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SNOHOMISH COUNTY, WASHINGTON

After Recording Return to:  
Harbour Homes, LLC  
c/o Geonerco Management, LLC  
Attn: John Baringer  
1441 North 34<sup>th</sup> Street, Suite 200  
Seattle, WA 98103

**DOCUMENT TITLE:**

**CHICAGO**  
5972170

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE  
PLAT OF ROCK CREEK NORTH DIVISION 2

**GRANTOR:** HARBOUR HOMES, LLC

**GRANTEE:** ROCK CREEK NORTH DIVISION 2 HOMEOWNERS ASSOCIATION  
AND THE PUBLIC

**LEGAL DESCRIPTION:** NW ¼ of the NW ¼ Section 25, Township 30 North, Range 5  
East, W.M.

**PARCEL NUMBER:** 30052500200200

After Recording Return to:  
Harbour Homes, LLC  
c/o Geonerco Management, LLC  
Attn: John Baringer  
1441 N. 34<sup>th</sup> Street, Suite 200  
Seattle, Washington 98103

**DECLARATION  
OF  
COVENANTS, CONDITIONS,  
AND RESTRICTIONS  
FOR  
THE PLAT OF  
ROCK CREEK NORTH DIVISION 2**

**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS  
FOR THE PLAT OF ROCK CREEK NORTH DIVISION 2**

THIS DECLARATION is made on the date set forth below by Harbour Homes, LLC, a Washington limited liability company ("Declarant").

**RECITALS**

A. Declarant is the owner of that certain real property contained within the boundaries of the Property described in the attached Exhibits A and B and known as the Plat of Rock Creek North Division 2, located in the City of Marysville, Snohomish County, Washington. The plat will be recorded in phases.

B. Declarant desires to subject the real property contained in Phase 1 of the Plat of Rock Creek North Division 2, which is legally described in Exhibit A hereto to the provisions of this Declaration to create a residential community of single-family housing (as "single family" is defined below) and related uses as set forth in Section 6.2 hereof.

C. As hereinafter provided in this Declaration, Declarant retains and reserves the right, privilege and option to submit all or any portion of the property comprising the Plat of Rock Creek North Division 2 as legally described in Exhibit B hereto to the provisions of this Declaration at a later time and from time to time as a part of the Community.

NOW, THEREFORE, Declarant hereby declares that all of the property described in Exhibit A and any Additional Property described in Exhibit B as may by amendment be subjected to this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

## **ARTICLE 1**

### **DEFINITIONS**

**1.1 Words Defined.** The following words, when used in this Declaration or in any Supplementary Declaration (unless the context shall prohibit), shall have the following meanings:

1.1.1 "Additional Property" shall mean the real property shown on Exhibit B which may be included in Community, together with all improvements thereon.

1.1.2 "Association" shall mean Rock Creek North Division 2 Homeowners Association, a Washington nonprofit corporation, its successors and assigns.

1.1.3 "Board of Directors" or "Board" of the Association shall be the appointed or elected body, as applicable, having its normal meaning under Washington law.

1.1.4 "Bylaws" shall refer to the Bylaws of the Rock Creek North Division 2 Homeowners Association.

1.1.5 "Common Areas" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon as designated on the final plat of the Community or as otherwise conveyed to the Association for the common use and enjoyment of the Owners.

1.1.6 "Community" shall mean and refer to that certain real property and interest therein described in Exhibit A, and such additions thereto as may be made by Declarant by amendment hereto.

1.1.7 "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors. Such determination, however, shall generally be made with reference to the standards originally established by the Declarant.

1.1.8 "Declarant" shall mean and refer to Harbour Homes, LLC and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the Property, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the Property there shall be only one "Declarant" hereunder at any one point in time.



1.1.9 "Development Period" shall mean that period of time beginning on the date this Declaration is recorded in the records of Snohomish County and ending on the earliest to occur of (i) twenty one (21) years from the date of recording of this Declaration or (ii) the date Declarant holds a special meeting of the Association, in accordance with the Bylaws, for the purpose of transitioning the management of the Association from the Declarant to the Owners.

1.1.10 "Governing Documents" shall mean and refer to this Declaration, the Articles of Incorporation (if any) and Bylaws of the Association, and rules and regulations (if any) of the Community adopted by the Board, as any of the foregoing may be amended from time to time.

1.1.11 "Lot" shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a residential dwelling site as shown on a plat recorded in the records of Snohomish County.

1.1.12 "Mortgage" means any mortgage, deed of trust, and any and all other similar instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation.

1.1.13 "Mortgagee" shall mean the holder of a Mortgage.

1.1.14 "Occupant" shall mean any Person occupying all or any portion of a residence or other property located within the Community for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

1.1.15 "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the payment or satisfaction of an obligation.

1.1.16 "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

1.1.17 "Property" shall mean the land described in Exhibit A, together with all improvements thereon, and upon submission to the provisions of this Declaration, the land described in Exhibit B or portion thereof, together with improvements thereon.

1.1.18 "Single Family" shall mean a single housekeeping unit, without regard to the construction type or ownership of such unit that includes not more than four (4) adults who are legally unrelated.

1.1.19 "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration or that imposes, expressly or by reference, additional or modified restrictions and obligations on the land described therein.

1.1.20 "Total Association Vote" means all of the votes attributable to members of the Association (including votes of Declarant).

## **ARTICLE 2**

### **PLAN OF DEVELOPMENT**

2.1 **Development of Property.** The Property initially shall consist of the real property described in Exhibit A. The Property contains Twenty (20) Lots. The Property also includes the Common Areas owned by the Association and designated as such on the Plat I. All Lots within Rock Creek North Division 2 shall be and are hereby restricted exclusively to a single-family residential use and shall be subject to the standards and restrictions set forth in Article 6 hereof.

2.2 **Plan of Development of Additional Property.** Declarant hereby reserves the option to be exercised in its sole discretion, to submit from time to time the Additional Property or portion or portions thereof to the provisions of this Declaration and thereby to cause the Additional Property or a portion or portions thereof to become part of the Property. At this time, Declarant intends that the Rock Creek North Division 2 community shall include four (4) additional single-family residential division(s), in addition to the Property. Declarant intends that in the event all divisions are included in the Property there shall be approximately one hundred forty three (143) single-family residences, together with certain Common Areas devoted to passive and active recreational use by all Owners on an equal basis. However, Declarant is not obligated to include any Additional Property or improvements to the Property as presently configured and reserves the right to develop more or fewer Lots, and more or less recreational improvements within the Common Areas, at Declarant's sole option, consistent with the following:

2.2.1 The option to add the Additional Property as described herein may be exercised from time to time by Declarant in its sole discretion at any time prior to the expiration of the twenty one (21) year period commencing on the recording date of this Declaration;

2.2.2 Portions of the Additional Property may be added to the Property at different times, and there are no limitations fixing the boundaries of those portions or regulating the order sequence or location in which any of such portions may be added to the Property;

2.2.3 If the Additional Property or any portion thereof is added to the development, the layout and design of the Property shall be substantially in accordance with the Plat of Rock Creek North Division 2, Phase 1 previously approved by Snohomish County and subsequently annexed by the City of Marysville;

2.2.4 The option reserved by Declarant to cause all or any portion of the Additional Property to become part of the development shall in no way be construed to impose upon Declarant any obligation to add all or any portion of the Additional Property or to construct thereon any improvements of any nature whatsoever. The option reserved to Declarant to add



the Additional Property may be exercised by execution of an amendment to this Declaration which shall be filed with the Auditor's Office of Snohomish County, Washington, together with the plat of the relevant division showing the Additional Property or such portion or portions thereof as are being added. Simultaneously therewith, Declarant shall convey to the Association all Common Areas contained within the Additional Property. Any such amendment shall expressly submit the Additional Property or such portion thereof to all the provisions of this Declaration. If the Additional Property or any portion thereof is added to the Property, then the number of votes in the Association shall also increase accordingly by the number of Lots in the Additional Property so that there shall continue to be a uniform and consistent method of voting an assessment within the Property.

2.3 **Interest Subject to Plan of Development.** Every purchaser of a Lot within the Property shall purchase such interest and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of Declarant's plan of development as herein set forth and Declarant shall have and does hereby specifically reserve the right to add the Additional Property or any portion thereof to the Property as hereinabove provided. Declarant further reserves the right with respect to all Lots within the Additional Property to convey to the purchaser thereof the title to such interest, together with its appurtenant membership and voting rights in the Association. Any provision of this Declaration to the contrary notwithstanding, the provisions of the foregoing plan of development as set forth in this Article 2 may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the prior written consent of Declarant.

### **ARTICLE 3**

#### **ROCK CREEK NORTH DIVISION 2 HOMEOWNERS ASSOCIATION**

3.1 **Description of Association.** The Association may, at the election of the Declarant or the Association, be incorporated as a non-profit corporation organized and existing under the laws of the State of Washington. The Association shall be charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents; provided, however, that no such Governing Documents, other than the Declaration, shall for any reason be amended or otherwise interpreted so as to be inconsistent with this Declaration.

3.2 **Board of Directors.** Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until termination of the Development Period. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant the authority to appoint and remove directors and officers of the Association during the Development Period. The directors selected by the Declarant need not be Owners. The number of directors shall be as set forth in the Bylaws. Following termination of the Development Period, the Board of Directors shall be elected by the Owners in accordance with the Bylaws.

3.3 **Membership.** Every Owner of a fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association and membership in the

Association shall consist exclusively of such owners. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

**3.4 Voting.** Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it.

**3.5 Architectural Control Committee.** No construction, alteration, addition, refurbishing, or erection of any structure or any nature whatsoever shall be commenced or placed upon any part of the Community, except that which is installed by the Declarant, or is approved in accordance with this Section, or as is otherwise expressly permitted herein. Any such construction, alteration, addition, refurbishing, or erection shall not be made unless and until plans and specifications showing the nature, kind, shape, size and height, architectural design and detail, materials, workmanship, colors, location on site, improvement and site grade elevations, and site landscaping shall have been submitted in writing to and approved by the Architectural Control Committee (the "ACC") established pursuant to this Section 3.5. The Board may employ architects, engineers, or other Persons as it deems necessary to enable the ACC to perform its review. Written design guidelines and procedures ("Design Guidelines") may be established by the Board for the exercise of this review, which Design Guidelines may provide for a review fee. Copies of the Design Guidelines shall be available to all Owners upon request for a reasonable fee.

3.5.1 The ACC shall consist of not less than one (1) nor more than five (5) members, who need not be Owners. So long as the Declarant owns any property for development and/or sale in the Community, the Declarant shall have the right to appoint or remove any or all members of the ACC. Upon the expiration or earlier surrender in writing of such right, the Board shall appoint the members of the ACC; however the ACC shall include two members of the Board.

3.5.2 Members of the ACC shall not be entitled to compensation for services performed pursuant to this Section 3.5. The Association shall defend, indemnify, and hold each members of the ACC harmless for any liability incurred while serving as a member of the ACC.

3.5.3 The ACC shall be the sole arbiter of plans submitted to it and may withhold approval for any reason, including aesthetic considerations, and it shall be entitled to stop any construction in violation of approved plans or this Declaration.



3.5.4 PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN OR QUALITY OF MATERIALS, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS NEITHER THE ACC, THE MEMBERS THEREOF, NOR THE ASSOCIATION ASSUMES LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS. NEITHER DECLARANT, THE ASSOCIATION, THE ACC, THE BOARD, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM SHALL BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER OF PROPERTY AFFECTED BY THESE RESTRICTIONS BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS OR SPECIFICATIONS AND EVERY OWNER AGREES THAT SUCH PERSON OR OWNER WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, THE ASSOCIATION, THE ACC, THE BOARD, OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM TO RECOVER ANY DAMAGES AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE, OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND THE CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

3.6 **Bylaws, Rules and Regulations.** The Board on behalf of the Association shall have the power to adopt, modify, and amend bylaws, rules and regulations governing the Community, provided that such bylaws, rules and regulations shall not be inconsistent with this Declaration and shall apply uniformly to all Owners, except as specifically provided herein. The Board shall have the power to enforce the rules and regulations on behalf of the Association and may prescribe penalties or fines for their violation. Any such bylaws, rules and regulations shall become effective thirty (30) days after promulgation and shall be mailed to all Owners prior to their effective date. A copy of the bylaws, rules and regulations then in force shall be retained by the secretary of the Association. The Declarant on behalf of the Board may adopt the initial bylaws, rules and regulations.

#### **ARTICLE 4**

#### **ASSESSMENTS**

4.1 **Purpose of Assessment.** The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

**4.2     Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (i) annual assessments or charges; (ii) special assessments, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines imposed in accordance with the terms of this Declaration.

4.2.1 All such assessments, together with (i) late charges, (ii) interest set by the Board, not to exceed the maximum rate permitted by law (but not to exceed eighteen percent (18%) per annum), and (iii) costs, including, without limitation, reasonable attorneys' fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made.

4.2.2 Each such assessment, together with late charges, interest, costs, including, without limitation, reasonable attorneys' fees actually incurred, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

4.2.3 The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Such certificate shall be binding upon the Association as of the date of issuance.

4.2.4 Annual assessments shall be levied equally on all Lots. Assessments shall be paid in such manner and on such dates as may be fixed by the Board. Unless otherwise provided by the Board, the assessment shall be paid in annual installments.

**4.3     Adoption of Budget.** It shall be the duty of the Board to prepare and adopt a budget covering the estimated costs of operating the Association during the coming year and the assessments to be levied against each Lot, which may include an amount for capital reserves in accordance with a capital budget separately prepared. The Board shall cause a summary of the proposed operating and capital budgets and the proposed assessments against each Lot for the following year to be mailed to each Owner. The Board shall set a date for a special meeting of the Owners to consider ratification of the budget within thirty (30) days after adoption by the Board and not less than fourteen (14) nor more than sixty (60) days after the mailing of the proposed budgets and assessments. Unless at such meeting the budget is rejected by at least seventy-five percent (75%) of the Total Association Vote, in person or by proxy, the budget shall be ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the budget in effect for the then current year shall continue in effect until the Owners ratify a subsequent budget.



**4.4 Revised Budget.** If the financial circumstances or needs of the Association materially change during any year, the Board may prepare and adopt a revised budget and assessments for the balance of the year. The Board shall cause a summary of the proposed revised budget and assessments to be mailed to each Owner and shall set a date for a meeting of the Owners to consider ratification of the revised budget and assessments in the same manner as the regular annual budget as set forth in Section 4.3 above.

**4.5 Special Assessments.** In addition to the other assessments authorized herein, the Association may levy special assessments for expenses such as, but not limited to, capital improvements from time to time if approved at a meeting by two-thirds (2/3) of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

**4.6 Lien for Assessments.** All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, including, without limitation, reasonable attorneys' fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the records of Snohomish County and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument. All other Persons acquiring liens or encumbrances on any Lot after the recording of this Declaration shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

**4.7 Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include interest set by the Board from time to time, on the principal amount due, late charges, costs of collection, including, without limitation, reasonable attorneys' fees actually incurred, and any other amounts provided or permitted by law.

**4.7.1** In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property.

4.7.2 The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

4.7.3 No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot.

4.7.4 All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

**4.8 Suspension for Nonpayment of Assessment.** If an Owner shall be in arrears in the payment of any assessment due, or shall otherwise be in default of the performance of any terms of the Governing Documents of the Association for a period of thirty (30) days, said Owner's voting rights shall, without the necessity of any further action by the Association, be suspended (except as against foreclosing secured parties) and shall remain suspended until all payments, including interest thereon, are brought current and any other default is remedied. No Owner is relieved of liability for assessments by non-use of the Common Areas or by abandonment of a Lot.

**4.9 Date of Commencement of Assessments.** The assessments provided for herein shall commence as to a Lot subject to this Declaration on the first day of the month following conveyance of such Lot to a Person other than Declarant.

**4.10 Specific Assessments.** In addition to the general and special assessments outlined above, the Board shall have the power to levy such specific assessments pursuant to this Section 4.10 as, in its discretion, it shall deem appropriate. All other terms and conditions of this Article 4 relating to general and special assessments shall apply to the levy and collection of the specific assessments covered hereby and the Association shall have all powers and remedies for collection and enforcement of such assessments as are applicable to the general and special assessments set forth above. Fines levied pursuant to Section 11.1 of this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible under Sections 5.3 and 5.4 of this Declaration shall be specific assessments.

**4.11 Common Areas Exempt.** The Common Areas shall be exempt from assessments by the Association.

**4.12 Capitalization of Association.** Intentionally omitted.



**ARTICLE 5**  
**MAINTENANCE; CONVEYANCE OF COMMON AREAS TO ASSOCIATION**

**5.1     Association's Responsibility.** The Association shall maintain and keep in good repair the Common Areas described in Article 2 herein and any Common Areas acquired by the Association in the future. If the streetlights are installed and there is no procedure for billing individual lot owners then the Association shall pay the bills for the streetlights. The Association shall also maintain all other facilities serving the Community not dedicated to or maintained by a public entity. The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

**5.2     Property Not Owned by Association.** The Association shall have the right, but not the obligation, to maintain other property, whether or not owned by the Association and whether within or without the Community, where the Board has determined that such maintenance would benefit all Owners. Without limitation of the foregoing, the Association may enter into a joint maintenance agreement with adjoining property owners or associations for the repair, maintenance and replacement of any shared facilities or other property.

**5.3     Damage Caused by Owner.** In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot of such Owner.

**5.4     Owner's Responsibility.** Except as provided in Sections 5.1, 5.2 and 5.3 above, all maintenance of any Lot and all structures, parking areas, landscaping, and other improvements thereon together with the landscaping and trees on any parking strip fronting any such Lot, shall be the sole responsibility of the Owner thereof, who shall provide maintenance consistent with the Community-Wide Standard and this Declaration. The perimeter fencing, if any, shall be maintained and repaired, in uniform appearance, by the abutting lot owners. In the event that the Board of Directors of the Association determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be added to and

become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

**5.5 Conveyance of Common Areas by Declarant to Association.** The Common Areas as described on Exhibit A attached hereto were conveyed to the Association on the recorded plat. The Association accepted the conveyance and the tracts are now Common Areas to be maintained by the Association. Additional Common Areas designated as such on later divisions of the Plat of Rock Creek North Division 2 may be dedicated at the time the Additional Property is added to the Property by amendment hereto.

The Common Areas are subject to an easement of common use and enjoyment in favor of the Association and every Owner, their heirs, successors and assigns in accordance with the terms and conditions of the Governing Documents. Such rights to use the Common Areas are appurtenant to and shall not be separated from ownership of any Lot and shall not be assigned or conveyed by any Lot Owner in any way except upon the transfer of title to such Lot, and then only to the transferee of such title and shall be deemed so conveyed whether or not it shall be so expressed in the deed or other instrument conveying title. Certain rights of use, ingress, egress, occupation, and management authority in the Common Areas set forth elsewhere in this Declaration shall be reserved to Declarant for the duration of the Development Period. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

**5.6 Further Restrictions on Common Areas.** If any Common Area is currently owned or is acquired in the future which is designated as a steep slope, as a wetland, as a buffer, as a native growth protection area or as any other type of sensitive area, then use of such Common Area shall be limited to activities approved by the municipality which designated such Common Area as sensitive. Notwithstanding the provisions in this Article 5, or in Section 10.1 below, or in any other provision of this Declaration, there shall be no right or easement of ingress and egress, use and enjoyment in or to such Common Area. Access shall be limited to maintenance activities approved by the municipality.

## **ARTICLE 6**

### **USE RESTRICTIONS AND RULES**

**6.1 General/Rules and Regulations.** This Article, beginning at Section 6.2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended in the manner provided in Section 11.3 hereof regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. Such use restrictions and rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a majority of the Total Association Vote and the consent of Declarant during the Development Period.



**6.2 Residential Use.** Except as provided in this Section, all Lots shall be used for single-family residential purposes exclusively with the exception that certain home occupations may be permitted, subject to the guidelines and rules established by the Board, if any, and subject to approval by the Board. Such home occupations may be limited to certain business uses, shall not create any disturbance, noise, or unsightliness, shall not unduly increase traffic flow or parking congestion, and shall not be in violation of any of the provisions of the Governing Documents. Use of the Lots shall in all cases be in compliance with all applicable laws, ordinances, rules and regulations.}

**6.3 Building and Landscaping Requirements and Restrictions.** Except as provided in Section 6.4 below, all residences constructed within the Community by any Person shall be subject to design review and approval by the ACC which may cover the minimum size, architectural style, height, scope of improvements, quality of design, materials, workmanship, and siting standards. Without restricting or limiting the authority of the ACC pursuant to Section 3.5 in approving or disapproving of any specific proposal, the following restrictions shall apply to the Community in general:

6.3.1 Only one Single Family home shall be permitted on each Lot. Two story or split level homes shall include no less than 1,600 gross square feet of living space, exclusive of one-story open porches and garages. One story homes shall include no less than 1,400 gross square feet of living space, exclusive of one-story open porches and garages.

6.3.2 After Declarant has completed construction of all houses in the Community, any remodeling or exterior addition to any residence or other structure erected or placed on any Lot shall be completed as to external appearance, including finished painting, within six (6) months after the date of commencement of construction. All front, side and rear yard landscaping must be completed within six (6) months from the date of closing of the purchase of the residence by the Owner from the Declarant. In the event that strict enforcement of this provision would cause undue hardship due to weather conditions, this provision may be extended for a reasonable length of time when approved by the ACC.

6.3.3 All homes within the Community shall contain a garage; carports shall not be permitted. Unless otherwise approved by the ACC, all garages must be attached to, or incorporated in and made a part of, the residence constructed upon a Lot. In granting waivers to this requirement, the ACC will consider functional necessity and architectural desirability.

6.3.4 All driveways and parking areas shall be paved with material approved by the ACC.

6.3.5 No fence, fencing-type barrier, or hedge of any kind in excess of six (6) feet high or extending into the front yard of any residence shall be erected, allowed or maintained upon any Lot, without the prior written consent of the ACC. All fences shall be constructed of wood material unless approved by the ACC. Any such fence, barrier, row of trees, or hedge shall be strictly in compliance with Design Guidelines, if any, established by the ACC, which standards may provide for limited acceptable styles and/or specifications.

6.3.6 Each home constructed on a Lot shall be built of new materials except, with approval of the ACC, decorative items such as used brick, weathered planking, and similar items. All visible masonry shall be native stone, brick or stucco. Types and colors of exterior paint and stain must be submitted to the committee for approval. Any change to the exterior color of any improvement located on a Lot, including, without limitation, the dwelling, must be approved by the ACC.

6.3.7 All roofs on dwellings and garages shall be of composite, tile or cedar shake and shall have a minimum pitch of four/twelve.

6.3.8 No owner shall grade, fill or otherwise alter the slope or contour of any Lot, construct or alter the drainage patterns initially installed and constructed by Declarant or a Residential Developer, or as established by the grading and natural course of surface and subsurface water run-off without first obtaining i) recommendations from a soils engineer or civil engineer, as appropriate, duly licensed by the State of Washington, ii) any and all necessary governmental approvals and permits and iii) written approval of the ACC, if any. No Owner shall perform any such work except in conformance with the recommendations, plans and specifications of such engineer.

**6.4 Existing Residence.** Intentionally omitted.

**6.5 Signs.** No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the ACC. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs including, without limitation, signs related to Declarant's development and marketing of residences within the Community. In addition, "For Sale" signs and security signs consistent with the Community-Wide Standard and any signs required by legal proceedings may be erected upon any Lot.

**6.6 Vehicles.** The term "vehicles" as used herein shall include, without limitation, automobiles, vans, campers, trucks, buses, motor homes, mobile homes, boats, jet skis, trailers, portable aircraft, motorcycles, snowmobiles, mini-bikes, scooters, go-carts, dune buggies and any other towed or self propelled transportation type vehicle. The term "passenger vehicles" as used herein shall include passenger automobiles, vans, small trucks, motorcycles, and similar type vehicles used regularly and primarily as transportation for the Occupants of the Lot. Vehicles used for commercial and recreational purposes are not considered passenger vehicles. "Parking areas" shall refer to the number of garage parking spaces and driveway areas in front of garages. However, driveway areas shall be considered "parking areas" for passenger vehicles only.

6.6.1 No vehicles other than passenger vehicles in regular use may be parked on any Lot or portion of the Community, except in parking areas on Lots, or in a screened area on a Lot, if such screened area is approved by the ACC. Any vehicle regularly parked in an unapproved area or for longer than twenty-four (24) consecutive hours shall be considered a nuisance and may be removed from the Community.



6.6.2 No passenger vehicles may be parked on any Lot or portion of the Community except in "parking areas" as defined in this Section.

6.6.3 Any passenger vehicle which is inoperable or unlicensed and not capable of use on the public highways and which is parked on any parking area for a period of more than forty-eight (48) hours shall be treated the same as a non-passenger vehicle and shall be considered a nuisance and may be removed from the Community.

6.6.4 The Board may adopt and maintain current rules and regulations concerning the parking and storage of vehicles on any Lot or any portion of the Community. Said rules are to protect the Community from the potentially adverse impacts of vehicles on the Community environment and to accommodate the evolving nature and use of such vehicles. Such rules and regulations may provide for exceptions and/or modifications to the conditions of this Section as determined in the sole discretion of the Board. The Board shall rule on any dispute as to the interpretation or application of this Section and all rules and regulations established by the Board with respect to vehicles.

6.6.5 Off-street parking for at least three (3) passenger vehicles shall be provided on each Lot. Covered enclosed parking shall be provided for one (1) or more passenger vehicles, plus a driveway for at least two (2) additional passenger vehicles, unless approved by the ACC.

**6.7 Vehicles on Common Areas.** No motorized vehicles shall be permitted on pathways or unpaved Common Areas except vehicles being used for the limited purpose of operating and maintaining utilities.

**6.8 Leasing.** Lots may be leased for residential purposes. All leases shall have a minimum term of at least three (3) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, and rules and regulations of the Association.

**6.9 Occupants Bound.** All provisions of the Declaration, Bylaws, and of any rules and regulations, which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

**6.10 Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept in the Community; provided, however, that conventional household pets may be kept on a Lot subject to the following restrictions: Pets shall not be kept, bred or maintained for any commercial purposes. Owners shall be responsible for the immediate clean up and removal of all fecal matter deposited by pets on any property other than the Lot of the Owner of the pet. Pets shall be confined in the Owner's Lot unless on a leash and accompanied by a responsible person. No domestic pet may be kept if it is a source of annoyance or a nuisance. The Board shall have the authority to determine whether a particular pet is a nuisance or a source of

annoyance, and such determination shall be final and conclusive. Pets shall be attended at all times and shall be registered, licensed and inoculated from time to time as required by law.

**6.11 Mining Prohibited.** No portion of the Community shall be used for the purpose of boring, mining, quarrying, or exploring for or removing oil or other hydrocarbons, minerals, gravel, or earth.

**6.12 Nuisance.** Each Owner and Occupant shall prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No illegal, illicit, noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law or unless specifically approved by the ACC.

**6.13 Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly of and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be undertaken outside of homes or garages. Garage doors shall be kept closed at all times unless they are in use. In addition, the storage of equipment, machinery, construction supplies or any similar material on a Lot outside of the home and garage constructed thereon is strictly prohibited except as required during the remodeling or refurbishing of improvements on such Lot and then for not more than sixty (60) days.

**6.14 Antennas.** No outside radio antenna, television antenna, microwave or satellite dish, aerial, or other such device (collectively "**Antennas**") with a diameter or diagonal measurement in excess of one meter shall be erected, constructed or placed on any Lot. Reasonable restrictions which comply with Federal, State and local laws and do not significantly increase the cost of the Antenna system or significantly decrease its efficiency or performance may be imposed by the ACC on Antennas with a diameter or diagonal measurement of one meter or less.

**6.15 No Obstruction of Easements.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers or storm drains. Declarant hereby reserves for the benefit of Declarant and the Association and their respective successors and assigns a



perpetual easement across all Common Areas and Lots for the purpose of maintaining or altering drainage and water flow. No structure, planting, or other material shall be placed or permitted to remain upon any easement which may damage or interfere with the installation and maintenance of any utilities, unless approved by the Board prior to installation. At no time shall any access easements be blocked.

**6.16 Sight Distance at Intersections.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem as determined by the ACC in its sole discretion.

**6.17 Garbage Cans, Woodpiles, Etc.** All garbage cans, woodpiles, air-conditioning compressors, machinery, equipment and other similar items related to the operation of the residence shall be located or screened so as to be concealed from view from the street abutting the Lot on which such items are located. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community.

**6.18 Subdivision of Lot.** No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the ACC. Declarant, however, hereby expressly reserves the right to re-plat any Lot or Lots owned by Declarant. Any such division, boundary line change, or re-platting shall not be in violation of the applicable subdivision and zoning regulations.

**6.19 Guns.** The use of firearms in the Community is prohibited. The term "firearms" includes without limitation BB guns, pellet guns, and firearms of all types.

**6.20 Utilities.** Except as may be permitted by the ACC, no overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and except as such lines exist upon recording of the plat of the Community or as required by utilities serving the Community.

**6.21 Lighting.** No colored lights (except holiday displays and yellow insect type lights) shall be permitted at any location within the Community. All exterior fixtures that are attached to the home shall be of compatible design and materials of the home. Any post mounted exterior fixtures shall be of compatible design and materials as the fixtures attached to the home. No fixtures which illuminate and excessively glare onto any other Lot shall be permitted, and all exterior lights shall be screened to minimize impacts of light and glare. No unshielded spot/floodlight fixtures are permitted.

**6.22 Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation, exterior sculpture, fountains, and similar items shall be permitted in the front yard of any Lot unless approved by the ACC.

**6.23 Mailboxes.** All mailboxes located on Lots shall be of a style approved by the ACC. Mailboxes shall be attached only to stands provided and maintained by the Association in designated locations.

**6.24 Clotheslines.** No exterior clotheslines of any type shall be permitted upon any Lot unless entirely screened from view from other Lots.

**6.25 Exterior Security Devices.** No exterior security devices, including, without limitation, window bars, shall be permitted on any residence or Lot. Signs placed on the Lot or the exterior of the residence stating that such residence is protected by a security system are permissible.

**6.26 Construction and Sale Period.** So long as Declarant owns any property in the Community for development and/or sale, the restrictions set forth in this Article 6 shall not be applied or interpreted so as to prevent, hinder or interfere with development, construction and sales activities of Declarant or any builder or developer approved by Declarant.

## **ARTICLE 7**

### **INSURANCE AND CASUALTY LOSSES**

**7.1 Insurance Coverage.** The Board of Directors or the duly authorized agent of the Association shall have the authority to and shall obtain or cause to be obtained insurance as follows:

7.1.1 The Board shall obtain insurance on all insurable buildings and, where the Board deems there to be a reasonable risk, other substantial structures whether or not such buildings or structures are located on the Common Areas and which the Association is obligated to maintain. Insurance on buildings shall provide, at minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Insurance on other substantial structures shall cover those risks deemed advisable by the Board and shall be in such amounts as are deemed advisable by the Board. The Board may insure other types of improvements, including entry monuments, landscaping, and the like, as it deems advisable. With respect to such other improvements, the Board shall determine the risks to be insured and the amounts of insurance to be carried.

7.1.2 The Board shall obtain a public liability policy applicable to the Common Areas covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00) unless otherwise determined by the Board.

7.1.3 The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant and to reimburse



Declarant for the cost thereof, and Declarant shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

7.1.4 Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

7.1.5 In the event insurance premiums in connection with the insurance required by this Article 7 become prohibitively expensive, in the judgment of the Board, the Board may with approval of seventy-five percent (75%) of the Total Association Vote reduce the amount of the required insurance, self-insure itself, or discontinue the insurance all together.

**7.2 Policy Requirements.** All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties. Such insurance shall be governed by the provisions hereinafter set forth:

7.2.1 All policies shall be written with a company authorized to do business in Washington.

7.2.2 Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

7.2.3 In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

7.2.4 All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the City of Marysville.

**7.3 Other Insurance.** In addition to the other insurance required by this Article 7, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws. The Board may, in its discretion, obtain a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for

the Association's funds, if reasonably available. The Association shall obtain additional insurance coverage, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, or the U.S. Department of Housing and Urban Development.

**7.4 Individual Insurance.** By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall at a minimum, carry fire and extended coverage casualty insurance on the Lot and all structures constructed thereon in an amount sufficient to cover the full replacement costs of any repair or reconstruction in the event of damage or destruction from any such hazard.

**7.5 Damage and Destruction — Insured by Association.**

7.5.1 Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. The Board of Directors shall have the enforcement powers specified in this Declaration necessary to enforce this provision.

7.5.2 Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the Total Association Vote otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

7.5.3 If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.



7.5.4 In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

**7.6 Damage and Destruction — Insured by Owners.** The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified herein.

**7.7 Insurance Deductible.** The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or be a common expense of the Association.

## **ARTICLE 8** **CONDEMNATION**

In the event of a taking by eminent domain of any portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least seventy-five percent (75%) of the Total Association Vote shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefor. The provisions of Section 7.5, above, applicable to Common Areas improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

## **ARTICLE 9** **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

**9.1 Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an “eligible holder”), will be entitled to timely written report as to the current status of said Lot with respect to the following:

9.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

9.1.2 Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder.

**9.2 No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas.

**9.3 Notice to Association.** Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**9.4 VA/HUD Approval.** As long as the Declarant has the right to appoint and remove the directors of the Association and so long as the project is approved by the U.S. Department of Housing and Urban Development ("HUD") for insuring or the U.S. Department of Veterans Affairs ("VA") for guaranteeing any Mortgage in the Community the following actions shall require the prior approval of the VA and/or HUD as applicable: dedication of Common Areas to any public entity; mergers and consolidations; dissolution of the Association, and material amendment of the Declaration, Bylaws or Articles of Incorporation.

**9.5 Applicability of Article 9.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Washington law for any of the acts set out in this Article.

**9.6 Amendments by Board.** Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD or VA subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

## **ARTICLE 10** **EASEMENTS**

### **10.1 Easements for Use and Enjoyment.**

10.1.1 Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to each Lot, subject to the following provisions:

10.1.1.1 the right of the Association to charge reasonable fees for the use of any portion of the Common Areas, to limit the number of guests of Lot



Owners and tenants who may use the Common Areas, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, and invitees;

10.1.1.2 the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use certain Common Areas for any period during which any assessment against such Owner's Lot remains unpaid;

10.1.1.3 the right of the Association to borrow money for the purpose of improving the Common Areas, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Areas; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community; and

10.1.1.4 the right of the Association to dedicate or transfer all or any portion of the Common Areas subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the affirmative vote of at least seventy-five percent (75%) of the Total Association Vote; provided, however, that during the Development Period, Declarant may, on its sole signature, dedicate or transfer portions of the Common Areas, so long as such transfer or dedication does not materially and adversely affect the Association or any Lot Owner.

10.1.2 Any Lot Owner may delegate such Owner's right of use and enjoyment in and to the Common Areas and facilities located thereon to the members of such Owner's family and to such Owner's tenants and guests and shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Lot, if leased.

**10.2 Easements for Utilities.** There is hereby reserved to the Declarant, the Association and any utility providers designated by either the Declarant or the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, storm sewer, cable television, telephone and electricity. It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. This easement shall be utilized so as to not unreasonably interfere with improvements constructed upon any Lot and the building envelope for any unimproved Lot. Should any party furnishing any such utility or service request a specific license or

easement by separate recordable document, the Board shall have the right to grant such easement.

**10.3 Easement for Maintenance.** Declarant hereby expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article 5. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Owner's property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**10.4 Easement for Entry Features.** If Declarant installs an entry feature, there is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction, landscaping and maintenance of entry features and similar street-scapes for the Community, as more fully described on the recorded subdivision plat for the Community or any other recorded instrument, easement or conveyance. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features.

**10.5 Construction and Sale Period Easement.** Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation, rules and regulations, design guidelines, and any amendments thereto, so long as Declarant owns any property in the Community for development and/or sale, Declarant reserves an easement across all Community property for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development, construction, and sales activities related to the Property, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Lot; the right to tie into any portion of the Community with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices. Declarant and any such builder or developer may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. During the Development Period, this Section shall not be amended without the Declarant's express written consent.



## **ARTICLE 11**

### **GENERAL PROVISIONS**

**11.1 Enforcement.** Each Owner and Occupant shall comply strictly with the Association's Bylaws, rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed to such Owner's Lot, if any. After notice and an opportunity to be heard by the Board of Directors or by a representative designated by the Board, and in accordance with rules and regulations adopted by the Board, the Board may levy reasonable fines for violations of the above (in addition to any late charges that may be assessed in connection with the late payment of assessments or other Association charges) in accordance with a previously established schedule adopted by the Board and furnished to the Owners, which fines shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

**11.2 Duration.** This Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, so long as and to the extent that Washington law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision shall be (a) automatically extended (to the extent allowed by applicable law) for successive periods of ten (10) years, unless a written instrument reflecting disapproval signed by the then Owners of at least seventy-five percent (75%) of the Lots and the Declarant (so long as the Declarant owns any property for development and/or sale in the Community) has been recorded within the year immediately preceding the beginning of a ten (10) year renewal period agreeing to change such provisions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated to the extent specified therein; or (b) extended as otherwise provided by law. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

### **11.3 Amendments.**

11.3.1 This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (ii) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) if such amendment is required by an institutional or

governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (iv) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing. Further, so long as Declarant owns any property for development and/or sale in the Community, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owners hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

11.3.2 This Declaration may also be amended upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least seventy-five percent (75%) of the Total Association Vote and the consent of Declarant (so long as the Declarant owns any property for development and/or sale in the Community). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

**11.4 Partition.** The Common Areas shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Community.

**11.5 Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**11.6 Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

**11.7 Captions.** The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

**11.8 Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after



the death of the last survivor of the now-living descendants of the individuals signing this Declaration.

**11.9 Indemnification.** To the fullest extent allowed by applicable Washington law, the Association shall indemnify every officer and director against any and all expenses, including, without limitation, attorneys' fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association may, at the discretion of the Board, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

**11.10 Books and Records.** This Declaration, the Articles of Incorporation, the Bylaws, copies of rules and regulations, Design Guidelines, use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available pursuant to reasonable procedures established by the Board for inspection and copying by any member of the Association or by the duly appointed representative of any member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

**11.11 Financial Review.** At least annually, the Board of Directors shall prepare, or cause to be prepared, a financial statement of the Association. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of such financial statement within ninety (90) days of the date of the request.

**11.12 Notice of Sale, Lease or Acquisition.** In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sale or lease, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably require.

**11.13 Agreements.** Subject to the prior approval of Declarant (so long as Declarant owns any property for development and/or sale in the Community or has the right to

unilaterally annex additional property to the Community) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

**11.14 Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule or regulation, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

**11.15 Variances.** Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any Design Guideline rule, regulation or use restriction established pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

**11.16 Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote. This Section shall not apply, however, to (i) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (ii) the imposition and collection of assessments as provided in Article 4 hereof, (iii) proceedings involving challenges to ad valorem taxation, or (iv) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant pursuant to Section 11.3, hereof, or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

EXECUTED this 31<sup>st</sup> day of July, 2013.

DECLARANT:

Harbour Homes, LLC

By: 

Justin Harman

Its: Vice President



State of Washington    )  
                                      )       ss.  
County of King         )

I certify that I know or have satisfactory evidence that Justin Harman 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 Vice President of Harbour Homes, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

(Seal Or Stamp)

Dated: 7-31-13

John C Baringer

Notary Public in and for the State of Washington

Residing at: Bellevue, WA

Printed Name: John Baringer

My Appointment Expires 8-8-2015



## **EXHIBIT A**

### **PROPERTY SUBJECT TO THIS DECLARATION**

The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property described as:

**LOTS 1 THROUGH 20, INCLUSIVE, OF ROCK CREEK NORTH DIVISION 2,  
PHASE 1 ACCORDING TO THE PLAT THEREOF, RECORDS OF SNOHOMISH  
COUNTY, WASHINGTON RECORDED UNDER RECORDING NUMBER  
201307245001.**

**SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON**

Private Tracts: *N/A*

Common Areas: Tract 999 is a native growth protection/open space area.



**EXHIBIT B**  
**LEGAL DESCRIPTION OF ADDITIONAL PROPERTY**

**TRACTS 995-998 OF THE PLAT OF ROCK CREEK NORTH DIVISION 2  
THEREOF, RECORDS OF SNOHOMISH COUNTY, WASHINGTON RECORDED  
UNDER RECORDING NUMBER 201307245001.**

**SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON**