

## **DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, EASEMENTS & RESTRICTIONS FOR VISTA GREEN**

**Grantor: Landshapes Northwest, Inc., a Washington "S" Corporation**

**Grantee: Vista Green**

**Legal Description: Lots I through 19 of the plat Vista Green as recorded in the office of the Thurston County Auditor**

**Assessor's Tax Parcel No.: 21724420800**

The Declarant herein as the owners in fee of the real property legally described in this Declaration, hereby covenant, and declare, that all of the properties and housing units constructed on the properties are and will be held, sold, and conveyed subject to this Declaration, which is made for the purpose of enhancing and protecting the value, the desirability and attractiveness of the properties for the benefits of all the properties and their owners. The covenants, restrictions, reservations, and conditions, contained in this Declaration shall run with the land as easements and equitable servitudes, and shall be binding upon the properties and each portion thereof and all persons owning, purchasing, leasing, subleasing or occupying any lot on the properties and upon their respective heirs, successors and assigns. Individual lot owners shall be responsible for maintenance and care of landscaping along with all adjacent right of way.

### **ARTICLE ONE: DEFINITIONS**

For the purpose 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 this Agreement.
2. "Articles" shall mean the Association's articles of Incorporation and any amendments.
3. "Association" shall mean the Vista Green Homeowners Association formed as a nonprofit Corporation for the purpose of administering this Declaration.
4. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.
5. "Bylaws" shall mean the Association's Bylaws and any amendments.
6. "Common Areas" shall include but not limited to Tract A as delineated on the Plat of Vista Green. Common areas shall also mean the property both real and personal in which the Association has been granted an ownership interest, easement, or right of control by any written instrument including this Declaration or by delineation and declaration of the

same on the plat map recorded as referred to above.

7. "Declaration" shall mean this Declaration of Protective Covenants, Conditions and Restrictions.
8. "Developer Declarant" The Developer and Declarant shall mean Landshapes Northwest, Inc., a Washington "S" Corporation. However, the Developer shall also include any entity, which purchases multiple lots from Landshapes Northwest, Inc., for the purposes of constructing residences thereon. Until such time as Landshapes Northwest, Inc., or any other entity purchasing multiple lots has sold all the lots by that party, then such party shall jointly exercise all rights reserved to the Declarant as set forth in this Declaration. At any time as such a party has sold or conveyed all the lots held by that entity then that party shall no longer be considered a Developer or Declarant.
9. "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 sold 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. In the event any loans with respect to any of the lots are insured through the Federal Housing Administration (FHA), the Veterans Administration (VA), the Federal National Mortgage Association (FNMA), and the Federal Home Loan Mortgage Corporation, then in that event, the Development Period shall terminate at such time as 75% of all the lots have been closed and sold to other than builders.
10. "Housing Unit" shall mean the building occupying a Lot.
11. "Institutional First Mortgage" 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 of federal agency, which holds a first note, or deed of trust against a Lot or Housing Unit thereon.
12. "Lot" shall initially refer to one of the Lots located in the Real Property described in the Plat of Vista Green.
13. "Member" shall mean every person or entity that holds a membership in the Association.
14. "Mortgage" shall mean a mortgage or deed of trust encumbering a lot or other portion of the Properties.
15. "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.
16. "Person" shall mean a natural person, a corporation, a partnership, trustee or other legal entity.
17. "Real Property that is subject to this Declaration is legally described as Lots I thought 19

of Vista Green.

18. "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: MANAGEMENT OF COMMON AREAS AND ENFORCEMENT OF DECLARATION**

**Section One: Development Period.** During the development period the Declarant Vista Green shall appoint the sole director of the Association. The Declarant may also appoint members of the Association to other committees or positions in the Association as the Declarant deems appropriate to serve at the Declarant's discretion and may assign such responsibilities, privileges, and duties to the Members as the Declarant determines for such time as the Declarant determines. Any member appointed by the Declarant during the development period may be dismissed at the Declarant's discretion. The Declarant shall also appoint members to the Architectural Control Committee. At such time as the Declarant has sold and conveyed all lots, then the Declarant may resign as a director of the Association and from any other committees for the duration of the development.

At such time as the Declarant has sold and conveyed all lots then any Developer as defined in this Agreement for the duration of the development period shall be entitled to appoint a director to the Association as well as a Member to the Architectural Control Committee.

**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 the development, ensure an orderly transition of Association operations, and to facilitate the Developers completion of construction of Housing Units.

**Section Three: Authority of Association After Development Period.** At the expiration of the 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 this agreement

**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: Termination of Development.** Upon termination of the development period, the Declarant, or in the event the Declarant has resigned as a director of the association, then the Developer, in accordance with the by-laws, shall conduct by mail an election of a board of directors who shall then act in accordance and in connection with the terms and provisions of the articles of incorporation, by-laws and this Declaration. However, in the alternative, not less than ten (10), nor more than thirty (30), days prior to the termination of the development period, the Declarant, or any Developers who then constitute the board, may give written notice of termination of the development period to the owner of each lot. Said notice shall specify the date when the development period will terminate and that at such time a meeting of the Members shall be called in accordance with the by-laws at which time Members shall then elect directors in accordance with the terms and provisions of the articles of incorporation, by-laws and this Declaration.

### **ARTICLE THREE: MEMBERSHIP**

Every person or entity who is an Owner of any Lot agrees to be a Member of the Association by acceptance of 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 FOUR: VOTING RIGHTS**

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

### **ARTICLE FIVE: DEED AND DEDICATION OF COMMON AREAS**

**Section One: conveyance of Common Areas:** Upon recording of this Declaration, the

Declarant does hereby convey and transfer all of its right, title and interest in and to Tract A as shown on the plat of Vista Green, to the Homeowners Association. The Declarant, however, reserves for the benefit of the Declarant, its successors and assigns, those certain rights of use, ingress, egress, occupation, and control indicated elsewhere in this declaration for the duration of the development, at which time this reservation shall cease and then be of no further force and effect. This tract and any other real properties and improvements which are described herein are referred to as the "Common Areas" together with any easements which are for the benefit of the Association or Members which are also defined as being "Common Areas" under the terms of this Declaration.

**Section Two: Property Rights in Common Areas:** The Association shall have the right and obligation to maintain improvements, vegetation, signage and utilities in and on all common areas, including the maintenance of the storm water system. 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 by-laws of the Association.

## **ARTICLE SIX: MAINTENANCE AND COMMON EXPENSES**

**Section One: Standard of Maintenance - Common Areas.** The Association shall maintain the Common Areas in a manner consistent with good building and nursery practices, and in compliance with all applicable codes and regulations. The common areas shall include but not be limited, as defined below, together with all easements, which are for the benefit of all lot owners. The common areas include but are not limited to the following:

- A. Tract A is a stormwater retention tract described in and shown on the Plat of Vista Green.
- B. All easements which have been established for the benefit of lot owners or the Association, or which may be delineated on the plat of Vista Green, which easements are reserved for the benefit of all lot owners as well as easements which are reserved for the benefit of the Association for the purpose of the installation, maintenance, and repairing of any improvements or any other installations constructed within said easement areas.

**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 Planting Strip located between the street and the sidewalk adjacent to the Owner's respective Lot, if any), 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 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 exterior of the Housing Unit located thereon, 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 his 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 this 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 are 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 Expense.** 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, the storm water system within the Plat, signs, perimeter fencing, if any, constructed by the Declarant, and plantings and landscaping situated on any planting strips which are located between the edge of any sidewalks and the curb of any roadway with the Plat, if the same are not maintained by applicable governmental jurisdictions. The cost of maintenance of all landscaping along easement boundaries, which are adjacent to residential lots, including but not limited to the storm water facilities and the stormwater facility easement.

4. The Association shall also assume, pay and be responsible to maintain the storm water facilities and to implement a pollution source control plan according to the terms of an agreement to be executed between the City of Yelm and the Declarant.
5. Any other expense which shall be designated as a Common Expense in the Declaration, in its Exhibits, or from time to time by the Association.

**Section Five: Sanctions for Failure to Maintain.** In the event the Association or its successors, in the judgment of the City of Yelm, fails to maintain drainage facilities within the plat, or if the Association or its successors willfully or accidentally reduces the capacity of the drainage system or renders any part of the drainage system unusable, the Association or its successors agree to the following remedy: After thirty (30) days notice by registered mail to the Association or successors, the City of Yelm may correct the problem or maintain facilities as necessary to restore the full design capacity of the drainage system. The City of Yelm will bill the Association or successors for all costs associated with the engineering and construction of the remedial work. The City of Yelm may charge interest as allowed by law from the date of completion of construction. The City of Yelm will place a lien on all of the property of the Association and/or lots within the Plat of Autumn Hill II for payments in arrears. Costs or fees incurred by the City of Yelm, should legal action be required to collect such payments, shall be borne by the Association or successors.

**Section Six: Extraordinary Use Expenses.** In the event that one or more lot owners should by their use of the Common Areas cause it to be subjected to other than reasonable wear and tear, or by their actions damages those Common Areas or any other improvements located thereon or therein, then the individual subjecting the Common Area to such use shall have the obligation to repair such damage, upon demand of the Association, and to restore such Common Area to the condition that existed prior to such use or action, and all expenses therefore shall be paid by such individual.

**Section Seven: Owners' Easements of Enjoyment.** Each owner shall have a right in an easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with title (or, if applicable, with the equitable title held by real estate contract purchaser) to every lot, subject to the following provisions:

- A. A. The right of the Declarant or the Association to establish use and operation standards for all common areas, to be binding upon all Association Members along with enforcement standards.
- B. The right of the Declarant (during the development period) to dedicate or transfer all or any part of the common areas to any public agency, authority or utility for such purpose and subject to such conditions as the Declarant or Members, as applicable, may deem appropriate. After the development period, no such dedication or transfer shall be



effective unless the instrument agreeing to such dedication or transfer is signed by owners of two thirds of the lots have been recorded.

- C. Any owner may delegate their right of enjoyment to the common areas and facilities to the members of their family, their tenants, or their guests, subject to the limitations set forth above.

**Section Eight: Insurance.** Nothing shall be done or kept in any common areas, which will increase the rate of insurance on the common areas or other lots or improvements without prior written consent of the board. Nothing shall be kept in any common area which will result in cancellation of insurance on any part of the common areas or which would be in violation of any laws or ordinances.

**Section Nine: Alteration of Common Areas and Common Maintenance Areas.** Nothing shall be altered or constructed in, or removed from any common maintenance area or common area except upon prior written consent of the board. There shall be no construction of any kind within the common areas except that community improvements may be constructed if two-thirds of the Members of the Association authorize (1) the construction of such improvements, and (2) assessment for such improvements. Also, any such improvements would be subject to acquisition of all required permits from governmental agencies. This Section shall not limit or prohibit Declarant (and no Member's consent shall be necessary), during the development period, from constructing or altering any such improvements to any common area or any common maintenance area, which Declarant in Declarant's sole discretion, deem for the benefit and enhancement of said areas and the Association in general.

**Section Ten: Dumping in Common Area, Common Maintenance Areas.** No trash, construction debris, or waste, plant or grass clippings or other debris of any kind, nor any hazardous waste, (as defined in federal, state or local law regulation) shall be dumped, deposited or placed on any common areas, common maintenance areas or easements. The Declarant (during the Development Period) and the Board thereafter, shall retain rights for enforcement and initiation of penalties for violations of this policy.

**Section Eleven: Landscaping and Fencing.** No permanent structures or landscaping of any kind, including fences, walls or shrubs, may be built or placed within any right of way easements or other easements as delineated on the plat except as deemed appropriate by the board. The fencing cannot exceed past the front of the house on any corner lots. This prohibition shall not apply to the landscaping and any improvements in the common maintenance areas installed by the Declarant, nor shall this Section prohibit the Association from installing additional improvements or landscaping within the designated common areas or common maintenance areas, nor shall this section prohibit the installation of fences as may be otherwise allowed in this



Declaration, nor shall this section prohibit the installation of landscaping on private lot areas encumbered by utility easements not otherwise restricted in this Declaration. Also, this prohibition shall not apply to landscaping of front or side yards of lots extending to the edge of the curb or sidewalk and the public right of way.

**Section Twelve: Management.** Each owner expressly covenants that the Declarant (during the Development Period) and the board thereafter, may delegate all or any portion of management authority to a managing agent, manager or officer of the Association and may enter into such management contracts or other service contracts to provide for the maintenance of the common areas and common maintenance areas and any portion thereof. Any management agreement or employment agreement for maintenance or management may be terminated by the Association without cause upon not more than ninety (90) days written notice thereof, (However, this shall not be applicable if the management agreement provides for any other specific termination.) The term of any such agreement shall not exceed one year, renewable by Agreement of the parties for such successive periods of up to three years each. Each owner is bound to observe the terms and conditions of any management agreement or employment contract, all of which shall be made available for such inspection by any owner upon request. Any fees or salary applicable to any such management employment or service agreement shall be assessed to each owner,

## **ARTICLE SEVEN: ASSESSMENTS**

### **Section One: Covenants for Maintenance Assessments.**

- A. Declarants, for each Lot owned by it, agrees, and each Owner of a lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to agree to pay to the Association annual or other regular assessments.
- B. The annual or other regular and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge and continuing lien upon Lot against which each such assessment is made. Such lien may be foreclosed by the Association in like manner as a Mortgage on real property.
- C. Each assessment, together with interest, cost and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the Lot assessed at the time of the assessment fell due. The personal obligation shall not pass to the Owner's successors-in interest unless expressly assumed by them. The new Owner shall be personally liable for assessments, which become due on and after the date of sale or transfer.
- D. Unless otherwise provided for in this Declaration, no lot owned by a Declarant shall be subject to any annual or other assessments.

**Section Two: Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property, including the improvement, repair and maintenance of the Common Areas and the services and facilities related to the use and enjoyment of said areas, for the payment of insurance premiums on the Common Areas, and for the maintenance of other areas as provided for in this Declaration.

**Section Three: Board to Fix Annual or Regular Assessment.** The Board of Directors shall fix the regular or annual assessment at least thirty (30) days prior to the commencement of the annual or regular assessment period. Written notice of the annual or regular assessment shall be sent to every Owner. In the event the Board fails to fix an annual or regular assessment for any assessment period, then the assessment established for the annual or regular assessment for the prior year shall automatically be continued until such time as the Board acts. The annual or regular assessments shall be sufficient to meet the obligations imposed by the Declaration and any supplementary declarations, and shall be sufficient to establish an adequate reserve fund for the maintenance, repair and replacement of those Common Areas which require such actions on a periodic basis. That in the event there is any increase in the annual or regular assessment of more than five percent (5%) of the annual or regular assessment for the prior assessment period, then it must be approved as provided for in the Bylaws of the Association which are incorporated herein as though fully act forth.

**Section Four: Special Assessment for Capital Improvements.** In addition to the annually or regular assessments authorized above, the Association may levy in any assessment year, as special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of capital improvements upon the Common Areas, including the necessary fixtures and personal property related thereto. That any special assessment for capital improvements must be approved in accordance with the provisions of the Bylaws of the Association which are incorporated herein as though fully set forth.

**Section Five: Rate of Assessment.** Both annually or regular and special assessment shall be fixed at a uniform rate for all Lots.

**Section Six: Initial Assessment.** The initial assessment which shall be paid by any Lot Owner who acquires a lot from the Developer shall pay \$100.00 for each lot so acquired at time of closing of the purchase of said Lot, which amount shall be paid to and held by the Association to pay for the association expenses under the terms of this said Declaration. This initial assessment shall be paid in addition to the annual assessment or any prorated portion thereof, which may be assessed pursuant to Section Seven.

**Section Seven: Annual Assessment.** The annual assessment shall be \$200.00 per lot commencing on January 1, 2006. Each lot owner, upon purchasing from a developer or builder, shall pay the pro rata portion of said assessment. Said assessment shall be due on or before January 304 of each year in which the assessment is made. The above referenced annual assessment and all subsequent annual assessments shall be paid to the Homeowner's Association who shall then pay for the expenses of the Association as required under the terms of this Declaration. In the event the expenses of the Association are in excess of the assessments collected, then the developers who subsequently purchased from the Declarant shall pay the difference to the Association on a pro rata basis as determined by the number of lots owned by all such developers. At such time as there had been sufficient assessments collected by the Association, then said developer shall be reimbursed. The Declarant shall not be responsible or liable for the payment of any assessments against any lot owned by the Declarant.

**Section Eight: Certificate of Payment.** 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 Nine: 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 work's commencement, provided such an 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 two thirds the Members.

**Section Ten: 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 this Declaration.

## **ARTICLE EIGHT: COLLECTION OF ASSESSMENT**

**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 the assessments by non-use of the Common Areas or abandonment of each 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%), 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 such payment more than ten (10) days past due. 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 actions 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 lien. 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 the period of thirty (30) days, the Member's right to vote shall be suspended and shall remain suspended until all payments 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 Article, Bylaws or Declaration.

**Section Four: 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 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 this Declaration.

## **ARTICLE NINE: BUILDING USE, AND ARCHITECTURAL RESTRICTIONS**

**Section One: Appointment of ACC.** The Declarant reserves the right to appoint any member or members of the ACC until the Declarant and all developers have sold and conveyed all of the lots held in the name of the Declarant or developer. This right shall automatically terminate at such time as the Declarant and any developer no longer owns any lots within the plat of Vista Green. During this period the Declarant reserves the right to appoint one member to the ACC. All decisions of the majority of the members of the ACC shall be final and binding. At the expiration of the time period in which the Declarant and the developer has the right to appoint members to the ACC then the Board of Association shall appoint up to three members of the ACC or if members of the ACC resigns and no replacements assume that office then the Board shall act as the ACC until members of the ACC are appointed or take office.

**Section Two: Authority of ACC After Development.** At the expiration of the Developers management authority, 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 Section Four 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 authority granted to the ACC by this Declaration.

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

**Section Four: 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 fence, hedge 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.

**Section Five: 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 by the Board, or such other address as is designated by the Board by written notice to the Members.

**Section Six: Guidelines.** The ACC may adopt and amend, subject to approval by the Board, written guidelines to be applied in its review of plans, 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.

**Section Seven: 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.

**Section Eight: No Waiver.** Approval by the ACC of any plans, drawings or specifications shall not be a waiver of the right to withhold approval of any similar plan, drawing, specification or matter submitted for approval.

**Section Nine: Consultation.** The ACC may retain and consult persons or entities to assist in the evaluation of plans submitted to the Board for the review.

**Section Ten: 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 appeal and provide time limitations for appeals to be made to the Board.

**Section Eleven: Enforcement.** The ACC may recommend and request that the Board initiate legal proceedings to enforce the terms of the covenants or orders of the ACC. Legal proceedings may only be instituted, however, after approval of the Board.

**Section Twelve: 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.

**Section Thirteen: 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 Fourteen: Temporary Structure 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 Fifteen: 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 any 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 Sixteen: Building Type.** No structures of any kind shall be erected or permitted to be maintained on any lot other than single-family residences, garages, workshops and structures normally accessory to such residences, which have been approved in accordance with the provisions of the Declaration. No carports will be allowed and all garages must have bay doors. All dwellings shall be of a "stick-built" variety. Mobile and manufactured homes, and modular homes are specifically not permitted. A two or three car garage is permitted and shall be incorporated in or made a part of the dwelling house. No detached garages shall be permitted except with the express written approval by the Architectural Control Committee or the Declarant if the same is erected during the development period.

**Section Seventeen: Use of Lots.** All Lots with the Property shall be used solely for private single-family residential purposes and not for business purposes, provided, however, that within such single-family residences the Owners(s) thereof may, upon formal written application to the Board, request permission to operate a licensed day care business. The Board shall be authorized, but not obligated, to grant such approval and such approval may only be granted, in the sole discretion of the Board F, I) all applicable governmental zoning and land use classifications lawfully permit such usage AND, 2) the business Owner(s) are licensed by all applicable governmental authorities to operate such a daycare business AND, 3) the day care business will be operated only between the hours of 7a.m. and 6 p.m. and only on Monday through Friday AND, 4) no more than four (4) children, in addition to those of the Owner(s) immediate family, are enrolled in either full-time capacity in such day AND, 5) the Owner(s) of such Lot (s) operating such day care facility will fully oversee, restrict and supervise all children enrolled and



will limit such activities strictly within the confines of their residence(s) and Lot(s) and not outside the same AND, 6) the Owner(s) of said Lot(s) agree to indemnify and hold the Declarant and the Association fully harmless from any and all liability and causes of action of whatever kind arising by virtue of the Owner(s) operation of such day care business AND, 7) the Owner(s) of said Lot(s) will provide the Association prior to commencing such business operations, and at all times during such business operations, with verification of liability of insurance coverage in an amount not less than \$1,000,000.00 naming the Association and the Declarant and such other parties as the Association may deem appropriate as additional insured AND, 8) such operation does not interfere or otherwise violate any other provisions of this Declaration, including, but not necessarily limited to Vehicle parking and signage restrictions. Should the Board give written authorization for such usage, such authorization may be revoked by at least five (5) days written notice delivered to Owner and should the Owner(s) operation such day care business fail to strictly adhere to the provisions contained within the Declaration as well as any additional Rules and Regulations imposed, from time to time, by the Board. No other uses are permitted. Neither the Declarant, the Board and/or the Association shall be deemed to be a partner or joint venturer and/or interest in such business operation to the extent permission to operate such day care business is authorized.

**Section Eighteen: Limitation on Animals.** No animals, except dogs, cats, caged birds, fish in tanks, and other small household pets, will be permitted on Lots. Dogs shall not be allowed to run at large or to create a disturbance for other Owners in the plat. No animals will be allowed to be leashed, chained or otherwise tied to any portion of the front or sides of residences. Leashed animals are permitted within the right-of-way when accompanied by their owners. The person accompanying the animal must exercise scooping of animal waste. All pens and enclosures must be screened from view of other residences and Lots and must be approved by the Committee prior to construction and shall be kept clean and odor free at all times. If the investigation of the Board indicates that animals are kept in violation of this Section, the Declarant, during the development period, or the Board thereafter, will give the Owner ten (10) days written notice of the violation. Such violation must be remedied by the Owner within such a ten (10) day period. Failure to comply with the written notice will result in a fine of \$25.00 per day. Any fine imposed by this Section shall be the personal obligation of the fined Owner and a lien on the Lot of the fine owned. The Association shall be entitled to attorneys' fees and costs for any action taken to collect such fines in accordance with the provisions of this Declaration.

**Section Nineteen: Tree Height.** No tree, with the exception of street trees in the right of way and trees in Common Areas, shall be allowed to grow to a height of more than thirty-five feet above the adjacent ground unless the Committee determines that the increased height would not have a material adverse effect on the view from other lots. The Association shall specifically have the right to trim offending trees at the Owner's expense after reasonable notice.

**Section Twenty: 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 of 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 be obtained from the ACC.

**Section Twenty-One: Antennas, Satellite Reception.** Satellite dishes of no more than one meter in diameter or diagonal measurement are permitted in the Properties with ACC approval of the location of the satellite dish in the manner described in this Declaration. Except as provided above, no radio or television antenna or transmitting tower or satellite dish shall be installed on the exterior of any home without approval of the ACC obtained pursuant to Section Four, and a showing by the Owner that such installation will be visually shielded from the view of the residents traveling upon streets located on the Properties.

**Section Twenty-Two: Setbacks.** No building shall be located on any Lot nearer to the front lot line nearer to the side street than the minimum building setback lines adopted by the governmental authority with jurisdiction over the properties.

**Section Twenty-Three: 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 Twenty-Four: Fences, Walls.** Fences, walls, or shrubs are permitted on side and rear property lines, up to within the greater of (i) twenty feet of the property line; or (ii) the distance between the front wall (facade) of the primary residence, subject to (i) approval of the ACC; and (ii) determination of whether such fence, walls or shrubs would interfere with utility easements reflected on the face of the plat and other easements elsewhere recorded. In no event shall any fence be allowed between the front lot line and the front wall facade of the primary residence. No barbed wire, chain link corrugated fiberglass fences shall be erected on any lot, except that chain link fencing for a sport facility enclosure may be considered for approval by the ACC upon request. All fences must be constructed of cedar unless otherwise approved by the ACC and can be no more than six feet in height

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

**Section Twenty-Six: Vehicle Parking and Storage.** No vehicle may be parked on any building Lot or sidewalks, except on designated and approved driveways or parking areas, which shall be hard-surfaced. Only cars of guests and visitors may be parked on the streets. All other vehicles shall be parked in garages or on driveways located entirely on a Lot. No storage of goods, vehicles, boats, trailers, trucks, campers, recreational vehicles or other equipment or devices shall be permitted in open view from any Lot or right-of-way. (Vehicles, boats, trailers, trucks, campers and recreational vehicles shall be referred to as “ Vehicles”) This provision shall not exclude parking of up to a combination of two (2) automobiles and regular size pickup trucks owned or used by the lot owner on the designated driveway areas adjacent to the garages on the Lot. A lot owner may also park on the driveway recreational vehicles and/or boat trailers for a period not to exceed 24 hours. This paragraph is also not meant to disallow permanent (more than 24 hours) parking or storage of vehicles on the Lots, but if stored, vehicles shall be adequately screened from the view of adjacent rights-of-way and Lots. Screening of such vehicles must have the approval of the Committee. Upon 48 hours notice to the Owner of an improperly parked vehicle, the Board has the authority to have towed, at the Owner's expense, any vehicles, (except up to a combination of two automobiles and regular sized pickup trucks owned or used by the lot owners), still visible from the right-of-way or adjacent residences that have been parked on any Lot or within the right-of-way for more than 24 hours. Notwithstanding the foregoing, Owners who have visiting guests intending to stay in such a vehicle may secure written permission from the Board for such guests to park the vehicle upon the Lot owned by the Owner for a maximum period of one (1) week. Such a privilege shall only exist, however, after written permission has been obtained from the Board.

**Section Twenty-Seven: Signs.** No signs, billboards, or other advertising structures or device shall be displayed to the public view on any lot except (1) not to exceed three square feet in area may be placed on a lot to offer the property for sale or rent and with the exception of any entry monumentation and signage which may be installed by Declarant. Political yard signs, not more than three square feet in area, of a temporary nature, not to exceed thirty days will be allowed during campaign periods on lots. Within five days after the date of the election to which the sign refers, such signs must be removed from lots. This section including but not limited to the restrictions on the number of signs and sign size limit shall not apply to signs approved under this Declaration by the Declarant during the development period.

The Declarant may establish, for the duration of the development, signage guidelines and standards for lot identification signs, "for sale" signs and other signage that may be placed by parties other than the Declarant on any part of the lots within Country Vista, the common areas, or the public right-of-way. The Declarant may also develop an overall theme for signage within the project, including specific requirements for physical sign installation and size requirements, which theme will then become a part of the established guidelines and standards for signage in

Vista Green during the development period

During the development period, the Declarant shall have the sole and exclusive right to approve, in the Declarant's sole discretion, any and all signage installations within any part of the real property encompassed within the plat of Vista Green, including the adjacent right-of-way. Each owner of a lot in Vista Green and any developer or real estate agent on behalf of an owner, shall submit any proposed signs to the Declarant for approval prior to the installation of the signs,

Any signs not specifically approved by the Declarant found anywhere within Vista Green common areas, or on any lot, or on adjacent right-of-way may be promptly removed and disposed of by Declarant. This absolute right of the Declarant to remove unauthorized signs from the property or adjacent rights-of-way specifically includes, but is not limited to, the Declarant's right to remove any and all signs placed by real estate agencies or representatives, including temporary reader board signs and other signage installations.

No person, including but not limited to, the person or persons owning any interest in the signs removed, shall be entitled to compensation of any kind for signs removed by Declarant pursuant to the section.

The Board may cause any sign placed on the property or any adjacent rights-of-way in violation of this Declaration to be removed and destroyed without compensation of any kind to anyone including, but not limited to any person having any ownership interest in the sign. This Section shall not apply to signage placed by Declarant.

Additional signage may be installed by Declarant during the development period to promote the sale of lots or houses and to promote Declarant's project and company and representatives. Notwithstanding anything in this Declaration to the contrary, signs placed by the Declarant shall not be subject to any sign restrictions and specifically shall not be subject to the limitations set forth in this Declaration in the number of signs and size of signs. The Declarant shall also not be subject to any guidelines or standards established by Declarant for other parties pursuant to this Declaration,

Under no circumstances shall the Declarant be liable for, or be required to pay, for all or any part of the construction, installation or maintenance of any signs which are placed on any lot not owned by the Declarant. This Section shall apply even if Declarant requires an owner to place a sign pursuant to this Declaration.  
a sign pursuant to not owned by the part of the

**Section Twenty-Eight: Easements for Enforcement Purposes.** Owners hereby grant to the Association an express easement for the purpose of going upon the Lots of Owners for the purpose of removing vehicles or other similar objects, which are parked or stored in violation of

the terms of this Declaration.

**Section Twenty-Nine: Excavation and Fill.** Except with the permission of the ACC, or except as may be necessary in connection with the construction of any approved improvement, no excavation or fill shall be made nor shall any dirt be removed from any Lot herein.

**Section Thirty: Drainage.** The owner of any Lot shall not take any action, which would interfere with surface water drainage across that lot either through natural drainage or by drainage easements. Any change of drainage, either through natural drainage areas or through drainage easements must be approved by the ACC. All drainage improvements must be completed prior to occupancy in accordance with the drainage plan submitted to the ACC. improvements must be completed prior

**Section Thirty-One: Use During Construction.** Except with the approval of the Board, no persons shall reside upon 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 Thirty-Two: Garbage and Refuse.** No garbage, refuse, rubbish, cuttings or debris of any kind shall be deposited on or left upon any Lot unless placed in an attractive container suitably located and screened from public view. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

**Section Thirty-Three: Tanks, Etc.** No elevated tanks of any kind shall be erected, placed, or permitted on any part of such premises. Any tanks for use in connection with any residence constructed on such premises, including tanks for the storage of fuels, must be buried or walled sufficiently to conceal them from the view from neighboring Lots, roads, or streets. All clothes lines, garbage cans. Equipment, coolers, woodpiles, or storage piles shall be walled in or otherwise suitably screened to conceal them from the view of neighboring Lots, Common Areas, roads or streets. Plans for all enclosures of this nature must be approved by the ACC prior to construction.

**Section Thirty-Four: Auto Repair.** No major auto repair shall be permitted except within enclosed garages, which are kept closed. The only repairs permitted on the balance of the Property are occasional casual repairs and maintenance activities such as tune-ups or oil changes.

**Section Thirty-Five: Exterior Finish.** The exterior finish on the front of houses shall be approved by the ACC. The entire residence must be painted or stained in colors approved by the ACC. All metal fireplace chimneys shall be either wood or stone wrap.

**Section Thirty-Six: Driveways.** That all driveways including any access to the rear yard of any residence shall be of a hard surface construction of either concrete or washed aggregate and shall be completed prior to final building inspection,

**Section Thirty-Seven: Maintenance of Structures and Grounds.** Each Owner shall maintain his Lot and residence thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire hazard

**Section Thirty-Eight: Firearms.** The use of firearms is expressly prohibited within the plat of Vista Green.

**Section Thirty-Nine: Dirt Bikes and/or ATV.** No unlicensed motor vehicles, including motorcycles, dirt bikes, motor scooters, ATV's etc., shall be permitted on any road within the plat, nor shall dirt bikes or ATV's be permitted to operate on any Owner's lot.

**Section Forty: Damage Repair.** All owners agree to repair immediately any damage to any utilities adjacent to their lot or lots, in the event any of the utilities are cracked, broken, or otherwise damaged as a result of dwelling construction activities, or other activities by owner, by persons acting for owner, or by persons in or around the property at the request or with the consent of the owner.

**Section Forty-One: Building Materials.** All homes constructed on each lot shall be built of new materials, with the exception of "decor items such as used brick, weathered planking, and similar items. The Committee will determine whether a used material is a "decor" item. In making this determination, the Committee will consider whether the material harmonizes with the aesthetic character of Vista Green development and whether the material would add to the attraction of the subdivision. All siding and trim are to be re-sawn wood and/or vertical or horizontal "LP" type siding, brick, authentic stone siding, OSB LAP or vinyl siding of a color approved by the ACC. T1-11 siding shall only be permitted on the sides of the residences, which do not face the street, or on the back of residences.

The exterior of all construction on any Lot shall be designed, built and maintained in such a manner as to blend in with the natural surroundings and landscaping. Exterior colors must be approved by the Committee. Exterior trim, fences, doors, railings, decks, eaves, gutters and the exterior finish of garages and other accessory buildings shall be designed, built and maintained to be compatible with the exterior of the structure they adjoin.

The Committee or Board will establish an approval process and color guidelines. Any change of color as to the exterior of any existing home within Vista Green will be subject to the same approval process.



**Section Forty-Two: Minimum Size of Residences.** Private single-family residences shall consist of not less than one (1) Lot and no Lot shall ever be further subdivided. Each Residence must have a private enclosed car shelter for not less than two (2) cars, and that no portion of the interior of said garage may be improved and/or finished for residential use. No single structure shall be altered to provide for more than one (1) family. Single level type residences (residence consisting of a one-story residence or a residence consisting of a basement and one story) shall contain at least 1,200 square feet. Multi Level residences (i.e., tri-levels as that term is used in the construction industry) shall contain at least 1,400 square feet. Two story residences shall contain at least 1,400 square feet. Split-level residences shall contain at least 1,400 square feet. In computing the total square footage of a residence, the basement may be included but garages and/or enclosed decks shall not be included.

**Section Forty-Three: Codes.** All construction shall conform to the requirements of the State of Washington's rules and regulation for installing electrical wires and equipment, and the uniform codes (building, mechanical, plumbing), in force at the commencement of the construction, including the latest revisions thereof.

**Section Forty-Four: Entry for Inspection.** Any agent or member of the Declarant or any member of the ACC may at any reasonable predetermined hour upon 24 hours notice during construction or exterior remodeling, enter and inspect the structure to determine if the construction or exterior remodeling complies with the provisions of this Declaration. The above-recited individuals shall not be guilty of trespass for such entry or inspection. There is created an easement over, under, and across, residential lots for the purpose of making and carrying out such inspections.

**Section Forty-Five: Authority to Adopt Additional Rules and Restrictions.** The Association shall have the authority to adopt additional written rules and restrictions governing the use of the Properties, provided such rules and restrictions are consistent with the purposes of the Declaration, and to establish penalties for violation of those rules and restrictions. If rules and restrictions are adopted, they, along with the established penalties, shall be available to all Members upon request.

**Section Forty-Six: Enforcement.** The Association, or the Declarant 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 and does not have the right to impose a fine as authorized by RCW Chapter 64.38) but the Member must first obtain an order from the court of competent jurisdiction entitling the Member to relief. In the event that a Member takes any 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.

## **ARTICLE TEN: 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 Declarant, and a valid easement for encroachments and for maintenance of the same as long as said 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 utilities and drainage are reserved for the Declarant or its assigns, over a five-foot wide strip along each side of the interior Lot lines, and ten 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 be maintained continuously by the owner of such Lot, 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 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; (e) all acts necessary to enforce these Covenants.

**Section Four: Easement for Declaration.** Declarants 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: Utility Maintenance Easements.** Easements are granted for the installation, inspections, and maintenance of utilities and drain facilities as delineated on the plat of Vista Green. No encroachment will be placed within the easement shown on the plat, which may damage or interfere with the installation, inspection, and maintenance of utilities. Maintenance

and expense of the storm water drainage facilities shall be the responsibility of the Association as established under the terms and provisions of this Declaration

## **ARTICLE ELEVEN: MORTGAGE PROTECTION**

**Section One: Mortgages.** Notwithstanding and prevailing over any other provisions of this Declaration, the Association's Articles of Incorporation or Bylaws, or any rules, regulations or management agreements, the following provisions apply to and benefit each Institutional First Mortgagee ("Mortgagee") which holds a Mortgagee 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, rule, Association, Article of Incorporation or Bylaw, or management agreement, except 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 Assessments.** If it is deemed necessary by the Association, any unpaid assessment against a Housing Unit foreclosed against may be treated as a common expense to 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 places 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 upon request therefore to (a) inspect the books and records of the Association during normal business hours; (6) receive an annual audited financial statement of the Association within ninety (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 meetings.

**Section Eight: Limitation on Abandonment of Common Areas.** The Association shall not, without the prior written approval of sixty-seven percent (67%) of the Mortgagee's, 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 party of the Common Areas or facilities; (b) any condemnation or eminent domain proceeding involving any Housing Units or portion of the 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 hold 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 (1) any proposed action that requires the consent of a specific percentage of Mortgagees.

## **ARTICLE TWELVE: MANAGEMENT CONTRACTS**

**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 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 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 FOURTEEN: 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 FIFTEEN: 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 Declarant, 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 Declarant 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 rights for the future, but such right to enforce any of the provisions of the Declaration or of the Articles, Bylaws or rules and regulations of the Association shall continue and remain in full force and effect. No waiver of any provision of the Declaration of the Article, Bylaws, rules or regulations or 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 SIXTEEN: CONDEMNATION**

In the event of a partial condemnation of the Common Areas, the proceeds shall be used to restore the remaining Common Area, and any balance remaining shall be distributed to the Association.

In the event that the entire Common Area is taken or condemned, or sold, or otherwise disposed of in lieu or in avoidance thereof, the condemnation award shall be distributed to the Association.

No proceeds received by the Association as the result of any condemnation shall be distributed to a Lot Owner or to any other party derogation of the rights of the First Mortgagee of any Lot.

## **ARTICLE SEVENTEEN: GENERAL PROVISIONS**

1. **Binding Effect.** All present and future Owners or occupants of Lots shall be subject to and shall comply with the provisions of this Declaration, and the Bylaws and rules and regulations of the Association, as they may be amended from time to time, are accepted and ratified by such Owner or occupant, and all such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at the time any interest or estate in such Lot, as though such provisions were recited and stipulated at length in each and every deed and conveyance or lease thereof.
2. **Encroachment by Court Action.** The Association, the Declaration, the ACC, The Homeowner's Association, or any Lot owners shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Should the Association or any Owner employ counsel to enforce any of the foregoing covenants, conditions, reservations, or restrictions, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the Owner found to be in violation of said condition, covenants, reservations, or restriction, or found to be delinquent in the payment of said lien charge.
3. **Enforcement by Self-Help.** The Declarant, the ACC, the Association, or duly appointed agent of either, may enter upon any Lot, whose entry shall not be deemed a trespass, and take whatever steps are necessary to correct a violation of the provisions of this Declaration. Provided, this provision shall not be construed as a permission to breach the peace.
4. **Condition Precedent to Action.** Prior to taking actions either by court or by self-help,

written notice shall be given to the offending lot Owners. Such notice shall specify the nature of the offense and shall also specify the action necessary to cure. Such action shall also provide a reasonable opportunity to cure which, except in the case of an emergency, shall not be less than thirty (30) days.

5. **Expense of Action.** The expense of any corrective action or enforcement of this Declaration, if not paid by the offending owner within thirty (30) days after written notice and billing, may be filed as a lien upon such lot, enforceable as other liens herein.
6. **Owner Objection.** Should a lot Owner object to the complaints of the Declarant, the Association or ACC in writing within a period of fifteen (15) days after the complaint is made and, further, should the parties not agree on property maintenance or other matters complained of, the matter shall be submitted to arbitration. The arbitration shall be binding upon the parties. If the parties cannot agree upon an arbitrator, each party shall choose an arbitrator and they, in turn, shall choose a third. The arbitration shall be conducted in accordance with the rules of arbitration under the laws of the State of Washington in existence at the time of any such arbitration,
7. **Costs and Attorneys Fees.** In the event of legal action, the prevailing party shall be entitled to recover actual costs and attorney's fees. For the purpose of this declaration "legal action" shall include arbitration, lawsuit, trial, appeals, and any action, negotiations, demands, counseling or otherwise where the prevailing party has hired an attorney. It is the intent of this provision to reimburse the prevailing party for all reasonable attorney's fees and actual costs incurred in defending or enforcing the provisions of this Declaration, or the owner's rights hereunder.
8. **Failure to Enforce.** No delay or omission on the part of the Declarants or the Owners of other Lots in exercising rights, power, or remedy provided in this Declaration shall be construed as a waiver of acquiescence in any breach of the covenants, conditions, reservations, or restrictions set forth in the Declaration. No action shall be brought or maintained by anyone whatsoever against the Declarants for or on account of its failure to bring any action for any breach of these covenants, conditions, reservations, or restrictions, or for imposing restrictions which may be unenforceable.
9. **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions, which shall remain in full force and effect.
10. **Interpretation.** In interpreting this Declaration, the term "person" may include natural persons, partnerships, corporations, Associations, and personal representatives. The singular may also include the plural and the masculine may include the feminine, or vice versa, where the context so admits or requires. This Declaration shall be liberally construed in favor of the party seeking to enforce its provisions to effectuate the purpose of protecting and enhancing the value, marketability, and desirability of the Properties by providing a common plan for the development Vista



Green.

11. **Term.** This Declaration shall be effective for an initial term of thirty (30) years, and thereafter by automatic extension for successive periods of ten (10) years each, unless terminated, at the expiration of the initial term or any succeeding ten (10) year term by a termination agreement executed by the then Owners of not less than 75% of the lots then subject to this Declaration. Any termination agreement must be in writing, signed by the approving owners, and must be recorded with the County Auditor.
12. **Perpetuities.** In the event that any provision of this Declaration violates the rule against perpetuities, such provisions 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 the said incorporators' children and grandchildren who shall be living at the time this instrument is executed, whichever is later.
13. **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.
14. **Successors and Assigns.** This Declaration binds and is for the benefit of the heirs, successors and assigns of Declarant, the Declarant, the Members and the Owners.

## **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 Declarant.** Notwithstanding any other provision of this Declaration, this Declaration can be amended at any time by the Declarant prior to the time that 75% of the lots have been sold to others than the Declarant builders. That all lot owners agree to be bound by such amendment or amendments as made by the Declarant pursuant to this provision. Thereafter this Declaration can be amended only as provided for in this Declaration

**Section Three: Prior Approval by FHA/HUD.** Regardless of whether or not 75% of the lots have been sold to others than Declarant builders, in the event any loan with respect to any lot or building constructed thereon is insured through either the Federal Housing Administration or the Department of Veteran Affairs or any programs sponsored by either such agency, then the insuring agency must give written approval before any of the following actions can be approved by either the Declarant or the Lot Owners:

- A. Annexation of additional properties
- B. Dedication of any properties



### C. Amendment to this Declaration

**Section Four: 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. 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 to other than as set forth herein;
9. Imposition of any restrictions on the right of an Owner to sell or transfer hi/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 Five: Effective Date.** Amendments shall take effect only upon recording with the Thurston County Auditor of the county in which this Declaration is recorded.

**Section Six: Protection of Declarants.** For such time as Declarant 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 Declarant's rights.
2. Change Article One ("Definitions") in a manner which alters the Declarant's right or

status.

3. Alter the character and rights of membership or the rights of the Declarant as set forth in this Declaration.
4. Alter its rights as set forth in this Declaration as relating to architectural controls.
5. Alter the basis for assessments, or the Declarant's exemption from assessments.
6. Alter the number or selection of Directors as established in the Bylaws.
7. Alter the Declarant's rights as they appear under this Article.

**Section Seven: Notice.** Any notice required hereunder shall be deemed effective when personally delivered or three days after mailing by certified and regular mail to the owner of public record at the time of such mailing to such owner's address as it appears on the Thurston County Assessor's tax records and to the street address of the lot(s) herein. Notices to lenders shall be sent to the last address the lender has given to the Association. The Association is not required to provide notice of any matter to any lender who has not notified the Association in writing of such lender's desire to receive notice, and/or has not given the Association written notice of the lender's address for receipt of notices. The Association shall not undergo investigation outside of its own records into the name or location of any lender or lien holder.