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RECORDED
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FOR
DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS
EASEMENTS AND RESERVATIONS
OF OAKVIEW HEIGHTS

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COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS AND RESERVATIONS
OF
OAKVIEW HEIGHTS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RESERVATIONS, (this "Declaration") is made by NEW CONCEPT HOMES, INC., a Washington corporation ("Declarant") this 12 day of MAY, 1994.

R E C I T A L S

Declarant is the owner and developer of that certain real property (the "Property") in Pierce County, Washington recorded as the Plat of Oakview Heights and legally described on Exhibit A.

Declarant wishes to subject the Property to this Declaration.

NOW, THEREFORE, Declarant declares that the Property is hereby made subject to, and shall be held, conveyed and occupied subject to the covenants, conditions, restrictions, easements, assessments and liens set forth herein in addition to any set forth on the recorded Plat. The matters set forth herein are for the purpose of enhancing the value and desirability of the Property, and shall be deemed to be covenants running with the land, and shall be binding upon Declarant and all of Declarant's grantees, assigns and successors, until the expiration of this Declaration.

ARTICLE 1. DEFINITIONS

Section 1.1 Words Defined. For the purposes of this Declaration and any amendments hereto, the following terms shall have the following meanings:

"**Architectural Control Committee**" or "**Committee**" shall mean the Architectural Control Committee of Oakview Heights pursuant to Section 3.5.

"**Association**" shall mean the Oakview Heights Homeowners Association described in Article 4 of this Declaration, its successors and assigns.

"**Board**" shall mean the board of directors of the Association as described in Article 5.

"**Common Areas**" are defined in Section 2.1.1.

"**Common Area Improvements**" are defined in Section 2.1.2.

"Construction" and "Constructed" shall mean any construction, reconstruction, installation, erection or alteration of a Structure, except wholly interior alterations to a then existing structure.

"Declarant" shall mean NEW CONCEPT HOMES, INC., a Washington corporation.

"Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, Easements and Reservations of Oakview Heights, as it may from time to time be amended.

"First Mortgage" and "First Mortgagee" shall mean, respectively: (a) a recorded Mortgage on a Lot that has legal priority over all other Mortgages thereon; and (b) the holder of a First Mortgage. For purposes of determining the percentage of First Mortgagees approving a proposed decision or course of action in cases where a Mortgagee holds First Mortgages on more than one Lot, such Mortgagee shall be deemed a separate Mortgagee for each such First Mortgage so held.

"Future Easements" is defined in Section 2.1.3.

"Future Improvements" is defined in Section 2.1.4.

"Lot" shall mean any one of the 83 lots numbered 1 through 83 on the Plat of Oakview Heights, as described in the Plat thereof, recorded under Pierce County Auditor's File No. 9405120167 records of Pierce County, Washington.

"Mortgage" shall mean a recorded mortgage or deed of trust that creates a lien against a Lot and shall also mean a real estate contract for the sale of a Lot.

"Mortgagee" shall mean the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a Lot created by a mortgage or deed of trust and, except where specifically excluded, shall also mean the vendor, or the assignee of a vendor, of a real estate contract for the sale of a Lot.

"Mortgage Foreclosure" shall mean a deed of trust sale, a forfeiture of a real estate contract, a judicial foreclosure of a mortgage or deed of trust or a deed given in lieu of any such foreclosure, forfeiture or sale.

"Owner" shall mean the record owner, whether one or more Persons, of fee simple title to a Lot within the Property, including a contract seller (except those having such interest merely for the performance of an obligation). Declarant is the original Owner of all Lots and shall continue to be the Owner thereof except as conveyances changing such ownership as to specific Lots are recorded.

"Owner Occupant" shall mean an Owner who acquires one or more Lots from Declarant or a builder for the purposes of residing in the dwelling thereon or renting or leasing the same.

"Person" shall mean an individual, corporation, partnership, association, personal representative, trustee or other legal entity.

"Plat" shall mean the recorded plat of Oakview Heights and any amendments, corrections or addenda thereto subsequently recorded.

"Property" shall mean the land contained in the Plat of Oakview Heights, described hereinabove.

"Structure" shall mean any building, fence, wall, driveway, walkway, patio, swimming pool or the like.

Section 1.2 Form of Words. The singular form of words shall include the plural and the plural shall include the singular. Masculine, feminine and neuter pronouns shall be used interchangeably.

Section 1.3 Construction. Words used herein shall have their usual and ordinary meaning, except as specifically defined herein or in any other documents recorded with respect to the Plat; provided that words which are not defined herein or in such other recorded documents, shall, if ambiguous, have the meaning given them (if any) in zoning and building regulations, ordinances and regulations of the governmental entity with jurisdiction in the area in which the Property is located.

Section 1.4 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate the intent of this Declaration creating a uniform plan for the development and operation of Oakview Heights.

ARTICLE 2. COMMON AREAS, IMPROVEMENTS AND EASEMENTS

Section 2.1 Common Areas and Common Area Improvements.

2.1.1 "Common Areas" shall mean and include all of the roadways and sidewalks as depicted in the Plat and to be conveyed and transferred to the Association as described in Section 2.2 below; and any and all areas reserved for easements benefiting the Association and/or all of the Owners, as set forth, described or depicted in the Plat or otherwise reserved by Declarant, including without limitation, entryway monument and landscaping easements, access easements, storm water retention and detention system easements, drainage channel easements and any and all other utilities easements; and the off-site ingress, egress, sight distance, slope, entryway landscaping and utility easement areas described in the Easement Agreements recorded under Pierce County Auditor's File Numbers 9207300523, and 9207300524.

2.1.2 "Common Area Improvements" shall mean and include all improvements and facilities installed upon any of the Common Areas, including without limitation, storm water retention and detention systems, drainage channels, signs, street lighting, landscaping, jogging or other paths, tennis courts, sprinkler systems, playground equipment and all other amenities.

2.1.3 "Future Easements" shall mean all additional areas over which Declarant may elect to reserve landscaping easements, sign easements or other easements benefiting all of the Owners as Declarant deems appropriate.

2.1.4 "Future Improvements" shall mean those improvements which may hereafter be installed upon "Future Easement" areas.

2.1.5 "Future Easements and the Future Improvements" shall: (1) be described as to location and purpose in either the Final Plat Certificate or another recorded instrument executed by Declarant which refers to this Section 2.1; (2) be for the benefit of the Association and all Owners; and (3) be deemed part of the Common Areas and Common Area Improvements upon the recording of such Final Plat Certificate or other recorded instrument.

2.1.6 "Use". The Owners of Lots which contain or are burdened by any Common Areas shall not in any manner interfere with the maintenance, use and operation of the Common Areas, but such Owners may use the Common Areas within their respective Lots in any manner that does not so interfere and shall promptly restore such area to a condition as close to its original condition as reasonably practical after making such use.

Section 2.2 Ownership and Control. The Declarant shall convey and quit claim the Common Areas to the Association, and the control and management of the Common Areas shall thereupon vest in the Association. After the conveyance by the Declarant to the Association, title to the Common Areas shall be held by the Association as trustee for the Owners. The Association shall own the Common Areas and manage the same for the common use and enjoyment of the Owners, subject to the rights of any public utilities holding easements to operate and maintain any facilities installed within said easements.

Section 2.3 Owners' Easement of Enjoyment. Every Owner shall have a nonexclusive perpetual right and easement of enjoyment in and to the Common Areas owned by the Association. Such easement shall be appurtenant to and shall be conveyed with the title to or real estate contract purchaser's interest in, every Lot, even though such easement is not expressly mentioned or described in the conveyance or other instrument. Such easement shall be subject to the following:

2.3.1 **Rules.** The right of the Association to adopt rules and regulations governing the Owners' use and enjoyment of the Common Areas;

2.3.2 **Utilities.** The right of the Association, or a public utility, as applicable, to exclusive use and management of the Common Areas and Common Area Improvements that provide or contain utility or drainage lines, facilities or equipment;

2.3.3 **Suspension.** The right of the Association to suspend the voting rights and right of use of the Common Areas by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed one hundred eighty (180) days for any infraction of its published rules and regulations;

2.3.4 **Dedication.** The right of the Association to further dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by sixty percent (60%) of all members of the Association has been recorded;

2.3.5 Miscellaneous. The other restrictions, limitations and reservations contained or provided for in this Declaration and the Articles and Bylaws of the Association.

Section 2.4 Maintenance of Common Areas and Common Area Improvements. Until the Declarant conveys the Common Areas to the Association, the Declarant shall, at its sole cost and expense, maintain and operate the Common Areas and Common Area Improvements. After the Declarant has conveyed the Common Areas to the Association, the Association shall, at its sole cost and expense, maintain and operate the Common Areas and Common Area Improvements, subject to the obligation of the Declarant set forth in Section 6.4.3 below to pay the cost of maintaining the same and subject to the rights of any public utilities holding easements to operate and maintain any facilities installed within said easements.

Notwithstanding the foregoing, all costs and expenses paid by Declarant in connection with the maintenance and operation of the Common Areas and Common Area Improvements shall be reimbursed by the Association to the Declarant from the Initial General Assessments described in Section 6.5 below.

Section 2.5 No Interference. No Owner shall allow or permit any structure or landscaping to be located, installed or grown upon the area subject to the easements for utilities and drainage which might in any way damage or interfere with the installation and operation of utility lines or drainage facilities. Each Owner shall maintain the area of his Lot subject to any easements for utilities or drainage in a condition which will not interfere with the operation and maintenance of utility lines and drainage facilities.

ARTICLE 3. CONSTRUCTION ON LOTS AND USE OF LOTS

Section 3.1 Uniformity of Use and Appearance. The purposes of this Declaration include assurance within the Property of:

- (1) a uniformity of use and quality of workmanship, materials, design, maintenance and location of Structures with respect to topography and finish grade elevation and
- (2) no undue repetition of external designs.

It is in the best interest of each Owner that such uniformity of use be maintained as hereinafter provided. No Structure other than one single family dwelling shall be erected, altered, placed or permitted to remain on any Lot. Accessory Structures including storage buildings are prohibited, except as may be specifically approved by the Architectural Control Committee. Notwithstanding anything herein set forth, the Construction of any Structure shall comply with (1) the terms and conditions of this Declaration and (2) the laws, ordinances and regulations of all governmental entities having jurisdiction over the Property; provided that the most restrictive of any duplicative or inconsistent provisions shall prevail. No Owner, including Declarant and any builder, may commence Construction on any Structure until said Owner has received the Architectural Control Committee's approval of said Structure in accordance with the terms of this Article 3.

Section 3.2 Submission and Approval of Plans.

3.2.1 Submission. Before commencing Construction of any Structure on any Lot, the Owner shall submit to the Architectural Control Committee two (2) complete sets of detailed building, construction and landscaping plans and specifications, and a site plan showing the location of all proposed Structures (the plans, specifications and site plans are collectively referred to herein as the "Plans").

3.2.2 Form. The Plans shall be submitted in a form satisfactory to the Architectural Control Committee, which may withhold its approval of the Plans because of its reasonable dissatisfaction with the location of the Structure on the Lot, anticipated tree cutting required, aesthetic design, exterior color scheme, finish, architecture, height, impact on view from another Lot or Lots, appropriateness of the proposed Structure, materials used therein, or because of its reasonable dissatisfaction with any other matter which, in the reasonable judgment of the Architectural Control Committee, would render the proposed Structure inharmonious with the general plan of development of the Property or other Structures nearby.

3.2.3 Written Action. The Architectural Control Committee's approval or disapproval of Plans shall be in writing. Approval shall be evidenced by written endorsement on such Plans, one copy of which shall be delivered to the Owner of the Lot upon which the Structure is to be Constructed. If the Architectural Control Committee, or its designated representative, fails to approve or disapprove Plans in writing within thirty (30) days of submission of the Plans, then the Plans shall be deemed approved as submitted. No Plans shall be deemed to be submitted until all of the Plans associated with the development of a Lot have been submitted.

3.2.4 No Alteration Without Approval. All Structures Constructed upon a Lot shall be Constructed strictly in accordance with the Plans approved by the Architectural Control Committee. No portion of any Plan shall be altered without the prior written approval of the Architectural Control Committee. No alteration of the exterior appearance of any Structure including, but not limited to, alteration of the color of any Structure, shall be made without the prior written approval of the Architectural Control Committee.

3.2.5 Enforceability. The Architectural Control Committee's review and approval or disapproval of Plans shall be absolute and enforceable in any court of competent jurisdiction. The Architectural Control Committee's approval of any Plans, however, shall not constitute any warranty or representation whatsoever by the Architectural Control Committee or any of its members that such Plans were examined or approved for engineering or structural integrity or sufficiency of compliance with applicable governmental laws, codes, ordinances and regulations. Each Owner hereby releases any and all claims or potential claims against the Architectural Control Committee, each member of the Committee, the Board, each member of the Board, and their heirs, successors and assigns, of any nature whatsoever, based upon engineering or structural integrity or sufficiency of compliance with applicable governmental laws, codes, ordinances and regulations.

Section 3.3 Size and Height Requirements and Restrictions.

3.3.1 Floor Area. The floor area of the main dwelling Structure, exclusive of open porches and garages, shall not be less than:

- (i) 1,000 square feet for a dwelling containing a single level;
- (ii) 1,200 square feet for a multi-level dwelling (i.e. a "tri-level" as that term is used in the construction industry); and
- (iii) 1,200 square feet for a standard two-story dwelling.
- (iv) 1,100 square feet for split-level entry dwelling.

3.3.2 Roofs and Siding. Roofs on all Structures must be finished with PABCO "Weathered Wood" unless another type of roof is specifically approved in writing by the Architectural Control Committee. No flat roof shall be allowed.

The exterior of the dwelling Structure shall be finished with spruce, cedar, brick, stucco, authentic stone siding, OSB LAP, or T-111 siding; provided, however, that T-111 siding will not be allowed in the front of a dwelling Structure.

3.3.3 Garages. Garages are required and may be incorporated in or made a part of the dwelling Structure, or may be detached garages. Single-car garages and carports are specifically prohibited.

Section 3.4 Use Restrictions.

3.4.1 Residential Use. Except as provided below, the Lots are intended for and restricted to use for single family residences only, on an ownership, rental or lease basis, and for social, recreational, or other reasonable activities normally incident to such use. Notwithstanding the above, Declarant and builders may use dwellings owned by them as sales offices and models.

3.4.2 Leases. Any lease or rental agreement between an Owner and a tenant shall provide: (1) that the terms of the tenancy shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association and any rules and regulations established by the Board; and (2) that any failure by the tenant to comply with the terms of such document shall be a default under the lease. All leases or rental agreements shall be in writing.

3.4.3 Maintenance of Structures and Lots. Each Owner shall, at his sole expense, keep the interior and exterior of every Structure on his Lot, and the Lot, in a clean and sanitary condition, free of rodents and pests, and in good order, condition and repair and shall do all redecorating, painting, landscaping, and maintenance at any time necessary to maintain the good appearance and condition of the Structure and the Lot.

3.4.4 Completion of Construction and Landscaping. Any Structure erected or placed on any Lot shall be completed as to external appearance (including finish painting and landscaping) within six (6) months after the date of commencement of Construction. All Lots shall be maintained in a neat and orderly condition during Construction. The landscaping to be completed within the six month time frame is the responsibility of the builder and includes the lawn, rockery, shrubbery, etc. for the entire front and side yards adjacent to the dwelling structure commencing from the rear of the dwelling structure; provided that with respect to a corner lot, the side lot landscaping must commence from the rear lot line of the Lot. As noted in Section 3.2.1 the landscaping plans and specifications must be approved by the Architectural Control Committee.

3.4.5 Parking. No recreation vehicle of any kind including, but not limited to, boats, campers, motor homes, and trailers (whether operable or not) shall be parked, stored, maintained, constructed on any street or on any Lot unless enclosed by a six foot high fence and approved by the Architectural Control Committee.

No trucks in excess of 1 ton, tractors and other such heavy equipment shall not be parked, stored, or maintained on any street or on any Lot without the prior written consent of the Architectural Control Committee.

Further, no cars or other vehicles owned or leased by a resident (i.e., an owner or renter of a Lot and/or a structure located on a Lot) shall be parked, stored or maintained on any street. Street parking for periods not in excess of 24 hours shall be limited to non-commercial vehicles of invitees or guests of residents.

3.4.6 Signs. No sign of any kind shall be displayed to the public view on or from any Lot without the prior written consent of the Board, except for street number, family name, "For Rent" or "For Sale" signs in a form permitted by any rules and regulations of the Architectural Control Committee shall shortly after recording the Plat designate the minimum size of shrubs, trees and other plantings which will be permitted in connection with landscaping of Lots. In the absence of any such rule or regulation, there may only be placed on each Lot one (1) of each of the permitted types of signs. "For Sale" and "For Rent" signs shall not be larger than five (5) square feet. Notwithstanding the above, Declarant and builders may place such signs on Lots as are necessary to meet the requirements of any law, ordinance or government regulation.

3.4.7 Animals. No animals or fowls shall be raised, kept, or permitted on any Lot except domestic dogs, cats, and caged birds kept within the dwelling Structure; provided such dogs, cats and pet birds are not permitted to run at large and are not permitted to be kept, breed, or raised for commercial purposes or in unreasonable numbers. No such household pet which is or becomes an annoyance or nuisance of the neighborhood shall thereafter be kept on any Lot.

3.4.8 Temporary Structures. No out building, basement, tent, shack, garage, trailer or shed or temporary building of any kind shall be used as a residence either temporarily or permanently, except for a construction shack used in connection with the Construction of a dwelling Structure.

3.4.9 Clothes Lines. No washing, rugs, clothing, apparel or any other article shall be hung from the exterior of any Structure or on a Lot so as to be visible from the streets or roadways.

3.4.10 Radio and Television Aerials. Exterior antennas and satellite dishes are strictly prohibited unless prior written approval therefore is obtained from the Architectural Control Committee.

3.4.11 Trash Containers and Debris. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall be kept only in sanitary containers properly screened and shielded from adjacent properties. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No trash, refuse pile, vehicles, underbrush, compost pile or other unsightly growth or objects shall be allowed to group, accumulate or remain on any Lot so as to be a detriment to the neighborhood or become a fire hazard.

3.4.12 Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done therein which may be or become an annoyance or nuisance to other Owners or their tenants.

3.4.13 Setbacks. No Structure shall be located on any Lot nearer to the lot lines then required by the Codes and Ordinances of Pierce County relating to setbacks. Further, a builder must also have specific written approval from the Architectural Control Committee on the placement of a Structure prior to commencing Construction.

3.4.14 Fences. No fence, wall, or hedge shall be erected or placed on any Lot nearer to any street than the minimum building setback line, or the actual dwelling Structure setback lines whichever is further from the street except that nothing shall prevent the erection of a necessary retaining wall, the top of which does not extend more than two feet above the finished grade at the back of said wall. Fences bordering green belt areas shall be erected with the finished side facing the green belt areas. No fencing shall be permitted in the front yard. Fencing adjacent to the side street property line of a corner lot shall be allowed to be built only from the rear lot line to the rear of the dwelling Structure and running substantially parallel to the side street property line of said corner lot. Fences shall be no higher than 6 feet; and the fence design and detail shall be as designated on Exhibit "B" attached hereto, or as may be otherwise approved, in writing, by the Architectural Control Committee. The permitted color(s) for fences shall be as designated by the Architectural Control Committee shortly after recording of the Plat.

3.4.15 Underground Utilities. All utility lines located outside a Structure shall be in conduits attached to such Structure or placed underground.

3.4.16 Damage. Any and all damage to streets, Common Area Improvements, entry structures, fences, landscaping, mailboxes, lights and lighting standards and any other improvements not owned by a Owner which are caused by said Owner or his family, contractors, agents, guests, invitees or service personnel shall be repaired by such Owner within twelve (12) days from the occurrence of such damage.

3.4.17 Water Systems. Private wells and water supply systems are prohibited unless otherwise previously approved, in writing, by the Architectural Control Committee.

3.4.18 Driveways, Walkways and Patios. All exterior walks, and patios shall be concrete unless approval for use of other material is granted by the Architectural Control Committee; and all driveways shall be either concrete or asphalt.

3.4.19 Outside Lighting Fixtures and Lamp Posts. The development and construction of each Lot shall include the following outside light fixtures:

- (i) At least one outside lighting fixture and lamp post to be located within five feet of the driveway and the front property line of the Lot which must be automatically activated by a photoelectric cell; the power for which cannot be switched off and on. It shall be the responsibility of the Owner Occupant of each dwelling Structure to repair and maintain the lamp post and lighting structure including, but not limited to the automatic photoelectric cell operation thereof. To the extent that an Owner Occupant does not so repair and maintain the lamp post and lighting fixture, then such repair and maintenance may be undertaken by the Association; whereupon the Board may make a special assessment against the Lot and Owner as provided in Section 6.4.2 in the amount of the costs expended for the repair or maintenance. The design and specifications for such lighting fixtures and lamp post(s) shall be approved, in writing, by the Architectural Control Committee prior to installation.
- (ii) At least two outside lighting fixtures on the dwelling structure, one to be located at the entry way and one on the attached garage.

Section 3.5 Architectural Control Committee. In addition to being governed by the foregoing provisions of this Declaration, the Oakview Heights Architectural Control Committee shall be governed by the following provisions:

3.5.1 Membership. The Architectural Control Committee shall be composed of three (3) members. The initial members shall be Herbert E. Mull, Fred R. Herber and Clifford J. Mull. In the event any of them is or becomes unable to serve, resigns or is removed, the Declarant shall appoint a replacement. Until such replacement is selected, the other members shall comprise the Committee, with full power to act. The Declarant may remove any or all of the initial members of the Architectural Control Committee or their replacements at any time with or without cause.

3.5.2 Termination of Initial Membership. The initial members of the Committee as described in Section 3.5.1 above or as replaced shall serve until fifteen (15) days after: (1) Declarant has sold and closed ninety-five percent (95%) of the Lots; or (2) that date which is four (4) years from the date this Declaration is recorded, whichever event shall first occur. Following termination of the service of the initial members of the Committee, the Board

shall either select successors to serve for such time as the Board may determine, or shall assume the duties of the Committee and shall thereafter have all of the rights, duties and powers of the Committee. If the Board selects successors, it may remove any or all of them at any time with or without cause, and may appoint replacements for any members who die, become unable to serve, resign or are removed. The Board may assume the duties of the Committee at any time thereafter.

3.5.3 Action by Committee. The Committee may unanimously designate one or more of its members or a third person to act for and on behalf of the Committee with respect to both ministerial matters and the exercise of judgments vested in the Committee, subject to review by the full Committee at the request of any member thereof. In all matters, the decision of the majority of the Committee shall be the decision of the Committee.

ARTICLE 4. OAKVIEW HEIGHTS HOMEOWNERS' ASSOCIATION

Section 4.1 Form of Association. The Oakview Heights Homeowners' Association shall be a Washington nonprofit corporation. The rights and duties of the members and of the Association shall be governed by the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association and such other Rules and Regulations as the Association may hereafter adopt.

Section 4.2 Membership.

4.2.1 Qualification. Each Owner of a Lot shall be a member of the Association and shall be entitled to one membership for each Lot owned; provided that, if a Lot has been sold by real estate contract, the contract purchaser shall be the member in connection with that Lot. Ownership of a Lot shall be the sole qualification for memberships in the Association. Membership rights may be suspended in accordance with the terms of this Declaration, the Articles of Incorporation or the Bylaws of the Association.

4.2.2 Transfer of Membership. The Association membership of each Owner (including Declarant) shall be appurtenant to the Lot(s) giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to the Lot, and then only to the transferee of title to the Lot. Any attempt to make a prohibited transfer shall be void. Transfer of title to a Lot shall operate automatically to transfer the membership in the Association to the new Owner.

Section 4.3 Voting.

4.3.1 Number of Votes. The total voting power of the Association at any given time shall equal the number of Lots included within the Property at that time. The Owner or Owners of each Lot within the Property shall be entitled to one vote. If a Person (including Declarant), owns more than one Lot, he shall have the votes appertaining to each Lot owned.

4.3.2 Voting Representative. There shall be one (1) voting representative for each Lot. Each member shall designate a voting representative for each Lot he owns by giving written notice to the Board of the name of the representative designated. If a member

(including Declarant) owns more than one Lot, he may have one or more voting representatives, and each voting representative may exercise the votes appertaining to one or more of the Lots owned, provided that the voting representative(s) or the voting representatives together may not exercise more votes than the number of Lots owned by the member. Voting representatives need not be Owners.

The designation shall be revocable at any time by actual notice to the Board from the member or by actual notice to the Board of the death or judicially declared incompetence of the member. This power of designation and revocation may be exercised by the guardian of a member and the administrator or executor of a member's estate. Where no designation has been made, or where a designation has been but is revoked and no new designation has been made, the voting representative of each Lot shall be the group composed of all of its Owners.

4.3.3 Joint Owner Disputes. The vote of each Lot shall be cast as a single vote; fractional votes shall not be permitted. If joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If more than one (1) vote is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed to be void.

4.3.4 Pledged Votes. An Owner may, but shall not be obligated to, pledge his vote on all issues or on certain specific issues to a Mortgagee; provided, however, that if an Owner is in default under a First Mortgage on his Lot for ninety (90) consecutive days or more, the Owner's First Mortgagee shall automatically be authorized to declare at any time thereafter that the Owner has pledged his vote to the Mortgagee on all issues arising after such declaration and during the continuance of the default. If the Board has been notified of any such pledge to a Mortgagee, only the vote of the Mortgagee will be recognized on the issues that are subject to the pledge.

Section 4.4 Meetings and Notice of Meetings.

4.4.1 Annual Meetings. There shall be an annual meeting of the members of the Association in the first quarter of each calendar year at such reasonable place and time as may be designated by written notice from the Board delivered to the members no less than thirty (30) and no more than fifty (50) days before the meeting. The financial statement for the preceding fiscal year (if any) and the budget the Board as adopted for the pending fiscal year shall be presented at the annual meeting for the information of the members.

4.4.2 Special Meetings. Special meetings of the members of the Association may be called at any time for the purpose of considering matters which require the approval of all or some of the members (Owners), or for any other reasonable purpose. Such special meetings shall be called by written notice from the President of the Association upon: the decision of the President; his receipt of a request signed by a majority of the Board; or written request of the Owners having at least forty percent (40%) of the total voting power of the Association. Said notice: shall be given to all Owners not less than fourteen (14) and not more than fifty (50) days before the date fixed for the meeting; shall specify the date, time and place of the meeting; and shall include a general statement of the matters to be considered.

Section 4.5 Bylaws. The affairs of the Association shall be administered in accordance with the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association. The Bylaws of the Association shall be adopted by the Declarant or by the Initial Board. The Bylaws shall be deemed to contain provisions identical to those provided in this Declaration and may contain supplementary, not inconsistent, provisions regarding the operation of the Association and the administration of the Common Areas and Common Area Improvements. In the event that any of the provisions of the Bylaws are inconsistent with the terms of this Declaration, the terms of this Declaration shall prevail.

Section 4.6 Books and Records. The Board shall cause to be kept complete, detailed, and accurate books and records of the receipts and expenditures (if any) of the Association, in a form reasonably approved by the Board. The books and records, authorizations for payment of expenditures, and all contracts, documents, papers and other records of the Association shall be available for examination by the Owners, Mortgagees, and the agents or attorneys of either of them, during normal business hours and at any other reasonable time or times.

ARTICLE 5. MANAGEMENT OF THE ASSOCIATION. As used in this Declaration, the term "Board" includes both the Initial Board of Directors and the Permanent Board of Directors established in accordance with Sections 5.1 and 5.2, respectively.

Section 5.1 Initial Board of Directors. The Initial Board of Directors shall be composed of three (3) members appointed by the Declarant. The Initial Board of Directors shall govern the affairs of the Association until fifteen (15) days after: (1) Declarant has sold and closed ninety percent (90%) of the Lots; or (2) that date which is two (2) years from the date this Declaration is recorded; or (3) that date on which Declarant elects to permanently relinquish its authority by written notice to all Owners, whichever date first occurs (hereinafter sometimes referred to as the term of the Initial Board of Directors). The Declarant hereby appoints Herbert E. Mull, Fred R. Herber, and Clifford J. Mull as the members of the Initial Board of Directors. Declarant shall have the right to remove any member hereby appointed at any time with or without cause. If any of the appointed members dies, becomes unable to serve, resigns or is removed during the term of the Initial Board of Directors, the Declarant shall appoint a successor.

Section 5.2 Permanent Board of Directors. The Permanent Board of Directors shall consist of three (3) directors elected by the voting representatives of the members of the Association designated in accordance with Section 4.3.2. The Permanent Board of Directors may be elected at an annual meeting of the members of the Association if said annual meeting occurs on a date which will enable the Permanent Board to be elected before the expiration of the term of the Initial Board of Directors. If not, the Declarant shall call a special meeting of the members of the Association for the purpose of electing the first Permanent Board of Directors before the expiration of the term of the Initial Board of Directors. The term of the directors elected at the meeting shall expire at the first annual meeting of the Association occurring after their election. Commencing at said next occurring annual meeting, and at each annual meeting thereafter, the voting representatives shall elect three (3) directors who shall serve for a term of one (1) year, until the next annual meeting of the Association. Directors may be re-elected.

Section 5.3 **Removal - Vacancies.** Any director serving on the Permanent Board of Directors may be removed from the Board with or without cause by the majority vote of the voting representatives at a special meeting called for that purpose. Any vacancy in the Permanent Board of Directors created or caused by any reason whatsoever, may be filled by an election held at a special meeting of the Association called for that purpose or by the remaining directors if the special meeting of the Association does not occur within sixty (60) days of the occurrence of the vacancy.

Section 5.4 **Action by Board.** A majority of the members of the Board shall constitute a quorum. The Board shall act by majority vote of the directors present at any meeting where a quorum exists. Meetings shall be called, held and conducted in accordance with the Bylaws. The Board may delegate all or any portion of its administrative duties to a manager or officer of the Association.

Section 5.5 **Officers.** The officers of the Association shall be a president, a secretary and a treasurer, who shall be appointed or elected by the Board. The Board may also appoint or elect such other officers as the Board may determine to be appropriate. The term and duties of each officer shall be as specified in the Bylaws. Any officer may be removed at any time, with or without cause, by the Board.

Section 5.6 **Compensation.** The directors and officers of the Association shall serve without compensation.

Section 5.7 **Limitation of Liability.**

5.7.1 **Limitation of Liability.** So long as a member of the Architectural Control Committee, a Board member, an Association officer, an Association member, or Declarant has acted in good faith, without willful or intentional misconduct, upon the basis of such information as is then possessed by such Person, then no such Person shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of such Person; provided that this Section 5.7.1 shall not apply to the extent that the consequences of such act, omission, error, or negligence are covered by any insurance actually obtained by the Board.

5.7.2 **Indemnification.** Each Board member, member of the Architectural Control Committee or Association officer (including Declarant) who act within the limits described in Section 5.7.1, shall be indemnified by the Association to the full extent permitted by law, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of holding or having held such position or any settlement thereof, whether or not he held such position at the time such expenses or liabilities are incurred; except to the extent such expenses and liabilities are covered by insurance; and, except in such cases wherein such Person did not conduct himself in good faith, or he did not reasonably believe his conduct to be in the Association's best interests (in the case of conduct in his own official capacity with the Association), or he did not reasonably believe his conduct to be at least not opposed to the Association's best interests (in cases other than conduct in his own official

capacity with the Association), or (in a criminal proceeding) where he had reasonable cause to believe his conduct to be unlawful; provided that no indemnification shall be made in respect of any proceeding in which such Person shall have been adjudged to be liable to the Association. No indemnification may be made unless authorized in the specific case as provided in RCW 23B.08.510 and RCW 23B.08.570 (as now existing or hereafter amended). Reasonable expenses may be paid or reimbursed in advance of final adjudication upon compliance with the provisions of RCW 23B.08.530 (as now existing or hereafter amended). The Association may purchase and maintain insurance on behalf of any person who is, or was, a director, officer, employee, member of the Architectural Control Committee, or agent, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Section.

Section 5.8 **Authority and Responsibility of the Board.** The Board shall have the following authority, power and duties:

5.8.1 **Adoption of Rules and Regulations.** The Board is empowered to adopt, amend and revoke on behalf of the Association detailed administrative rules and regulations necessary or convenient from time to time to ensure compliance with the general guideline of this Declaration to promote the comfortable use and enjoyment of the Property and to govern the operation and procedures of the Association. The rules and regulations shall be binding upon all Owners, occupants and all other Persons claiming any interest in the Property after a copy has been given to each Owner in the manner prescribed for the giving of notices in Article 14 of this Declaration.

5.8.2 **Enforcement.** Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association and any rules and regulations established by the Board. The Board shall enforce the provisions of this Declaration, the Articles of Incorporation, the Bylaws and the rules and regulations of the Association for the benefit of the Association and the Owners. The failure of any Owner to comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws or the rules and regulations of the Association will give rise to a cause of action in the Association (acting through the Board) and any aggrieved Owner for recovery of damages, or injunctive relief, or both. The failure of the Board in any instance to insist upon strict compliance with this Declaration, the Articles of Incorporation, the Bylaws or the rules and regulations of the Association, or to exercise any right contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment of any right, term, covenant, condition, or restriction contained therein. The receipt by the Board of payment of any assessment from an Owner, with knowledge of any breach by the Owner, shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless expressed in writing and signed by an authorized agent of the Board.

5.8.3 **Goods and Services.** The Board shall acquire and pay for, as common expenses of the Association, all goods and services reasonably necessary or convenient for the efficient and orderly maintenance of all portions of the Common Area and Common Area Improvements not maintained by public utility companies or a governmental entity. The goods and services shall include (by way of illustration and not limitation) utility services for the

Common Areas; policies of insurance; and maintenance, repair, landscaping, gardening, and general upkeep of the Common Areas and Common Area Improvements.

5.8.4 Preservation of Common Area. The Board may spend such funds and take such action as it may from time to time deem necessary to preserve the Common Areas, settle claims, or otherwise act in what it considers to be the best interests of the Association.

5.8.5 Assessments. The Board shall determine the amount of any assessments to be collected from the Owners for the common expenses of the Association, and to establish reserves, and shall collect the assessments and enforce the collection of assessments in accordance with the provisions of this Declaration, the Bylaws and any applicable laws.

5.8.6 Actions. The Board may institute or defend actions at law, in equity or before administrative bodies to further or protect the interests of the Association or the Owners and may incur such expenses (including expenses for legal counsel) as may be reasonable, necessary or convenient to accomplish such purpose.

5.8.7 Other. The Board may exercise all other rights and perform all other duties as are reasonably necessary or incidental to the use, enjoyment, operation, management or administration of the Association, the Common Areas or the Common Area Improvements.

5.8.8 No Business. Nothing contained in this Declaration shall be construed to authorize the Association to conduct a business for profit.

ARTICLE 6. BUDGET AND ASSESSMENT FOR COMMON EXPENSES

Section 6.1 Common Expenses. Common expenses include those expenses incurred by the Association in the operation, management and administration of the Association, the Common Areas and the Common Area Improvements as permitted by the provisions of this Declaration and the Bylaws.

Section 6.2 Fiscal Year. The Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year.

Section 6.3 Budget. Within sixty (60) days before the beginning of each calendar year, or such other fiscal year as the Board may adopt, the Board: shall estimate the charges, including common expenses and any special charges for particular Lots, to be paid during the coming fiscal year; shall make provision for creating, funding and maintaining reasonable reserves for contingencies and operations, as well as maintenance, repair, replacement and acquisition of Common Areas and Common Area Improvements; and shall take into account any expected income and any surplus available from the prior year's operating fund. The Declarant or the Initial Board of Directors may at any suitable time establish the first such estimate and budget.

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Section 6.4 Assessment of Lots.

6.4.1 General Assessments. As soon as the estimate and budget is prepared as set forth in Section 6.3, the Board shall assess each Lot within the Property with its pro rata share, (based upon the number of Lots then within the Property), of such estimated common expenses. The amount of assessment against each Lot shall be equal. The Board, at its election, may require the Owners to pay any amount assessed in equal monthly or quarterly installments or in a single lump sum installment, and unless and until otherwise determined by the Board shall be paid quarterly. If the sum estimated and budgeted and being collected and/or already collected at any time proves excessive, the Board may reduce the amount being assessed and/or apply existing funds (in excess of current needs and required reserves) against future assessments and/or refund such excess funds. Any failure by the Board or the Association to make the budget and assessments hereunder before the expiration of any fiscal year for the ensuing fiscal year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owners from the obligation to pay assessments during that or any subsequent year. The assessment amount and payment method established for the preceding fiscal year (if any) shall continue until a new assessment is established.

6.4.2 Special Assessments. If the sum estimated and budgeted by the Board at any time proves to be inadequate for any reason (including non-payment for any reason of any Owner's assessment), the Board may at any time levy a further assessment against all of the Lots. The Board may at any time make special assessments against particular Lots for any amounts (other than general assessments) owed to the Association by the Owner under the terms of this Declaration or the Articles of Incorporation or Bylaws of the Association.

6.4.3 Payments by Declarant. Until the expiration of the term of the Initial Board of Directors as provided in Section 5.1 above, the Declarant shall maintain the Common Areas and Common Area Improvements, and (subject to Declarant's right to reimbursement from the Initial General Assessments as described in Section 6.5 below) shall pay all costs incident thereto, and all costs of providing the insurance required by this Declaration.

Section 6.5 Initial General Assessment. The Initial General Assessment for each Lot is \$100 per year and shall be deemed to have been made on January 1, 1994. The Initial General Assessment shall be paid by the Owner Occupant to the Association concurrently with the closing of the sale of the Lot and dwelling Structure to the Owner Occupant; provided that said Initial General Assessment shall be prorated as of the date of closing. For example, if the closing of a Lot and dwelling Structure were first made on July 1, 1995, then the Owner Occupant would be required to make a total assessment payment to the Association of \$150 (i.e., the initial general assessment of \$100 for calendar year 1994, and \$50 for calendar year 1995). Notwithstanding the foregoing, in no event will an Owner Occupant be required to pay an Initial General Assessment aggregating more than \$200 per Lot.

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A portion of the Initial General Assessment for each Lot shall be utilized to reimburse the Declarant for the costs and expenses paid by Declarant in connection with the maintenance and operation of the Common Areas and Common Area Improvements as described in Section 2.4 above.

Section 6.6 **Purpose.** The assessments levied by the Board shall be used exclusively to promote the recreation, health, safety and welfare of the Owners, for the improvement and maintenance of the Common Areas and Common Area Improvements to pay the costs of operating the Association and to pay any other costs that the Board is authorized to incur pursuant to the provisions of this Declaration. X

ARTICLE 7. LIEN AND COLLECTION OF ASSESSMENTS.

Section 7.1 **Assessments Are a Lien; Priority.** All unpaid sums assessed by the Association for the share of the common expenses chargeable to any Lot and any sums specifically assessed to any Lot under the authority of this Declaration shall constitute a lien on the Lot and all its appurtenances and improvements from the date the assessment becomes due until fully paid. The amount of the lien shall include all interest and late charges in connection with said unpaid assessment and all costs and expenses, including attorneys' fees, incurred by the Association in the collection of said unpaid assessment. The lien for such unpaid assessments shall be subordinate to tax liens on the Lot in favor of any assessing unit and/or special district, and to all sums unpaid on all First Mortgages of record which were made in good faith and for value, but, to the extent permitted by applicable law, shall have priority over all other liens against the Lot. A First Mortgagee that obtains possession through a Mortgage foreclosure or deed of trust sale, or by taking a deed in lieu of foreclosure or sale, or a purchaser at a foreclosure sale, shall take the Lot free of any claims for the share of common expenses or assessments by the Association chargeable to the Lot which became due before such possession, but will be liable for the common expenses and assessments that accrue after the taking of possession. The Lot's past-due share of common expenses or assessments shall become new common expenses chargeable to all of the Lots, including the Lot foreclosed upon. Notwithstanding any of the foregoing, however, the defaulting Owner or real estate contract purchaser shall continue to be personally liable for past due assessments as provided in Section 7.3. For purposes of this Section, "Mortgage" does not include a real estate contract and "Mortgagee" does not include the vendor or the assignee or designee of a vendor of a real estate contract.

Section 7.2 **Lien May Be Foreclosed.** The lien for delinquent assessments may be foreclosed by suit by the Board, acting on behalf of the Association, in like manner as the foreclosure of a mortgage of real property. The Board, acting on behalf of the Association, shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

Section 7.3 **Assessments Are Personal Obligations.** In addition to constituting a lien on the Lot, all sums assessed by the Association chargeable to any Lot, together with interest, late charges, costs and attorneys' fees in the event of delinquency, shall be the joint and several personal obligations of the Owners and any contract purchaser of the Lot when the assessment is made. In connection with the voluntary transfer of a Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments up to the closing of the transfer, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee therefore. Suit to recover personal judgment for any delinquent assessments shall be maintainable without foreclosing or waiving the liens securing them.

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Section 7.4 **Remedies Cumulative.** The remedies provided herein are cumulative, and the Board may pursue any or all of them, and any other remedies which may be available under law although not expressed herein, either concurrently or in any order.

ARTICLE 8. INSURANCE

Section 8.1 **Liability Insurance.** The Board shall obtain as of the date on which the first Lot is transferred from Declarant or a builder to an Owner Occupant, and shall maintain at all subsequent times, a general comprehensive liability insurance policy insuring the Board, the Association and the directors and officers of the Association against any liability to the public or to the Owners and their invitees or tenants incident to the ownership or use of the Common Area or Common Area Improvements. Said insurance shall be in an amount determined by the Board but shall not be less than \$500,000.00 covering all claims for personal injury or death and/or property damage arising out of a single occurrence.

Section 8.2 **Other Insurance.** At such times as the Board deems appropriate, the Board shall cause the Association to purchase and maintain as a common expense such other insurance as the Board deems advisable.

ARTICLE 9. DAMAGE AND REPAIR OF DAMAGE TO COMMON AREAS

Section 9.1 **Damage by Particular Owner.** Any Owner who causes, or whose family, agents or invitees cause, any damage or destruction to the Common Areas or Common Area Improvements shall pay the full cost of repair or restoration which is not paid by any casualty insurance proceeds. The Owner shall pay the same within ten (10) days after receiving from the Board written demand therefore containing documentation of the amount due. If the Owner fails to pay the same within said ten (10) day period, the Board may make a special assessment against said Lot and Owner as provided in Section 6.4.2 in the amount of the cost of repair or restoration, plus interest thereon at the rate of 12% per annum from the date of the written demand to the date of the assessment, plus any costs or attorneys' fees incurred by the Board in attempting to collect the amount due before making the assessment.

Section 9.2 **Damage Not by Particular Owner.** In the event of any casualty, loss or other damage to the Common Areas or Common Area Improvements not caused by a particular Owner, his family, agents or invitees, if any insurance proceeds available to the Board for restoration or repair are insufficient to pay the full cost of the same, and if the current assessments, in the opinion of the Board, are insufficient to pay the remaining cost thereof, the Board may make a special assessment against each Lot within the Property for its pro rata share of the expense to repair and/or restore the same as provided for in Section 6.4.2.

Section 9.3 **Notice to Owners.** The board shall notify each Owner of any special assessment pursuant to Section 9.2 not less than ten (10) days prior to the date such special assessment or the first installment thereon is due and payable, which notice shall be accompanied by a reasonably detailed statement of the Board's estimate of the expense of repairing and/or restoring the Common Area and/or Common Area Improvements.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Section 9.4 **Damage to Lot Structures.** In the event of damage or destruction to the Structures located upon any Lot, the Owner of said Lot shall repair or restore such damaged or destroyed Structures in a good and workmanlike manner in conformance with the original plans and specifications approved by the Architectural Control Committee. The plans and specifications for said damaged or destroyed Structures may be modified and the Structures may be reconstructed in accordance with said modified plans and specifications if the Owner of said Lot secures the approval of the Architectural Control Committee as provided in Article 3 of this Declaration. If the Owner fails or refuses to commence such repair or restoration within sixty (60) days after such damage or destruction has occurred, the Association, by and through the Board, is hereby authorized to repair or restore the same in a good and workmanlike manner in conformance with the original plans and specifications. The Owner shall repay to the Association the amount actually expended by the Association for such repair or restoration within ten (10) days after receiving written demand therefore. If the Owner fails to pay the full amount due within said ten (10) days, the Board may make a special assessment against the Lot and Owner as provided in Section 6.4.2 in the amount of the costs expended for the repair or restoration, plus interest thereon from the date of the written demand to the date of the assessment, plus any costs or attorneys' fees incurred by the Board in attempting to cause the Owner to make the repair or restoration and/or in attempting to collect the amount due before making the assessment.

ARTICLE 10. RESERVATIONS AND EASEMENTS

Nonexclusive perpetual easements running with the land are hereby reserved on each Lot over, under and across eight (8) foot strips of land parallel and adjacent to the front and rear boundary lines and to the side street boundary lines; and over, under and across two and one-half (2 1/2) foot strips of land adjacent to the side boundary lines (except any side street boundary lines) for construction, installation and maintenance of utilities including, but not limited to: power, telephone, water, sewer, drainage, CATV and gas, together with the right to enter upon each Lot for such purposes. Additionally utility easements are reserved as shown on the Plat and others may also be recorded if required by governmental authorities having jurisdiction. Within such strips no Structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of said utilities, or which may change, obstruct or retard the flow of water through drainage channels. The easement areas and all improvements thereon shall be maintained by the Owner Occupant of the lot, except as to utility service improvements located therein, which are the responsibility of the utility entity owning such improvements. Subject to the foregoing, fencing and landscape plantings are permitted within the easement area.

Said easements are reserved to and for the benefit of the Association, and may be assigned and transferred by the Association to other appropriate persons or entities as deemed reasonably necessary by the Board in connection with the development and maintenance of the Plat and the Construction of dwelling Structures on the Lots.

ARTICLE 11. AMENDMENTS OF DECLARATION

Section 11.1 Amendments by Owners. Any Owner may propose amendments to this Declaration by submitting the proposed amendments to the Board. If a majority of the members of the Board approve of a proposed amendment, it shall cause the proposed amendment to be submitted to the members of the Association for their consideration at their next regular or special meeting. If an amendment is proposed by Owners of twenty (20) or more of the Lots, then, regardless of whether the Board approves of the proposed amendment, it shall be submitted to the members of the Association for their consideration.

11.1.1 Notice of Proposed Amendment. The notice of a meeting at which an amendment is to be considered shall include the entire text of the proposed amendment.

11.1.2 Adoption of Amendments. Except as specifically provided in Sections 11.1.3, 11.2, 11.3, 11.4 and 11.5, amendments may be made to this Declaration by the affirmative vote of sixty percent (60%) of the voting power of the Association at any annual meeting of the Association, any special meeting of the Association called for that purpose, or without a meeting if all Owners have been duly notified and voting representatives representing at least sixty percent (60%) of the members consent in writing to such amendment.

11.1.3 Unanimous Consent for Certain Amendments. The unanimous consent of all Owners shall be required for adoption of either (1) an amendment changing the voting power or portion of assessments appurtenant to each Lot, or (2) an amendment of this Article 11.

Section 11.2 Amendments by Declarant. Until such time as Declarant has sold and closed seventy-five percent (75%) of the Lots. Declarant may amend this Declaration without approval of any Owners, provided that no such amendment may be made which would have the effect of changing the voting power or portion of assessments appurtenant to each Lot or of amending Section 11.1.3.

Section 11.3 Amendments to Conform to Lending Guidelines. In addition, as long as Declarant continues to own one or more Lots, the Declarant, on his sole signature alone, and as an attorney-in-fact for all other Owners, with an irrevocable power coupled with an interest, may record an amendment to the Declaration or make an amendment to the Bylaws as necessary to meet the then requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Veteran's Administration, the Federal Housing Administration, or similar agencies, institutions, or lenders financing, or title insurance companies insuring, the purchase of a Lot.

Section 11.4 Amendments Requiring Veteran's Administration Approval. If the Veteran's Administration is involved in the financing of the purchase of a Lot, amendments to the Declaration by Declarant and amendments of the Bylaws must be approved by the Veteran's Administration.

Section 11.5 **Amendments Requiring First Mortgagees' Approval.** No material amendment to this Declaration or the Bylaws (other than an amendment to conform to lending guidelines as described in Section 11.3) may be made without the prior written approval of seventy-five percent (75%) of all first Mortgagees of Lots; provided that a First Mortgagee who fails to respond within thirty (30) days of a written request to approve an amendment shall be deemed to have approved the Amendment. For the purposes of this Section 11.5 material amendment shall mean an amendment regarding the following subject matters: changes to the allocation of voting power; changes to the portion of assessments appurtenant to each Lot; changes to any provisions relating to First Mortgagees or holders, insurers or guarantors of First Mortgages; changes to the priority of assessment liens; and imposition of any right of first refusal or other restriction on the right of an Owner to sell, transfer or otherwise convey a Lot.

ARTICLE 12. FIRST MORTGAGEES' PROTECTION. In addition to any other provisions of this Declaration benefiting First Mortgagees, and notwithstanding and prevailing over any other inconsistent provisions of this Declaration, the Association's Articles of Incorporation or Bylaws, or any rules or regulations established by the Board, the following provisions shall apply to and benefit each First Mortgagee.

Section 12.1 **Notices.** Written notice that an Owner of a Lot has failed to meet any of his obligations under this Declaration, the Articles, the Bylaws or any rules and regulations for more than sixty (60) days shall be given by the Board to the First Mortgagee of such Lot; provided that said First Mortgagee has submitted to the Board a written request for such notification containing the address to which said notification is to be made. In addition, if it submits to the Board a written request for notification containing the address to which such notification is to be sent, any First Mortgagee shall be entitled to receive notice of: all meetings of the Association (and be permitted to designate a representative to attend the same); any condemnation; any damage or destruction affecting a material portion of the Common Areas or Common Area Improvements; and any lapse, cancellation or material modification of insurance policies maintained by the Association.

Section 12.2 **Condemnation.** No provision of this Declaration shall be construed to entitle any Owner or other Person (including the Association) to priority over any First Mortgagee with respect to any distribution of a Condemnation Award.

Section 12.3 **Insurance.** The Board shall request any carrier of insurance maintained by the Board to give to any First Mortgagees who have made written request to the Board for such notification as set forth in Section 13.1, at least thirty (30) days written notice before cancelling, reducing the coverage or limits or otherwise substantially modifying any such insurance. The Board shall request that any insurance policy maintained by the Association provide: that any reference to a Mortgagee in said policy mean and include all holders of First Mortgages, whether or not specifically named therein; and that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or any Owner or any persons claiming under any of them.

Section 12.4 **Books and Records.** First Mortgagees and insurers and guarantors of First Mortgages shall be entitled to inspect at all reasonable hours of normal business days all of the books and records of the Association, including current copies of the Declaration, Articles of Incorporation, Bylaws and rules and regulations.

ARTICLE 13. NOTICES

All notices required or permitted under the provisions of this Declaration or the Bylaws or rules and regulations of the Association shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, the notice shall be deemed to have been delivered on the third (3) day of regular mail delivery after a copy has been deposited in the United States mail, first class, postage prepaid, addressed to the Person entitled to such notice at the most recent address known to the Board. Mailing addresses may be changed by notice in writing to the Board. Notices to the Board may be given to any Board member or mailed to the following address:

Board of Directors
Oakview Heights Homeowners Association
c/o Herbert E. Mull
14700 N.E. 8th, Suite 110
Bellevue, Washington 98007

The Board's address may be changed from time to time by the execution and recording of an instrument in the real property Records of Pierce County, Washington which (i) refers to this Declaration and this Article 13 and (ii) sets forth the Board's new address. Notice to the Owner shall constitute notice to the Owner as a member of the Association and to said Owner's voting representative. Notice to an Owner shall be sufficient if mailed to the address of the dwelling located upon the Lot if no other mailing address has been given to the Board by said Owner.

ARTICLE 14. ATTORNEYS' FEES

In the event that the Association employs an attorney to enforce any provision of this Declaration, the Articles of Incorporation or Bylaws of the Association, or any rules and regulations established by the Board, the Association shall be entitled to recover from the defaulting party its reasonable costs and attorneys' fees so incurred, whether or not suit or action is commenced.

ARTICLE 15. EFFECTIVE DATE

This Declaration shall be effective upon recording.

ARTICLE 16. DURATION

The covenants, conditions, and restrictions of this Declaration shall run with, and bind the Property and shall inure to the benefit of, and be enforceable by, the Owners, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the

date this Declaration is recorded. After said thirty (30) year period they shall be automatically extended for successive periods of ten (10) years each, unless an instrument terminating the covenants, conditions and restrictions, which instrument is signed by a majority of the then Owners, has been recorded in the real property division of the Records and Elections Division of Pierce County, Washington. In the event that such a termination instrument is recorded, the covenants, conditions and restrictions contained in this Declaration shall terminate at the end of the ten (10) year period during which it was so recorded.

ARTICLE 17. SEVERABILITY

The Provisions of this Declaration shall be independent and severable. The unenforceability or invalidity of any one provision shall not affect the enforceability of any other provision.

ARTICLE 18. ASSIGNMENT BY DECLARANT

Declarant reserves the right to assign, transfer, sell, lease, or rent all or any portion of the Property owned by it. Declarant reserves the right to assign to any person all of its rights, powers, privileges, authority, duties, and obligations as Declarant created under this Declaration (which are in addition to those arising from Declarant's ownership of one or more Lots).

ARTICLE 19. GENDER AND HEADINGS.

This Declaration is to be read with all changes of number and gender required by the context. The headings of the Articles and Sections of this Declaration are for convenience only and do not in any manner affect, limit or amplify the provisions hereof.

ARTICLE 20. ANNEXATION OF OAKVIEW HEIGHTS.

Each Owner upon purchase of a Lot subject to the provisions of this Declaration, as the same may be amended, hereby acknowledges and agrees that the Declarant, so long as the Declarant is in control of the Association, or upon a majority vote of a quorum of the members of the Association present, in person or by proxy, at meeting of the Association may cause or petition to cause the Property included within the Plat to be annexed into the City of Roy.

DECLARANT:

NEW CONCEPT HOMES, INC., a Washington corporation:

By Herbert E. Mull
Herbert E. Mull, President

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Herbert E. Mull is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of New Concept Homes, Inc. to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.



Dated April 11, 1994
Christine A. Balyeat
Notary Public in and for the State
of Washington, residing at Renton
My Appointment Expires 3-20-97

EXHIBIT "A"

**LEGAL DESCRIPTION OF
OAKVIEW HEIGHTS**

**The Plat of Oakview Heights as recorded under Pierce County Auditor's File Number
9209240295, located in Pierce County, Washington.**

"EXHIBIT B"

