

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
EASEMENTS & RESTRICTIONS**

ARTICLE ONE: Definitions

For purposes of the Declaration, Articles of Incorporation and Bylaws of the Association, certain words and phrases have particular meanings, which are as follows:

1. "ACC" shall mean the Architectural Control Committee, as described in Article Ten, Section Four.
2. "Additional Real Property" shall mean additional Lots in future divisions of the plat of Shaunessy Phase 1, which, at the time of the recording of this Declaration, have not been included in the real property subject to the Declaration, but may be added to this Declaration at a later date. Without limiting the generality of the foregoing, Tract 501 is reserved for future development and shall be deemed to be "Additional Real Property."
3. "Adjacent Real Property" shall mean any real property owned or after acquired by Developer or Declarant that is in the vicinity of Shaunessy; said real property need not be contiguous to Shaunessy to be Adjacent Real Property.
4. "Articles" shall mean the Association's Articles of Incorporation and any amendments.
5. "Association" shall mean the Shaunessy Homeowners' Association which has been formed as a nonprofit corporation for the purpose of administering this Declaration.
6. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.
7. "Bylaws" shall mean the Association's Bylaws and any amendments.
8. "Common Areas" shall mean all real property owned, used and/or maintained in common by the Lots, including property designated as Common Open Space, Stormwater Detention Facility and/or Native Growth Protection Area on the final Plat. The Common Areas include ownership and maintenance obligations for Tracts 980 through 999, inclusive, and any other obligations of the Association as set forth in the Declaration. Also, included in the definition of "Common Areas" for purposes of maintenance obligations is the maintenance and payment for repair and/or operation expenses for the plat entry private lighting system, if any, entry monuments, mailboxes, mailbox shelters, if any, and maintaining all landscaping, common area irrigation systems and fencing in the public right of ways in the interior portions and frontage of Shaunessy or within any private easement upon a

lot tract or adjoining property which may be granted to the Association on the face of the recorded final plat or in the future via a recorded easement document.

9. "Declaration" shall mean this Declaration of Protective Covenants, Conditions and Restrictions.
10. "Developer" shall mean Shaunessy LLC, a Washington limited liability company, or any persons or entities to which it assigns its rights as Developer, or succeeds to its interest.
11. "Development Period" shall mean the period of time from the date of recording of this Declaration until 180 days after the date upon which 100% of the Lots have been conveyed by the Developer or any shorter period, as determined by the Developer. A partial delegation of authority by the Developer of any of the management duties described in this Declaration shall not terminate the Development Period.
12. "Housing Unit" shall mean the building occupying a Lot.
13. "Institutional First Mortgagee" or "Mortgagee" shall mean a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company or state or federal agency which holds a first mortgage or deed of trust against a Lot or Housing Unit thereon.
14. "Lot" shall initially refer to one of the Lots located in the Real Property described herein. At such time as Additional Real Property may be subjected to the Declaration, "Lot" shall include those lots shown on and included in the plat of Additional Real Property.
15. "Member" shall mean every person or entity that holds a membership in the Association.
16. "Mortgage" shall mean a mortgage or deed of trust encumbering a Lot or other portion of the Properties.
17. "Owner" shall mean the recorded owner of a Lot, whether one or more persons or entities, but excluding those having such interest merely as security. A real estate contract purchaser shall be deemed the Owner.
18. "Person" shall mean a natural person, a corporation, a partnership, trustee or other legal entity.
19. "Plat" shall mean the plat of Shaunessy Phase 1, recorded at Snohomish County Auditor's No. 2003 \_\_\_\_\_, together with all requirements described or referenced therein.

20. "Properties" shall mean the Real Property, and any Additional Real Property that may be added to this Declaration.
21. "Sale" or "Sold" shall mean the date upon which ownership of a Lot is transferred from an Owner to another person or entity by recordation of an instrument of transfer such as a deed or real estate contract.

## ARTICLE TWO: Additional Real Property

Section One: Addition to Declaration. Initially, only the Real Property described herein shall be subjected to the Declaration. The Developer hereby reserves for itself, or its successors or assignees, the right to subject the Additional Real Property to the terms and provisions of this Declaration, and grant to the Owners of Lots located on Additional Real Property, after it is subjected to the Declaration, all of the rights and benefits to which Members of the Association are entitled. The Owners of Lots located on the Real Property hereby covenant and agree to burden the Real Property and Additional Real Property with all of the duties, responsibilities, costs and expenses related to the management, administration, maintenance and improvement of the Common Areas and such additional Common Areas that are included in the Additional Real Property. The Developer hereby reserves for itself the right to develop the Additional Real Property without subjecting it to the terms and provisions of the Declaration.

Section Two: Rights in Additional Real Property - Common Areas. Until Additional Real Property shall be subjected to the Declaration, the property shall not be subject to the terms and provisions of this Declaration. This Declaration shall not give the Association or any Lot Owners any rights in Additional Real Property until it is subjected to the Declaration. At such time as the Additional Real Property shall be subjected to the terms and provisions of this Declaration, the Additional Real Property shall become part of the Properties and Lot Owners in the Additional Real Property shall automatically become members of the Association and shall be entitled to all of the rights and benefits and subject to all of the obligations of the Members of the Association. All Common Areas in the Additional Real Property shall likewise become the property of the Association and shall be managed, administered, maintained and improved in the same manner as all Common Areas of the Association, and all members shall be assessed for the costs of such Common Areas in the Additional Real Property in the same manner as all other Common Areas of the Real Property.

Section Three: Method of Adding Additional Real Property. Any such Additional Real Property shall be added by the filing for record of an amendment to this Declaration. An amendment adding Additional Real Property may, in the Developer's discretion, alter or limit the applicability of a portion of the Declaration to the Additional Real Property.

## ARTICLE THREE: Management of Common Areas and Enforcement of Declaration

Section One: Development Period. During the Development Period, the Association, the ACC, and all Common Areas shall, for all purposes, be under the management and administration of the Developer. During the Development Period, the Developer shall appoint three to five directors, and may appoint any persons the Developer chooses as directors. At the Developer's

sole discretion, the Developer may appoint members of the Association to such committees or positions in the Association as the Developer deems appropriate, to serve at the Developer's discretion and may assign such responsibilities, privileges and duties to the members as the Developer determines, for such time as the Developer determines. Members appointed by the Developer during the Development Period may be dismissed at the Developer's discretion.

Section Two: Purpose of Development Period. The Developer's control of the Association during the Development Period is established in order to ensure that the Properties and the Association will be adequately administered in the initial phases of development, to ensure an orderly transition of Association operations, and to facilitate the Developer's completion of construction of Housing Units.

Section Three: Authority of Association After Development Period. At the expiration of Developer's management authority the Association shall have the authority and obligation to manage and administer the Common Areas and to enforce this Declaration. Such authority shall include all authority provided for in the Association's Articles, Bylaws, rules and regulations and this Declaration. The Association shall also have the authority and obligation to manage and administer the activities of the ACC in its responsibilities as described in Article Ten, Section Five.

Section Four: Delegation of Authority. The Board of Directors or the Developer may delegate any of its managerial duties, powers, or functions to any person, firm, or corporation. The Board and the Developer shall not be liable for any breach of duty, negligence, omission, intentional act or improper exercise by a person who is delegated any duty, power or function by the Board of Directors or the Developer.

Section Five: Indemnification of Board Members and Officers. Directors, officers and committee members of the Association and the ACC shall not be liable to the Association or its members for damages caused by an action taken on behalf of the Association in good faith. This provision may not limit liability for failure to exercise the degree of care and loyalty required under RCW 24.03. Directors, officers and committee members of the Association and the ACC shall be indemnified and held harmless from and against any damages, liabilities, judgments, penalties, fines, settlements and reasonable expenses (including attorney fees) actually incurred as a result of all actions undertaken by said person in good faith, and (a) in the case of conduct in his or her official capacity with the Association, he or she reasonably believed his or her conduct to be in the Association's best interests, or (b) in all other cases, he or she reasonably believed his or her conduct to be at least not opposed to the Association's best interests, or (c) in the case of any criminal proceedings, he or she had no reasonable cause to believe his or her conduct was unlawful. Said persons shall be indemnified and held harmless to the full extent permissible under Washington law. The foregoing right of indemnification shall not be exclusive of other rights to which such director, officer or committee member may be entitled to as a matter of law.

#### ARTICLE FOUR: Membership

Every person or entity who is an Owner of any Lot agrees to be a Member of the Association by acceptance of a deed for such Lot. Membership may not be separated from ownership of any Lot. All Members shall have rights and duties as specified in this Declaration, and in the Articles and Bylaws of the Association.

## ARTICLE FIVE: Voting Rights

Members shall be entitled to one vote for each Lot owned. No more than one vote may be cast with respect to any Lot. The voting rights of any Member may be suspended as provided in the Declaration, or the Articles or Bylaws of the Association. Members' votes may be solicited and tabulated by mail or facsimile.

## ARTICLE SIX: Property Rights in Common Areas

Section One: Rights. The Common Areas are hereby granted and conveyed to the Association. Every Owner shall have a right and easement of enjoyment, subject to the restriction set forth herein, in the final Plat or applicable laws, in and to the Common Areas by virtue of membership in the Association. The Association shall have the right and obligation to maintain improvements, vegetation, signage and utilities in and on the Common Areas, subject to any restrictions delineated on the Plat of the Properties. The Association shall have the exclusive right to use and manage the Common Areas in a manner consistent with the Plat, this Declaration, the Articles and the Bylaws of the Association. In the event the Association is at any time dissolved, then each Lot shall immediately succeed to an equal and undivided interest in the Common Areas, as well as the responsibility for its maintenance; provided that Owners of the Lots by majority vote may provide for a successor corporation or other entity to perform such maintenance obligations and allow for the collection of dues to pay the cost of the maintenance. In that event, all of the assets, rights, powers and obligations of the Association existing immediately prior to its dissolution, except the ownership interest in the Common Areas, shall thereupon automatically vest in the successor entity. To the greatest extent possible, any successor entity shall be governed by the Articles of Association and Bylaws of the Association as if they had been made to constitute the governing documents of the successor entity. The Common Areas and any other property dedicated to and accepted by a government or public authority shall be exempt from assessments, Mortgages or other liens by the Association and any Owner.

Section Two: Potential Dedication of Portions of Tracts 985 and 990. As noted on the final Plat, the Declarant has agreed to dedicate a portion of Tract 985, and a portion of Tract 990, to Snohomish County for right of way purposes. The approximate location of the areas that may be dedicated are noted on the final Plat. Upon written request by Snohomish County and/or the property owner adjacent to such areas, the Association shall cooperate in the dedication, so long as said dedication does not, in the Association's reasonable opinion, conflict with any condition of plat approval or any applicable Snohomish County and State of Washington code or regulation. There shall be no consideration paid for the dedication, but the obligation to dedicate shall be conditioned on the adjacent property owner's agreement to pay all costs of said dedication, including but not limited to, surveying, engineering, legal and permit costs and fees, and its agreement to indemnify and defend the Association from any third party claims arising from or related to the dedication or the portions dedicated under this Section.

## ARTICLE SEVEN: Maintenance and Common Expenses

Section One: Standard of Maintenance - Common Areas. The Association shall maintain the Common Areas (except for those portions of Tracts 985 and 990 that may be dedicated to Snohomish County as set forth in Article Six, Section Two herein) in a manner consistent with good building and nursery practices, in compliance with all applicable Snohomish County and State of Washington codes and regulations, including the regulations and conditions specified in the final Plat. Common Areas include:

1. Common open space Tracts 980, 981, 992, 994.
2. Common open space/Landscape buffer and/or pedestrian trail Tracts 982, 984-991, 993, and 996.
3. Native Growth Protection Area Tracts 997, 998, 999.
4. Stormwater Detention Facilities Tracts 983, 995.

Section Two: Standard of Maintenance - Lots and Planting Strips. Each Lot Owner hereby covenants and agrees to maintain his respective Lot including as a part of said Lot the maintaining, repairing, and replacing of the planting strip located within the right-of-way adjacent to the Owner's respective Lot and the Housing Unit located thereon in the same condition as a reasonably prudent homeowner would maintain his own home so that the Real Property will reflect a high pride of ownership. Each Lot Owner shall perform at the Lot Owner's expense the maintenance and upkeep of any fencing, development required street trees, drainage swales and/or underground drain lines and catch basins installed on their Lot.

Section Three: Remedies for Failure to Maintain. If any Lot Owner shall fail to conduct maintenance on his Lot or the exterior of the Housing Unit located thereon, or fails to maintain and/or replace the development required street trees or fails to maintain the Lot and the exterior of the Housing Unit in the same condition as a reasonably prudent homeowner, or in a manner which preserves the drainage for other Lots, the Association shall notify the Lot Owner in writing of the maintenance required. If the maintenance is not performed within thirty (30) days of the date notice is delivered, the Association shall have the right to provide such maintenance, and to levy an assessment against the non-performing Lot Owner and its Lot for the cost of providing the maintenance. The assessment shall constitute a lien against the Lot owned by the non-performing Lot Owner and may be collected and foreclosed in the same manner as any other delinquent monthly or special assessment. The Association shall have all remedies for collection as provided in Article Nine of the Declaration. In the event that emergency repairs are needed to correct a condition on a Lot which poses a substantial risk of injury or significant property damage to others, the Association may immediately perform such repairs as may be necessary after the Association has attempted to give notice to the Lot Owner of the repairs necessary. Such notice in emergency circumstances shall be sufficient if attempted orally or in writing immediately prior to the Association's undertaking the necessary repairs. Emergency repairs performed by the Association, if not paid for by the Lot Owner, may be collected by the Association in the manner provided for herein notwithstanding the failure of the Association to give the Lot Owner the thirty (30) day notice.

Section Four: Common Expenses. The Association shall perform such work as is necessary to carry out the duties described in this Declaration, and shall delegate the

responsibility for management and supervision of such work to the Board, the ACC or to a manager or agent hired by the Board for the purpose of such management and supervision. Expenses for such work shall be paid by the Association for the benefit of all Lot Owners and shall be referred to as Common Expenses. The Common Expenses shall be paid by the Association from funds collected from assessments paid by Lot Owners. The Common Expenses shall include, but shall not be limited to, the following:

1. The real property taxes levied upon the Association for the Common Areas;
2. The cost of maintaining all required insurance coverage and fidelity bonds on any Common Areas, and for directors and officers of the Association and the ACC;
3. The cost of maintaining, repairing and replacing all Common Area improvements, including, but not limited to, signs, lights, fences, walls, play structures, benches, picnic tables, open space tracts, mail boxes, plantings and landscaping (if not maintained by Snohomish County or abutting property owner), and drainage and irrigation systems, monuments;
4. The cost of maintaining landscaped entries, street borders, parking strips or pedestrian trails in which the Association holds an easement or tract ownership;
5. The cost of maintaining repairing and replacing street lights (if not maintained by applicable governmental jurisdictions);
6. Any other expense which shall be designated as a Common Expense on the face of the final Plat, in the Declaration, in its Exhibits, or from time to time by the Association.

#### ARTICLE EIGHT: Assessments

Section One: Initial Contribution, Annual Assessments. Each Lot owner, at the time of purchase of his or her Lot, shall make a start-up contribution to the Association in the amount of **\$300.00**. At the time of the Incorporation of the Association there are no annual assessments. Annual assessments may be assessed by the board following the procedure set forth in Section Three of this article. The Developer shall be exempt from the initial contribution during the Development Period.

Section Two: Types of Assessments. Each Lot shall be subject to monthly or annual assessments or charges, and certain special assessments, in an amount to be determined by the Board of Directors of the Association.

Section Three: Determination of Amount. The Board of Directors of the Association shall determine the amount of assessments necessary to pay Common Expenses. The amount of assessments may be increased or decreased periodically as may be necessary to provide for payment of the Common Expenses. The amount of such assessments shall be equal for all Lots.

There shall be no assessment for Lots owned by Developer, without the consent of the Developer. The Association may create and maintain from assessments a reserve fund for maintenance, repair and/or replacement of those Common Area improvements that can reasonably be expected to require maintenance, repair and/or replacement. Written notice of all assessments shall be given to each Owner. If the Board fails to fix an assessment for a fiscal year, the assessment shall be automatically continued at the sum previously set by the Board, plus increases in the Consumer Price Index applicable to the City of Everett, All Items, until such time as the Board acts.

Section Four: Certificate of Payment. The Treasurer of the Association shall, upon written demand, furnish a certificate in writing setting forth whether the assessment on a specified Lot has been paid. A reasonable charge may be made for the issuance of the certificate. Such certificate shall be conclusive evidence of payment of any assessment stated to have been paid.

Section Five: Special Assessments. In addition to the assessments authorized above, the Association, by its Board of Directors may levy, in any year, a special assessment applicable to that year only, for the purpose of defraying the cost of any construction or reconstruction, unexpected repair or replacement of facilities in the Common Areas. However, the Developer shall not be obligated to pay any special assessments on Lots owned by the Developer. Assessments may be made based upon the estimated cost of such work, prior to the work's commencement, provided such estimate has been provided by a contractor retained by the Board for the purpose of such estimate. All special assessments for construction of new facilities or acquisition of new equipment, which is not for the upgrade, repair or replacement of existing construction or equipment, shall require approval of a vote of two-thirds of the Members at any meeting at which a quorum is present.

Section Six: Assessments - Additional Real Property. At such time as additional Lots are subject to the Declaration, they shall also become subject to assessment. Provided, however, that during and after the Development Period, the Developer shall be exempt from such assessments on any Lots owned by Developer until sale or transfer of said Lot to a person who will occupy it as a residence. The assessment may be adjusted to reflect the total Lots obligated to contribute to the Association budget.

Section Seven: Fines Treated as Special Assessments. Any fines levied by the Association pursuant to RCW Chapter 64.38 (or successor statute authorizing the imposition of fines) shall be treated as a special assessment of the Owner fined, and may be collected by the Association in the manner described in Article Nine.

#### ARTICLE NINE: Collection of Assessments

Section One: Lien - Personal Obligation. All assessments, together with interest and the cost of collection shall be a continuing lien upon the Lot against which each such assessment is made. The lien shall have all the incidents of a mortgage on real property. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the assessment was due. No Owner may waive or otherwise avoid liability for assessments by non-use of the Common Areas or abandonment of the Lot.



Section Two: Delinquency. If any assessment is not paid within thirty (30) days after its due date, the assessment shall bear interest from said date at twelve percent (12%) per annum, or, in the event that twelve percent (12%) exceeds the maximum amount of interest that can be charged by law, then the highest permissible rate as provided for by law. A late charge of five percent (5%) of the amount overdue shall be charged for any payment more than ten (10) days past due. The assessment shall also be subject to any attorneys' fees and costs incurred in the collection of the assessment, whether or not a lawsuit, arbitration or other action shall be commenced. Each Member hereby expressly grants to the Association, or its agents, the authority to bring all actions against each Member personally for the collection of such assessments as a debt and to enforce lien rights of the Association by all methods for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage of real property, and such Member hereby expressly grants to the Association the power of sale in connection with such liens. The liens provided for in this section shall be in favor of the Association, and shall be for the benefit of the Association. The Association shall have the power to bid at a foreclosure sale and to acquire, hold, lease, mortgage and convey any Lot obtained by the Association.

Section Three: Suspension of Voting Rights. In the event any Member shall be in arrears in the payment of the assessments due or shall be in default of the performance of any of the terms of the Articles and Bylaws of the Association, the rules or regulations adopted by the Association, or the Declaration for a period of thirty (30) days, the Member's right to vote shall be suspended and shall remain suspended until all payments, together with interest, late fees, and attorneys' fees and costs, if any, are brought current and all defaults remedied. In addition, the Association shall have such other remedies against such delinquent Members as may be provided in the Articles, Bylaws Declaration or Washington state law.

Section Four: Commencement of Assessments. The assessments may commence as to each Lot (except Lots owned by the Developer) upon the initial conveyance of the Lot. The first assessment on any Lot shall be adjusted according to the number of days remaining in the month. At the time of each initial sale, the Developer may collect from each Purchaser an amount equal to one year's assessment for the Association, to be placed in the Association's account. Any interest earned by the Association on assessments held by it shall be to the benefit of the Association.

Section Five: Enforcement of Assessments. The Board may take such action as is necessary, including the institution of legal proceedings, to enforce the provisions of this Article. In the event the Board begins an action to enforce any such rights, the prevailing party shall be entitled to its attorney's fees, costs and expenses incurred in the course of such enforcement action as provided in Article Seventeen, Section Five.

#### ARTICLE TEN: Building, Use and Architectural Restrictions; Waiver of Protest

Section One: Development Period. The Developer hereby reserves the right to exercise any and all powers and controls herein given to the Board of Directors, the ACC or its authorized representative in this Article or the Declaration, during the Development Period. This reserved

right shall automatically terminate at the end of the Development Period, or when the reserved right is relinquished to the Board of Directors or the ACC of the Association.

Section Two: Authority of ACC After Development Period. At the expiration of the Development Period the ACC shall have the authority and obligation to manage and administer the review of building plans, specifications and plot plans and such other submissions as described in Article Ten, Section Five herein, and to enforce these covenants, conditions and restrictions. Such authority shall include all authority provided for the ACC in the Association's Articles, Bylaws, Rules and Regulations, as initially adopted, or as amended, and all the authority granted to the ACC by this Declaration. *Provided, however,* that the Developer shall be entitled to exercise the architectural control described in Article Ten, Sections 1, 3 and 19 as to any Lot in the Additional Real Property during and after the Development Period until said Lot has been sold or transferred to a Person who will occupy it as a residence.

Section Three: Delegation of Authority of ACC. The ACC or the Developer may delegate any of its duties, powers, or functions described in this Article to any person, firm, or corporation.

Section Four: Appointment of ACC. The Board shall appoint the members of the ACC. There shall be three members of the ACC, chosen in the manner described in the Articles and Bylaws of the Association. If the Board fails to appoint the members of the ACC, or the members of the ACC resign and no replacements assume the office, the Board shall act as the ACC until members of the ACC are appointed and take office.

Section Five: Approval by ACC Required. Except as to construction, alteration, or improvements performed by the Developer, no construction activity of any type, including clearing and grading, cutting or transplanting of significant natural vegetation, may begin on a Lot or Common Area and no building, structure, fence or other improvement shall be erected, placed or altered on any Lot or Common Area until, at a minimum, the building plans, specifications, plot plans, and landscape plan showing the nature, kind, shape, height, materials, exterior color and location of such building, structure or other improvements have been submitted and approved in writing by the ACC or its authorized representative as to harmony of exterior design and location in relation to and its effect upon surrounding structures and topography. Further, no fences, hedges or walls shall be erected or altered and no significant exterior changes shall be made to any building including, but not limited to, exterior color changes, additions or alterations until such written approval shall have been obtained.

1. Time Limits. If the ACC or its authorized representative shall fail to notify the Owner of its action for a period of thirty (30) days following the date of the submission of the required information to the ACC, or its authorized representative, the Owner may proceed with the proposed work notwithstanding the lack of written approval by the ACC or its authorized representative. The required information shall be considered submitted to the ACC upon personal delivery of a complete set of all required information to the person designated to receive such items by the ACC, or by mail three days after deposit in the U.S. Mail, postage prepaid, certified, return receipt requested, to the ACC in care of the Board of Directors of the Association at the address designated in the most recent notice of assessment

issued by the Board, or at such other address as is designated by the Board by written notice to the Members.

2. Guidelines. The ACC may adopt and amend, subject to approval by the Board, written guidelines to be applied in its review of plans and specifications, in order to further the intent and purpose of this Declaration and any other covenants or restrictions covering Real Property. If such guidelines are adopted, they shall be available to all interested parties upon request.
3. Meetings. The ACC shall meet as is necessary to review any plans or specifications provided pursuant to this Section, and shall keep and maintain a record of all actions taken at meetings or otherwise.
4. No Waiver. Approval by the ACC of any plans, drawings Of Specifications Shall not be a waiver of the right to withhold approval of any similar plan, drawing, specification or matter submitted for approval.
5. Consultation. The ACC may retain and consult persons or entities to assist in the evaluation of plans submitted to the Board for review.
6. Appeals. After the Development Period, the Board shall serve as an appellate panel to review decisions of the ACC upon request of a party aggrieved by the ACC's decision. The Board shall provide, through rules and regulations, a procedure by which decisions of the ACC may be appealed to the Board. The Board may choose, in its discretion, to limit the scope of such appeals and provide time limitations for appeals to be made to the Board.
7. Enforcement. The ACC may recommend and request that the Board initiate legal proceedings to enforce the terms of these covenants or orders of the ACC. Legal proceedings may only be instituted, however, after approval of the Board.
8. No Liability. The ACC, its agents and consultants shall not be liable to the Association, its members, to any Owner or to any other person for any damage, loss or prejudice resulting from any action or failure to act on a matter submitted to the ACC for determination, or for failure of the ACC to approve any matter submitted to the ACC. The ACC shall not be liable for any damage, loss or prejudice resulting from any action by a person who is delegated a duty, power or function by the ACC.
9. Fees. The ACC may charge a fee for the review of any matter submitted to it. Any fee schedule adopted by the ACC must be approved by the Board.

Section Six: Temporary Structures Prohibited. No basement, tent, shack, garage, barn or other outbuilding or buildings or any structure of a temporary or moveable character erected or placed on the Properties shall at any time be used as living quarters except as specifically authorized by the ACC.

Section Seven: Nuisances. No noxious or undesirable thing, activity or use of any Lot in the Properties shall be permitted or maintained. If the ACC shall determine that a thing or use of property is undesirable or noxious, such determination shall be conclusive. The ACC may recommend and the Board may direct that steps be taken as is reasonably necessary, including the institution of legal action or the imposition of fines in the manner authorized by RCW Chapter 64.38, to abate any activity, remove anything or terminate any use of property which is determined by the ACC or described in this Declaration to constitute a nuisance.

Section Eight: Limitation on Animals. No animal, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except cats, dogs, birds or fish may be kept if they are not kept, bred or maintained for any commercial purpose, and they shall not be kept in numbers or under conditions reasonably objectionable in a closely built-up residential community. Animals shall not be allowed to roam loose outside the limits of any Lot on which they are kept. Any dogs must be kept so as to minimize excessive noise from barking or otherwise shall be considered a nuisance according to the terms of this Declaration.

Section Nine: Limitation on Signs. No sign of any kind shall be displayed to public view on any Lot, except one sign, not to exceed 24 inches by 24 inches, advertising the Lot (where posted) for sale or rent by the Owner, or the Owner's agent. In addition to other rights reserved to the Developer in the Declaration, the Developer hereby reserves for itself so long as it owns any Lot, the right to maintain upon the property such signs as in the opinion of the Developer are required, convenient or incidental to the merchandising and sale of the Lots. All other signs except as described above shall only be displayed to public view after written approval of the ACC, its authorized representative, or the Developer.

Section Ten: Completion of Construction Projects. The work of construction of all building and structures shall be pursued diligently and continuously from commencement of construction until the structures are fully completed and painted. All structures shall be completed as to external appearance, including finish painting, within eight months of the date of commencement of construction, except such construction as is performed by the Developer, which shall be exempt from the limitations contained in this Section. Front yard landscaping must be completed within 90 days of completion of a Housing Unit, and rear yard landscaping must be completed within one year of completion of a Housing Unit. Except with the approval of the ACC, no person shall reside on the premises of any Lot until such time as the improvements to be erected thereon in accordance with the plans and specifications approved by the Board have been completed.

Section Eleven: Unsightly Conditions. No unsightly conditions shall be permitted to exist on any Lot. Unsightly conditions shall include, without limitation, laundry hanging or exposed in view for drying, litter, trash, junk or other debris; inappropriate, broken or damaged furniture or plants; non-decorative gear, equipment, cans, bottles, ladders, trash barrels and other such items; and no awnings, air conditioning units, heat pumps or other projections shall be placed on the exterior walls of any Housing Unit unless prior written approval shall have been obtained from the ACC.

Section Twelve: Antennas. Satellite Reception. Satellite dishes of no more than one meter in diameter or diagonal measurement are permitted on the Properties without ACC approval. Except as provided above, no radio or television antenna or transmitting tower or

satellite dish shall be erected on the exterior of any home without approval of the ACC obtained pursuant to Article Ten, Section Five, and a showing by the Owner that such installation will be visually shielded from most of the view of the residents traveling upon streets located on the Properties.

Section Thirteen: Setbacks. No building shall be located on any Lot nearer to the front lot line or nearer to the side street than the minimum building setback lines adopted by the governmental authority with jurisdiction over the Properties.

Section Fourteen: Roofs. Roofs on all buildings must be finished with materials approved for use by the ACC or its authorized representatives. More than one type of material may be approved.

Section Fifteen: Fences, Walls. In order to preserve the aesthetics of the Properties, no fence, wall or hedge shall be erected or placed on any Lot unless prior written approval has been obtained from the ACC. The design and color of any fence on the Properties, whether visible to the other Lots or not, shall be constructed and finished according to the standard fence detail, as such detail is initially designated by the Developer during the Development Period, and continued or modified by the ACC after the Development Period. If a standard fence detail is attached to this Declaration, such fence detail and any required color for a fence may be modified by the Developer or by amendment of this Declaration

Section Sixteen: Residential Use Only; Home Businesses Limited. Except for Developer's temporary sales, construction offices and model homes, no Lot shall be used for other than one detached single-family dwelling with driveway parking for not more than three cars. A trade, craft business, commercial or business or commercial activity ("Home Business") may be conducted or carried on within any building located on a Lot, provided that any goods, materials or supplies used in connection with any trade, service or business, wherever the same may be conducted, be kept or stored inside any building on any Lot and that they not be visible from the exterior of the home; nor shall any goods, used for private purposes and not for trade or business be kept or stored outside any building on any Lot. The provisions of this Section shall permit such Home Businesses to the extent permitted by applicable zoning laws and other government laws, regulations, rules and ordinances. Nothing in this Section shall permit (1) the use of a Lot for a purpose which violates law, regulations, rules or applicable zoning codes, or (2) Home Business activities that cause a significant increase in neighborhood traffic, or (3) modification of the exterior of the home. The Association may, from time to time, promulgate rules restricting the activities of Home Businesses located on the Properties pursuant to the authority granted to the Association under this Declaration, the Bylaws, and RCW Chapter 64.38.

Section Seventeen: Underground Utilities Required. Except for any facilities or equipment provided by the Developer or any utility, all electrical service, telephone lines and other outdoor utility lines shall be placed underground.

Section Eighteen: Additional Restrictions (Minimum Floor Area). The floor area of the main house structure, excluding open porches and garages shall not be less than: (1) 1400 square feet for a dwelling containing a single level; and (2) 1500 square feet for a dwelling containing two levels.

Section Nineteen: Enforcement. The Association, or the Developer during the Development Period, may, but is not required to, take any action to enforce the provisions of the Declaration available to it under law, including but not limited to imposition of fines as authorized by RCW Chapter 64.38, specific performance, injunctive relief, and damages. Any Member may also enforce the terms of this Article (although a Member may not impose a fine as authorized by RCW Chapter 64.38), but the Member must first obtain an order from a court of competent jurisdiction entitling the Member to relief. In the event that a Member takes action to enforce the terms of this Article, the Association shall not be in any way obligated to join in such action, or pay any of the attorney's fees, costs and expenses incurred in such action.

Section Twenty: Subdivision. No further subdivision of any Lot without resubmitting for formal plat procedure is allowed. The sale or lease of less than a whole Lot in the Subdivision is expressly prohibited except in compliance with Title 30.41 A of the Snohomish County Code.

Section Twenty-One. Sales and Construction Facilities. Notwithstanding any other provision in this Declaration to the contrary, it is expressly permissible during the Development Period for the Developer, and its agents, employees or nominees, to maintain on any portion of the Properties owned by the Developer or on the Common Areas such facilities as the Developer may reasonably feel are required, convenient or incidental to the construction and/or sales of Lots or improvements thereon. The Developer may permit, in writing, an individual Owner to maintain temporary equipment and construction material on the Owner's Lot when the Developer feels the same is reasonably required, convenient or incidental to construction activities for improvement on said Lot. It shall also be permissible during and after the Development Period for the Developer, and its agents, employees or nominees, to maintain on any portion of the Additional Real Property owned by the Developer or on the Common Areas such facilities as the Developer may reasonably feel are required, convenient or incidental to the construction and/or sales of Lots or improvements thereon.

Section Twenty-Two. Drainage Waters. Following original grading of the roads and ways of Shaunessy, no drainage waters on any Lot or Lots shall be diverted or blocked from their natural course so as to discharge upon any public road rights-of-way. The Owner of any Lot or Lots, prior to making any alteration in the drainage system, must make application to and receive approval from the Director of Public Works for said application. Any enclosing of drainage waters in culverts or drains or rerouting thereof across any Lot as may be undertaken by or for the Owner of any Lot shall be done by and at the expense of such Owner.

Section Twenty-Three. NGPA Restrictions and Maintenance. All areas designated as Native Growth Protection Area or NGPA shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur within these areas, except the activities set forth in SCC 32.10.110(29)(A), (C) and (D) (or any successor statute or code) are allowed when approved by Snohomish County. Some activities that may be permitted are: (1) underground utility lines and drainage discharge swales may cross such areas utilizing the shortest alignment possible if and only if no feasible alignment is available which would avoid such a crossing; (2) fences, when the NGPA and its buffer are not detrimentally affected; and (3) removal of hazardous vegetation by the property owner. No adjustment to the boundary of any such area shall occur unless first approved through

the formal replat process. The Association shall be responsible for operating, maintaining and restoring the condition of the NGPA in the event any unauthorized disturbance occurs.

Section Twenty-Four. Mailboxes. The mailbox and mailbox shelters' maintenance, repair, or replacement shall be the responsibility of the Association. The mailboxes and mailbox shelters may not be moved or physically altered without approval of the Architectural Control Committee, the U.S. Postal Service and Snohomish County.

Section Twenty-Five. Deviation During the Development Period. Developer hereby reserves the right during the Development Period to enter into an agreement with the Owner or grantee of any Lot or Lots (without the consent of the Owner of any other Lot) to deviate from the conditions, restrictions, limitations or agreements contained in this Declaration. Any deviation shall be manifested in an agreement in writing and shall not constitute a waiver of any such condition, restriction, limitation, or agreement as to the remaining Lots in the Subdivision and the same shall remain fully enforceable as to all other Lots located in the Subdivision.

Section Twenty-Six: Limitation on Storage of Vehicles - Temporary Permits for RVs. Except as hereinafter expressly provided, the Lots, Common Areas and/or streets located on the Properties shall not be used for the storage and/or overnight parking of any vehicle other than private family automobiles, trucks, motorcycles and commercial vehicles operated by a person residing at the Lot (provided that such commercial vehicles contain a single rear axle). Boats, boat trailers, house trailers, campers, trucks, trucks with a camper, or other recreational vehicles or similar object may not be stored and/or parked overnight on any part of the Properties, except as specified herein. No inoperable vehicles of any kind shall be parked, stored, maintained, or constructed on any Lot or street unless stored in a garage. Notwithstanding the foregoing, Lot Owners who have guests visiting them intending to stay in a camper, trailer, or other form of recreational vehicle, may secure written permission from the ACC for guests to park a vehicle upon the Lot or the public street adjacent to a Lot for a period of up to 72 hours, and not to exceed two weeks in any calendar year. The privilege shall only exist, however, after the written permission has been obtained from the ACC or its authorized representative. A Lot Owner that stores a recreation vehicle off-site may park the vehicle on the driveway, other unscreened area or on the street for 48 hours for the purpose of preparing for departure or upon return, to facilitate preparation and return from travel.

Section Twenty-Seven. Access Restrictions. Direct access to 41<sup>st</sup> St. S.E. from Lot 1, and direct access to 156<sup>th</sup> Street from Lot 148, is prohibited. All Lots in Shaunessy Phase 2 are to take access from internal plat roads.

Section Twenty-Eight. Waiver of Right to Protest. To the maximum extent allowed by law, the Association, Board of Directors, ACC and each Lot Owner, by accepting title to his or her Lot, expressly waive any right to protest, appeal or otherwise contest any application by the Developer or Declarant with respect to development of Adjacent Real Property.

## ARTICLE ELEVEN: Easements

Section One: Easement for Encroachments. Each Lot is, and the Common Areas are, subject to an easement for encroachments created by construction settlement and overhangs as designed or constructed by the Developer, and to a valid easement for encroachments and for maintenance of the same as long as the improvements remain.

Section Two: Easements on Exterior Lot Lines. In addition to easements reserved on any Plat of the Properties or shown by instrument of record, easements for private storm drainage are reserved for the Developer or its assigns, over a 2.5-foot wide strip along each side of the interior Lot lines, and five feet over the rear and front of each Lot, and over, under, and on the Common Areas. Within all of the easements, no structure, planting or fill material shall be placed or permitted to remain which may, in the opinion of the Board or ACC, damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through drainage channels and the easements. The easement area of each Lot and all improvements within it shall share equally in these drainage facilities, except those improvements for which a public authority, utility company or the Association is responsible.

Section Three: Association's Easement of Access. The Association, the ACC, and its agents shall have an easement for access to each Lot and to the exterior of any building located thereon during reasonable hours as may be necessary for the following purposes: (a) cleaning, maintenance, or repair of any home or Lot as provided in Article Seven, Section Three of this Declaration; (b) repair, replacement or improvement of any Common Area accessible from that Lot; (c) emergency repairs necessary to prevent damage to the Common Areas or to another Lot, or to the improvements thereon; (d) cleaning, maintenance, repair or restoration work which the Owner is required to do but has failed or refused to do; and (e) all acts necessary to enforce this Declaration.

Section Four: Easement for Developer. Developer shall have an easement across all Common Areas for ingress, egress, storage and placement of equipment and materials, and other actions necessary or related to the development or maintenance of the Real Property.

Section Five. Easements and Restrictions on Final Plat. Easements and restrictions set forth in the recorded final Plat map or notes are incorporated herein and hereby reserved on each Lot and/or the Common Areas. Within those easements, no structure, planting or fill material shall be placed or permitted to remain which may, in the opinion of the Board or ACC, damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through drainage channels and the easements; without limiting the generality of the foregoing; Lots 79 and 152 are subject to a maintenance easement in favor of Snohomish County to allow access for wall maintenance and repair.

The maintenance, repair, and/or reconstruction of that portion of the drainage facility benefiting any Owner(s) shall be borne equally by such Owner(s) having the benefit of use. Provided, however, that no Owner shall be responsible for the maintenance, repair, and/or reconstruction of that portion of the commonly used storm sewer located upstream from the point of connection of that respective Owner. No Owner shall construct or locate any structure or portion thereof within the utilities easement areas, and no Owner shall relocate, remove or disturb any utility within the



utilities easement, including any utility box, without the written approval of the Architectural Control Committee and the current holder(s) of the utilities easement. Any easement entered upon for the purposes stated above shall be restored as near as possible to its original condition by the individual or entity entering said easement.

## ARTICLE TWELVE: Mortgagee Protection

Section One: Mortgagees. Notwithstanding and prevailing over any other provisions of the Declaration, the Association's Articles of Incorporation or Bylaws, or any rules, regulations or management agreements, the following provisions shall apply to and benefit each Institutional First Mortgagee ("Mortgagee") which holds a Mortgage given for the purpose of obtaining funds for the construction or purchase of a Housing Unit on any Lot or the improvement of any Lot.

Section Two: Liability Limited. The Mortgagee entitled to the protection hereof shall not in any case or manner be personally liable for the payment of any assessment or charge, nor for the observance or performance of any covenant, restriction, regulation, rule, Association Article of Incorporation or Bylaw, or management agreement, except for those matters which are enforceable by injunctive or other equitable relief, not requiring the payment of money, except as hereinafter provided.

Section Three: Mortgagee's Rights During Foreclosure. During the pendency of any proceeding to foreclose the Mortgage, the Mortgagee or the receiver, if any, may exercise any or all of the rights and privileges of the Owner of the mortgaged Lot, including but not limited to the right to vote as a Member of the Association to the exclusion of the Owner's exercise of such rights and privileges.

Section Four: Acquisition of Lot by Mortgagee. At such time as the Mortgagee shall become entitled to possession of the Lot, the Mortgagee shall be subject to all of the terms and conditions of the Declaration, and the Articles, Bylaws, rules and regulations of the Association, including but not limited to the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any Owner; provided, however, the Mortgagee shall acquire the title to said Lot free and clear of any lien authorized by or arising out of any provisions of the Declaration which secure the payment of any assessment for charges accrued prior to the date the Mortgagee became entitled to possession of the Lot.

Section Five: Reallocation of Unpaid Assessment. If it is deemed necessary by the Association, any unpaid assessment against a Housing Unit foreclosed against may be treated as a common expense of other Lots. Any such unpaid assessment shall continue to exist as a personal obligation of the defaulting Owner of the respective Lot to the Association.

Section Six: Subordination. The liens for assessments provided for in this instrument shall be subordinate to the lien of any Mortgage, or other security interest placed upon a Lot or Housing Unit as a construction loan security interest or as a purchase price security interest, and the Association will, upon demand, execute a written subordination document to confirm the particular superior security interest.

Section Seven: Mortgagee's Rights. Any Mortgagee shall have the right on request therefor to: (a) inspect the books and records of the Association during normal business hours; (b) receive an annual audited financial statement of the association within (90) days following the end of any fiscal year; and (c) receive written notice of all meetings of the Association and designate a representative to attend all such meeting.

Section Eight: Limitation on Abandonment of Common Areas. The Association shall not, without the prior written approval of sixty-seven percent (67%) of the Mortgagees, seek to abandon the Common Areas for reasons other than substantial destruction or condemnation of the property.

Section Nine: Notice. If such notice has been requested in writing, Mortgagees shall be entitled to timely written notice of: (a) substantial damage or destruction of any Housing Unit or any part of the Common Areas or facilities; (b) any condemnation or eminent domain proceedings involving any Housing Units or any portion of Common Areas or facilities; (c) any default under this Declaration or the Articles, Bylaws or rules and regulations of the Association by an Owner of any Housing Unit on which it holds the mortgage which is not cured within thirty (30) days; (d) any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Housing Unit on which it holds the mortgage; (e) ten (10) days' prior written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (f) any proposed action that requires the consent of a specific percentage of Mortgagees.

#### ARTICLE THIRTEEN: Management Contracts

Each Member hereby agrees that the Association and the ACC may enter into agreements for the performance of any or all of the functions of the Association and the ACC with such persons or entities as the Association deems appropriate; however, any agreement for professional management of the Properties, or any other contract providing for services by the Developer must provide for termination by either party without cause after reasonable notice.

#### ARTICLE FOURTEEN: Insurance

Section One: Coverage. The Association may purchase as a Common Area Expense and shall have authority to and may obtain insurance for the Common Areas against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement value in the event of damage or destruction. It may also obtain a comprehensive public liability policy covering the Common Areas. The comprehensive public liability coverage shall be in an amount to be determined by the Association. It may also obtain insurance to cover the Board, the ACC, its agents and employees from any action brought against them arising out of actions taken in furtherance of the Association's duties under this Declaration. Following the Development Period, all such insurance coverage shall be written in the name of the Association as trustee for each of the Members of the Association. The Association shall review the adequacy of the Association's insurance coverage at least annually. All policies shall include a standard mortgagee's clause and shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to any and all insured named therein, including Owners and Institutional First Mortgagees that have requested notice.

Section Two: Replacement, Repair After Loss. In the event of the damage or destruction of the Common Areas covered by insurance written in the name of the Association, the Association may, upon receipt of the insurance proceeds, and to the extent of such proceeds contract to rebuild, replace or repair such damaged or destroyed portions of the Common Areas to as good a condition as they were when the loss occurred; provided, however, that the Association's election not to rebuild the Common Areas shall require the approval of two-thirds (2/3) of the Association. The Association may in its sole discretion contract with any contractor for reconstruction or rebuilding of such destroyed portions of the Common Areas.

#### ARTICLE FIFTEEN: Rules and Regulations

The Association and/or its Board of Directors is hereby authorized and empowered to adopt rules and regulations governing the use of the Properties and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof, in the manner described by RCW Chapter 64.38, the Bylaws and any resolutions passed by the Board. All Lot Owners shall be given written notice of the rules and regulations in the manner required by RCW Chapter 64.38.

#### ARTICLE SIXTEEN: Remedies and Waiver

Section One: Remedies Not Limited. The remedies provided herein, including those for collection of any assessment or other charge or claim against any Member, for and on behalf of the Association, the ACC, or Developer, are in addition to, and not in limitation of, any other remedies provided by law.

Section Two: No Waiver. The failure of the Association, the ACC, the Developer or of any of their duly authorized agents or any of the Owners to insist upon the strict performance of or compliance with the Declaration or any of the Articles, Bylaws or rules or regulations of the Association, or to exercise any right or option contained therein, or to serve any notice or to institute any action or summary proceedings, shall not be construed as a waiver or relinquishment of such right for the future, but such right to enforce any of the provisions of the Declaration or of the Articles, Bylaws or rules or regulations of the Association shall continue and remain in full force and effect. No waiver of any provision of the Declaration or of the Articles, Bylaws, rules or regulations of the Association shall be deemed to have been made, either expressly or implied, unless such waiver shall be in writing and signed by the Board of Directors of the Association pursuant to authority contained in a resolution of the Board of Directors.

#### ARTICLE SEVENTEEN: General Provisions

Section One: Singular and Plural. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section Two: Severability. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this Declaration or any

part hereof, all of which are inserted conditionally on their being held valid in law and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained herein should be invalid, this Declaration shall be construed as if such invalid phrase, sentence, clause, paragraph, or section had not been inserted.

Section Three: Duration. These covenants, restrictions, reservations and conditions shall remain in full force and effect for a period of twenty (20) years from the date hereof. Thereafter, they shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked or amended as herein provided.

Section Four: Perpetuities. In the event that any provision of this Declaration violates the rule against perpetuities, such provision shall be construed as being void and of no effect as of twenty-one (21) years after the death of the last surviving incorporator of the Association, or twenty-one (21) years after the death of the last survivor of all of the said incorporators<sup>1</sup> children and grandchildren who shall be living at the time this instrument is executed, whichever is later.

Section Five: Attorney's Fees. Costs and Expenses. In the event the Association or a Member employs an attorney to enforce any provision of the Declaration, the Articles, Bylaws of the Association, or rules and regulations adopted by the Association, the prevailing party in any action for enforcement shall be entitled to the award of reasonable attorney's fees, costs and all expenses incurred in the action, whether determined by judgment, arbitration or settlement.

Section Six: Method of Notice. Any notice required by the Declaration or the Articles or Bylaws of the Association or the rules and regulations adopted by the Association shall be deemed properly given when personally delivered, deposited in the United States mail, postage prepaid, or when transmitted by facsimile.

Section Seven: Enforcement of Declaration. This Declaration may be enforced by the Association, the Developer or the Owner of any Lot. Such enforcement may include the institution of legal proceedings to enforce compliance with or specific performance of any of the covenants or restrictions contained in this Declaration, rules and regulations adopted by the Association, or the provisions of the Articles or Bylaws of the Association.

Section Eight: Successors and Assigns. This Declaration binds and is for the benefit of the heirs, successors and assigns of Declarant, the Developer, the Members and the Owners.

Section Nine: Exhibits. All exhibits referred to in this Declaration are incorporated within it.

#### ARTICLE EIGHTEEN: Amendment and Revocation

Section One: Exclusive Method. This instrument may be amended, and partially or completely revoked only as herein provided or otherwise provided by law.

Section Two: Amendment by Developer. During the Development Period, the Developer may amend this instrument to add Additional Real Property and to comply with the requirements of the Federal National Mortgage Association, Government National Mortgage Association,

Veterans Administration or Federal Home Loan Mortgage Corporation by recording an acknowledged document setting forth specifically the provisions amending this instrument.

Section Three: Voting. This Declaration may be amended at any annual meeting of the Association, or at a special meeting called for such purpose, if sixty-seven percent (67%) or more of the Owners vote for such amendment, or without such meeting if all Owners are notified in writing of such amendment, and if sixty-seven percent (67%) or more of the Owners vote for such amendment by written ballot. This Declaration may be amended during the Development Period by an affirmative vote of fifty-one percent (51%) of the voting power of the Association. In the event that the Declarant has the necessary votes and desires to amend the Declaration during the Development Period, the Declarant may waive any requirements to conduct a membership meeting if and to the extent permissible by law. Notice of any proposed amendment shall be given to all Owners not less than ten (10) days prior to the date of the annual meeting or of any special meeting at which the proposed amendment shall be considered. Notwithstanding any of the foregoing, fifty-one percent (51%) of all Institutional First Mortgagees who have requested notification of amendments must give prior written approval to any material amendment to the Declaration or Bylaws, including any of the following:

1. Voting rights;
2. Assessments, assessment liens and subordination of such liens;
3. Reserves for maintenance, repair and replacement of Common Areas;
4. Insurance or fidelity bonds;
5. Responsibility for maintenance and repair;
6. Contraction of the project or the withdrawal of property from the Properties;
7. The boundaries of any Lot;
8. Leasing of Housing Units other than as set forth herein;
9. Imposition of any restrictions on the right of an Owner to sell or transfer his or her Lot;
10. Any decision by the Association to establish self-management when professional management had been required previously by an Institutional First Mortgagee;
11. Restoration or repair (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration.
12. Any action to terminate the legal status of the Properties after substantial destruction or condemnation occurs; or
13. Any provisions which are for the express benefit of Institutional First Mortgagees.

Section Four: Effective Date. Amendments shall take effect only upon recording with the Recorder or Auditor of the county in which this Declaration is recorded.

Section Five. Protection of Developer. For such time as Developer shall own Lots located in the Properties there shall be no amendments to the Declaration, the Articles of Incorporation, the Bylaws of the Association, or any Rules and Regulations adopted by the Association which:

1. Discriminate or tend to discriminate against the Developer's rights.
2. Change Article One ("Definitions") in a manner which alters the Developer's right or status.
3. Alter the character and rights of membership or the rights of the Developer as set forth in Article Three.
4. Alter its rights as set forth in Article Ten relating to architectural controls.
5. Alter the basis for assessments, or the Developer's exemption from assessments.
6. Alter the number or selection of Directors as established in the Bylaws.
7. Alter the Developer's rights as they appear under this Article.