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**AMENDED AND RESTATED MILL CREEK  
DECLARATION OF RESTRICTIVE COVENANTS**

GRANTOR: MILL CREEK COMMUNITY ASSOCIATION

GRANTEE: MILL CREEK COMMUNITY ASSOCIATION

LEGAL DESCRIPTION: ALL THAT CERTAIN REAL PROPERTY KNOWN AS MILL CREEK-1, SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON, BEING A PORTION OF THE WEST HALF OF SECTION 5 AND THE EAST HALF OF SECTION 6, BOTH IN TOWNSHIP 27 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, AND ALL OTHER PROPERTY JOINED TO THE COMMUNITY.

REFERENCE #: 2362420

**AMENDED AND RESTATED MILL CREEK  
DECLARATION OF RESTRICTIVE COVENANTS**

This Amended and Restated Declaration for the MILL CREEK COMMUNITY ASSOCIATION is made as of the date of its recording.

**RECITALS**

A declaration submitting real estate to restrictive covenants, entitled Mill Creek Declaration of Restrictive Covenants, was recorded on April 21, 1975, under Recording No. 2362420 in Snohomish County, Washington (the "Original Declaration"). The initial Plat Maps (Mill Creek-1) were recorded on April 23, 1975, in Snohomish County, Washington under Recording No. 2382696.

The Original Declaration has been previously amended by instruments recorded with Snohomish County. The Original Plat has been joined by multiple additional Plats over the years, each subjecting additional property to the Original Declaration. Exhibit A references a map of the community as of the time of recording this Declaration. Exhibit B includes a list of properties within the jurisdiction of the Mill Creek Community Association at the time of recording of this Declaration.

The Property and the Association are subject to the provisions of the Homeowners Association Act, RCW 64.38.

Pursuant to Section 12.1.3 of the Original Declaration, this Amended and Restated Declaration was approved by a majority of the Board of Directors.

Pursuant to Section 12.1.3 of the Original Declaration, at least fifty percent (50%) of the Voting Power in the Association approved this Amended and Restated Declaration, and not more than thirty-three and one-third percent (33 1/3%) objected to the Amended and Restated Declaration.

To accomplish the foregoing purpose, the undersigned President and Secretary, respectively, of the Mill Creek Community Association, the Association duly authorized to govern the Mill Creek Community, do hereby certify that the requirements of the Declaration have been complied with and the Association adopts the following Amended and Restated Declaration:

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**ARTICLE I – PURPOSE**

1.1 General. Mill Creek Community Association, representing the Owners of certain real Property in the County of Snohomish, State of Washington, known as MILL CREEK, such plats being recorded in the office of the Snohomish County Auditor, Snohomish County, Washington, is desirous of subjecting the real Property described in said plats, and any other Property as provided for in Section 3.2 below, to the restrictions, covenants, reservations, easements and charges hereinafter set forth, each and all of which is and are for the benefit of said Property and for each Owner thereof, and shall inure to the benefit of and pass with said Property and each and every parcel thereof and shall apply to and bind the successors in interest and any Owner thereof. These easements, restrictions, covenants and conditions are intended to protect the value and desirability of the aforesaid real Property.

1.2 Covenants. Mill Creek Community Association hereby declares that the real Property described in said plats, and any other Property as provided for in Section 3.2 below, is and shall be held, transferred, sold and conveyed subject to the conditions, restrictions, covenants, reservations, easements and charges hereinafter set forth. The entire area shown on the above-referenced plats, or any subsequent plats filed pursuant to this Declaration, shall be subject to the following restrictive covenants and restrictions hereinafter referred to as Amended and Restated Mill Creek Declaration of Restrictive Covenants.

1.3 Remedies to Be Liberally Administered. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of this Community under the provisions of Washington law. It is intended and covenanted that the provisions of applicable Washington statutes be liberally construed so as to effectuate the intent of this Declaration. The remedies provided under the Act must be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or

punitive damages may not be awarded except as specifically provided in the Act or by other rule of law.

1.4 Supplemental General Principles of Law Applicable. The principles of law and equity, including the law of corporations, the law of real estate, and the law relative to the capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement this Declaration, except to the extent inconsistent with the Act or this Declaration.

1.5 Obligation of Good Faith. Every contract or duty governed under this chapter imposes an obligation of good faith in its performance or enforcement.

1.6 Construction and Validity of Governing Documents. (1) All provisions of the governing documents are severable. If any provision of a governing document, or its application to any person or circumstances, is held invalid, the remainder of the governing document or application to other persons or circumstances is not affected. (2) If a conflict exists between the Declaration and the organizational documents, the Declaration prevails except to the extent the Declaration is inconsistent with law.

1.7 Consistent with Act. The terms used herein which are not specifically defined are intended to have the same meaning as given in the Homeowners Association Act (RCW 64.38) unless the context clearly requires otherwise or to so define the terms would produce an illegal or improper result.

1.8 Covenant Running with Land. This Declaration shall operate as a set of covenants running with the land, or equitable servitudes, binding on all Owners of the Property, together with their grantees, successors, heirs, executors, administrators, devisees or assigns, supplementing and interpreting the Act, and operating independently of the Act, should the Act or any part thereof be, in any respect, inapplicable.

1.9 Captions and Exhibits. Captions given to the various sections and section herein are for convenience only and are not intended to modify or affect the meaning of any substantive provisions of this Declaration. The various Exhibits referred to and attached shall be deemed incorporated herein.

1.10 Inflationary Increase in Dollar Limits. Any dollar amounts specified in the Declaration in connection with any proposed action or decision of the Board or Association shall be increased proportionately by the increase in the Consumer Price Index for the City of Seattle, Washington, for All Urban Consumers ("Index"), prepared by the United States Department of Labor over the base Index of January 1 of the calendar year in which the Restated Declaration is recorded, to adjust for any change in the value of the dollar. In the event the Index is discontinued, the Board shall select a comparable Index for this purpose.

1.11 Form of Words. Each use of the masculine, neuter or feminine gender herein will be deemed to include the other genders, and each use of the plural will include the singular, and vice versa, in each case as the context requires.

## ARTICLE II – DEFINITIONS

The following words when used in this Declaration or any supplemental Declaration, unless the context shall prohibit, shall have the following meanings:

**“The Act”** or **“Act”** means the Washington Homeowner Association Act (RCW 64.38), as amended from time to time, and any provision of the Washington Uniform Common Interest Ownership Act (RCW 64.90) which is required by that statute to apply to pre-existing homeowner Associations.

**“Assessment”** means all sums chargeable by the Association against a Single Family Lot, a Living Unit, or other Property; any Assessments levied or imposed through the budget process; specially allocated expenses or any expense chargeable to an Owner or Property as provided by the Declaration or law; fines or fees levied or imposed by the Association pursuant to the governing documents; interest and late charges on any delinquent account, and all costs of collection incurred by the Association in connection with the collection of a delinquent Owner's account, including reasonable attorneys' fees.

**“Association”** shall mean the **Mill Creek Community Association**, a Washington non-profit Corporation.

**“Board”** or **“Board of Directors”** shall mean the Board of Directors of **Mill Creek Community Association**, which is the body designated in the Declaration with primary authority to manage the affairs of the Association, as further described in the Bylaws.

**“Boarding House”** shall mean a Single Family home, a Condominium Unit or Townhouse in which lodgers rent one or more rooms on a nightly, weekly or monthly basis, and sometimes for extended periods of time. The Board may make the determination about whether the living situation involved is one of permissible roommates, or impermissible lodging for unrelated persons.

**“Building Site”** shall mean any Lot or portion thereof, or any two or more contiguous Lots, or a parcel of land of record in a single Ownership and upon which a structure may be erected in conformance with the requirements of this Declaration.

**“Business”** and **“Trade”** have their ordinary generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis that involves the provision of goods or services for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) the activity is engaged in full-time or part-time; (b) the activity is intended to or does generate a profit; or (c) a license is required to engage in the activity.

**“Bylaws”** shall mean the Bylaws of the Association, as they may from time to time be amended.

**“Capital Addition or Improvement”** means additions to the existing Property. This shall not include maintenance, repair or replacement of existing structures and Buildings, even if there are changes to or replacement of an existing material with different material. These do not include making, in the ordinary course of management, repairs to Common Elements or replacements of the Common Elements with substantially similar items, subject to: (a) availability of materials and products, (b) prevailing law, or (c) sound engineering and construction standards then prevailing.

**“Committee”** shall mean any committee created by the Board, including the Architectural Control Committee (ACC) and Covenant Committee.

**"Common Expense"** means any expense of the Association, including allocations to reserves, allocated to all of the Property Owners.

**“Common Property,” “Common Elements” or “Common Areas”** shall mean land and/or Facilities, which the Association owns and/or maintains. It shall include Property subject to this Declaration that is not a Single Family Lot, not an Apartment, not a condominium, not a townhouse, and not land designated as areas to be used and/or maintained exclusively by individual Plat communities.

**“Declaration”** means this Amended and Restated Mill Creek Declaration of Restrictive Covenants, as it may be amended from time to time.

**“Development”** shall mean all Property included in any plat which is subject to this Declaration or which is made subject to this Declaration by specific reference.

**“Dispute”** means a conflict or a controversy arising out of or related to the provisions of the Governing Documents and duly authorized decisions of the Board. “Dispute” does not include enforcement by the Board of any Violation of the Governing Documents, though enforcement of a Violation may evolve into a Dispute if the final decision of the Board regarding a Violation is challenged. “Dispute” does not include the collection of unpaid Assessments as provided in Article VI.

**"Electronic Transmission" or "Electronically Transmitted"** means any electronic communication (a) not directly involving the physical transfer of a record in a tangible medium and (b) that may be retained, retrieved, and reviewed by the sender and the recipient of the communication, and that may be directly reproduced in a tangible medium by a sender and recipient.

**"Eligible Mortgagee"** means the holder of a security interest on a Lot that has filed with the Association a written request that it be given copies of notices of any action by the Association that requires the consent of mortgagees.

**“Facility”** shall include playground equipment, trail systems not accepted by the County of Snohomish as sidewalks, street furniture, and all other common buildings, appurtenances or land improvements for common use by Mill Creek residents or the general public.

**"Governing Documents"** means the organizational documents, Bylaws, Plat Maps, Declaration, Rules and Regulations, or other written instruments by which the Association has the authority to exercise any of the powers provided for in the Act or to manage, maintain, or otherwise affect the property under its jurisdiction. In the event of, and only to the extent of a conflict between the following, applicable statutes control over the Declaration, the Declaration controls over the Bylaws, and the Bylaws control over the Rules, Regulations and policies adopted by the Board.

**“Guest”** shall mean a person visiting an owner or resident within the community.

**“Lease and/or Rent”** and shall mean granting the right to live in a Property to a person who is not the legal owner. Lease and Rent are synonyms. Leasing and Renting are synonyms.

**“Leased Living Unit”** shall mean an apartment consisting of one or more rooms intended for use and occupancy by a tenant of the Owner.

**“Living Unit”** or **“Dwelling Unit”** shall mean any structure or portion of a structure situated upon the Properties designed and intended for use, occupancy and Ownership as a residence by a single family. It includes townhouses, condominium units and apartments, but does not include Lots or Single Family Lots.

**“Lot”** or **“Single Family Lot”** means a physical portion of the real property located within the Association's jurisdiction designated for separate ownership for the construction of a single detached home.

**“Member”** means the Owner of a Lot or Living Unit, as further provided in the Bylaws under Section 3.1.

**“Owner”** shall mean the record Owner, whether one or more persons or entities, of fee simple title to any Building Site, Lot or Living Unit situated upon the Properties, but shall not mean a mortgagee nor a condominium Association owning record title to a tract of land on which is located a condominium development.

**“Organizational Documents”** means the instruments filed with the Secretary of State to create an entity and the instruments governing the internal affairs of the entity including, but not limited to, any articles of incorporation, certificate of formation, and Bylaws (which need not be filed or recorded).

**“Original Declaration”** means the Mill Creek Declaration of Covenants recorded on April 21, 1975, under Recording No. 2362420 in Snohomish County.

**“Parking Bay”** means a space designed for parking a car or similar vehicle that may be within or adjacent to a Single Family Lot. It is a paved parking area or driveway.

**“Person”** means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entity.

**“Properties”** or **“Property”** shall mean all the Property herein above described and all Property included in subsequent plats or conveyances by specific reference and additions thereto subject to this Declaration or any supplemental Declaration under the provisions of Article III hereof. “Property” includes Single Family Lots (including any common areas within a Plat which is subject to the Declaration), Townhouses, Condominiums (including their common areas and Living Units), apartments (including their common areas and Living Units), and all common areas of the Mill Creek Community.

**“Record,”** when used as a noun, means information inscribed on a tangible medium or contained in an electronic transmission, as further defined in Section 4.7.

**“Related Party”** means a person who has been certified in a written document filed by a Property Owner with the Association to be (a) the Owner's spouse, domestic partner, parent, parent-in-law, sibling, sibling-in-law, step parent, step sibling, parent's sibling, or lineal descendant or ancestor of any of the foregoing persons; (b) an officer or director of any Property Owner that is a corporation; (c) a member of any Property Owner that is a limited liability company; (d) the trustee or beneficiary of any Property Owner that is a trust; or (e) a partner of any Property Owner that is a partnership.

**"Revocation"** means cancellation of a proxy, vote or other action.

**"Rule"** or **"Regulation"** means a policy, guideline, restriction, procedure, or regulation of the Association, however denominated, that is not set forth in the Declaration or organizational documents and governs the conduct of persons or the use or appearance of property.

**"Specially Allocated Expense"** means any expense of the Association, including allocations to reserves, allocated to some or all of the Property Owners pursuant to Section 6.18.

**"Survey Maps"** means those Plats recorded in Snohomish County, Washington, under recording number 2382696, and all additional Plats subject to the Original Declaration or this Declaration.

**"Tangible Medium"** means a writing, copy of a writing, facsimile, or a physical reproduction, each on paper or on other tangible material.

**"Townhome"** or **"Townhouse"** means an attached single family home. These terms are synonyms, and may be used interchangeably.

**"Violation"** means an infraction or breach of the Governing Documents, any duly authorized, lawful decision of the Board, or applicable local, state, or federal law and **"Violate"** means to commit such an infraction or breach.

**"Voting Power"** means the value of a vote assigned to an individual Property. Single Family Lots each have one vote. Living Units in townhouses, condominiums and apartments shall each have not less than one half (1/2) of a vote. Voting power is directly proportionate to the amount of Assessments to a Property.

**"Written"** means embodied in a tangible medium. It includes communications by electronic transmission a) only for persons who have agreed to accept notice by electronic transmission, and b) which can be printed by both the sender and recipient.

### **ARTICLE III – PROPERTY SUBJECT TO THIS DECLARATION**

3.1 Property Description. The real Property which has been held and conveyed, transferred and sold subject to the conditions, restrictions, covenants, reservations, easements and charges with respect to the various portions thereof set forth in the various clauses and subdivisions of Original Declaration, and now this Declaration, is located in the County of Snohomish, State of Washington, and is more particularly described in Article I above. No Property other than that described above shall be deemed subject to this Declaration unless and until specifically made subject thereto. The first plat subject to the Original Declaration, the initial Plat Maps (Mill Creek-1), was recorded on April 23, 1975. All Property subject to the Original Declaration shall be bound to and subject to this Amended and Restated Declaration.

3.2 Addition Procedures. The Association, on request from additional property owners, may subject additional real Property to the conditions, restrictions, covenants, reservations and charges herein set forth by appropriate reference hereto. Such addition may be accomplished by recording a plat of the real Property to be added or by Deed or conveyance containing appropriate dedication language and refer to this Declaration, and by:

3.2.1 Describing the real Property being added and designate the permissible uses thereof.

3.2.2 Setting forth any new or supplemental restrictions or covenants which may be applicable to such added Property, including limited or restrictive uses of common areas. Such supplemental Declaration may contain such additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added Properties. In no event, however, shall such supplemental Declaration revoke, modify or add to the covenants established by this Declaration with respect to the specific real Property already subject to this Declaration.

3.2.3 Declaring that such added Property is held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the provisions of this Declaration. Upon the recording of such plat or conveyance, the added area shall become a part of the development and shall be deemed a part or portion of the Properties.

### 3.3 Common Elements and Facilities.

3.3.1 The land and/or Facilities which the Association owns and/or maintains. It includes:

- Buffer areas
- Open tracts of land
- Parks including playgrounds and equipment
- Mail hutches provided for homeowner owned mail boxes
- Roadside areas
- Trails and pedestrian bridges
- Dam and fish ladder
- Natural areas
- MCCA buildings including the office building, maintenance shop and facilities, and Cherry Pond pump house
- Stormwater facilities
- Common area fencing
- Sidewalks and roads that have not been dedicated to the City and are not within or maintained by Townhouse, Condominium or Apartment communities inside of MCCA
- Entries and signage for single family home divisions
- Signage at major entries (Trillium, corner of Mill Creek Road and Village Green Drive, corner of Bothell Everett Highway and Mill Creek Road)

### 3.4 Conveyance or Encumbrance of Common Elements.

3.4.1 Portions of the Common Elements may be conveyed or subjected to a security interest by the Association if Lot Owners entitled to cast a majority of the Voting Power in the Association agree to that action.

3.4.2 Proceeds of the sale or a loan are an asset of the Association.

3.4.3 An agreement to convey Common Elements must be evidenced by the execution of an agreement, in the same manner as a deed, by the requisite number of Lot Owners. The agreement must be recorded with the county and is effective only upon recordation.

3.4.4 The Association, on behalf of the Lot Owners, may contract to convey or dedicate an interest in the common elements, but the contract is not enforceable against the Association until approved pursuant to subsection 3.4.1, 3.4.2, or 3.4.3 of this section. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

3.4.5 Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of Common Elements or of any other part of the community is void.

## **ARTICLE IV – MILL CREEK COMMUNITY ASSOCIATION**

4.1 General. The Association is a Washington non-profit Corporation organized to further and promote the common interests of Property Owners in the development. The Association shall have such powers in the furtherance of its purposes as are set forth in its Articles and Bylaws. The Community shall be administered by the Mill Creek Community Association. The rights and duties of the members of such corporation shall be governed by the provisions of this Declaration, the other Governing Documents and applicable Washington statutes.

The governance of the Association shall be as provided in the Articles of Incorporation, and the Bylaws, to deal with meetings, voting and election and removal of Board Members.

The Association shall operate and maintain at its cost in neat and good order, and for the use and benefit of the Owners of the Property in the development, all land and/or facilities from time to time owned, designated, transferred or conveyed to the Association. Further, the Association may maintain at its cost in neat and good order the planting medians within the public right-of-way in accordance with improvement plans on file with the Snohomish County Engineer (if any). The Association may maintain landscaping within the dedicated right-of-way to the extent that it is not maintained by the City.

When Common Properties are conveyed to the Association, such conveyance shall be by an appropriate Deed, transferring marketable title. The Association shall pay the established monthly street light fee to the Public Utility District of Snohomish County. Such fees are established by the Public Utility District Commissioners and include repair, replacement, operation, maintenance and energy costs. The Association shall be responsible for the monthly fee until such fees are assumed by any municipal corporation or other public agency.



4.2 Membership. Members of the Association shall be every Owner of a fee or undivided fee interest in any Building Site or Living Unit who is subject by covenants of records to Assessment by the Association and every person who holds a contract purchaser's interest of record in a Building Site or Living Unit. There shall be no other qualification for membership except as set forth above. Membership shall terminate on transfer of fee simple title by an Owner or the contract purchaser's interest by a contract purchaser who qualified as a Member. If an Owner sells a Building Site or Living Unit by contract of sale, upon recordation thereof the Owner's membership shall terminate and the contract purchaser's membership shall commence.

4.3 Meetings. A meeting of the Association must be held at least once each year. Special meetings of the Association may be called by the president, a majority of the board of directors, or by owners having ten percent (10%) of the Voting Power in the Association. The Association must make available to each owner of record for examination and copying minutes from the previous Association meeting (which may not yet be approved by the membership) not more than sixty (60) days after the meeting. Minutes of the previous Association meeting must be approved at the next Association meeting in accordance with the Association's governing documents.

4.4 Management by Board. The Association shall be administered and managed by a Board of Directors as provided in the Bylaws. Except as provided otherwise in the Governing Documents or law, the Board acts on behalf of the Association.

4.5 Authority of the Association.

4.5.1 Powers. The Board (or the Managing Agent to the extent delegated by the Board) shall exercise all powers of the Association except as restricted by the Act, the Declaration or the Bylaws; shall enforce the provisions of this Declaration and of the Bylaws; and shall have all powers and authority permitted to the Board under applicable Washington statutes and the Declaration. Without limiting the generality of the foregoing, the Association shall have the following powers and duties:

- (a) To adopt and amend Rules and Regulations;
- (b) To propose and adopt budgets for revenues, expenditures, and reserves, and impose and collect Assessments for Common Expenses from Owners, pursuant to ratification in accordance with the Bylaws;
- (c) To obtain and maintain water, sewer, garbage collection, electrical, telephone, gas and any other utility service as required or desirable for the Common Elements;
- (d) To obtain and maintain policies of insurance or bonds providing coverage for (i) fire and other hazard, (ii) liability for personal injury and property damage, (iii) fidelity coverage for the Association assets, and (iv) directors and officers liability, and such other insurance as the Board deems appropriate to protect and maintain the Property and its value;
- (e) Hire and discharge or contract with Managing Agents and other employees, agents, and independent contractors to properly manage the affairs of the Community to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine are necessary or proper for the operation of the Common Elements,

regardless whether such personnel are employed directly by the Board or are furnished by the Managing Agent;

(f) To employ legal and accounting services as may be reasonably necessary or proper in the operation of the Association affairs, administration of the Common Elements, or the enforcement of this Declaration and other Governing Documents;

(g) To contract for all goods and services, including painting, maintenance, repair and all landscaping and gardening work, for the Common Elements and such furnishings and equipment for the Common Elements as the Board shall determine are necessary or proper, and the Board shall have the exclusive right and duty to acquire the same for the Common Elements;

(h) To regulate the use, maintenance, repair, replacement, and modification of the Common Elements;

(i) To cause additional improvements to be made as a part of the Common Elements (except as limited below);

(j) To obtain any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or Assessments which the Board is required to secure by law, or which in its opinion shall be necessary or proper for the operation of the Common Elements or for the enforcement of this Declaration, provided that if for any reason such materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or Assessments are provided for one or more particular Property or their Owners, the cost thereof shall be specially charged to the Owners of such Property;

(k) To perform maintenance and repair of any Property, its appurtenances and appliances, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect the Common Elements or preserve the appearance and value of the Community, and the Owner of said Property has failed or refused to perform said maintenance or repair within a reasonable time after written notice to the Owner, and provided that the Board shall levy a special charge against the Property of such Owner or Owners for the cost of such maintenance or repair;

(l) To grant easements, leases, licenses, and concessions through or over the Common Elements;

(m) To pay any amount necessary to discharge any lien or encumbrance levied against the entire Property or any part thereof that is claimed to or may, in the opinion of the Board, constitute a lien against the Common Elements, rather than merely against the interest of particular Owners;

(n) To impose and collect any payments, fees, or charges for the use, rental, or operation of the Common Elements, and for services provided to Property Owners. This may include move-in fees to recover expenses associated with changes in ownership or occupancy, and one time or monthly fees to recover expenses associated with Property rented by their Owners;

(o) To impose and collect charges for late payments of Assessments and, after notice and an opportunity to be heard by the board of directors or by the representative

designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the Governing Documents of the Association. See Article XIV;

(p) To impose and collect charges for the preparation of statements of unpaid Assessments or other financial disclosures requested by Owners or Financial Institutions;

(q) To assign the Association's right to future income, including the right to receive Common Expense Assessments;

(r) To join in a petition for the establishment of a parking and business improvement area, participate in the ratepayers' Board or other advisory body set up by the legislative authority for operation of a parking and business improvement area encompassing the Property for activities and projects that benefit the Community directly;

(s) To establish and administer a reserve account as described in RCW 64.38.065;

(t) To prepare a reserve study as described in RCW 64.90.550;

(u) To provide for the indemnification of its officers and Board members, to the extent permitted under RCW 23B.17.030;

(v) To require that disputes between the Association and Property Owners, or between two or more Property Owners, regarding the Community be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding or arbitration;

(w) To suspend any right or privilege of a Property Owner who fails to pay an Assessment, but may not (i) deny a Property Owner or other Occupant access to the Owner's Property; (ii) suspend a Property Owner's right to vote; or (iii) withhold services provided to a Property or a Property Owner by the Association if the effect of withholding the service would be to endanger the health, safety, or property of any person;

(x) To exercise any powers conferred by the Act, this Declaration or the Bylaws;

(y) To exercise all powers that may be exercised by Washington corporations of the same type as the Association; and

(z) To exercise any other powers necessary and proper for the governance and operation of the Association and enforcement of this Declaration.

4.5.2 Litigation. Except as limited by Article XIV, institute, defend, or intervene in litigation or in arbitration, mediation, or administrative proceedings or any other legal proceeding in its own name on behalf of itself or two or more Property Owners on matters affecting the Community or the Association, but not on behalf of owners involved in disputes that are not the responsibility of the Association;

4.5.3 Board Exercises Control. The Board shall have the exclusive right to contract for all goods and services, payment of which is to be a Common Expense. The Board may delegate such powers to the Managing Agent or others, subject to the terms hereof.

4.5.4 Acquisition of Property. The Board may acquire and hold in the name of the Association, for the benefit of the Owners, tangible and intangible personal property and real property and interests therein, and may dispose of the same by sale or otherwise; and the beneficial interest in such property shall be owned by the Owners in the same proportion as their respective interests in the Common Elements, and such property shall thereafter be held, sold, leased, rented, mortgaged or otherwise dealt with for the benefit of the Association as the Board may direct.

4.5.5 Entry for Repairs. Upon prior notice, except in case of an emergency, each Property Owner must afford to the Association, and to its agents or employees, access into and through that Owner's Property. The Board and its agents may enter any Property when the Board deems necessary in connection with any inspection, maintenance, repair, landscaping or construction carried out by the Board, in the event of an emergency, or in connection with any maintenance or other necessary repairs, replacement, construction, or other activity for which the Property Owner is responsible but has failed to perform. Entry to the property is not entry into a dwelling. Entry into a dwelling may only be had with permission of the occupant, or a court order.

Such entry shall be made with as little inconvenience to the Owner and/or Occupant as practicable. Except in emergencies, Notice shall be provided at least five (5) days in advance, and shall be posted on the Property at least forty-eight (48) hours in advance of entry.

Each Owner shall provide the Association access into their Property for compliance with this Section. Common expenses incurred due to an Owner's failure to provide access will be assessed to the Property.

If an Owner needs to move or store any contents of their Property (personal belongings) in order for the Association to perform repairs for which the Association is responsible (whether to Common Elements or to the Property), the Owner must do so within a reasonable time of request by the Association, and any costs incurred shall be borne by the Owner.

If an Owner is displaced due to fire, damage, or necessary repairs to the Common Elements, the Association has no liability for the cost of moving, storage, or alternative housing. These are risks for which each owner can insure themselves. If an Owner refuses to remove the occupants or contents of a Property when necessary for the Association to perform its work, any costs incurred by the Association for the removal or protection of persons or contents shall be assessed against the Owner and the Property.

4.5.6 Association as Attorney-in-Fact. Each Owner, by the mere act of becoming an Owner or contract purchaser of a Property, shall irrevocably appoint the Association as his attorney-in-fact, with full power of substitution, to take such action as is reasonably necessary to promptly perform the duties of the Association and the Board hereunder, including but not limited to the duties to maintain, repair, or improve the Property. This power of attorney is limited to those duties authorized by this Declaration.

#### 4.6 Specific Limitations on Association's Authority.

4.6.1 Loan Ratification. Any borrowing by the Association that is to be secured by an assignment of the Association's right to receive future income requires ratification by

the Property Owners as provided in this subsection. Ratification of a loan and associated budget may be combined into a single meeting.

(a) The Board must provide notice of the intent to borrow to all Property Owners. The notice must include the purpose and maximum amount of the loan, the estimated amount and term of any Assessments required to repay the loan, a reasonably detailed projection of how the money will be expended, and the interest rate and term of the loan.

(b) In the notice, the Board must set a date for a meeting of the Property Owners, which must not be less than fourteen (14) and no more than fifty (50) days after mailing of the notice, to consider ratification of the borrowing.

(c) Unless at that meeting, whether or not a quorum is present, Property Owners holding a majority of the Voting Power in the Association reject the proposal to borrow funds, the Association may proceed to borrow the funds in substantial accordance with the terms contained in the notice.

4.6.2 **Flags.** Owners and residents may display the flag of the United States on the owner's or resident's property if the flag is displayed in a manner consistent with federal flag display law, 4 U.S.C. Sec. 1 et seq. The Board may adopt reasonable rules and regulations, consistent with 4 U.S.C. Sec. 1 et seq., regarding the placement and manner of display of the flag of the United States, including reasonable rules and regulations regarding the location and the size of flagpoles for the display of the flag of the United States. For purposes of this section, "flag of the United States" means the flag of the United States as defined in federal flag display law, 4 U.S.C. Sec. 1 et seq., that is made of fabric, cloth, or paper and that is displayed from a staff or flagpole or in a window. For purposes of this section, "flag of the United States" does not mean a flag depiction or emblem made of lights, paint, roofing, siding, paving materials, flora, balloons, or of any similar building, landscaping, or decorative component.

4.6.3 **Capital Additions and Improvements; Acquisition of Property.** The Board of Directors may not undertake any capital additions or improvements to the Common Elements, or acquire real property, in any one year costing in excess of \$200,000, unless such expenses are included in a budget ratified by the Association, or are ratified in the same manner as any budget or Special Assessment. Any additions, alterations, or improvements costing \$200,000 or less, in any one year, may be made by the Board of Directors without approval of the Property Owners, and the cost thereof shall constitute a common expense. This restriction does not apply to repair and replacement of existing Common Areas or Facilities.

4.6.4 **Security.** The Association does not have a duty to provide for the safety or security of persons or property within the Community.

4.6.5 **Management Contracts.** Any agreement for professional management shall provide for termination by the Association without cause or payment of a termination fee on ninety (90) days' written notice and shall have a maximum duration of one year, but may be renewed each year;

4.7 **Association Records.**

4.7.1 **Records to be Kept.** The Association must retain the following records:

(a) The current budget, detailed records of receipts and expenditures affecting the operation and administration of the Association, and other appropriate accounting records within the last seven years;

(b) Minutes of all meetings of its Lot Owners and Board, other than executive sessions, a record of all actions taken by the Lot Owners or Board without a meeting, and a record of all actions taken by a committee in place of the Board on behalf of the Association;

(c) The names of current Lot Owners, and mailing addresses used by the Association to communicate with them;

(d) The Declaration, organizational documents, all amendments to the Declaration and organizational documents, and all rules and regulations currently in effect;

(e) All financial statements and tax returns of the Association for the past seven years;

(f) A list of the names and mailing addresses of its current Board members and officers;

(g) Its most recent annual report delivered to the secretary of state, if any;

(h) Financial and other records sufficiently detailed to enable the Association to prepare a resale certificate as required by law;

(i) Copies of contracts to which it is or was a party within the last seven years;

(j) Materials relied upon by the Board or any committee to approve or deny any requests for design or architectural approval for a period of seven years after the decision is made;

(k) Materials relied upon by the Board or any committee concerning a decision to enforce the governing documents for a period of seven years after the decision is made;

(l) Copies of insurance policies under which the Association is a named insured;

(m) Any current warranties provided to the Association;

(n) Copies of all notices provided to Lot Owners or the Association in accordance with the Act or the governing documents for a period of one year; and

(o) Ballots, proxies, absentee ballots, and other records related to voting by Lot Owners for one year after the election, action, or vote to which they relate.

(p) Board Members' emails are not Association records. Emails between Board Members, or between Board Members and Managers are not Association records, unless they are the written authorization to take Board action outside of a Board meeting.

4.7.2 Owners' Right to Review Records. All records of the Association, including the names and addresses of owners and other occupants of the lots, shall be available for examination by all owners, holders of mortgages on the lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the Association or its Managing Agent.

4.7.3 Protected Records. Records retained by the Association may be withheld from inspection and copying to the extent that they concern:

- (a) Personnel, compensation and medical records relating to specific individuals;
- (b) Contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated;
- (c) Existing or potential litigation or mediation, arbitration, or administrative proceedings;
- (d) Existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the governing documents;
- (e) Legal advice or communications that are otherwise protected by the attorney-client privilege or the attorney work product doctrine, including communications with the Managing Agent or other agent of the Association;
- (f) Information the disclosure of which would violate a court order or law;
- (g) Records of an executive session of the Board;
- (h) Individual Lot files other than those of the requesting Lot Owner;
- (i) Unlisted telephone number or electronic address of any Lot Owner or resident;
- (j) Security access information provided to the Association for emergency purposes; or
- (k) Agreements that for good cause prohibit disclosure to the members.

4.7.4 Costs of Records Review. The Association may impose and collect a reasonable charge for copies and any reasonable costs incurred by the Association in providing access to records.

4.7.5 Right to Copies of Records. A right to copies of records under this section includes the right to receive copies by photocopying or other means, including through an electronic transmission if available, upon request by the Lot Owner. Any costs incurred by the Association to provide such copies shall be assessed to the Lot Owner.

4.7.6 Records as Kept in the Course of Business. The Association is not obligated to compile or synthesize information. Records need only be made available as kept by the Association.

4.7.7 No Commercial Use. Information provided pursuant to this section may not be used for commercial purposes.

## **ARTICLE V – PROPERTY RIGHTS IN THE COMMON PROPERTIES**

5.1 Member's Easement of Enjoyment. Subject to the provisions of Section 5.2 of this Article, every Member shall have a right of easement and enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit and upon recordation of a Contract of Sale of any Lot or Living Unit. Property Owners have an easement in the Common Elements for access to their Property. Subject to the Declaration and rules, the Property Owners have a right to

use the Common Elements for the purposes for which the Common Elements were intended. The Association may restrict the right to use of Common Elements for Owners (and other residents) who are delinquent in payment of their Assessments, or who are otherwise in violation of the Governing Documents, but may not do so in a way that would restrict an Owner's (or other resident's) access to their Property.

5.2 Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

5.2.1 The right of the Association to limit the number of guests of Members.

5.2.2 The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated on the Common Properties.

5.2.3 The right of the Association to suspend the enjoyment rights of any Member for any period during which any Assessment remains unpaid and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.

5.2.4 The right of the Association in accordance with its Articles and Bylaws to mortgage Common Areas as security for any loan, the purpose of which is improvement of the Common Properties. In the event of a default upon any such mortgage, the lender's rights hereunder shall be limited to a right, after taking possession of such Properties, to charge admission and other fees as a condition of continued enjoyment by the Members, and if necessary, to open the enjoyment of such Property to a wider public until the mortgage debt is satisfied, whereupon the possession of such Property shall be returned to the Association and all rights of the Members hereunder shall be fully restored. The Association shall also have the power to assign future Assessments as collateral for a loan, if such loan is ratified by the Membership in the same manner as any budget or Special Assessment.

5.2.5 The right of the Association to dedicate or transfer all or any part of the Common Properties to any municipal corporation, public agency or authority for such uses and purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer, however, shall be effective except pursuant to a vote of the Members as provided by the Articles of Incorporation. Notwithstanding the above, the Board shall have the authority without a vote of the Members to grant easements and licenses in and to the Common Properties for the installation, repair and maintenance of utilities (including water, sewer, power, telephone, cable, cellular communications), which easements the Board determines are reasonably necessary to the ongoing development and operation of the Property and which would not materially interfere with the use and enjoyment of the easements.

5.3 Delegation of Use. Any Member may delegate in accordance with the Bylaws, his rights of enjoyment to the Common Properties to the Members of his family and his tenants. The Board of Directors shall determine the procedures for notification of the Association of the names of persons to whom such rights have been delegated. In the event that any Assessment of Property on which a Member resides is delinquent, the Board of Directors may suspend the right of the Member, members of his family and tenants to the use of the Common Properties and recreational facilities of the Association until such Assessment has been paid. Such rights of a Member, members of his family



and tenants may also be suspended after notice and hearing for a period not to exceed thirty (30) days for violation of any rules and regulations established by the Board of Directors concerning the use of the Common Properties and Facilities furnished by the Association.

5.4 Right of Entry for Maintenance, Repairs, Emergencies or Improvements. The Association shall have the right to have access to each Property from time to time as may reasonably be necessary for inspection, routine maintenance, repair, replacement or improvement of any of the Common Elements accessible therefrom, or for making repairs necessary to prevent damage to the Common Elements or to other Property, or for any emergency situations. Any agent or Officer of the Association may at any reasonable pre-determined time upon not less than twenty-four (24) hours' notice during or following construction, alteration or change, enter and inspect the Property to determine if there has been compliance with all applicable Architectural Guidelines, rules, regulations, procedures and provisions of this Declaration. The Association and any agent or Officer thereof shall not thereby be deemed guilty of any manner of trespass for such entry or inspection.

This right to entry does not grant to the Association the right to enter any dwelling or structure absent permission from the occupant or a court order.

5.5 Easement through Property. The Association, its vendors and agents, have easements through all Property to allow for the inspection, maintenance and repair of the Property as authorized by the Declaration.

## **ARTICLE VI – COVENANT FOR MAINTENANCE ASSESSMENT**

6.1 Creation of the Lien and Personal Obligation of Assessment. Each Owner shall be obligated to pay its share of Common Expenses annually or in such other reasonable manner as the Board shall designate. No Owner may exempt themselves from liability for payment of Assessments for any reason, including waiver of use or enjoyment of any of the Common Elements or abandonment of the Owner's Property.

6.2 Lien for Sums Due; Enforcement.

6.2.1 Lien. The amount of any Assessment, whether regular or special, assessed in respect of any Property, plus interest at the maximum rate provided by law, and costs, including reasonable attorneys' fees related thereto or incurred to collect same, shall be a lien upon such Property from the time the Assessment is due. A payment on an Owner's Assessment account shall be applied to the oldest Assessments first, whether for fines, costs of collection, attorneys' fees, interest, late fees, regular Assessments, or Special Assessments.

6.2.2 Priority. The lien for payment of such Assessments shall have priority over all other liens and encumbrances, recorded or unrecorded, except for (a) a mortgage on the Property recorded before the date on which the Assessment sought to be enforced came due; and (b) liens for real property taxes and other governmental Assessments or charges against the Property that would be superior under law to the Association's lien;

6.2.3 Recording as Notice. Recording of the Declaration constitutes record notice and perfection of the lien for Assessments. While no further recording of any claim of lien for the Assessments under this Section shall be required to perfect the Association's lien,

the Association may record a notice of claim of lien for Assessments in the real property records of the County.

6.2.4 Purchaser's Obligations. The Mortgagee or other purchaser of a Property who obtains a right of first possession of the Property through Foreclosure shall not be liable for Assessments that became due prior to such right of possession. Such unpaid Assessments shall be deemed to be Common Expenses, except that foreclosure of a mortgage does not relieve the prior Owner of personal liability for Assessments accruing against the Property prior to the date of such Foreclosure.

6.2.5 Limitation on Action. A lien for unpaid Assessments and the personal liability for payment of Assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within six (6) years after the amount of the Assessments sought to be recovered becomes due. Suit to recover a money judgment for unpaid Assessments or charges shall be maintainable without Foreclosure or waiving the lien securing the same.

6.2.6 Lien Survives Contract Sale. The liens arising under this Declaration shall not be affected by the sale or transfer of the subject Property except in the event of sale through foreclosure, as provide in this section.

6.3 Personal Obligation. In addition to constituting a lien on the Property, each Assessment is the joint and several obligation of the Property Owner of the Property to which the same are assessed as of the time the Assessment is due. A Property Owner may not exempt themselves from liability for Assessments. In a voluntary conveyance other than by foreclosure, the grantee of a Property is jointly and severally liable with the grantor for all unpaid Assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee. Suit to recover a personal judgment for any delinquent Assessment is maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

6.4 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, enjoyment and welfare of the residents in the Properties and in particular, for the improvement and maintenance of Property, services and Facilities devoted to the purpose and related to the use and enjoyment of the Common Properties and of the homes situated upon the Properties. Without limiting the generality of the foregoing, Assessments may be used to lease facilities for the use of residents in the Properties.

6.4.1 Common Expenses Shall Include:

- (a) Expenses of administration, including payroll.
- (b) Expenses of maintenance, repair or replacement of Common Elements and Facilities.
- (c) Costs of insurance and bonds required by this Declaration and/or the Bylaws.
- (d) Reserve for replacements and deferred maintenance.
- (e) Any deficit in common expenses for any prior period.

(f) Any other items properly chargeable as expenses of the Association as determined by the Board.

#### 6.5 Basis of Annual Assessment.

6.5.1 It shall be the duty of the Board of Directors to prepare and adopt a budget estimating the expected revenues and expenses for the next year. Provisions shall be made for operations, planned capital reserves and emergency reserves.

6.5.2 Following budget ratification, the Board of Directors shall levy an Assessment against each Single Family Lot, Townhouse, vacant Lot, Condominium unit and Leased or Rented dwelling space at such ratios as determined by the Board according to services, amenities and costs incurred by the Association with respect to each type of dwelling unit. No dwelling unit shall be assessed at a rate less than fifty percent (50%) of that which a single family detached dwelling is assessed.

6.6 Adoption of Budgets. Assessments and Special Assessments. About sixty (60) days prior to the beginning of each calendar year, or other fiscal year as the Board may adopt, the Board shall: a) estimate the charges including Common Expenses and any special charges for particular Properties to be paid during the year; b) shall make provision for creating, funding, and maintaining reasonable reserves for contingencies and operations as well as for maintenance, repair, replacement and acquisition of Common Elements; and, c) shall take into account any expected income and any surplus available from the prior year's operating fund.

6.6.1 Notice and Ratification. Budgets shall be ratified by the members as set forth in the Bylaws or as otherwise provided by Law.

6.6.2 Supplemental Budgets. If the sum estimated and budgeted at any time proves inadequate for any reason (including non-payment for any reason of any Owner's Assessment), the Board may adopt a new budget which shall be ratified in the same manner as the annual budget. If the amounts budgeted and being collected at any time proves excessive, the Board may reduce the amount being assessed and/or apply existing funds in excess of current needs to reserves, or refund the excess funds.

6.6.3 Special Assessments. The Board, at any time, may propose a Special Assessment. The Assessment is effective only if the Board follows the procedures for ratification of a budget described in the Bylaws, and the Property Owners do not reject the proposed Assessment. (A majority of the total Voting Power in the Association is required to reject a Special Assessment.) The Board may provide that the Special Assessment may be due and payable in installments over any period it determines and may provide a discount for early payment. The Assessment ratio for any Living Unit or Property as determined pursuant to Section 6.5 shall be applicable to Special Assessments.

6.7 Payment by Owners. Each Single Family Lot Owner shall be obligated to pay its share of Common Expenses and special charges made pursuant to this Article to the Association in such reasonable manner as the Board shall designate. No Owner may exempt himself from liability for payment of Assessments for any reason, including waiver of use or enjoyment of any of the Common Elements or abandonment of the

Owner's Property. Fees for Townhomes, Condominium units and Apartments shall be paid by the subassociation or Apartment Owner.

The amount of the initial annual Assessment for the first year in which Assessments are made or for any Property which becomes subject to Assessment for the first time shall be prorated on a calendar year basis according to the date of the first Assessment or the date on which Property first became subject to Assessment.

6.8 Duty of Board of Directors. The Board shall cause to be prepared a roster of the Properties subject to Assessments with Assessments applicable to each such Property and shall keep such roster in the Association office, subject to inspection by any Owner.

The Association, upon written request, shall furnish to a Property Owner or a Mortgagee a statement signed by an officer or authorized agent of the Association setting forth the amount of unpaid Assessments against that Property. The statement shall be furnished within ten (10) days after receipt of the request and is binding on the Association, the Board, and every Property Owner, unless and to the extent known by the recipient to be false. The Association or its management company may charge a reasonable fee to prepare such document.

6.9 Late Fees and Interest. The Association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent Assessments or installments thereof. In the absence of another established non-usurious rate, delinquent Assessments shall bear interest from the date due at the maximum rate permitted under RCW 19.52.020 on the date which the Assessments became delinquent. In the absence of other late fees established in the Association's rules, the late fee shall be \$50 per month per Lot or Dwelling Unit, which may be assessed on any delinquent Assessment the day it becomes delinquent.

6.10 Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any mortgage or Deed of Trust recorded prior to the Assessment. Sale or transfer of any Building Site or Living Unit shall not affect the Assessment lien. However, the sale or transfer of any Building Site or Living Unit which is subject to any mortgage or Deed of Trust, pursuant to a Decree of Foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof including sale under a Deed of Trust, shall extinguish any lien of an Assessment which became a lien prior to such sale or transfer, unless there are surplus funds to satisfy the Association's lien. Such sale or transfer shall not release such Building Site or Living Unit from liability from any Assessments thereafter becoming due or from the lien thereof.

6.11 Judicial Foreclosure. Any Assessment lien may be enforced judicially by the Association or its authorized representative in the manner set forth in Chapter 61.12 RCW. The Association or its authorized representative shall have the power to purchase the Property at the Foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver of any right to a deficiency judgment in a judicial Foreclosure, the period of redemption shall be eight (8) months. Nothing in this Section shall prohibit the Association from taking a deed in lieu of foreclosure.

6.11.1 Foreclosure Miscellaneous. The Lots and Living Units are not used principally for agricultural or farming purposes. The power of sale provided for above shall be operative in the case of a default in any Property Owner's obligation to pay off any amounts due under this Declaration to the Association, including all Assessments. The Association or its authorized representative shall have the power to purchase the Property at the foreclosure sale and to acquire, hold, lease, mortgage or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight (8) months. Nothing in this Section shall prohibit the Association from taking a deed in lieu of foreclosure.

6.12 Rent Paid to Association. If a Single Family Lot is leased by its Owner, the rent is hereby pledged and assigned to the Association as security for the payment of all Assessments due by that Owner to the Association. The Board or the Managing Agent, on behalf of the Association, may collect, and the Tenant shall pay over to the Board or the Managing Agent, so much of the rent for such Lot as is required to pay any Assessments due the Association, plus interest, late fees and costs, if such Assessments are in default over thirty (30) days. The Tenant shall not have the right to question payment over to the Association, and such payment will discharge the Tenant's duty of payment to the Owner for rent, to the extent such rent is paid to the Association. The Association shall not exercise this power where a receiver has been appointed.

6.13 Receiver. From the time of commencement of an action by the Association to foreclose a lien for nonpayment of delinquent Assessments under a Property that is not occupied by the Owner, the Association shall be entitled to the appointment of a receiver to collect from the lessee the rent for the Property as and when due. Receivers may only be appointed by a Court with appropriate jurisdiction. If the rental is not paid, the receiver may obtain possession of the Property, refurbish it for rental up to a reasonable standard for rental Properties in this type of Community, rent the Property, or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees, then to the cost of refurbishing the Property, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent Assessments. Only a receiver may take possession and collect rents under this section, and a receiver shall not be appointed less than ninety (90) days after the delinquency. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Property.

6.14 Acceleration of Assessments. In the event any Assessment or special charge attributable to a particular Property remains delinquent for more than thirty (30) days, the Board may, upon fifteen (15) days' written notice to the Owner of such Property, accelerate and demand immediate payment of all, or such portion as the Board determines, of the Assessments and special charges which the Board reasonably determines will become due during the next succeeding twelve (12) months with respect to such Property.

6.15 Remedies Cumulative. The rights and remedies set forth in this Article are not exclusive, and the exercise of any right or remedy does not preclude the exercise of any other rights or remedies in this Article, or that may now or subsequently exist in law or in equity or by statute or otherwise.

6.16 Exempt Property. The following property subject to this Declaration shall be exempted from the Assessments, charges and liens created herein:

6.16.1 All properties to the extent of any easement of other interest therein dedicated and accepted by a municipal corporation or other local public authority and devoted to public use.

6.16.2 All Common Properties.

6.16.3 Land owned or held for commercial use.

6.16.4 Land owned or held for private recreational use.

6.17 Common Expense Assessments.

6.17.1 Annual Budget. Assessments for common expenses and those specially allocated expenses that are subject to inclusion in a budget shall be made at least annually based on a budget adopted by the Association.

6.17.2 Allocation of Common Expenses. Except as provided otherwise in this section, all common expenses must be assessed against all Single Family Lots equally, against Townhouses equally, and against all Living Units within Condominiums and Apartments equally. The Assessment against Single Family Lots may be greater than against other Living Units as provided in this Declaration. No Living Unit may be assessed less than fifty percent (50%) of the Assessment against a Single Family Lot.

6.18 Specially Allocated Expenses. The following expenses of the Association may be assessed against the individual Properties on some basis other than common expense liability. The Association may assess:

(a) Property Benefitted. Expenses benefitting fewer than all of the Lots or Living Units may be assessed exclusively against the benefitted Property;

(b) Misconduct. To the extent that any expense of the Association is caused by willful misconduct or negligence (gross or ordinary) of any Property Owner, Related Party or that Property Owner's tenant, guest, invitee, or occupant, the Association may assess that expense against the Property after Notice and an Opportunity to be Heard, even if the Association maintains insurance with respect to that damage or common expense. Property Owners are responsible to the extent that such expense is not covered by proceeds from any Association Insurance. The cost for repair or replacement of any damage to the Common Elements, in excess of actual insurance proceeds received by, or to be paid to, the Association under the Association's policies of insurance and any expense the Association incurs as a result of any such misconduct, after notice and opportunity to be heard, may be specially assessed to the Property, and be a personal obligation of the Property Owner and of the tenant or occupant who engaged in misconduct;

(c) Late Fees, Interest. Late fees, interest, and costs of collection for delinquent accounts, and;

(d) Fines and Expenses. Fines and costs for enforcement are assessed against individual Owners in accordance with this Declaration or law.

(e) Special Charges for Services Provided to Property Owners. A Property Owner shall reimburse the Association for expenses incurred or amounts paid by the Association for any services requested by such Property Owner, including, but not limited to: (a) preparation of financial disclosures for Owners, Buyers or financial institutions, and (b) review of a request for approval by the ACC or Board for any architectural, structural, or related alteration to the interior or exterior of any Property or Property Structure.

(f) Assessments against Condominium Units and Townhouses shall be assessed to the subassociation and paid in bulk by the subassociation. Assessments against apartment dwelling units shall be assessed to the Owner and paid in bulk by the Owner.

#### 6.19 Reserve Account; Withdrawals.

6.19.1 The Association may establish one or more accounts for the deposit of funds, if any, for the replacement costs of reserve components. Any reserve account must be an income-earning account. The Board is responsible for administering the reserve account.

6.19.2 The Board may withdraw funds from the Association's reserve account to pay for unforeseen or unbudgeted costs that are unrelated to replacement costs of the reserve components. Any such withdrawal must be recorded in the minute books of the Association. The Board must give notice of any such withdrawal to each Property Owner and adopt a repayment schedule not to exceed twenty-four (24) months unless the Board determines that repayment within twenty-four (24) months would impose an unreasonable burden on the Property Owners. The Board must provide information about the withdrawal to Property Owners along with the annual budget summary:

- (a) notice of any such withdrawal,
- (b) a statement of the current deficiency in reserve funding expressed on a per Lot or Living Unit basis, and
- (c) the repayment plan.

6.19.3 The Board may withdraw funds from the reserve account without satisfying the notification of repayment requirements under this section to pay for replacement costs of reserve components whether or not included in the reserve study.

6.20 Reserve Study Preparation. The Association must prepare and update a reserve study in accordance with the Act. An updated reserve study must be prepared annually. An updated reserve study must be prepared at least every third year by a reserve study professional based upon a visual site inspection conducted by the reserve study professional. A Property Owner's duty to pay Assessments is not excused because of the Association's failure to obtain a reserve study. A budget ratified by the Property Owners pursuant to the Declaration is not invalidated because of the Association's failure to obtain a reserve study.

6.21 Financial Statements. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association.

6.22 CPA Audit. At least annually, the financial statements of the Association shall be audited by a Certified Public Accountant unless the Owners of Property to which sixty-seven percent (67%) of the Voting Power present, at a meeting with a quorum, waive

this requirement. The Board at any time, or by written request of Owners having at least twenty-five percent (25%) of the total votes, may require that an audit of the Association and management books be performed and presented at any special meeting. A Property Owner, at their own expense, may at any reasonable time make an audit of the books of the Board and Association.

6.23 Attorneys' Fees. The prevailing party shall be entitled to recover all attorney's fees and all costs incurred in connection with the collection of delinquent Assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees and all costs and expenses reasonably incurred in preparation for or in the prosecution of said action, in addition to taxable costs permitted by law, including fees and costs on appeal and in the enforcement of a judgment, and including any attorneys' fees and costs associated with an action in Small Claims Court.

## **ARTICLE VII – RESTRICTIONS ON USE OF PROPERTY BY OCCUPANTS**

7.1 Use Restrictions. The following restrictions shall be applicable to the use of any Property subject to this Declaration. Condominiums, Townhouses and Apartments may have additional restrictions to those provided for in the Declaration, imposed by their subassociations or Owners.

7.1.1 No animal or fowls shall be raised, kept or permitted upon the Properties or any part thereof, excepting only domestic dogs or cats, not to exceed a total of three (3) per Lot or Living Unit, and excepting caged pet birds kept within the dwelling house, provided said dogs, cats and pet birds are not permitted to run at large and are not kept, bred or raised for commercial purposes. Provided further that animals shall be kept in strict accordance with the Rules and Regulations relating to animals from time to time adopted or approved by the Board of Directors, and provided that they shall not in the judgment of the Board of Directors constitute a nuisance to others. The Board may require the removal of any animal that it finds is a nuisance or is disturbing other residents, even though they may allow other animals to remain in the Community. The Board, by written agreement, may allow Townhouses, Apartments and Condominiums to vary these rules within their governing documents.

7.1.2 No part of the Properties shall be used for the purpose of exploring for, taking therefrom or producing therefrom gas, oil or other hydrocarbon substances.

7.1.3 Nuisances. No noxious or offensive activity shall be carried on nor shall anything be done or maintained in any Property which may be or may become an annoyance or nuisance to the neighborhood or detract from its value as a high-class residential district. No Person shall cause any unreasonably loud noise anywhere in the Property. If the Board of Directors, or the Covenant Committee, reasonably determines that a thing or use is undesirable or noxious, or that a noise is unreasonably loud, that determination shall be conclusive. Any decision can be appealed to the Board. The Board may reasonably rely on evidence presented by its Managers, employees, the Covenant Committee and the ACC in making its determination.

7.2 Property Maintenance. Each Property Owner shall, at their sole expense, have the right and the duty to keep their Property and its equipment, structures, and



appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting, and finishing which may at any time be necessary to maintain the good appearance and condition of their Property.

7.2.1 Structures and Landscaping. All structures upon a Property shall at all times be maintained in good condition and repair and be properly painted, stained or otherwise finished. Portable garages and other temporary structures must follow City and County regulations regarding setbacks and must have landscaping around the structure to hide from road and neighbor view. All trees, hedges, shrubs, gardens and lawns shall be neatly maintained and cultivated so that the Property is not detrimental to the neighborhood as a whole. The Board may adopt rules regarding maintenance of landscaping and yards, including regarding the type of plants, size and location of plants and trees, and the maintenance of lawns and planter beds, including requirements to keep them free of weeds. Carports are not allowed on Single Family Lots.

Sloped banks upon any Property shall be properly watered and maintained by the Owner thereof. The Association shall have the right to enter any Property for inspection and/or to perform work not done by an Owner, following Notice and an Opportunity to be Heard. Any expenses incurred by the Association in conjunction with entry or repair shall be assessed to the Owner and Property.

7.2.2 Prohibited activity shall include, without limitation:

7.2.2.1 Yard Maintenance

- improperly maintained yards, including lack of mowing, fertilizing, watering, edging, and weeding (to include all areas within the Property line).
  - Native Trees, including Western Red Cedar, Hemlock, White Pine and Douglas Fir, are protected, and may not be removed or trimmed unless approved by the ACC. Removal is permissible if the tree is identified as dead, dangerous, diseased or dying. A report by a licensed arborist may be required.
  - To preserve the urban forest, the Board may adopt rules regarding trimming and removal of any significant trees located on any Property within the jurisdiction of the Association. A significant tree is defined as anything with a diameter of six inches (6") at a height of four and a half feet (4.5') above the ground.
- failure to maintain trees and shrubs, including lack of trimming and watering necessary to maintain a landscaped appearance.
- failure to remove weeds, errant grass, dead vegetation, etc., from landscaping.
- failure to remove dead trees.
- failure to remove tree stumps, except for tree stumps aesthetically incorporated into landscaping plans.

7.2.2.2 Fences and Painted Surfaces

- failure to replace rotted posts and/or defective boards.

- failure to replace or reattach loose boards.
- failure to clean and/or replace discolored, aged, raw wood.
- failure to maintain stained or painted surfaces that have become water stained, peeled or blistered, faded, uneven, blotched or weathered.

#### 7.2.2.3 Sports Equipment, Surfaces

- failure to maintain equipment, sports court surfaces, swimming pools, basketball hoops, etc., in good repair and appearance.

#### 7.2.2.4 Cordwood and Stored Items

- storage of cordwood in any area visible from the street.
- storage of debris, lawnmowers, mechanical equipment or discarded items directly in view from the street or neighboring Properties.

#### 7.2.2.5 Paved Surfaces, Driveways, Parking Bays, Etc.

- failure to keep driveways, patios, sidewalks, etc., clean of debris and/or moss and mildew growth.
- failure to keep roofs and gutters cleaned and/or treated for moss and plant growth.

7.2.3 It shall be the duty of the Owner or occupant of any Building Site to improve and maintain in proper condition the area between the Property line of said Building Site and the nearest curb or improved street, including installing and maintaining Parking Bays within said area.

7.2.4 The Board, Covenant Committee and Architectural Control Committee may adopt additional rules and regulations regarding the use, maintenance and appearance of the Property. The Board may grant Townhouses, Condominiums and Apartments exceptions or modifications of these standards (in writing), and Townhouses, Condominiums and Apartments may have more restrictive standards within their governing documents.

7.3 Vehicles. The following restrictions apply to vehicles and recreational vehicles:

The Board may adopt rules regarding use and storage of all types of vehicles, including related to the size, contents, advertising on, location, and number of vehicles. Absent more specific rules promulgated by the Board, the following restrictions apply:

- Vehicles, commercially licensed or not, bearing visible work-related equipment and/or apparatus for attachment of work-related equipment shall not be parked or stored in the driveways or on the Properties.
- Vehicles with logos, advertising, or wording other than those of the car manufacturer shall not be parked or stored in the driveways or on the Properties.

- Vehicles loaded with trees, trash or debris shall not remain parked or stored in the driveways or on the Properties.
- Unmaintained, damaged, neglected or rusted vehicles shall not be parked or stored in the driveways or on the Properties.
- Vehicles parked or stored in the driveways or on the properties shall not be covered or shielded with covers of any kind including but not limited to custom fit covers, weather shield covers, form-fitting covers or tarps of any size or material.

#### 7.3.1 Recreational Vehicles.

- Permitted 24 hours before and 24 hours after a trip, for loading and unloading purposes on an occasional basis. "Occasional" has been defined as two times per month. Security is to be notified.

#### 7.3.2 Boats, Camper Tops, Trailers, Etc.

- Parking and/or storage of boats, trailers, camper tops, etc. in any area of the Property visible from streets, neighboring Properties, recreational areas or common areas is prohibited.

7.3.3 Commercial Vehicles. Commercial vehicles are prohibited, except within garages. Commercial vehicles include any vehicles with ladders or other equipment attached to them, and vehicles with logos or advertising which identify a business or other organization.

#### 7.3.4 Vehicles, In General.

(a) No Owner of any Lot shall permit any vehicle, boat, recreational vehicle (RV), trailer, motorcycle, etc. whether licensed or not, which is inoperable or otherwise in a state of disrepair, to be abandoned or to remain parked upon any street or upon any Lot within the property for a period in excess of forty-eight (48) hours. Failure to have current license tabs shall be conclusive proof of in-operability.

(b) The Board shall establish a procedure to hear complaints and render decisions and enforce against abandoned or inoperative vehicles, recreation vehicles, boats or other equipment. Absent some specific procedures, the regular violation Notice and enforcement procedures shall be followed as provided in Article XIV.

(c) If an Owner refuses or fails to remove a vehicle, recreation vehicle, boat or other equipment when required by the Board after Notice and Opportunity to be Heard, the Board may remove the vehicle at the Owner's expense and any costs or expenses advanced by the Association for removal of the vehicle or trailer shall be assessed to the Owner.

(d) No dismantling, repair or refurbishment of any vehicle or equipment, shall be conducted or permitted on any Lot except within a garage.

7.4 Common Properties. No Owner or occupant shall remove or significantly alter any tree in any street, right-of-way, park or recreational area or other part of the

Common Properties or Properties unless permission in writing is first granted by the Association.

7.5 Trash Removal. No garbage, refuse or rubbish shall be deposited or kept on any Property except in a suitable container. Loose garden trash that is required to be placed at a designated point in order to be collected may be placed and kept at such designated point for periods not to exceed twenty-four (24) hours. All areas and equipment for storage and disposal of such materials shall be kept in a clean and sanitary condition. The Board may adopt rules regarding use and storage of garbage, recycling and yard waste containers. The following rules apply to the collection and storage of garbage, yard waste and recycling materials:

- Containers for storage of trash, yard waste, recycling, etc. are to be stored in an area not directly in view from streets and neighboring Properties.
- Containers are to be returned to the storage site within 24 hours of pickup and stored properly between pickup days.
- Containers are to be emptied on a routine basis to avoid health and safety concerns.

7.6 Grading. Grading, clearing, removal or cutting of natural vegetation and/or stumps shall not be permitted without prior written approval of the Architectural Control Committee.

7.7 Drainage. At the time the certificate of occupancy is issued, it shall be the duty of the Owner or occupant of any Building on private Property to connect all roof drains and area storm drains on this Property to the public or primary storm sewer system unless the Architectural Control Committee deems such connections to be unnecessary. Exposed curb connections should be screened from public view.

7.8 Landscaping. It shall be the duty of the Owner of any Building Site to landscape his Property within one year from the date of final building inspection or within six (6) months of first occupancy of the structure, whichever occurs first. This includes the entire Property (front, back, and side yards) and may include grass, plantings, shrubs, trees, rocks, bark, chips, etc. Exposed dirt is not acceptable.

7.9 Leases or Rentals.

7.9.1 Lease or Rental of Lots and Living Units – Limitation. The lease or rental of any Lot or Living Unit is governed by this Declaration, including this Section, the Bylaws and any applicable Rules and Regulations. As used herein, the lease or rental of any Lot or Living Unit and all provisions of the Section apply to all tenancies of any duration, all tenancies with an option to purchase, all tenancies with a first right of refusal, and all living arrangements in any way governed by the provision of RCW 59.18 – Washington Residential Landlord - Tenancy Act. The sublease or sub-rental of any portion of a Lot or Living Unit shall not be allowed, nor shall any Accessory Dwelling Unit (ADU) be allowed on the Property.

7.9.2 Minimum Occupancy Requirement for Single Family Lots. No Owner of a Single Family Lot shall be allowed to lease or rent a home unless he/she/they (or a

Related Party) have resided in the Living Unit for at least twelve (12) months prior to the leasing or renting of the home.

7.9.3 Lease and Rental Agreement Requirements. Any lease or rental agreement must be in writing and provide that its terms shall be subject in all respects to the provision of this Declaration, the Bylaws and the Rules and Regulations of the Association and that any failure by the Tenant to comply with the terms of such Governing Documents shall be a default under the lease or rental agreement. If any lease or rental agreement under this Section does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be part of the lease or rental agreement and binding upon the Owner and Tenant by reason of their being stated in this Declaration.

7.9.4 Lease or Rental Only of the Entire Lot or Living Unit. No person shall be permitted to lease or rent less than the entire Lot or Living Unit or otherwise permit a Lot or Living Unit to be used as a boarding house, an Airbnb or similar short-term rental, a motel, and/or for short-term transient purposes.

7.9.5 Minimum and Maximum Lease Terms Required for Single Family Lots. Every Single Family Lot Lease Agreement shall be for a fixed term of not less than six (6) months and not more than twelve (12) months. Owners may continue to lease to the same tenant on a month-to-month basis at the expiration of an initial lease, or may enter into another lease not to exceed twelve (12) months. No Owner or Tenant shall cause or allow the overnight accommodation of employees or business invitees in any Unit on a temporary or transient basis.

7.9.6 Occupancy by Persons Living with the Owner. Occupancy of a Single Family Lot by a person who is not an Owner (e.g. domestic partner, family member, roommate, care provider) shall not be considered a lease or rental of a Living Unit governed by this Section, provided that the Living Unit is also occupied by the Owner and the intended usage is not for boarding house or Airbnb and similar short-term rental purposes. The occupant(s) shall be subject in all other applicable respects to the provisions of this Declaration, the Bylaws, and the Rules and Regulations of the Association.

7.9.7 Occupancy by a Related Party Without the Owner. A Living Unit occupied by a Related Party of the Owner, where the owner does not reside with the occupant, shall not be considered to be leased or rented provided that the Living Unit is not used for boarding house or Airbnb and similar short-term rental purposes, and the occupant(s) shall be subject in all other applicable respects to the provisions of this Declaration, the Bylaws, and the Rules and Regulations of the Association.

7.9.8 Obligations of the Owner Who Rents. Prior to signing any lease or rental agreement, it shall be the responsibility of the Owner to deliver to the Tenant a copy of all MCCA Rules and Regulations of the Association. If it is determined that the Owner has failed to provide copies of such documents to the Tenant, the Association may furnish a copy of the documents to the Tenant and charge the Owner a reasonable fee which will be collectible as a Special Assessment against the Lot or Living Unit and its Owner. It is also necessary for the Owner of any Single Family Lot to notify the Association office within ten (10) calendar days of any new Tenant(s) and to provide all requested information including, but not limited to, a copy of the Lease or Rental Agreement.

7.9.9 Obligations of Tenant. Tenants are required to comply with the Rules, Regulations, and Restrictive Covenants of the Association. If for any reason the Tenant fails to do so, it is the responsibility of the Owner to correct the situation. This includes, but is not limited to, regular yard maintenance, upkeep of the Living Unit, removal of any clutter surrounding the premises, proper conduct and respect for neighbors, removal of trash totes on time, and adherence to local noise restrictions. Owners may be fined, and enforcement action taken against them, for the conduct of their Tenants.

7.9.10 Existing Leases and Rentals. The Owner of any Single Family Lot that is leased or rented as of the effective date of this Declaration shall forward to the Board of Directors relevant Tenant information on a form supplied by the Association within thirty (30) days of request.

7.9.11 Hardship Exception. The Board of Directors shall have the right, in the exercise of discretion, to permit exceptions to the leasing and rental limitations where the Board of Directors determines that a variance would not detrimentally affect other Owners.

7.9.12 Rules and Regulations. The Board of Directors may adopt Rules and Regulations in furtherance of the administration of this Section, which Rules and Regulations shall be effective upon distribution to the Association and its members.

7.10 Residential Use. The Lots and Living Units shall be used for and restricted to use as single family residences only, on an Ownership, rental or lease basis, and for social, recreational, or other reasonable activities normally incident to such use not inconsistent with the provisions of this Declaration, nor with applicable zoning, and for the purposes of operating the Association and managing the Community if required. The foregoing restrictions as to residence shall not, however, be construed in such a manner as to prohibit an Owner or resident from maintaining their personal professional library therein; keeping their personal business and professional records or accounts therein; or handling their personal business or professional telephone calls or correspondence therefrom. Use of a Property for hotel or transient purposes is not consistent with single family residential use. Use of a property for short term guests, such as through services like Airbnb, are prohibited, even if the Property is concurrently occupied by the Owner. No Accessory Dwelling Units (ADU) shall be permitted on any Single Family Lot

7.11 Trade or Business Use. (These restrictions do not apply to commercial properties within Mill Creek) No Trade or Business of any kind may be conducted in or from any Lot or Living Unit or any portion of the Property, except that an Owner or Occupant may conduct a Business activity within the Property only if:

(a) the existence or operation of the Business activity within the Property is not apparent or detectable by sight, sound, or smell from the exterior of the Property;

(b) the Business activity conforms to all zoning and land-use requirements for the Property;

(c) the Business activity does not involve persons who do not reside in the Community coming onto the Property, including customers or employees. Boarding houses are prohibited;

(d) the Business activity does not involve additional vehicles being parked, sold, stored or repaired on public roads or Common Areas;

(e) the Business activity does not increase the liability or casualty insurance obligation or premium of the Association; and

(f) in the sole discretion of the Board, the Business activity is consistent with the residential character of the Association and does not constitute a nuisance or hazardous or offensive use.

(g) Adult family homes are permitted as provided in RCW 64.38.060, subject to rules adopted by the Board regarding landscaping standards and signs.

#### 7.12 Restrictions on Occupancy.

(a) No Lot may be occupied by more than one family, as that term is defined by the City of Mill Creek.

#### 7.13 Use of the Lots

7.13.1 Smoking. Smokers must be considerate of their neighbors, and avoid smoking locations outside where smoke would travel into their neighbor's homes, or onto their property, that non-smokers find offensive.

7.13.2 Signs. Owners may display political yard signs regarding candidates for public or Association office, or ballot issues, on or within a Lot or Living Unit subject to rules adopted by the Board governing the time, place, size, number, and manner of those displays. Owners may erect temporary signs, not to exceed four (4) square feet, advertising a home for sale. Nothing herein shall be deemed to prohibit reasonable and tasteful house numbers for addresses, or occupants' names on mailboxes. No business signs, advertising signs, or signs in any way relating to services, occupation or profession are allowed. Signs posted in violation of this provision may be removed upon order of the Board following Notice and Opportunity to be Heard. The Board may adopt rules regarding signs for security systems, political signs, for sale signs, service provider signs, and any other type of sign.

7.13.3 Clothing Lines. No clothesline shall be located on a Property so as to be visible from the street.

7.14 Damages to Property. If, due to the act or neglect of a Property Owner, or of a Related Party or their household pet, or of a guest or other authorized occupant or visitor of such Property Owner, damage shall be caused to the Common Elements and Facilities or to Property owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a common expense, then such Property Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Association, to the extent not covered by the Association's insurance.

7.15 Solar Panels. Solar panels are not prohibited if the installation of a solar energy panel by an owner or resident on the owner's or resident's property:

(a) Meets applicable health and safety standards and requirements imposed by state and local permitting authorities;

(b) If used to heat water, is certified by the Solar Rating & Certification Corporation or another nationally recognized certification agency. Certification must be for the solar energy panel and for installation; and

(c) If used to produce electricity, meets all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, accredited testing laboratories, such as Underwriters Laboratories, and, where applicable, rules of the Utilities and Transportation Commission regarding safety and reliability.

(d) If a solar system is not functional, the Board can require its repair or removal.

#### 7.15.1 Solar Panels, Roof Mounting.

(a) No part of a roof-mounted solar energy panel is above the roof line;

(b) No portion of a solar energy panel is on the slope of a roof facing a street unless: (i) The solar energy panel conforms to the slope of the roof; and (ii) The top edge of the solar energy panel is parallel to the roof ridge; and

(c) All solar energy panel frames, support brackets, or any visible piping or wiring shall be painted to coordinate with the roofing material;

7.15.2 Solar Panels, Shielding. An owner or resident must shield a ground-mounted solar energy panel if shielding the panel does not prohibit economic installation of the solar energy panel or degrade the operational performance quality of the solar energy panel by more than ten percent;

7.15.3 Solar Panels, Indemnification. Owners or residents who install solar energy panels must indemnify or reimburse the Association for loss or damage caused by the installation, maintenance, or use of their solar energy panel.

7.15.4 Solar Panels, Rules. The Board may adopt other reasonable rules regarding the placement and manner of solar energy panel systems, including freestanding solar arrays.

7.15.5 Solar Panels, Definition. For purposes of this section, "solar energy panel" means a panel device or system or combination of panel devices or systems that relies on direct sunlight as an energy source, including a panel device or system or combination of panel devices or systems that collects sunlight for use in:

(a) The heating or cooling of a structure or building;

(b) The heating or pumping of water;

(c) Industrial, commercial, or agricultural processes; or

(d) The generation of electricity.

7.15.6 Solar Panels, Common Elements. This section does not apply to common areas as defined in RCW 64.38.010.

7.16 Common Elements and Facilities. The Common Elements and Facilities shall be used only for access, ingress and egress to and from the respective Property by the occupants and their guests, household help, and other authorized visitors, and for



such other purposes which are incidental to the residential use of the respective Property; and in special areas shall be used for the purposes approved by the Board of Directors. The use, maintenance and operation of the Common Elements and Facilities shall not be obstructed, damaged or unreasonably interfered with by any Property Owner or Related Party.

## **ARTICLE VIII – ARCHITECTURAL CONTROL COMMITTEE**

8.1 Architectural Control. Except as otherwise provided in this Declaration, the Association must maintain, repair, and replace the Common Elements and each Property Owner must maintain, repair, and replace that Owner's Property.

8.2 Architectural Control Committee (ACC). The Board of Directors shall appoint an Architectural Control Committee of at least three (3) or more Members of the Association. The Committee shall act for the Board of Directors to the extent set forth in this Declaration. Members of the ACC are appointed by the Board for terms as determined by the Board, and may be removed by the Board at any time for any reason. The ACC shall have as members at least two (2) Board Members. The Board may at any time dissolve the ACC and exercise any of its authority and powers. Decisions of the ACC may be appealed to the full Board, whose decisions shall be final.

8.3 Jurisdiction and Purpose. The ACC shall have the right to review and thereby either approve or reject all plans and specifications for any building or structure to be constructed or modified within the Properties which do not conform to the Architectural Guidelines. Enforcement of these covenants shall be carried out by the Mill Creek Community Association. The ACC shall be given fifteen (15) days to consider any application submitted for review. In the event that the ACC fails to respond to an Owner within fifteen (15) days, the application shall be deemed rejected, but the ACC may continue to review or reconsider the application.

8.3.1 No building of any kind shall be erected, placed or altered on any Property or Building Site on the Property until the building plans, specifications, plot plan and landscape plans are submitted by the Owner or his representative to the Architectural Control Committee and found by said Committee to be in accordance with the guidelines and the procedures established by the Committee. It shall be the obligation of each Owner to familiarize themselves with the rules, regulations and procedures of the Committee. All costs incurred by the Committee for inspections, plan review and consultants shall be paid for by the applicant.

8.3.2 The Architectural Control Committee shall administer the recommendations embodied in the cutting preserve limits as outlined on the improvement plans and the typical preserve treatment plans on file with the Snohomish County Engineer's Office and/or City of Mill Creek Engineer's Office, said records being one and the same.

8.3.3 For the purpose of determining the minimum rear and side yard requirements under the County Zoning Resolutions, the Mill Creek Country Club and all common areas are "limited access open spaces," but are considered as "public open space" when computing rear and side yard requirements as detailed in Title 17 of the Mill Creek Municipal Code.

#### 8.4 Approval Procedures.

8.4.1 Any approval requested of the Committee shall be requested in writing and shall be submitted to the Association office unless the Committee shall record an instrument establishing a different place to submit such plans. The ACC may adopt rules and procedures for applications and to require approval for any exterior components of any structure on any Property, and may regulate colors and materials that may be used within the community. ACC approval is required for any change in the yards or the exterior appearance, including (not limited to) play structures, tree houses, sheds, out buildings, hot tubs, retaining walls, decks, patios, rain barrels, sport courts, swimming pools, ponds, etc.

8.4.2 Owners must submit applications at least fifteen (15) days in advance of expected construction starting. If the ACC has not responded within fifteen (15) days, the application is considered denied, but the ACC may continue to consider such application. Any approval must come in writing from the ACC or the Board. In the event an Owner enters into construction, addition, alteration or change of any Building on a Building Site on the Properties without having first submitted in writing the proposed plans and specifications to the Committee for such work and completes such work without written approval by the Committee, the Association has the right, at any time, to force compliance by change or removal of such work, at the Owner's expense, and has the authority to issue stop work orders for work in progress in violation of the CC&Rs, the Rules and Regulations, or an approved ACC request.

8.4.3 The Committee, in the discharge of its obligations hereunder and in its deliberations, shall act objectively and fairly in making decisions concerning various plans, specifications, plot plans and landscape plans submitted to it by various Owners for consideration. Further, the determinations of the Architectural Control Committee, as to non-compliance, shall be in writing signed by the Committee and shall set forth in reasonable details the reason of non-compliance.

8.5 Compliance with Architectural Requirements and Rules. Each Owner shall comply with the Covenants and the ACC Rules adopted by the Board. All ACC Rules and Regulations and all additions, deletions and changes to all ACC Rules and Regulations, shall be distributed to the Property Owners.

8.6 Approval Prior to Work Start. No clearing, excavating or filling of any Property shall be commenced prior to ACC approval. No dwelling, garage, fence, screening, wall, shed, deck, porch, dock, solar collection device, outbuilding or other structure shall be constructed, erected, or located on any Property, nor shall any exterior addition or alteration be made (other than replacement within same footprint or maintenance to any structure on any Lot) nor shall any road or driveway be made or altered, until the construction plans and specifications and a plot plan showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved by the ACC.

8.7 Submission of Plans and Application. Any Owner wishing to take any of the actions described in this section shall submit to the ACC two (2) sets of plans and specifications with a scale of 1" = 10' for plot plans and 1/4" = 1' for buildings showing the following:

- (a) The size and dimensions of the improvement or alteration;
- (b) The exterior design, color scheme, exact location on the Lot (See recommendations for colors in the book in Manager's office);
- (c) The location of driveways and parking areas;
- (d) The plan for drainage and grading; and
- (d) The proposed landscaping and outdoor lighting.

8.8 Minimum Requirements for Dwellings. No dwelling shall be constructed or placed on any residential Lot unless it shall comply with the minimum Architectural Requirements recommended by the ACC and with the following:

- (a) The dwelling must be permanently anchored to a county approved concrete or masonry foundation.
- (b) The roof and exterior siding of the dwelling shall be of wood, cement fiber board, masonry, or other material approved by the ACC. All roofing material shall be limited to either cedar shakes, cedar shingles, earth-tone concrete tile, approved architectural grade asphalt shingles, or other material approved by the ACC. Flat roofs shielded from public view with asphalt materials, or such other materials as the Board may from time to time designate by rule as being appropriate, are allowed. All proposed installations of roofing materials shall be approved in writing by the Committee prior to construction.
- (c) The dwellings must be declared to be part of the real property and taxed accordingly.
- (d) All exterior construction and landscaping must be completed within one year following approval by the ACC and the issuance of the building permit. Lot Owners may apply for extensions for good cause shown.
- (e) Outbuildings must be in the backyard or side yard and meet setback requirements from back and sides as the City or County permits.

8.9 Requirements for Fences, Screening, Walls, Decks and Porches. No fences, screening, walls, decks and porches shall be constructed or placed on any residential Lot unless it shall comply with the minimum ACC Rules adopted by the Board and with the following:

- (a) All fences, screening, walls (rockeries or retaining), decks and porches must follow City or County Code.
- (b) Fences, screening or walls from lot line to setback must be approved by the Architectural Committee or Board.
- (c) Fences, screening and walls must be complementary to the neighborhood and not exceed 6.5 feet tall.
- (d) Building or rebuilding attached or detached decks or porches must be approved by the ACC.

8.10 Minimum Requirements for Landscaping. The minimum Architectural Requirements adopted by the Board and with the following:

- (a) Front yard must be grass, bark with plants or ground cover.
- (b) All driveways and Parking Bays shall be constructed of concrete, concrete aggregate or concrete pavers unless written approval for other materials is granted by the Architectural Control Committee.
- (c) Bushes and shrubs should be conducive to natural vegetation or suitable for the Pacific Northwest.

8.11 ACC Rules and Regulations. The ACC may propose to the Board, and the Board may adopt, additional rules and regulations regarding the appearance, size and location of anything built on a Lot, and any landscaping on a Lot. Such rules and regulations shall be binding on every Lot as if set forth fully in this Declaration.

8.12 Alterations of Lots. Subject to the provisions of the Declaration and other provisions of law, a Lot Owner:

- (a) May make any improvements or alterations to the Owner's Lot that do not affect the Common Elements, and are not visible from the roads, common areas, or other Lots;
- (b) May not change the appearance of the Common Elements or the exterior appearance of a Lot without written permission of the ACC;
- (c) May not, without first obtaining written consent of the ACC, make or permit to be made any structural alterations, improvements, or addition in or to their Lot, or in or to the exterior of the buildings or any other areas and facilities;
- (d) Shall obtain all permits required by the City for any modification to their Lots. All work done must be as required by the Building Code;
- (e) May not paint or decorate any portion of the exterior of their homes or other structures on their Lot or the Common Elements without first obtaining written consent of the ACC; and
- (f) May not install any visible radio or television antenna, satellite dish or other similar type of exterior equipment on any Common Element, unless approved by the Board. The locations of any dish antenna on a Lot shall be subject to the Rules and Regulations of the Board.

The Board may allow Condominiums and Townhouses within the community to establish more restrictive standards for maintenance and alteration of buildings, landscape and other structures within the Condominium and Townhouse Property.

**ARTICLE IX – CONSTRUCTION, MAINTENANCE AND IMPROVEMENT**

9.1 Restrictions. The following restrictions are applicable to construction, maintenance and improvements on all the residential Properties;

9.1.1 Delivery Boxes. The location, color, size, design, lettering and other particulars of mail or paper delivery boxes shall be subject to approval of the Architectural Control Committee.

9.1.2 Visual Noise. Each Lot Owner shall not display, hang, store or use any signs, clothing, sheets, blankets, laundry, or other articles within or outside their Lot, or

which may be visible through their windows from outside (other than draperies, curtains or shades of a customary nature and appearance, subject to the Rules and Regulations of the Board of Directors), or paint or decorate or adorn the outside of their Lot, or install outside their Lot any canopy or awning, or outside radio or television antenna, or other equipment, fixtures or items of any kind, without the prior written permission of the Board of Directors or Association Director.

9.1.3 Decorations. The Board may adopt rules regarding display of holiday or other seasonal decorations, lights, signs, or any form of yard or house decoration visible from the Association common areas or neighboring Property.

9.1.4 Underground utilities. No outdoor overhead wire or service drop for the distribution of electric energy or for telecommunication purposes nor any pole, tower or other structure supporting said outdoor overhead wires shall be erected, placed or maintained within the Properties. All purchasers of Lots within the Properties, their heirs, successors and assigns shall use underground service wires to connect their premises and the structures built thereon to the underground electric or telephone utility facilities.

9.1.5 Mechanical equipment. Heat pumps, air conditioners, propane tanks, solar devices, chimney flues, hot tub pumps and similar exposed mechanical equipment shall be aesthetically concealed from view on all sides and shall be shielded in such a manner to minimize noise and safety impacts.

9.1.6 Matching facades. No home with the same structural facade shall be repeated on the same street without permission of the Architectural Control Committee.

9.1.7 No chain link. No chain link or similar metal fences or metal dog pens shall be allowed on the Properties. All fences and dog pens facing Common Property or street frontages shall have natural landscaping to conceal the fence or dog pen.

Notwithstanding the above, the Board of Directors shall have the right to approve and arrange for the installation of chain link fencing around detention ponds located on Association Property. Installation of chain link fencing around detention ponds shall in no way establish any right in favor of an Owner to use or otherwise erect chain link fencing on the Owner's Property.

9.2 Evidence of Compliance with Restrictions. Records of the Association with respect to compliance with the provisions of this Declaration shall be conclusive evidence as to all matters shown by such records. After the expiration of six (6) months following the completion of any approved construction, addition, alteration or change to any building on a Building Site, in the absence of any notice to comply or in the absence of any suit to enjoin such work or to force compliance by change or removal of such work within said period, the approved construction, addition, alteration or change shall be deemed to be in compliance with the provisions of this Declaration and all applicable Architectural Guidelines, rules, regulations, procedures and provisions of this Declaration.

## **ARTICLE X – MAINTENANCE OBLIGATIONS OF OWNER**

10.1 Vacant Lots. It is the intent of these restrictions that vacant Lots be maintained in a reasonably presentable condition. Therefore, the Association shall have the right at all times to enter upon any Lot or Building Site that is vacant and unplanted or untended by the Owner, after reasonable notice to the Owner, to remove debris, weeds

or other waste material and to trim, cut back, remove if damaged or dead, plant, cultivate and/or maintain hedges, trees, shrubs, plants or lawns without the permission of the Owner and to charge the expense thereof to the Owner as an Assessment. The Association shall have the rights with respect to such Assessment as set forth in Article VI as to annual and Special Assessments.

10.2 Owner's Obligation to Maintain Planting. Where the Association has permitted an Owner to plant a portion of the Common Properties abutting the Owner's Property in accordance with the Owner's landscaping plan, as approved in writing by the Committee, the Owner shall thenceforth be obligated to maintain the landscaping of such portion of the Common Properties or Parking Bays thereon. The Owner shall give the Association a right upon reasonable notice to the Owner to maintain such areas of the Common Properties and to charge the expense thereof to the Owner as an Assessment to be collected in the manner provided in Article VI.

## **ARTICLE XI – RESERVED**

## **ARTICLE XII – GENERAL PROVISIONS**

12.1 Duration. Covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any Building Site or Living Units subject to this Declaration, their respective legal representatives, heirs, successors and assigns in perpetuity. The covenants and restrictions of this Declaration may be amended as herein provided. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, which may be amended only in the manner provided herein.

12.2 Amendment of the Declaration. Except for provisions relating to voting rights of Members and rights of Members in common areas, none of which may be changed if more than thirty-three and one-third (33  $\frac{1}{3}$ %) percent of the Members of the Association entitled to vote thereon cast their vote against the change, any of the covenants herein contained may be amended and/or new covenants affecting the Development may be created by the filing of an appropriate document in the Office of the Auditor of Snohomish County or other proper recording office. An amendment to the Declaration executed and acknowledged by the proper Officers of the Association shall set forth substantially the following provisions:

12.2.1 The covenant intended to be added or amended;

12.2.2 A description or designation of the part of the Development upon which such amendment or new covenant is intended to be operative, which description or designation may refer to or appear on a plat to be filed with a certificate;

12.2.3 A statement that such amendment or such new covenant was duly adopted at a meeting of the Members of the Association, at which meeting the resolution was approved by more than fifty (50%) percent of the Voting Power of the Association. If the Amendment proposed sets limitations on the rights of Members to use common areas, such statement shall represent that not more than thirty-three and one-third (33  $\frac{1}{3}$ %) percent of the Members of the Association entitled to vote thereon cast their vote against the amendment.

12.3 Compliance with Law. This Declaration may not be amended so as to conflict with the provisions of the Homeowners Association Act or in deprivation of any right or lien held or claimed by any holder of a recorded mortgage or underlying real estate contract on a Property.

12.4 Challenges to Amendments. In the absence of fraud, any action to challenge the validity of an amendment adopted by the Association may not be brought more than one year after the amendment is recorded.

12.5 Recording. An amendment is effective only upon recording with the County.

12.6 Eligible Mortgagee Protection. If any provision of law or the Declaration requires the consent of a holder of a security interest in a Lot as a condition to the effectiveness of an amendment to the Declaration, the consent is deemed granted if a refusal to consent in a record is not received by the Association within sixty (60) days after the Association delivers notice of the proposed amendment to the holder at an address for notice provided by the holder or mails the notice to the holder by certified mail, return receipt requested, at that address. If the holder has not provided an address for notice to the Association, the Association must provide notice to the address in the security interest of record.

12.7 Corrections. Upon thirty (30) days advance notice to Lot Owners, the Association may, upon a vote of two-thirds (2/3) of the members of the Board, without a vote of the Lot Owners, adopt, execute, and record an amendment to the Declaration for the purpose of correcting or supplementing the governing documents to correct a mathematical mistake, an inconsistency, or a scrivener's error, or clarifying an ambiguity in the governing documents with respect to an objectively verifiable fact.

### **ARTICLE XIII – NOTICE**

13.1 Form. Notice to the Association, Board, or any Owner or occupant of a Lot must be provided in the form of a record.

13.2 Tangible Medium.

13.2.1 Notice provided in a tangible medium may be transmitted by mail, private carrier, or personal delivery; or telephone, wire, or wireless equipment that transmits a facsimile of the notice.

13.2.2 Notice in a tangible medium to the Association may be addressed to the Association's registered agent at its registered office, to the Association at its principal office shown in its most recent annual report or provided by notice to the Lot Owners, or to the president or secretary of the Association at the address shown in the Association's most recent annual report or provided by notice to the Lot Owners.

13.2.3 Notice in a tangible medium to a Lot Owner or occupant must be addressed to the Lot address unless the Lot Owner or occupant has requested, in a record delivered to the Association, that notices be sent to an alternate address or by other method allowed by the governing documents.

13.3 Electronic Transmission. Notice may be provided in an electronic transmission as follows:

13.3.1 Notice to Lot Owners or Board members by electronic transmission is effective only upon Lot Owners and Board members who have consented, in the form of a record, to receive electronically transmitted notices and have designated in the consent the address, location, or system to which such notices may be electronically transmitted, provided that such notice otherwise complies with any other requirements of the Declaration and applicable law. The Association shall retain the records which indicate an Owner's consent to receive Notice electronically, and shall maintain a list of electronic addresses to be used for such Notice.

13.3.2 Notice to Lot Owners or Board members includes material that the law or the governing documents requires or permits to accompany the notice.

13.3.3 A Lot Owner or Board member who has consented to receipt of electronically transmitted notices may revoke this consent by delivering a revocation to the Association in the form of a record.

13.3.4 The consent of any Lot Owner or Board member is revoked if: The Association is unable to electronically transmit two consecutive notices given by the Association in accordance with the consent, and this inability becomes known to the secretary of the Association or any other person responsible for giving the notice. The inadvertent failure by the Association to treat this inability as a revocation does not invalidate any meeting or other action.

13.3.5 Notice to Lot Owners or Board members who have consented to receipt of electronically transmitted notices may be provided by posting the notice on an electronic network and delivering to the Lot Owner or Board member a separate record of the posting, together with comprehensible instructions regarding how to obtain access to the posting on the electronic network.

13.3.6 Notice to the Association in an electronic transmission is effective only if the Association has designated in a record an address, location, or system to which the notices may be electronically transmitted.

13.3.7 Notice may be given by any other method reasonably calculated to provide notice to the recipient.

13.4 When Effective. Notice is effective as follows:

13.4.1 Notice provided in a tangible medium is effective as of the date of hand delivery, deposit with the carrier, or when sent by fax.

13.4.2 Notice provided in an electronic transmission is effective as of the date it:

(a) Is electronically transmitted to an address, location, or system designated by the recipient for that purpose; or

(b) Has been posted on an electronic network and a separate record of the posting has been sent to the recipient containing instructions regarding how to obtain access to the posting on the electronic network.

13.5 Good Faith. The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.



## **ARTICLE XIV – ENFORCEMENT AND DISPUTE RESOLUTION**

14.1 Enforcement. Except as provided in Article XIV (Enforcement), the Association or any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration, and a similar right shall exist with respect to recovery of damages for any such violation. In the event a Judgment, Decree, or Court Order is entered in favor of the Association or any Owner in any action at law or in equity to enforce these provisions, the defendant in such action shall be liable for the Association's or Owner's court costs and disbursements and reasonable Attorney fees to be fixed by the Court. Failure of the Association or of any Owner, at any time, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so in the future.

14.2 Compliance with the Governing Documents is enforced through two distinct processes: Enforcement of Violations, and Disputes. The process for Enforcement of Violations is outlined in Sections 14.5 through 14.6. The process for Disputes is outlined in Section 14.8. Enforcement of a Violation is not a Dispute. However, Enforcement of a Violation can evolve into a Dispute if the final decision of the Board regarding a Violation is challenged. Unpaid Assessments are collected as provided in Article VI, and are not subject to Section 14.8.

14.3 Strict Compliance. Each Owner, each Occupant, the Board and the Association shall comply strictly with this Declaration, the Bylaws, and the Rules and Regulations adopted pursuant thereto, as they may be lawfully amended from time to time, and the decisions of the Board.

14.4 Failure of Board to Insist on Strict Performance No Waiver. The failure of the Board in any instance to insist upon the strict compliance with this Declaration or the Bylaws or Rules and Regulations of the Association, or to exercise any right contained in such documents, or to serve any Notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of any term, covenant, condition, or restriction. The receipt by the Board of payment of an Assessment from an Owner, with knowledge of a breach by the Owner, shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless expressed in writing and signed on behalf of the Board.

14.5 Enforcement of Governing Documents. The Board may determine whether any Person (including but not limited to Owners, Related Parties, Tenants, and Guests) has Violated or allowed a Violation of the Governing Documents. In determining whether any Person has Violated the Governing Documents, the Board, Managers, employees, the ACC or Covenant Committee shall conduct a reasonable inquiry and base its decision on objective information. The Board may, in its discretion, establish a committee to investigate suspected violations.

If the Board finds that a Person has committed a Violation of the Governing Documents, the Board is also authorized to, after Notice and Opportunity to be Heard, assess reasonable fines (in accordance with a previously established schedule adopted by the Board and furnished to the Owners) and prohibit the use of one or more Common Elements. If an Owner's or Occupant's conduct is repeatedly offensive to the community, and is not corrected, following an Opportunity to be Heard and the Dispute Resolution

Process, the Association may evict the Owner or Occupant from living in or visiting the Community, as provided by Washington law.

14.6 Opportunity to Be Heard. Whenever this Declaration requires that an action of the Board be taken after Notice and "Opportunity to be Heard," the following procedure shall be observed: The Board shall give Notice, in accordance with Article XIII, of the proposed action to all Owners or Occupants whose interest would be significantly affected by the proposed action. The Notice shall include a general statement of the proposed action and a statement that the affected Person may request a hearing, which request shall not be made more than ten (10) days from the date Notice is delivered by the Board, or may respond in writing.

The Board may conduct the hearing or may delegate its hearing authority to a Manager or to a committee. At the hearing, the affected Person shall have the right, personally or by a representative, to give testimony orally, in writing, or both, subject to reasonable rules of procedure established by the Board to assure a prompt and orderly resolution of the issues. If the affected Person does not request a hearing, or fails to attend a scheduled hearing, the Board or its delegate may base its decision (including, but not limited to, the decision to assess a fine or prohibit the use of one or more Common Elements) on the information it possesses. The affected Person shall be notified of the decision in the same manner in which Notice was given. The Board may establish additional procedures in the Rules and Regulations.

14.7 Challenge to Board's Decision. If an Owner challenges any Board decision, including a decision to: (1) find that a Violation has been committed, or (2) to assess a fine or prohibit the use of one or more Common Elements, the Owner may use the Dispute Resolution process in Section 14.8.

#### 14.8 Dispute Resolution

14.8.1 Policy. The parties hope there will be no Disputes arising out of their relationship. To that end, each commits to cooperate in good faith and to deal fairly in performing its duties under this Declaration in order to accomplish their mutual objectives and avoid Disputes.

14.8.2 Disputes Between Owners. The Board has the discretion but not the obligation to initiate the Dispute Resolution process in response to a Dispute between or among Owners and/or Occupants. In deciding whether to do so, the Board shall consider whether it is in the best interests of the Association. All Owners have the right to initiate the Dispute Resolution process on their own behalf.

14.8.3 Initial Dispute Resolution Procedure. Except as provided in Article VI, for collection of unpaid Assessments, or in the enforcement of the Governing Documents initiated under Section 14.5, any parties who believe they have a Dispute involving the Association, any Board member or Officer, a Lot Owner, Occupant, or an agent or employee of the above, shall first seek resolution of the Dispute through conversation between the parties. If conversation does not resolve the issues, the complaining party in the Dispute (the "Complainant") shall submit a written statement of the Dispute to the responsible party. This written statement shall include a description of the action taken in violation of the Governing Documents, the harm that resulted, and a proposed solution

that would resolve the issue. The party who receives this settlement demand (the "Respondent") shall respond within fourteen (14) days to the Complainant directly, in writing, and shall either agree to the proposed resolution or propose an alternate means of resolution. If a resolution cannot be agreed upon, or if no response is received within fourteen (14) days of the initial demand for resolution, the Dispute shall proceed to mediation, as described in this Article.

14.8.4 Mediation. The parties agree that they will attempt to resolve any Dispute by nonbinding mediation, and that mediation is a condition precedent to any form of binding Dispute resolution, including arbitration. The parties are encouraged to use a mediator from a Dispute Resolution Center such as the Community Associations Institute Mediation Program, the Snohomish County Dispute Resolution Center or from a mediation clinic at the University of Washington School of Law or Seattle University School of Law. Unless otherwise agreed upon by all parties, the Mediator shall be selected from among Washington Arbitration and Mediation Services panelists. A request for mediation shall be made in writing, delivered to the other party. The request may be made concurrently with binding Dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The parties shall split the cost of the mediation equally or with equal shares to each participating entity if there are more than two.

14.8.5 Arbitration. The parties agree that if they are unable to resolve their Dispute which relates to the Restrictive Covenants through mediation, they will submit their Dispute to binding arbitration. The parties confirm that by adopting this alternate Dispute resolution process, they intend to give up their right to have Disputes decided in court by a judge or jury. Any dispute which involves the Association shall be resolved by mediation, even if it is not relate to the Restrictive Covenants.

If a Dispute arises which cannot be resolved by Mediation, the parties agree to resolve the Dispute by the arbitration process outlined here, provided that during this process the parties may pursue a settlement. Any Dispute between or among any party subject to this Declaration (including, without limitation, the Association, any Association Board members or officers, Lot Owners, and their employees or agents) arising out of or relating to this Declaration, a Lot, the Community or the Association shall be determined by Arbitration in Snohomish County.

If the parties engage in Mediation but are unable to resolve their Dispute, either party may submit a written demand for Arbitration. If one party requests Mediation and the other refuses to participate, the requesting party may submit a written demand for Arbitration.

Unless otherwise agreed upon by all parties, the parties agree that the Arbitrator shall be selected from among Washington Arbitration and Mediation Services panelists. All statutes of limitation, which would otherwise be applicable, shall apply to any arbitration proceeding hereunder. The party demanding Arbitration shall advance the initial costs of Arbitration. The arbitrator, as part of its decision, shall allocate the costs and fees associated with Arbitration among the parties. The arbitrator shall also have the

authority to decide any Disputes that arose out of Mediation, including but not limited to, allocation of the costs and fees associated with Mediation.

14.8.6 Emergency Enforcement Action Exception. For violations of the Governing Documents that create safety hazards, affect the insurance coverage afforded to the Association, or otherwise require immediate action, the parties may use the courts for injunctive action to obtain temporary or preliminary rulings. Such actions may include the removal of Owners or Tenants, access to Lots, the prohibition of specific activities, and restraining orders. The arbitrator shall have final jurisdiction over such Disputes through this Article.

14.8.7 Hearing – Law – Appeal Limited. The arbitrator shall take such steps as may be necessary to hold a private hearing within ninety (90) days of the initial demand for Arbitration and to conclude the hearing within one (1) day; and the arbitrator's written decision shall be made not later than fourteen (14) calendar days after the hearing. The arbitrator shall authorize such discovery as may be necessary to ensure a fair hearing. These time limits are intended to expedite the proceeding, but they are not jurisdictional. The arbitrator may for good cause afford or permit reasonable extensions or delays, which shall not affect the validity of the award. The written decision shall contain a brief statement of the claim(s) determined and the award made on each claim. In making the decision and award, the arbitrator shall apply applicable substantive law. The arbitrator may award injunctive relief or any other remedy available from a judge, including without limitation, attorney fees and costs to the prevailing party, joinder of parties or consolidation of this arbitration with any other involving common issues or law or fact or which may promote judicial economy; but shall not have the power to award punitive or exemplary damages.

14.9 Attorney Fees and Costs. The prevailing party in any proceeding, including litigation, administrative, mediation, or arbitration, shall be entitled to recover any costs (including all expenses and liabilities, including attorneys' fees and costs) incurred in an action, whether commenced or merely threatened (including proceedings for which the Association is obligated to indemnify a Board member, Association committee member, Association officer, or Managing Agent) and reasonable attorney's fees incurred in connection with any enforcement action, whether or not such action results in a proceeding actually being commenced or prosecuted to judgment. Costs and reasonable attorney's fees incurred in connection with an enforcement action shall be payable and collectible as any other Assessment.

#### 14.10 Enforcement by Board.

14.10.1 The Board may determine whether to take enforcement action by exercising the Association's power to impose sanctions or commencing an action for a violation of the governing documents, including whether to compromise any claim for unpaid Assessments or other claim made by or against it.

14.10.2 The Board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(a) The Association's legal position does not justify taking any or further enforcement action;

(b) The covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law;

(c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(d) It is not in the Association's best interests to pursue an enforcement action.

14.10.3 The Board's decision to not pursue enforcement under one set of circumstances does not prevent the Board from taking enforcement action under another set of circumstances, but the Board may not be arbitrary or capricious in taking enforcement action.

14.11 Enforcement against tenants.

14.11.1 If a tenant of a Lot Owner violates the governing documents, in addition to exercising any of its powers against the Lot Owner, the Association may:

(a) Exercise directly against the tenant the powers it has against an Owner;

(b) After giving Notice and opportunity to be heard to the Lot Owner, levy reasonable fines against the Lot Owner for the violation; and

(c) Enforce any other rights against the tenant for the violation that the Lot Owner as the landlord could lawfully have exercised under the lease, or that the Association could lawfully have exercised directly against the Lot Owner, or both. The Association has the right to terminate a lease or evict a tenant if an Owner has failed to do so. The rights referred to in this subsection (c) may be exercised only if the tenant or Lot Owner fails to cure the violation within ten (10) days after the Association notifies the tenant and Lot Owner of that violation.

14.11.2 Unless a lease otherwise provides, this section does not:

(a) Affect rights that the Lot Owner has to enforce the lease or that the Association has under other law; or

(b) Permit the Association to enforce a lease to which it is not a party, in the absence of a violation of the governing documents.

14.12 Interpretation of Covenants. In the event of conflicts or ambiguities within these Covenants, The Board shall have the right to determine all questions arising in connection with the Declaration and to construe and interpret the provisions of the Declaration, and the Board's good faith determination, construction, or interpretation shall be final and binding.

## **ARTICLE XV – INSURANCE**

15.1 Association Insurance. The Association shall maintain, to the extent reasonably available:

(a) Property insurance on the common elements, which at the discretion of the board, may include insurance for earthquake, flood and terrorism;

(b) Liability insurance, including medical payments insurance, in an amount determined by the Board of directors but not less than two million dollars (\$2 million),

covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, Ownership, or maintenance of the Common Elements;

(c) Fidelity insurance naming the members of the Board, the Association Director or managers and such other Persons as may be designated by the Board, in amounts equal to at least the amount of all bank accounts, plus three (3) months estimated cash to be collected as Assessments each year;

(d) Directors and Officers liability insurance;

(e) Insurance against loss of personal property of the Association by fire, theft and other losses with deductible provisions as the Board deems advisable; and

(f) Such other insurance as the Board deems advisable.

15.2 Insurance Required. Insurance policies carried pursuant to subsection 15.1 shall provide that:

(a) Each Property Owner is an insured Person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association;

(b) The insurer waives its right to subrogation under the policy against any Property Owner, member of the Owner's household, and lessee of the Owner; and

(c) No act or omission by any Property Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

15.3 Policy Requirements. The Board shall review at least annually the adequacy of the Association's insurance coverage. All insurance policies shall be obtained from insurance carriers that are generally acceptable for similar projects, licensed to do business in the State of Washington. All such insurance policies and fidelity insurance shall provide that coverage shall not lapse and may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written Notice to any and all insureds named therein.

#### 15.4 Property Owner Insurance

15.4.1 Owner's Obligation to Buy Insurance. Each Property Owner should obtain and maintain an individual insurance policy which provides coverage for the Owner's Property and general liability for acts of the Owner, its tenants, agents or pets.

15.4.2 Tenant or Occupant Insurance. Single Family Lot, Townhouse and Condominium Unit Owners are encouraged to require any Tenants, Related Parties, or other Occupants to obtain Renter's Insurance to provide general liability insurance for acts and omissions by the Occupants and their guests, agents, pets and invitees.

15.5 Claim on Owner Policies. The Board may require a Property Owner to file a claim under the Owner's policy if the Owner is responsible for damage and has not otherwise paid his/her obligations for the necessary repairs.

## **ARTICLE XVI – DAMAGE AND DESTRUCTION**

16.1 Application. Any portion of the Common Elements for which insurance is required that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) The Community Association is terminated;
- (b) Repair or replacement would be illegal;
- (c) Owners holding sixty-seven percent (67%) of the total Voting Power vote not to rebuild; or
- (d) The Board determines that it is not in the best interest of the community to rebuild, and it is not a significant asset to the Community.

16.2 Costs. The cost of repair or replacement not paid from insurance proceeds or due from individual Owners is a common expense.

16.3 Failure to Restore Common Elements. If all of the damaged or destroyed portions of the common elements are not repaired or replaced:

- (a) The insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the community; and
- (b) Except to the extent that other persons will be distributees, the remainder of the proceeds may be held in reserves or may be distributed to all the Lot Owners or lienholders, as their interests may appear, in proportion to the Assessments collected from each Property.

## **ARTICLE XVII – MORTGAGEE PROTECTION**

17.1 Right to Review Records. All mortgagees shall have the right to examine books and records of the Association, under the same terms and conditions as any Owner;

17.2 Pledged Votes. A Property Owner may pledge or assign their voting rights to a mortgagee. Such a mortgagee, or its designated representative, shall be sent all Notices to which the Property Owner is entitled hereunder and shall be entitled to exercise each Lot Owner's voting rights from and after the time that the mortgagee shall give written notice of such pledge or assignment to the Association.

17.3 Amendments. No amendment of this Declaration shall be effective to modify, change, limit or alter the rights expressly conferred upon mortgagees with respect to any unsatisfied mortgage duly recorded in the public records of the County, unless the amendment shall be consented to in writing by the holder of such mortgage.

17.4 Consent of Mortgagees. With respect to any action requiring the consent of a specified number or percentage of mortgagees, the consent of only eligible mortgagees holding a first lien security interest need be obtained, and the percentage must be based upon the votes attributable to Properties with respect to which eligible mortgagees have an interest.

## **ARTICLE XVIII – TORT AND CONTRACT LIABILITY**

18.1 Liability of Lot Owner. A Property Owner is not liable, solely by reason of being a Property Owner, for an injury or damage arising out of the condition or use of the Common Elements.

18.2 Standing.

18.2.1 An action alleging a wrong done by the Association, including an action arising out of the condition or use of the Common Elements, may be maintained only against the Association and not against any Property Owner.

18.2.2 A Lot Owner is not precluded from maintaining an action contemplated under this section because that person is a Property Owner, Board member, or officer of the Association.

## **ARTICLE XIX – LIMITATION OF LIABILITY**

19.1 Liability for Utility Failure, Etc. Except to the extent covered by insurance obtained by the Association, neither the Association nor the Board shall be liable for: any failure of any utility or other service to be obtained and paid for by the Association, or for injury or damage to persons or property caused by the elements or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance or orders of a governmental authority. No diminution or abatement of Common Expense Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort. The Association is not responsible for loss of use of a Property, nor for loss of rental income for a Property.

The Association is not responsible to provide for the safety or security of persons or property within the Community.

19.2 No Personal Liability. So long as a Board member, Association committee member, Association officer, or Managing Agent exercising the powers of the Board, has acted in good faith, without willful or intentional misconduct, upon the basis of such information as may be possessed by such person, then no such Person shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error or negligence of such person; provided, that this section shall not apply where the consequence of such act, omission, error or negligence are covered by insurance obtained by the Association.

19.3 Indemnification of Board Members. Each Board member, Association committee member, Association officer, or Managing Agent exercising the powers of the Board, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees reasonably incurred by or imposed in connection with any proceeding to which they may be a party, or in which they may become involved, by reason of being or having held such position, or any settlement thereof, whether or not they hold such position at the time such expenses or liabilities are incurred, except in such cases wherein such Person is adjudged guilty of willful misfeasance or malfeasance in the performance of their duties; provided, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association.





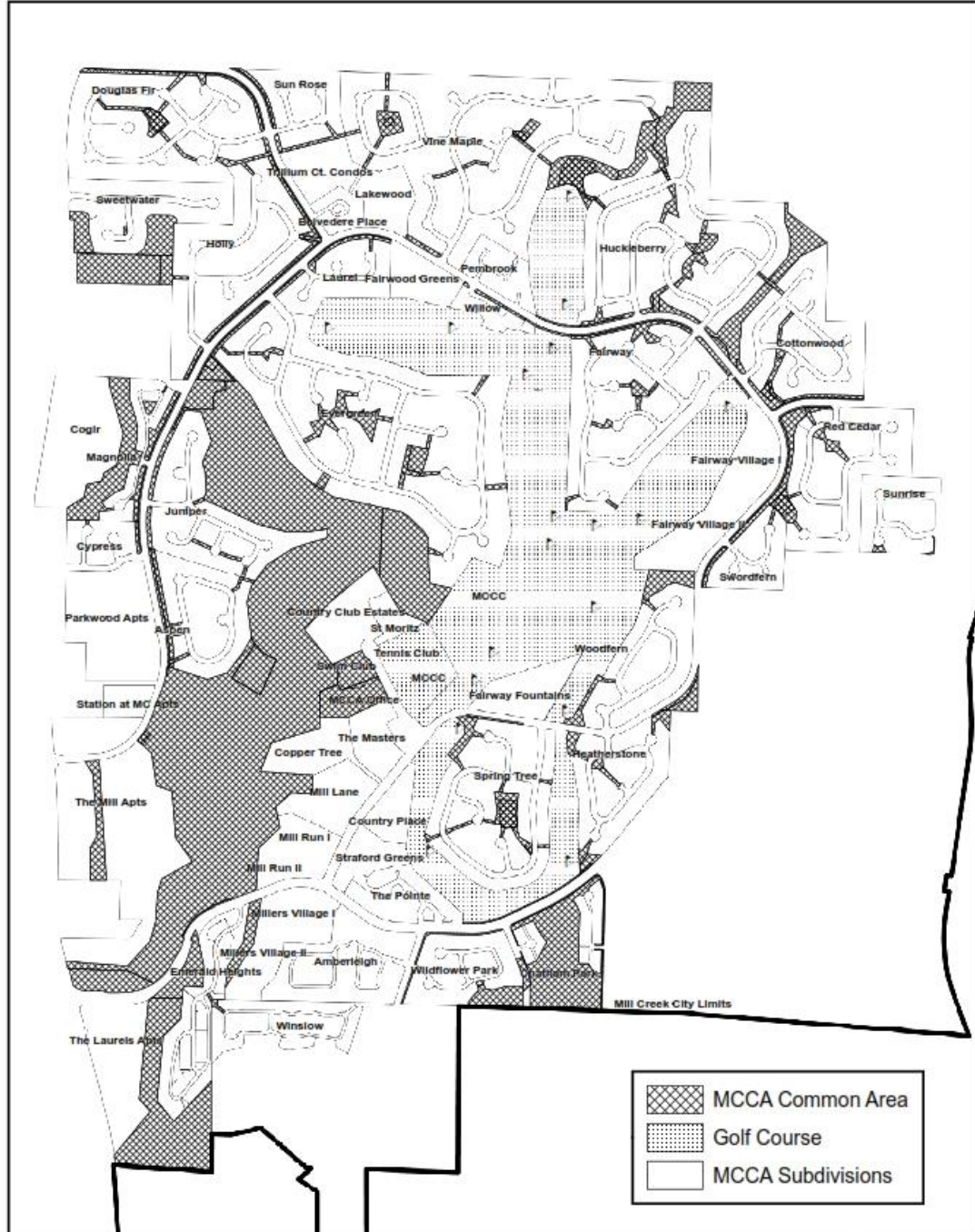
\_\_\_\_\_ to me known to be the Secretary of Association, the Washington non-profit corporation that executed the within and foregoing instrument, and acknowledged that instrument to be the free and voluntary act and deed of the Association, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the instrument on behalf of said Association.

WITNESS my hand and seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
(Print name)  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Exhibit A – Community Map

# Mill Creek Community Association



Didrik Voss 3/2/2022

**Exhibit B – Properties Within Mill Creek Community Association**

<b>Name on Community Map</b>	<b># Units</b>	<b>Type of Plat</b>
Parkwood at MC	240	Apartment
The Station at MC	46	Apartment
Laurels at MC	164	Apartment
Cogir of MC	186	Apartment
The Mill at MC	516	Apartment
Copper Tree	42	Condominium
Country Club Estates	151	Condominium
Country Place	19	Condominium
Fairway Village I	28	Condominium
Fairway Village II	28	Condominium
Lakewood	28	Condominium
Mill Lane	37	Condominium
Mill Run I	32	Condominium
Mill Run II	28	Condominium
Millers Village I	42	Condominium
Millers Village II	27	Condominium
St. Moritz	64	Condominium
Stratford Green	31	Condominium
The Masters	33	Condominium
Trillium Court	32	Condominium
Amberleigh	88	Townhouse
Belvedere Place	20	Townhouse
Emerald Heights	53	Townhouse
Fairwood Greens	34	Townhouse
Pembrook	26	Townhouse
The Pointe	48	Townhouse

<b>Name on Community Map</b>	<b># Units</b>	<b>Type of Plat</b>
Aspen	45	Single Family Lots
Chatham Park	27	Single Family Lots
Cottonwood	69	Single Family Lots
Cypress	14	Single Family Lots
Douglas Fir	95	Single Family Lots
Evergreen	180	Single Family Lots
Fairway	106	Single Family Lots
Fairway Fountains	7	Single Family Lots
Heatherstone	51	Single Family Lots
Holly	77	Single Family Lots
Huckleberry	149	Single Family Lots
Juniper	65	Single Family Lots
Laurel	22	Single Family Lots
Magnolia	29	Single Family Lots
Red Cedar	72	Single Family Lots
Spring Tree	100	Single Family Lots
Sunrise	32	Single Family Lots
Sun Rose	25	Single Family Lots
Sweetwater Ranch	50	Single Family Lots
Swordfern	24	Single Family Lots
Vine Maple	185	Single Family Lots
Wildflower Park	57	Single Family Lots
Willow	6	Single Family Lots
Winslow	57	Single Family Lots
Woodfern	51	Single Family Lots