment) or for one (1) year (if a change of station).

3.3 **Exterior Maintenance Obligations.** Each Owner agrees to keep all Improvements on the Owner's Lot in good, safe condition and repair. Without limiting the generality of the foregoing, each Lot must be kept in a neat, orderly, weed-free condition at all times, including the period prior to the Owner constructing any Improvements thereon. In the event that any Owner permits any Improvement on the Owner's Lot to: (a) fall into disrepair such that it, in the judgment of the Board, creates an unsafe, unsightly, unattractive, or inoperable condition; or (b) be constructed, reconstructed, refinished, removed, added, altered, or maintained in violation of this Declaration, the Association may exercise its power hereunder to enter upon the Owner's Lot and take any action as the Association deems necessary or appropriate to correct the condition or violation. In that event, the defaulting Owner will immediately reimburse the Association for all costs reasonably incurred by the Association in correcting the condition or violation. Except in the event of an emergency, the Association will provide the defaulting Owner with a notice specifying the default and a reasonable period to cure (no less than ten (10) days and no more than thirty (30) days) prior to exercising its power hereunder. Each Owner hereby designates the Association as the Owner's agent for purposes of Washington's mechanic's lien statute, and each laborer, material supplier or other person who performs work on the Owner's Lot at the direction of the Association will have a mechanic's lien against the Owner's Lot for the work.

3.4 **Nuisances.** No rubbish or debris of any kind will be placed or permitted to accumulate anywhere upon the Community, including the Common Area or vacant Lots, so as to render the Community or any portion thereof unsanitary, unsightly, offensive or detrimental to the Community, or to any other property in the vicinity of the Community. No Owner will allow any odor to arise from the Community so as to render the Community or any portion thereof unsanitary, offensive or detrimental to the Community, or to any other property in the vicinity of the Community. No business or Home Occupation, no noise, no exterior fires, no obstructions of pedestrian walkways, no unsightliness or other nuisance will be permitted to exist or operate upon any portion of the Community so as to be offensive or detrimental to the Community or its Occupants or to other property in the vicinity or to its occupants or residents, as determined by the Board, in its reasonable judgment, or in violation of any federal, state or local law, rule, regulation or ordinance. Without limiting the generality of any of the foregoing, no whistles, bells or other sound devices (other than security devices used exclusively for security purposes which have been approved by the Board), flashing lights or search lights will be located, used or placed on the Community without the Board's approval. No unsightly objects will be permitted to remain on any Lot so as to be visible from any other portion of the Community. Without limiting the generality of the foregoing, refuse, garbage, trash, equipment, gas canisters, propane gas tanks, barbecue equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant waste, metals, bulk material and scrap will be kept at all times in containers and in areas approved by the Board. No clothing or fabric will be hung, dried or aired in a way that is visible to any other portion of the Community. No major appliances (such as clothes washers,

dryers, refrigerators or freezers) may be kept, stored or operated on any balcony, patio, porch or other exterior area of any Improvement. Window air-conditioning units are not allowed. Windows will be covered only by drapes, shades or shutters that are white or muted earth tone in color, and will not be painted or covered by foil, cardboard, sheets or similar materials.

- 3.5 **Vehicles and Equipment.** On-street parking on public roads will be limited to those specific areas where on-street parking is expressly permitted by the City of Ellensburg or highway authority responsible for the public road. Vehicles must not extend or otherwise be permitted on or into any sidewalk, bicycle path or pedestrian path unless the vehicle is engaged in an emergency procedure, or as provided elsewhere in the Community Documents. Except as expressly permitted by this Section 3.5, none of the following items may be placed in any part of the Community (including streets, parking areas and driveways), unless the item is located entirely within a garage such that the item is concealed from the view of any person standing outside the garage, except when the garage is open to facilitate ingress and egress: (a) motor homes, motor coaches, campers, trailers, snowmobiles, aircraft, boats, recreational vehicles, all-terrain vehicles; (b) abandoned or inoperable vehicles, defined as any vehicle which has not been driven under its own propulsion for a period of forty-eight (48) hours or longer; (c) oversized vehicles, defined as vehicles which are too high or too wide to clear the entrance of a standard residential garage door opening; (d) dilapidated or unrepaired and unsightly vehicles; (e) snow removal equipment, garden maintenance equipment or similar equipment; and/or (f) any other unsightly equipment or machinery. To the extent possible, garage doors will remain closed at all times. Gardening, yard and snow removal machines (electric, gas or other power source) may only be used from 8:00 am to 9:00 pm.
- 3.6 **Animals/Pets.** Except as provided in Section 3.7, no animals, livestock of any kind will be raised, bred or kept on any Lot except that Household Pets (defined below) may be kept for an Owner's personal use provided that (a) the Household Pets are not bred or maintained for any commercial purpose; (b) no more than three(3) of any combination of domesticated dogs or domesticated cats may be kept on a Lot; and (c) any Household Pets will be properly restrained and controlled at any time they are within the Community. "**Household Pets**" means generally recognized household pets that are customarily kept as indoor pets, such as domesticated dogs, domesticated cats, fish, birds, rodents and non-poisonous reptiles. Household Pets will not include livestock, swine or waterfowl. Hens or chickens may be approved as Household Pets on a case-by-case basis by the Board at its sole discretion with a plan including the count and coop design and location. Household Pets will not be kept which unreasonably bother or constitute a nuisance to other Owners. Any noisy animal (defined below), any vicious animal, any non-domestic household pet or any animal which damages or destroys property will be deemed a nuisance. Excessive or untimely barking, molesting passersby, chasing vehicles, pursuing or attacking other animals, including wildlife, and trespassing upon private property in a manner that may damage the Community will also be deemed a nuisance. A "noisy animal" means any animal which habitually or frequently disturbs the sleep, peace or quiet of any Occupant. Owners will contact the local animal control agency regarding noisy animals prior to complaining to the Board about the animals. Any costs associated with responding to complaints of a noisy animal or nuisance pet may be levied against an Owner as a Limited Assessment. The Owner of a Lot where a Household Pet is kept, as well as the legal owner of the Household Pet (if not the Owner), will be jointly and severally liable for any and all damage and destruction caused by the Household Pet, and for any clean-up of any Common Area, roads or other property necessitated by the Household Pet.

- 3.7 **Assistance Animals.** Assistance animals are welcome in the Community in accordance with the Fair Housing Act (42 U.S.C. § 3601 et. seq., as amended), Washington law or any other applicable law.
- 3.8 **Construction and Temporary Structures.** During the course of construction, no trailer houses or similar mobile units designed for overnight accommodations will be parked on any street. No trailer, tent, shack, garage, barn or other unattached structure erected on a Lot will, at any time, be used as a residence, temporarily or permanently, nor will any residence of a temporary character be permitted. No building of any kind will be erected or maintained on a Lot prior to the construction of the Improvements thereon. The construction of Improvements will be prosecuted diligently and continuously from the time of commencement thereof until the Improvements are fully completed and painted. The construction site will be cleaned of trash and debris nightly and maintained in a non-nuisance condition.
- 3.9 **Drainage.** No Owner will interfere with the established drainage pattern over any portion of the Community, unless adequate alternative provisions for proper drainage have first been approved by the Board and properly installed. For the purposes hereof, “established” drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Community is completed by Developer, or that drainage which is shown on any plans approved by the Board, which may include drainage from Common Area over any Lot in the Community.
- 3.10 **Grading.** Except as provided in Section 3.9, no Lot will drain onto, over, across or under the Common Area or an adjacent Lot. The Owner of any Lot within the Community in which grading or other work has been performed pursuant to a grading plan approved by any public agency, or by the Board, will maintain and repair all graded surfaces and erosion prevention devices, retaining walls, drainage structures, means or devices which are not the responsibility of any public agency, and plantings and ground cover installed or completed thereon.
- 3.11 **Irrigation District Assessments.** The Community is located in Cascade Irrigation District or lateral association and, the irrigation district may assess the Association or the Owners. If the irrigation district or lateral association assesses the Association, then the Association will pay the assessment and the assessments will be part of the Common Expenses. If the irrigation district or lateral association directly assesses the Owners, then the Owners will pay the assessments directly to the irrigation district.
- 3.12 **Energy Devices.** Solar panels and solar collectors (“**Solar Devices**”) are permitted on the rooftop of any structure on any Lot if the rooftop is owned, controlled and maintained by the Owner; provided however, the Board will have the right to determine the specific location where the Solar Devices may be installed on the roof as long as installation is permitted within an orientation to the south or within forty-five (45) degrees east or west of due south. The Association may adopt reasonable rules for the installation of Solar Devices consistent with an applicable building code or to require that panels or collectors of the Solar Devices be parallel to a roof line, conform to the slope of the roof, and that any frame, support bracket, or visible piping or wiring be painted to coordinate with the roofing material. No other energy production devices or generators of any kind (e.g., windmills) will be permitted in the Community without the Board’s approval of the device and the installation thereof.
- 3.13 **General Signs.** No more than one (1) sign will be allowed on any Lot at the same time to advertise the Lot/home for sale or to advertise the Lot/home during the course of construction, and all signs must be removed within fifteen (15) days of occupancy or closing of the sale. Directional signs may be used at any time and open house signs may be used during open house

time period only. No sign of any kind will be displayed to the public view more than eight (8) square feet in size and not more than four (4) feet above grade. The Association may erect and maintain identification signs, street signs and other appropriate informational signs upon the Common Area or upon utility easements of a size and design approved by the Board. No other signs will be placed or maintained upon the Common Area. Signs advertising a Lot for rent or lease are not allowed anywhere within the Community. An Owner may place political signs for an upcoming election as set forth in Section 3.14.

- 3.14 **Political Signs.** A “political sign” is limited to any fixed, ground-mounted display in support of or in opposition to a candidate for office or a ballot measure. An Owner may place political signs for an upcoming election on any Lot owned by that Owner, but only during the prior that is thirty (30) days prior to the applicable election, and the signs will be removed within three (3) days after any the election. The Association may adopt reasonable rules, subject to any applicable laws, regarding the time, size, place, number, and manner of display of political signs. The Association may remove political signs that violate this Declaration or the Association’s rules, so long as the removal is not prohibited by applicable law.
- 3.15 **Flags.** No flags, banners, windsocks or similar items are permitted within the Community except for the flag of the United States of America, the flag of the state of Washington, the POW/MIA flag, an official or replica flag of any branch of the United States armed forces, and an official or replica flag of any police organization (the “**Permitted Flags**”). The Association may adopt reasonable rules that regulate the display of Permitted Flags as permitted by applicable law.
- 3.16 **Antenna; Satellite Dishes.** The following restrictions will apply to direct broadcast satellite dishes that are less than one meter in diameter and antenna for receipt of video programming (each, a “**Device**”) except where the restrictions would (a) unreasonably delay or prevent installation, maintenance or use of the Device; (2) unreasonably increase the cost of installation, maintenance or use of the Device; or (b) preclude reception of an acceptable quality signal to the Device. The Device must be installed on the rear of the residential structure on the Lot, or within four (4) feet of the rear of the structure on any of the structure’s side walls. The Device must be screened by a fence, landscaping or similar structures in accordance with the Design Requirements, or as otherwise required to ensure the safety of the residents of the Community. No Device may be installed until after an Owner has received Board approval for construction of residential Improvements on the Owner’s Lot. Satellite dishes that are one meter or larger in diameter, and any antenna other than an antenna for the receipt of video programming, will not be a Device and are prohibited unless the Device and its installation are expressly approved by the Board.
- 3.17 **No Further Subdivision.** No Lot may be further subdivided unless the subdivision is approved by the Board, and then only in accordance with applicable law.
- 3.18 **Holiday Lights.** Winter holiday decorations and lighting displays are permitted starting on November 15 of each year and must be removed by January 25 of the following year. Any other holiday decorations or lighting displays (such as Halloween) are permitted up to fifteen (15) days prior to the holiday and must be removed within seven (7) days after the holiday.
- 3.19 **Trash Cans.** Trash cans and other trash receptacles, including recycling cans and receptacles, must not be visible from any street except between 8:00 PM on the day before, and 8:00 PM on the day of, the date selected by the trash collector for trash and recycling pick-up.
- 3.20 **Marijuana.** No Owner, Occupant or guest may use any Lot (or any portion thereof) for the sale, cultivation, manufacture, distribution, or marketing of any substance containing any amount of

marijuana, cannabis, or tetrahydrocannabinol, whether or not the activities are lawful under applicable law.

- 3.21 **Harassment Prohibited.** Each Owner covenants that its Owner Parties will not engage in any conduct or behavior that constitutes harassment toward any person lawfully on the Common Area. “**Harassment**” means any verbal, written or physical conduct (or conduct using technology) that limits or denies a Community member’s ability to enjoy the benefits of the Common Area. To constitute harassment, the conduct must be severe, persistent or pervasive such that it has the purpose or effect of unreasonably interfering with an individual’s use of the Common Area, or that it creates an intimidating, hostile, or offensive environment on the Common Area. To rise to the level of Harassment, the behavior must be subjectively and objectively unreasonable, taking into consideration the characteristics of the victim. If the Association finds (in its discretion) that any Owner Party violates the covenant in this Section, then the Association may (a) temporarily ban the Owner Party from access to, or use of, any Common Area for any period the Association deems appropriate; (b) place any restrictions on the Owner Party’s access to, or use of, any Common Area for any period the Association deems appropriate. The terms of this Section will be interpreted broadly to effectuate its purpose. The Association’s decisions pursuant to this Section will be binding on the affected Owner Parties, unless the Association’s decision violates applicable law or unless there is clear and convincing evidence that the Association acted in bad faith.

#### **ARTICLE 4 ARCHITECTURAL REVIEW**

- 4.1 **Design Requirements.** The Board has the power to adopt, amend and repeal any rules that the Board deems reasonable to ensure that all Improvements in the Community meet the minimum requirements for external design, quality and type of construction, architectural character, materials, color, location in the Building Envelope, height, grade and finish ground elevation, natural conditions, landscaping and other design or aesthetic considerations (the “**Design Requirements**”). The Design Requirements may include rules and regulations: (a) to protect the special qualities of the Community; (b) to encourage creative design; (c) to provide general architectural, design and construction guidelines; (d) that provide landscape guidelines (including a description of existing, natural conditions and vegetation); (e) that provide submittal and review procedures; (f) establishing fees and charges for review; and (g) establishing penalties for noncompliance. The Design Requirements must conform to this Declaration, and if the Design Requirements conflict with this Declaration, this Declaration will govern. If any provision of the Design Requirements are deemed ambiguous on any matter, the Board’s interpretation of the provision will be given deference so long as the interpretation is a reasonable.
- 4.2 **Design Review Required.** No Owner will construct, reconstruct, alter, install or remove any Improvements or landscaping except with the Board’s approval. The Board will review, study and either approve or reject the proposed Improvements or landscaping, all in compliance with the Declaration and the Design Requirements. The Board is authorized to retain the services of one or more consulting architects, landscape architects, engineers, designers and other consultants to advise and assist the Board on a single project, on a number of projects or on a continuing basis. The Board’s action in the exercise of its discretion by its approval or disapproval of the proposed Improvements or landscaping, or with respect to any other matter before it, will be conclusive and binding on all interested parties. The Board will not direct or control the interior layout or interior design of residential structures except to the extent incidentally necessitated by use, size and height restrictions.

- 4.3 **Board Expenses.** All expenses of the Board will be Common Expenses paid by the Association. The Board will have the right to charge reasonable fees for applications submitted to it for review, in amounts which may be established by the Board from time-to-time, and the fees will be collected by the Board and remitted to the Association to help defray the expenses of the Board's operation, including reasonable payment to each member of the Board for their services as provided herein. Each Owner, by submitting a design review application to the Board, agrees to pay any additional reasonable fees based on costs incurred by the Board in retaining consultants for the review and approval of the Owner's application(s).
- 4.4 **Variances.** The Board may authorize variances from any of the Design Requirements when the Board deems it desirable to address special circumstances, such as unusual topography, natural obstructions, hardship, aesthetic considerations or other circumstances. The granting of a variance will not waive any element of the Design Requirements for any purpose except as to the particular property and particular provision covered by the variance. Approval of a variance will not affect the Owner's obligation to comply with this Declaration or applicable law.
- 4.5 **Board Approvals.** The Board's approval of any Improvement does not mean the Improvements will be permitted by applicable law, approved by the applicable governmental authorities or others. The Board will not be responsible in any way for any defects or errors in any plans or specifications submitted, revised or approved, nor for any structural or other defects in any work done according to the plans and specifications.
- 4.6 **Immunity; Indemnification.** The Board's members, agents and employees will be immune from liability and entitled to indemnification as set forth in Section 2.10.

## ARTICLE 5 ASSESSMENTS

- 5.1 **Covenant to Pay Assessments.** Each Owner covenants and agrees to pay when due (without deduction, setoff, abatement of counterclaim of any kind whatsoever) all Assessments or charges made against the Owner or the Owner's Lot pursuant to the Community Documents. Assessments against a Lot will be a continuing lien on the Lot until paid, whether or not ownership of the Lot is transferred. Assessments against a Lot are also the personal obligation of the Owner of the Lot when the Assessment becomes due and payable. The personal obligation will remain with the Owner regardless of whether the Owner remains the owner of the Lot. Delinquent Assessments related to a Lot will not pass to the Owner's successors in title unless expressly assumed by them. The Assessments and charges, together with interest, costs and reasonable attorneys' fees, which may be incurred in collecting the same, will be a charge on the land and will be a continuing lien upon the Community against which each the Assessment or charge is made.
- 5.2 **Regular Assessments.** Regular Assessments are to be used to pay for all costs and expenses incurred by the Association for the conduct of its affairs or the exercise of any of the Association's powers, obligations under the Community Documents (collectively, the "**Common Expenses**"). Without limiting the generality of the foregoing, the Common Expenses will include:
- 5.2.1 The cost and expenses incurred by the Association for professional management of its business and affairs;
- 5.2.2 The costs and expenses incurred by the Association in the exercise of any of its powers under Section 2.8;

- 5.2.3 The costs and expenses of construction, improvement, protection, insurance, maintenance, repair, management and operation of the Common Area and any Improvements located in other areas that are owned, managed or maintained by the Association; and
- 5.2.4 An amount to fund adequate reserves for extraordinary operating expenses, contingent risks or liabilities (such as indemnification and defense expenses), capital repairs, capital replacements and any other expenses for which the Board deems prudent to fund a reserve.
- 5.3 **Special Assessments.** If the Board determines that the Regular Assessment for a given calendar year is or will be inadequate to meet the Common Expenses for the calendar year for any reason, the Board may levy a Special Assessment to collect the additional funds needed to meet the Common Expenses for the calendar year. Special Assessments will be levied and paid upon the same basis as Regular Assessments; provided, however, the Association will, in the Board's reasonable discretion, set the schedule under which the Special Assessment will be paid, which schedule may be different than Regular Assessments.
- 5.4 **Limited Assessments.** Notwithstanding the above provisions with respect to Regular Assessments and Special Assessments, the Association may levy a Limited Assessment against an Owner (a) for any fines, fees or charges levied against the Owner under the Community Documents; (b) to reimburse the Association for any costs incurred to bring the Owner's Lot or any Improvements thereon into compliance with the Community Documents; (c) to reimburse the Association for any damages caused by an Owner or any of its Owner Parties to any Common Area or Common Improvements; and (d) for the cost of providing any goods or services under the Community Documents that benefit the Owner or Owner's Lot, but less than all Owners or all Owners' Lots.
- 5.5 **Transfer Assessments.** Upon any transfer of fee simple title to a Lot to any Owner from time to time, the transferee will pay the then current transfer assessment to the Association (the "**Transfer Assessment**"). The Association may use the Transfer Assessments for any purpose that is not prohibited by law. The Association may waive the Transfer Assessment if the Association concludes that the transfer was from a grantor to a party related to the grantor for less than market value.
- 5.6 **Assessment Procedures.** Unless otherwise determined by the Board, the Association will compute and forecast the total amount of Common Expenses on an annual basis (the "**Budget**"). The computation of the Budget will take place not less than thirty (30) nor more than ninety (90) days before the beginning of each fiscal year of the Association, unless a change in Owners or other circumstance makes it impracticable to compute the Budget in that time frame, in which event the Budget will be computed as soon as reasonably practicable. In all events, the computation of the Budget will be completed in good faith and is valid upon completion. Each Owner's Regular Assessment will be computed by multiplying the Budget by the fraction produced by dividing the number of Lots owned by the Owner by the total number of Lots not then exempt from Assessment. The Association may, in its discretion or as provided in the Community Documents, require payment of Regular Assessments in monthly, quarterly, semi-annual, or annual installments. The Association will provide Owners with not less than fifteen (15) days and no more than thirty (30) days of prior notice before any Board meeting for the purpose of levying a Special Assessment or increasing the Regular Assessment by more than ten percent (10%). Assessments are due and payable within thirty (30) days after the Association provides an invoice therefor to each Owner. If all or any part of an Assessment is not paid when

due, then: (a) the delinquent Owner will pay to the Association a late payment charge equal to five percent (5%) of the delinquent amount; and (b) interest accrues on the delinquent amount at the rate of twelve percent (12%) per annum until paid in full. In the event an Owner's payment is returned for any reason, the Owner will pay to the Association an administrative fee in an amount set by the Board and thereafter the Association has the right to require future Assessments due from the Owner to be paid in the form of a cashier's check, certified check, or other form of immediately collectible funds acceptable to the Association in the Board's discretion. Each Owner agrees that the late payment charge and administrative fee are reasonable compensation to the Association for additional administrative costs and expenses caused by any late payment or returned check.

## 5.7 **Assessment Liens.**

5.7.1 *Creation.* There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against the Lot pursuant to the Community Documents, together with interest thereon at the rate described in Section 5.6 and all collection costs and attorneys' fees which may be paid or incurred by the Association in connection therewith. Upon default of any Owner in the payment of any Assessment related to a Lot, the Association may record a claim of lien against the Lot in accordance with applicable law. Each delinquency will constitute a separate basis for a claim of lien, but any number of defaults may be included within a single claim of lien. The claim of lien may be foreclosed in any manner permitted by applicable law. Upon payment of the lien in full, the Association will record a release of the claim of lien.

5.7.2 *Subordination to First Mortgages.* Upon recordation of a claim of lien for delinquent Assessments in accordance with applicable law, the lien will be prior and superior to all other liens or claims created subsequent to the recordation of the claim of lien except for (a) liens which, by law, would be superior thereto and (b) the lien of a first Mortgage given and made in good faith and for value that is of record as an encumbrance against the Lot prior to the recordation of a claim of lien for the Assessments. Except as expressly provided in this Section 5.7.2, the sale or transfer of any Lot will not affect the Assessment lien provided for herein, nor the creation thereof by the recordation of a claim of lien, on account of the Assessments becoming due whether before, on, or after the date of the sale or transfer, nor will the sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

5.8 **Exemptions.** All Common Area and any Lots owned by the Association will be exempt from Assessments. Developer will be exempt from Assessments as set forth in Section 10.4.

## **ARTICLE 6 RIGHTS TO COMMON AREAS**

6.1 **Use of Common Area.** Every Owner will have a right to use the Common Area (if any) as set forth in this Declaration subject to:

6.1.1 The Community Documents;

6.1.2 The right of the Association to suspend the right of an Owner to use the Common Area (or any designated portion of Common Area) for any period during which any Assessment or charge against the Owner's Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of the Community Rules; and



6.1.3 The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility or other party for any purposes and subject to any conditions as may be permitted by the Community Documents.

6.2 **Delegation of Right to Use.** An Owner may delegate its right to use the Common Area to any Owner Parties; provided, however, each Owner will be liable to the Association for any damage to any Common Area or Common Improvements caused by the negligence or misconduct of any Owner Parties. The cost of correcting the damage will be a Limited Assessment against the Lot.

6.3 **Association's Responsibility.** The Association will maintain, repair and replace the Common Area and Common Improvements so as to keep the same in good operating condition.

## ARTICLE 7 EASEMENTS

7.1 **Easements of Encroachment.** There will be reciprocal appurtenant easements of encroachment as between adjacent Lots and between Lots and adjacent portions of the Common Area due to the placement or settling or shifting of the Improvements constructed, reconstructed or altered in accordance with the Community Documents. Easements of encroachment will be valid only so long as they exist, and the rights and obligations of Owners will not be altered in any way because of the settling or shifting of the Improvements; provided, however, that in no event will a valid easement for encroachment occur due to an Owner's willful or bad faith acts. If an Improvement is partially or totally destroyed, the Improvement may be repaired or rebuilt within the minor encroachments that existed prior to the encroachment and may be reconstructed pursuant to the easement granted by this Section 7.1.

7.2 **Easements of Access.** There will be reciprocal appurtenant easements of ingress and egress for all Owners to and from their respective Lots for installation and repair of utility services and for necessary maintenance and repair of any Improvement, such as fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees and landscaping.

7.3 **Improvements in Drainage and Utility Easements.** No Owner will construct or alter any Improvements in any drainage or utility easement areas which would interfere with the easement being used for its intended purpose. The Owners may install and maintain Improvements on the easement areas as permitted by the Community Documents so long as the Improvements are permitted by the terms of the easement and the Improvements will not interfere with or prevent the easement areas from being used for their intended purposes. No lawful user of the easement will incur any liability to the Owner for the damage or destruction of the Improvements.

7.4 **Easements Deemed Created.** All conveyances of Lots made after the date of the recording of the Declaration, whether by Developer or otherwise, will be construed to grant and reserve the easements contained in this Article 7 and elsewhere in this Declaration, even though no specific reference to the easements appear in the conveyance instrument.

7.5 **Emergency Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies to enter upon the Community in the proper performance of their duties.

7.6 **Maintenance Easement.** A non-exclusive easement is hereby reserved to Developer and the Association upon, across, over, in, and under all portions of all Lots that are not improved with an occupied structure. Developer and the Association may use the easement reserved herein as Developer or the Association may deem necessary, appropriate, or convenient to perform any of their respective rights or obligations identified in the Community Documents, to perform their respective duties and functions to

which they are obligated or permitted to perform pursuant to the Community Documents, and to make emergency repairs. Nothing herein relieves each Owner's obligation to maintain Improvements on the Owner's Lot.

7.7 **Developer's Rights Incident to Construction.** Developer retains a right and easement of ingress and egress over, in, upon, under, and across the Community and the right to store materials thereon and to make any other use thereof as may be reasonably necessary or incident to the construction of the Improvements in the Community on those portions owned by Developer or the Association; provided, however, that Developer will not exercise the rights in a way that will unreasonably interfere with the occupancy, use, enjoyment, or access to an Owner's Lot by that Owner or its Owner Parties.

## **ARTICLE 8 PRIVATE STREETS AND COMMON DRIVES**

8.1 **Private Streets.** Private streets (if any) may be constructed pursuant to Ellensburg City Code for vehicular and pedestrian ingress and egress from to and from the Community.

8.2 **Common Driveways.** Any "Common Driveway and Public Utility Easement" areas (if any) identified on the Plat will be common driveways pursuant to Ellensburg City Code for vehicular and pedestrian ingress and egress from the applicable private street to each benefitted Lot.

8.3 **Utilities.** Any private streets and common drives may be used for the installation, operation, maintenance, repair and replacement of any utility services, including electricity, communications, gas, water and sewer (collectively referred to as "**Utility Improvements**"). If any Owner or utility provider installs Utility Improvements in a private street or common drive, then the Owner or utility provider will, at its sole costs and expense, restore (or cause to be restored) any displacement, damage or disfigurement to the private street or common drive as necessary to restore the private street or common drive to the same condition existing prior to the installation or repair of the Utility Improvements. The Owners and the Association agree to cooperate with each other to avoid utility conflicts and, where feasible, share Utility Improvements. All Utility Improvements are to be located underground; provided, however, if any element of a Utility Improvement should reasonably be located at or above the surface of the ground to comply with applicable law, utility services provider requirements or practices, or good engineering practices, then the elements may be at or above ground provided that the element is not located on any vehicular or pedestrian travel surface unless the improvement is designed to traveled on (i.e., an access hole cover).

8.4 **Maintenance.** The Association will be responsible for (a) managing the private streets and common drives as Common Area; (b) the maintenance, repair and replacement of the surface and subsurface of the private streets and common drives in a reasonably smooth condition (to the extent practical), evenly covered with the type of materials originally constructed thereon or such substitutes as will, in all respects, be equal to such materials in quality, appearance and durability (but in all events as required by applicable law for private streets and common drives); (c) regular vegetation control in the private streets and common drives in compliance with Wildland-Urban Interface (WUI) standards; (d) such future improvements in the private streets or common drives that may be reasonably necessary for them to provide safe and usable access from W. Floating Feather Road to the Lots in accordance with applicable law; (e) such future private street or common drive improvements that may be approved by the Owners (i.e., gates, entrance signs and other similar items) and permitted by applicable law; and (f) other responsibilities necessary for the proper maintenance of the private streets and common drives as private streets and common drives under applicable law. All maintenance and repair work must be performed to an equal standard over the entire length of a particular private street or common drive. All expenses incurred by the Association for the private streets and common drives will be Expenses under this Declaration.

8.5 **Legal Requirements.** The provisions of this Article 9 may not be amended in a manner that would cause any private street or common drive (or any Lot taking access from a private street or common drive) to violate any of (a) the legal requirements for private streets or common drives (or the legal requirements for Lots taking access from a private streets or common drives) under applicable law.

8.6 **Private Road Study.** The Board may be required to periodically conduct a visual inspection of any private streets and common driveways and conduct a reserve study, in order to ensure adequate reserves exist for road replacement.

## **ARTICLE 9 RESOLUTION OF DISPUTES**

9.1 **Agreement to Avoid Litigation.** All claims, grievances or disputes between Community Members arising out of or relating to the interpretation, application or enforcement of the Community Documents or the rights or obligations thereunder (“**Claims**”) will be subject to Section 9.3 unless exempt under Section 9.2. All Claims will be subject to resolution pursuant to this Article 9 as a condition precedent to the institution or continuation of any legal or equitable proceeding; provided, however, any Community Member may proceed in accordance with applicable law to comply with any notice or filing deadlines prior to resolution of the Claim.

9.2 **Exemptions.** The following Claims will not be subject to this Article 9:

- 9.2.1 Any Claim by the Association against any Community Member to enforce the obligation to pay any Assessment under the Community Documents;
- 9.2.2 Any Claim by Developer or Association to seek injunctive relief to enforce the Community Documents;
- 9.2.3 Any Claim between Owners where Developer or the Association are not a party thereto, which Claim would constitute a cause of action independent of the Community Documents;
- 9.2.4 Any Claim in which any indispensable party is not a Community Member;
- 9.2.5 Any Claim against a Released Party that would be barred by Section 2.10;
- 9.2.6 Any Claim which otherwise would be barred by any applicable law (such as, for example, the applicable statute of limitations); and
- 9.2.7 Any Claim arising out of or relating to the interpretation, application or enforcement of any purchase, sale or construction agreement with Developer or any builder related to the construction of Improvements within the Community, or the rights and obligations of any Community Member under the agreements, it being understood that applicable law and the provisions of the agreements will control the resolution of any claims or disputes related thereto.

9.3 **Dispute Resolution**

- 9.3.1 Direct Discussions. Any Community Member having a Claim against any other Community Member will notify the party(ies) of the Claim in writing, stating plainly and concisely the following: (a) the nature of the Claim; (b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); (c) the basic facts supporting the

allegations in the Claim; (d) the other persons involved in the Claim or with personal knowledge of the facts alleged; and (e) the claimant's proposed remedy, including the specific monetary amounts (if any) demanded. The Community Members to the Claim will make reasonable efforts to meet in person to resolve the Claim by good faith – it being understood that the best opportunity to achieve a fair and satisfactory resolution to a Claim is ordinarily through early discussions held in good faith.

9.3.2 *Dispute Resolution.* If the Community Members to a Claim are unable to resolve the Claim through direct discussions within a reasonable time, either Community Member may submit the Claim to the Board for assistance in resolving the Claim. In that event, the Board may, by notice to each Community Member to the Claim within thirty (30) days of its receipt of a request for assistance:

9.3.2.1 Order the Community Members to continue direct discussions and negotiations for a period of up to thirty (30) days. If the Claim is not resolved in the period, any Community Member may request the Board's assistance to resolve the Claim;

9.3.2.2 Order the Community Members to mediate the Claim with a mediator selected by the Association. The mediator will set the rules, location and schedule for the mediation; provided, however, unless otherwise agreed, the mediation will be held within thirty (30) days of the order for mediation. If the mediation does not resolve the Claim, the Community Members may proceed to litigation of the Claim in any court of competent jurisdiction;

9.3.2.3 If the Claim is within the jurisdiction of the Small Claims Department of the Magistrate Division (currently, monetary claims for \$5,000 or less), order a Community Members to resolve the Claim exclusively therein; or

9.3.2.4 Order the Community Members to resolve the Claim through an individual arbitration by a single arbitrator conducted in accordance with the Washington Uniform Arbitration Act with an arbitrator selected by the Association. The arbitrator will set the rules, location and schedule for the arbitration, with the intent that the rules will be as simple and expedient as the nature of the dispute allows. The parties will bear their own attorneys' fees (if any) and share the arbitrator's fees equally; provided, however, the arbitrator may award costs, arbitrator's fees and attorneys' fees to the substantially prevailing party. The arbitrator's award will be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof; or

9.3.2.5 Elect to exempt the Claim from this Article 9, at which time the Community Members are free to exercise any right or remedy in accordance with applicable law.

If the Board fails to notify the Community Members within thirty (30) days of its receipt of a request for assistance, the Board will be deemed to have elected to exempt the Claim from this Article 9.

9.3.3 If the Community Members resolve any Claim through mediation or arbitration pursuant to this Article 9 and any Community Member thereafter fails to abide by the terms of the resolution (i.e., settlement agreement or arbitrator's award), then any other Community

Member may take any legal or other action to enforce the settlement agreement or arbitrator's award without the need to comply again with the procedures set forth in this Article 9. In that event, the Community Member taking action to enforce the resolution will be entitled to recover from any non-complying Community Member all costs and attorneys' fees reasonably incurred in the enforcement.

- 9.4 **Jury Trial Waiver.** EVERY COMMUNITY MEMBER WAIVES ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN COMMUNITY MEMBERS ARISING OUT OF THE COMMUNITY DOCUMENTS.

## **ARTICLE 10 INITIAL DEVELOPMENT PERIOD**

- 10.1 **Community Management.** Each Owner recognizes that the Community will require a high level of knowledge, effort, judgment, diligence and attention during the Development Period, and that level is beyond what can reasonably be expected from Community volunteers. Accordingly, each Owner agrees that it is in the best interest of the Community for Developer to have full management authority for the Community during the Development Period, including the sole and exclusive right to appoint remove and replace directors of the Board at any time and from time-to-time in Developer's sole discretion.
- 10.2 **General Exemptions.** Developer may take any of the following actions as Developer deems appropriate without the approval of the Board:
- 10.2.1 Make modifications or Improvements on any Lot or the Common Area;
  - 10.2.2 Place or authorize signs of any size, design and number as Developer for the initial development of the Community, including signs to identify the Community, display information pertaining to the Community, display information or instructions to builders, to advertise Lots and homes for sale (including sale events and open houses), and to advertise of Community elements or events;
  - 10.2.3 Authorize any developer or contractor to use any Lot as a model home, sales office, construction office or construction storage yard; and
  - 10.2.4 Place or authorize temporary structures upon any Lot or the Common Area.
- 10.3 **Water Rights Appurtenant to Community Lands.** Developer may own certain water and water rights which are appurtenant to the Community (which may be in the form of irrigation company shares). Developer hereby reserves unto itself any and all water and water rights appurtenant to the Community, and consequently Owners will not have any right, title or interest in the water rights. Developer will convey the portion of the water rights needed for the operation of any Irrigation System, if applicable, to the Association, for the Association to hold for the benefit of the Community. Any fees or assessments for the water rights will be Common Expenses.
- 10.4 **Developer's Exception from Assessments.** Developer will not be assessed any Regular Assessments or Special Assessments for any Lots owned by Developer. If Developer owns at least one (1) Lot during the period, Developer will pay the shortfall, if any, in the operating Common Expenses of the Association; provided, however, the obligation will not exceed the amount that the Regular Assessments and Special Assessments that Developer would otherwise be assessed as an Owner multiplied by the total number of Lots owned by Developer on the date

Regular Assessments or Special Assessments are assessed against the Owners of Lots. After the foregoing period, Developer will be assessed Regular Assessments and Special Assessments for each Lot owned by Developer.

- 10.5 **Assignment of Developer's Rights.** Developer may assign any or all of its rights under the Community Documents to any person or entity in a written instrument that contains the assignee's acceptance of the assignment and agreement to assume any of Developer's obligations pertaining to the rights assigned, which acceptance and assumption will be effective upon the recordation of the written instrument recorded in the real property records of the county where the Community is located. Developer will promptly provide a copy of the recorded instrument to the Association and, thereupon, be released from Developer's obligations pertaining to the rights assigned.

## **ARTICLE 11 TERM**

The easements created hereunder are perpetual, subject only to extinguishment by the holders of the easements as provided by law. The remainder of this Declaration runs until December 31, 2073 and thereafter will be automatically extended for successive periods of ten (10) years each, unless earlier amended or terminated in accordance with Article 13.

## **ARTICLE 12 ANNEXATION AND DE-ANNEXATION**

Developer may annex additional adjacent lands into the Community from time-to-time by recording a supplement to this Declaration declaring such additional adjacent lands to be part of the Community and subject to this Declaration (each a "**Supplemental Declaration**"). The Supplemental Declaration may add or delete covenants, conditions, restrictions, and easements applicable to the annexed lands as Developer may deem appropriate. Upon annexation, Owners within the annexed lands will become Owners in the Community on equal footing with the then current Owners in the Community, and will have the same rights, privileges and obligations (except as may otherwise be set forth in the annexing Supplemental Declaration). Developer will have the right to de-annex any adjacent property owned by Developer from the Community upon Developer's recordation of a Supplemental Declaration identifying the de-annexed lands and declaring that such lands will no longer be subject to this Declaration. In order to be valid, all Supplemental Declarations must refer to this Declaration and be recorded in the real property records of the county where the Community is located.

## ARTICLE 13 AMENDMENTS

- 13.1 **Amendment.** From and after the recordation of this Declaration until the expiration or earlier termination of the Development Period, Developer will have the exclusive right to amend, or terminate, this Declaration by executing a written instrument setting forth the amendment, or termination, and the same will be effective upon the recordation thereof in the real property records of the county where the Community is located. After the expiration or earlier termination of the Development Period, any amendment to this Declaration, or termination hereof, will be by a written instrument setting forth the amendment or termination, signed and acknowledged by the president and secretary of the Association certifying and attesting that the amendment or termination has been approved by the vote or written consent of Members representing more than sixty-five percent (65%) of the total voting power in the Association, and the same will be effective upon the recordation thereof in the real property records of the county where the Community is located.
- 13.2 **Financing Amendments.** Developer and the Association will each have the independent power and authority, acting individually or collectively, to amend to this Declaration by a written instrument setting forth such amendment, if the amendment is necessary or convenient (in the reasonable opinion of Developer or the Association) to allow Owners to take full advantage of, or secure the full availability of, any financing programs offered or supported by the Federal Housing Finance Agency (“FHFA”), Federal National Mortgage Association (“FNMA” or “Fannie Mae”), the Federal Home Loan Mortgage Corp (“FMCC” or “Freddie Mac”), the Government National Mortgage Association (“GNMA” or “Ginnie Mae”), the Federal Housing Administration (“FHA”), the Veterans Administration (“VA”), Washington State Housing Finance Commission (“WSHFC”) or any similar federal, state or local governmental or quasi-governmental program.
- 13.3 **Effect of Amendment; Mortgagee Protection.** Any Supplemental Declaration or amendment or termination of this Declaration will be effective upon its recordation thereof in the real property records of the county where the Community is located, and will be binding on and effective as to all Owners, whether or not the Owners voted for or consented to the amendment or termination. Any amendment to this Declaration may add to, delete, and/or otherwise change the covenants, conditions, restrictions, and easements applicable to the Community; provided, however, no amendment will operate to defeat or render invalid the rights of the beneficiary under any Mortgage made in good faith and for value, and recorded prior to the recordation of the amendment, provided that after foreclosure of any Mortgage, the Lot will remain subject to this Declaration as supplemented or amended.
- 13.4 **No Amendment of Required Provisions.** Subject to Section 13.2, except with the written consent of the City of Ellensburg (“City”), which consent must be recorded in the real property records of the county where the Community is located, this Declaration may not be terminated or amended to cause any provision required by City in its approval of the Community to be contrary the applicable requirements of the approval.

## ARTICLE 14 NOTICES

Any notices, invoices, consents, approvals or other communications required or permitted by this Declaration will be in writing and may be delivered personally, by electronic mail or by U.S. mail. Each Owner will be responsible for ensuring that the Association has the Owner’s then current mailing address, physical address, electronic mail address and telephone numbers. Except where another form of notice is required by applicable law, each Owner will be deemed to have received any notice when the notice is

actually received by the Owner (regardless of the method of delivery) or when the notice is delivered to any of the addresses then currently on file with the Association. Notices delivered by U.S. Mail will not be deemed received until three (3) business after posting. The Association will provide the notice addresses of all Owners to Developer or any other Owner promptly upon request (and Developer may use the addresses for sending marketing, promotional and other materials to Owners).

## ARTICLE 15 MISCELLANEOUS

- 15.1 **Interpretation.** This Declaration will be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Community. As used herein, the word “including” will be deemed to be followed by “but not limited to” unless otherwise indicated. Unless the context requires a contrary construction, the singular will include the plural and the plural the singular; and the masculine, feminine or neuter will each include the masculine, feminine and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and will not affect that which is set forth in any of the provisions hereof. As used herein the terms “shall,” “will,” and “must” may be used interchangeably and are mandatory, while the term “may” is permissive. Any reference to a provision or document means the provision or document as it may be amended and supplemented from time to time. *In the event that any provision of this Declaration is deemed ambiguous on any matter, the Board’s interpretation of the provision will be given deference so long as the interpretation is reasonable.*
- 15.2 **Governing Law.** This Declaration will be governed by the laws of the State of Washington without regard to its conflicts of law principles. Any legal action to interpret or enforce this Declaration will be filed exclusively in the state or federal courts situated in Washington with proper venue.
- 15.3 **Severability.** Each provision of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof will not affect the validity or enforceability of any other provision herein.
- 15.4 **Entire Agreement.** This Declaration and the documents referenced herein constitute the sole agreement of Developer and the Owners with respect to the subject matter herein and supersedes all prior understandings and agreements with respect to the subject matter hereof.
- 15.5 **No Third Party Beneficiaries.** Except as otherwise set forth herein, this Declaration and each and every provision herein is for the exclusive benefit of Developer, the Association and the Owners and not for the benefit of any third party.
- 15.6 **No Waiver.** No waiver by the Association hereunder may be oral. No waiver, forbearance, delay, indulgence or failure by the Association to enforce any of the provisions of this Declaration will in any way prejudice or limit the Association’s right thereafter to enforce or compel strict compliance with the provision hereof, any course of dealing or custom of the trade notwithstanding. No delay or omission on the part of the Association will operate as a waiver thereof, nor will any waiver by the Association of any breach of this Declaration operate as a waiver of any subsequent or continuing breach of this Declaration.
- 15.7 **Enforcement; Remedies.** The failure of any Owner or Occupant to comply with applicable law pertaining to the ownership, use or occupancy of any Lot or the Community, or to comply with any provision of the Community Documents, is hereby declared a nuisance and gives rise to a cause of action (subject to Article 9) in Developer, the Association (on its own and/or on behalf



of any consenting Owners) and any affected Owner for recovery of damages or for negative or affirmative injunctive relief or both enforce the provisions hereof only as set forth in this Declaration. Each remedy provided herein is cumulative and not exclusive. If any party initiates or defends any legal action or proceeding to interpret or enforce any of the terms of this Declaration, the substantially prevailing party will be entitled to recover any costs and attorneys' fees reasonably incurred therein.

- 15.8 **Consents and Approvals.** Subject to Developer's rights as Developer as a special member of the Association (e.g., as the sole voting member) during the Development Period, any consents or approvals required or contemplated herein must be in a writing executed by the party whose consent or approval is required or contemplated. No Owner unreasonably withhold, condition or delay its consent or approval of any matter requested by Developer, the Association or another Owner.
- 15.9 **Recitals and Exhibits.** All recitals and exhibits to this Declaration are true, correct, material, and are hereby incorporated as if set forth herein in full.

*[ end of text; signature page follows ]*

SIGNATURE PAGE

Developer has executed this Declaration effective as of the Effective Date.

“Developer”

Developer Entity, an \_\_\_\_\_ limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

County of \_\_\_\_\_ )

This record was acknowledged before me on July \_\_\_\_\_ 2023 by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, an \_\_\_\_\_ limited liability company.

\_\_\_\_\_  
Signature of Notary Public

**EXHIBIT A**

**PLAT**

[ attached; four (4) pages ]







