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KATHY HILL
SKAGIT COUNTY AUDITOR
'96 SEP 20 P1:12
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REQUEST OF_____

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DECLARATION

AND

COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RESERVATIONS

FOR

MADDOX CREEK

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(Revised 9/18/96)

Semrau & Lisser
2118 Riverside Dr., Ste. 104
Mt. Vernon 98273

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THIS DECLARATION AND COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RESERVATIONS (this "Declaration") is made by InterWest Properties, Inc., a Washington corporation ("Declarant") as of the _____ day of September, 1996.

RECITALS

Declarant is the owner of certain real property (the "Property") in Skagit County, Washington, legally described on Exhibit 1 hereto.

A portion of the Property is subdivided as shown in the Plat for Maddox Creek, Division No. 1, recorded in Volume 16 of Plats, pages 121 - 130, records of Skagit County, Washington (the "Plat" and "the Existing Property).

Declarant wishes to subject the Existing Property to this Declaration;

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said Property and for the preservation, protection and maintenance of open spaces and other common facilities described herein; and, to this end, desires to subject the Existing Property with such additions as may hereafter be made thereto (as provided in Article 2) to the covenants, restrictions, easements, conservation agreements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said Property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said Property to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated under the laws of the State of Washington, as non-profit corporations, the Maddox Creek Master Community Association, for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, Declarant declares that the Existing Property is subject to all restrictions and easements of said Plat, shall be held, transferred, sold, conveyed, leased, used and occupied subject to the covenants, conditions, restrictions, easements, assessments, and liens hereinafter set forth which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the Existing Property and which shall be binding on all parties having any right, title, or interest in the Existing Property or any portion thereof, and their respective heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

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ARTICLE 1 DEFINITIONS

1.1 **Words Defined.** For the purpose of this Declaration and any amendments hereto, the following terms shall have the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

1.1.1 "Additional Property" shall mean additional portions of the Property which may be included in the Maddox Creek Community Association, together with all improvements thereon.

1.1.2 "Association" shall mean Maddox Creek Master Community Association described in Article 5 of this Declaration, its successors and assigns.

1.1.3 "Board" shall mean the board of directors of the Association. Where appropriate, references to the Board may include references to the Architectural Control Committee that may be established by the Board pursuant to authority delegated to the Architectural Control Committee by the Board.

1.1.4 "Common Area" and "Common Area Improvements" shall mean all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Areas may include maintenance areas, sidewalks, street lighting, if any, planted landscape features, signage and any other areas owned by the Association and designated as Common Areas by Declarant. The Common Areas to be owned by the Association at the time of conveyance of the first Lot to an Owner other than Declarant are described herein and depicted on the final recorded Plat of the Property. Additional Common Areas designated as such on later divisions of the Plat of Maddox Creek may be dedicated at the time Additional Property becomes subject to this Declaration by amendment hereto.

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

1.1.6 "Declarant" shall mean InterWest Properties, Inc., a Washington corporation.

1.1.7 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, and Reservations for Maddox Creek, as it may from time to time be amended.

1.1.8 "Exiting Property" shall mean Division #1 of Maddox Creek, a PUD (see Section 2.1).

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

1.1.10 "Lot" shall mean any one of the 64 lots numbered lots 1 through 14, 16 through 32, and 43 through 75 of the Plat, together with the Structures and Improvements thereon, together with Additional Properties added under the provisions of Article 2 hereof. On those Lots that allow multi-family or condominium units, "Lot" shall include each condominium unit when created.

1.1.11 "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article 5 hereof.

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

1.1.13 "Mortgagee" shall mean the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a Lot created by a Mortgage or deed of trust and shall also mean the vendor, or the designee of a vendor, of a real estate contract for the sale of a Lot.

1.1.14 "Owner" shall mean the record owner, whether one or more Persons, of fee simple title to a Lot within the Property, including a contract seller except those having such interest merely for the performance of an obligation.

1.1.15 "Participating Builder" shall mean a Person who acquires from Declarant two or more Lots for the purpose of improving the same for resale to future Owners.

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

1.1.17 "Planned Unit Development (PUD)" shall mean the Planned Unit Development for Maddox Creek as approved by the City of Mount Vernon.

1.1.18 "Plat" shall mean the recorded plat of Maddox Creek Division 1 and any amendments, corrections or addenda thereto subsequently recorded.

1.1.19 "Property" shall mean the land described on Exhibit 1 and such additions thereto as may hereafter be subjected to the terms of the Declaration, and all improvements and structures now or hereafter placed on the land.

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1.1.20 "Structure" shall mean any residence, accessory building, other building, fence, wall, patio, swimming pool, or the like constructed on a Lot.

1.1.21 "Transition Date" is defined in Section 5.

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

ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO

2.1 **Existing Property.** The Existing Property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Mount Vernon, Skagit County, Washington, and is more particularly described in Section 1.1.8.

2.2 **Additions to Existing Property.** Additional lands may become subject to this Declaration in the following manner:

2.2.1 Additions in Accordance with the approved PUD plan. The Declarant and its assigns, shall have the right to bring within the scheme of this Declaration Additional Properties in future stages of the development, provided that such additions are in accord with the PUD plan, or approved revisions thereof. No Owner, Board member or any person or entity governed by this Declaration shall prohibit, object or bring action to prevent the orderly continuation of the development of those Additional Properties shown upon the PUD plan.

The additions authorized under this and the succeeding subsection, shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the Additional Property which shall extend the scheme of the covenants and restrictions of the Declaration to such Additional Property.

Such Supplementary Declaration may contain such complementary 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 Additional Properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the Existing Property.

2.2.2 Other Additions. Upon approval in writing of the Association pursuant to a vote of its members as provided in its Articles of Incorporation, the owner of any

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property who desires to add it to the scheme of the Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions, as described in Section 2.2 hereof.

2.2.3 Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Existing Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Existing Property except as hereinafter provided.

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

ARTICLE 3 COMMON AREAS AND EASEMENTS

3.1 **Common Areas.** "Common Areas" shall be shown on the face of the plat of various divisions of Maddox Creek and may be dedicated either to the Property Owners, to the Association or to a combination thereof. The Common Areas will include in some divisions open space, trails, buffer areas, private roads, specific landscaping areas, the entrance signs, parks and similar facilities. The Common Area shall include rights retained in conjunction with the dedication or conveyance of properties to the City of Mount Vernon reserving unto the Association rights and authorities to improve or maintain in cooperation with the City of Mount Vernon the properties conveyed to the City of Mount Vernon.

3.2 **Association to Maintain Common Areas.** The Association shall have the right and the obligation to maintain the Common Areas, including the private roads in various divisions of Maddox Creek PUD and the operation and maintenance of all private road lighting systems, including the cost of power for such systems. The Association shall provide

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for, and be responsible for, the maintenance of storm water runoff from the various plats of Maddox Creek, including associated pipe and other conveyance systems, provided, however, that the maintenance of the storm water drainage facilities within Tract City shall require the prior approval of the City of Mount Vernon.

3.3 **Alteration of Common Area.** Nothing shall be altered or constructed upon or removed from the Common Areas except upon the prior written consent of the Board.

3.4 **Easements for Utilities and Drainage.** Declarant does hereby establish, create and reserve for the benefit of itself, the Association, all Owners and designated providers an easement (the "Utilities and Drainage Easement") as set forth on the face of the Plat. No Lot Owner shall allow or permit any structure or landscaping to be located, installed or grow upon the area subject to the Utilities and Drainage Easement which might in any way damage or interfere with the installation and operation of such utilities and systems. Each person utilizing the Utilities and Drainage Easement areas located on another's Lot shall promptly restore such area to a condition as close to its original condition as reasonably practical after making such use. Each Owner shall maintain the area of his Lot subject to the Utilities and Drainage Easement in a condition which will not interfere with the operation and maintenance of said utilities and systems.

3.5 **Maintenance of Entry.** The landscaped entry (at the northerly terminus of Maddox Creek Road) shall be maintained by the Association, including signs and the property in the right of way.

ARTICLE 4 CONSTRUCTION ON LOTS AND USE OF LOTS

4.1 **Permitted Structures.** No Structure of any kind shall be constructed, altered, added to or maintained upon any Lot or any other part of the Existing Property, except: (a) improvements or structures which are constructed by Declarant or its agents or assigns; (b) such structures as are approved by the Board in accordance with this Article 4; or (c) structures which pursuant to this Article 4 do not require consent of the Board.

4.2 **Uniformity of Use and Appearance.** One of the purposes of this Declaration is to assure within the Property: (i) a uniformity of use and quality of workmanship, materials, design, maintenance and location of Structures with respect to topography and finish grade elevation and (ii) that there will be no undue repetition of external designs. It is in the best interests of each Owner that such uniformity of use be maintained as hereinafter provided. No building (except for Accessory Structures) shall be erected, altered, placed or permitted to remain on any Lot other than single family dwelling units, which may include, where approved, townhomes and condominiums. Accessory Structures including carports and storage buildings are permitted as allowed by the requirements of this Article 4. Notwithstanding anything herein set forth, the Construction of any Structure shall comply with the more restrictive of either (i) the terms and conditions of this Declaration or (ii) the

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laws, codes, ordinances and regulations of any governmental entity having jurisdiction.

4.3 **Submission of Plans.** At least twenty (20) days before commencing Construction of any Structure on any Lot, the Owner shall submit to the Board three (3) complete sets of detailed building, Construction, surface water run-off control and landscaping plans and specifications and a site plan showing the location of all proposed Structures (the plans, specifications and site plans are individually and collectively referred to herein as the "Plans"). The Plans shall be submitted in a form satisfactory to the Board, which may withhold its approval by reason of its reasonable dissatisfaction with the location of the Structure on the Lot, color scheme, finish, architecture, height, impact on view from another Lot or Lots, appropriateness of the proposed Structure, materials used therein, or because of its reasonable dissatisfaction with any other matter which, in the reasonable judgment of the Board, would render the proposed Structure inharmonious with the general plan of development of the Property or other Structures nearby. The Board's approval or disapproval of Plans shall be in writing and approval shall be evidenced by written endorsement on such Plans, two (2) copies of which shall be delivered to the Owner of the Lot upon which the Structure is to be Constructed.

4.4 **Construction.** No Structure shall be Constructed or caused to be Constructed on any Lot unless the Plans for the Structure, including landscaping, have been approved in writing by the Board. The Board's review and approval or disapproval of Plans on the basis of cost, aesthetic design, harmony with previously approved Structures on or about other Lots in the Property, and location, shall be absolute and enforceable in any court of competent jurisdiction. The Board's approval of any Plans, however, shall not constitute any warranty or representation whatsoever by the Board or any of its members that such Plans were examined or approved for engineering or structural integrity or sufficiency or compliance with applicable governmental laws, codes, ordinances and regulations, and each Owner hereby releases any and all claims or possible claims against the Board or any of them, and their heirs, successors and assigns, or of any nature whatsoever, based upon engineering or structural integrity or sufficiency or compliance with applicable governmental laws, codes, ordinances and regulations.

4.4.1 **Power of the Board to Grant a Variance.** The Board shall have the power to grant a variance to an Owner, who, at the time the Owner submits his Plans for approval, also submits a request for a variance. The granting of the request for a variance shall be in writing and shall also be entered in the minutes of the Board.

4.5 **Minimum Size.** The Board shall adopt minimum size requirements for single family homes, for townhomes and for condominium units which shall be made available to Owners upon request. Each residential unit must have a garage which shall be of such size as to accommodate the number of automobiles required by the Board. The Board is authorized to grant a variance as to these requirements upon receiving an application from the owner of a lot showing that the grade of the lot will not reasonably accommodate those

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requirements.

4.6 **Maximum Height.** All buildings or Structures shall be Constructed in accordance with the laws of the City of Mount Vernon and other applicable codes. Townhouse Structures shall be two stories in height and, where topography permits, may be built on a daylight basement area.

4.7 **Use Restrictions.**

4.7.1 **Residential Use; Home Office.** The dwellings within the Structures are intended 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. In addition to the foregoing, Declarant and any Participating Builder may use dwellings it owns as sales offices and models for sales of other Lots. Home office occupations, to the extent permitted by the City of Mount Vernon, shall be allowed provided the number of outside employees does not exceed two (2) and that business is conducted Monday through Friday during normal business hours. Shipment of materials shall be handled by normal or express mails and shall be limited to documents and paperwork. No shipment of any product, equipment, materials or inventory to or from any Structure for business purposes shall be permitted.

4.7.2 **Renting or Leasing.** Owners may rent or lease their homes upon obtaining from tenant a signed statement that he or she has received a copy of this Declaration and the Rules and Regulations and his or her agreement to abide by this Declaration and the Rules and Regulations. The Owner renting or leasing is in no way released from his obligations for assessments and compliance with this Declaration.

4.7.3 **Maintenance of Buildings and Lots.** Each Owner shall, at the Owner's sole expense, keep the interior and exterior of the Structure on the Owner's Lot, as well as the Lot, in a clean and sanitary condition, free of rodents and pests, and in good order, condition and repair and shall do all redecorating, painting, landscaping, and maintenance at any time necessary to maintain the appearance and condition of the Structure and the Lot. The landscaping shall be maintained to the curb on the edge of the street.

4.7.4 **Maintenance of Street Landscaping.** Following home construction, Owners shall be required to landscape and maintain yards, in particular and of major concern, the twenty (20) feet of yard abutting the street. The appearance of these areas have a major impact upon the appearance of the entire community, giving each Owner an interest in his neighbor's willingness to maintain an attractive yard. In the event an Owner fails to adequately maintain this area, the Board shall give reasonable notice to the offending Owner, in writing. If the violation has not been corrected within thirty (30) days of receipt of notice, the Board shall have the authority to make the necessary correction and submit billings for the cost to the Owner. (See Article 5.13.9.)

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4.7.5 **Completion of Construction.** Any Structure erected or placed on any Lot shall be completed as to external appearance within twelve (12) months from the date Construction is started, however, with good cause shown, the Board may extend this term. All yards and landscaping must be completed within three (3) months from the date of completion of the Structure, however, with good cause shown, the Board may extend this term. All Lots shall be maintained in a neat and orderly condition during Construction.

4.7.6 **Vehicle Storage on Premises.** The purpose of the parking and storage restrictions is to maintain a desirable community appearance. The parking of dump trucks, large vans or similarly large commercial vehicles detracts from the general community appearance. Restrictions applying to specific vehicles are:

4.7.6.1 Recreational vehicles, including boats, are permitted on off-street parking spaces for a period of up to 24 hours.

4.7.6.2 Immobilized vehicles shall be removed from the premises within five days or kept within the garage.

4.7.6.3 Commercially licensed vehicles of the pick up and light van type are permitted on off-street spaces.

4.7.6.4 Dump trucks, large vans or other heavy construction type vehicles are not permitted.

4.7.7 **Parking.** Each Owner is required to provide adequate off-street parking. On-street parking is reserved for guests and emergency purposes only.

4.7.8 **Signs.** No sign of any kind shall be displayed to the public view on or from any Lot without the prior written consent of the Board, except for "For Rent" or "For Sale" signs in a form not prohibited by any rules and regulations of the Board. This Section shall not apply to the Declarant or any Participating Builder.

4.7.9 **Lighting.** Area, flood and ornamental lighting must be of a subdued nature and must be approved by the Board.

4.7.10 **Animals.** Animals, including horses, livestock, poultry, reptiles or pigs, shall not be kept on any lot. Household pets shall not exceed three (3) in number; provided that unweaned puppies or kittens may be kept. All animal enclosures must be kept in a clean, neat and odor free condition at all times. All animals must be kept at a distance of not less than 20 feet from abutting Structures if directed by the Board. The Board may at any time require the removal of any pet which it finds is disturbing other Owners or tenants unreasonably, in the Board's determination, and may exercise this authority for specific pets even though other pets are permitted to remain. Notwithstanding anything set forth herein

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all Owners shall comply with all applicable governmental laws, codes, ordinances, and regulations pertaining to animals. Dogs must be on a leash when away from Owners' premises.

4.7.11 **Temporary Structures.** No Structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuilding shall be installed, placed, or used on any Lot as a residence, either temporarily or permanently.

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

4.7.13 **Radio and Television Aerials.** Underground television cable service has been provided to all Lots. Satellite dishes 24 inches in diameter or smaller shall be permitted provided they are situated in a location approved by the Board and they are located in a fashion to have minimum visibility from public or private streets. No other antennae, towers or similar devices shall be allowed on any Lot unless approved by the Board upon a showing of special circumstances.

4.7.14 **Trash Containers and Debris.** All trash shall be placed in sanitary containers either buried or screened so as not to be visible from adjoining Structures or streets or roadways. No Lot or any portion thereof shall be used as a dumping ground for trash or rubbish of any kind. Yard rakings, dirt and debris resulting from landscaping work or Construction shall not be dumped onto adjoining Lots, streets, open spaces or roadways. Compost piles may be kept upon the Lots provided they are kept in a clean, neat and sanitary condition.

4.7.15 **Offensive Activity.** No trade, craft, business, profession, commercial or manufacturing enterprise or business or commercial activity of any kind, including day schools, nurseries, or church schools, shall be conducted or permitted on any Lot, nor shall goods, equipment, vehicles or materials used in connection therewith, be kept, parked, stored, dismantled or repaired outside of any Lot or any street within the Existing Property. No noxious or offensive activity, including but not limited to the creation of excess levels of noise, shall be carried on in any Lot, nor shall anything be done therein which may be or become an annoyance or nuisance to other Owners or tenants.

4.7.16 **Setbacks.** In Phase 1, no Structure shall be located closer than (i) 20 feet from the front line of any Lot, (ii) 5 feet from the side lines of any Lots (provided however, the sum of the side yard setbacks shall not be less than 15 feet), and (iii) 20 feet from the rear line of any Lot, provided that accessory buildings may be located closer to the various Lot lines if approved by the Board in writing in advance. For purposes of this Section, eaves, steps and open porches shall not be considered as part of the Structure; provided that this Section shall not be construed to permit any portion of a Structure

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(including eaves, steps and open porches) on any Lot to encroach upon any other Lot, or easement shown on the face of the Plat. All Structures shall also comply with all applicable governmental laws, codes, ordinances and regulations pertaining to setbacks.

4.7.17 **Fences.** No fence shall be constructed on any Lot without the prior written approval of the Board, which approval may be granted or denied in the Board's sole discretion. All fences shall be constructed in a good and workman-like manner of suitable fencing materials and shall be artistic in design and shall not detract from the appearance of any adjacent Structures. All fences shall comply with the design plan adopted by the Board.

4.7.18 **Underground Utilities.** All utility lines located outside a dwelling unit shall be in conduits attachedp86ito units or underground.

4.7.19 **Drainage.** Any and all drainage from a Lot, which in the reasonable opinion of the Board causes erosion problems, shall be piped at the Lot Owner's expense to the nearest underground public storm sewer line, street ditch or dry well. All roof drains shall be connected to public storm sewer system. Absolutely no dumping of any pollutants into the storm sewer systems shall be permitted.

4.7.20 **Tree Cutting.** The cutting of any trees in any Common Areas is strictly prohibited unless approved by the Board.

4.7.21 **Damage.** Any damage to streets, plat improvements, entry structure, fences, landscaping, mailboxes, lights and lighting standards by Owners, their children, contractors, agents, visitors, friends, relatives or service personnel shall be repaired by such Owner within twelve (12) days from the occurrence of such damage.

4.7.22 **Roofs.** Roof surfacing materials shall be limited to types approved in writing by the Board. No cedar shingles or shakes shall be permitted.

4.7.23 **Driveways.** All driveways shall be paved with Portland cement concrete or asphalt paving from the edge of the paved street to connect with the paved surface of the floor of the garage.

4.7.24 **Mailboxes.** All mailboxes must be of a standard accepted by the U. S. Postal Authorities and must be located in those areas so designed by the U. S. Postal Department. Structures containing mailboxes must be approved by the Board. Newspaper boxes are not allowed.

4.7.25 **View Control Plan.** The Board shall have the authority to promulgate, alter, amend and enforce a view control plan for the purpose of providing a uniform and equitable system for the maintenance of views from Lots within the Existing Property. Such

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plan may obligate Owners to prune, trim or remove trees, shrubs or other vegetation as necessary to protect and maximize views. The expense of any such required pruning, trimming or removal shall be borne as agreed between affected parties or as determined by the Board.

4.7.26 **Compliance with Laws.** Notwithstanding anything to the contrary set forth herein, each Owner and the Association shall comply with the more restrictive of either (i) the terms and conditions of this Declaration, or (ii) the laws, codes, ordinances, and regulations of any governmental entity having jurisdiction.

4.7.27 **Damage Deposit.** For any undeveloped Lot, each Owner shall deposit with Declarant at closing, a damage deposit of $500 for each Lot that is the subject of said closing. The Damage Deposit is security to Declarant that Owner will comply with Owner's obligations and undertakings as set forth herein. As such time as Owner has completed a dwelling on said Lot, together with all appurtenances, and said dwelling is landscaped, as required herein, and upon written request by Owner for inspection, Declarant and Owner shall jointly inspect said plat improvements in the immediate area of the specific Lot for which the written inspection was requested. The purpose of the inspection will be to ascertain if there has been damage occasioned to the plat improvement by acts of Owner or those for whom Owner is responsible, and final compliance with landscape and design plans and specifications as provided previously by Declarant.

If there has been no damage to plat improvements occasioned by Owner or those for whom Owner is responsible, and there has been full compliance with the undertakings of Owner as set forth herein, and in accordance with prior approval as given by the Board and/or Declarant, the Damage Deposit shall be returned to Owner, without interest, as applicable to said respective Lot.

If there has been damage to plat improvements, or other violations of the Owner's undertakings as set forth herein, the parties will endeavor to list the same and will attempt to attach a monetary cost thereto, and will attempt to resolve responsibility therefor and the date by which the same will be repaired. At such time as the damages or violations have been fully repaired, restored or replaced, then the Damage Deposit applicable to said Lot will be refunded without interest.

If there has been damage to plat improvements or violations of undertakings assumed by Owner herein, and the matter is not otherwise resolved to the satisfaction of Owner and Declarant, then in said event and after expiration of thirty (30) calendar days from said joint inspection, Declarant may, but shall not be obligated to, repair, replace or correct the same and deduct the cost from the Damage Deposit and remit any balance to Owner.

If the cost of repair, restoration, replacement or correction, or cost of complying with any undertaking assumed by Owner as provided herein, is in excess of $500, and irrespective of whether Declarant elects to effectuate said repair, restoration, replacement or correction, Owner shall remain liable for the full costs of any repair, restoration, replacement or correction.

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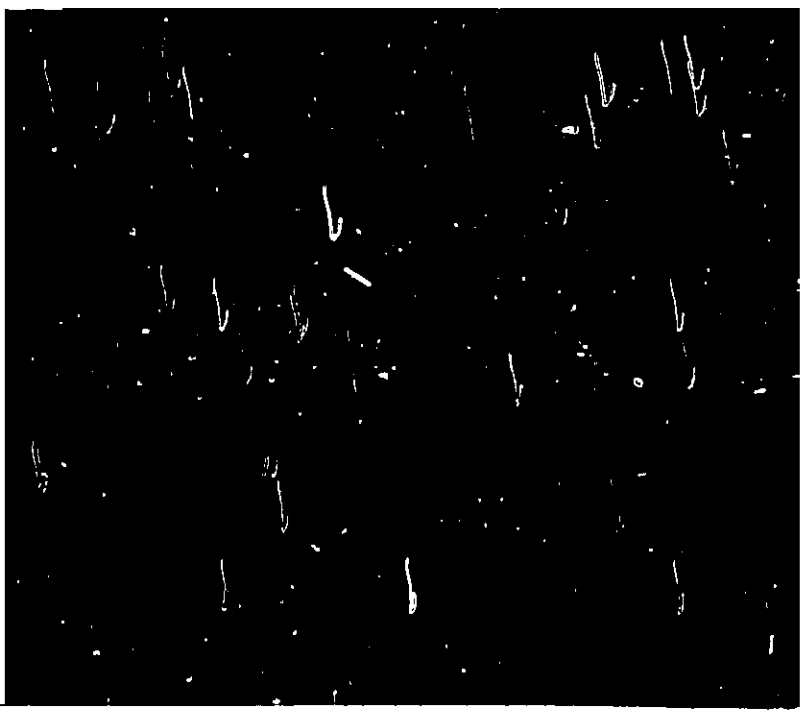

4.7.28 **Cuts and Fills.** Some lots will require relatively severe cuts prior to construction. Substantial fill material has been structurally placed and compacted on several lots. Each property owner may desire to obtain an opinion from a geotechnical engineer concerning the stability of such lot to accommodate standard building construction techniques.

ARTICLE 5 ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

5.1 **Form of Association.** The Association shall be an incorporated association. The rights and duties of the Members and the corporation shall be governed by the provisions of the Articles, Bylaws and this Declaration.

5.2 **Membership Qualification.** Each Owner of a Lot (including Declarant) shall be a member of the Association and shall be entitled to one membership and one vote for each Lot owned; provided, that if a Lot has been sold on contract, the contract purchaser shall exercise the rights of an Owner for purposes of the Association, this Declaration and the Bylaws, except as hereinafter limited, and shall be the voting representative unless otherwise specified. Ownership of a Lot shall be the sole and exclusive qualification for membership in the Association.

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

5.4 **Voting Rights in the Association.** The Association shall have two classes of voting membership:

5.4.1 Class A Members shall be all those Owners, as defined in Section 1.1 hereof and in the Articles of Incorporation, with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interests required for membership. When more than one person holds such interest or interests in any Lot all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

5.4.2 Class B Members shall be the Declarant. The Class B Member shall be entitled to three votes for each Lot in which he holds the interest required for membership by Section 5.2, provided that the Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership. From and after this happening the Class B Member shall be deemed a Class A Member entitled to one vote for each Lot in which he holds the interest required for membership.

5.5 **Joint Owner Disputes.** The vote for a Lot must be cast as a single vote and fractional votes shall not be allowed. In the event that joint Owners are unable to agree

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among themselves as to how their vote shall be cast, the majority of said joint Owners shall prevail and the vote allocated to such Lot shall be cast accordingly. In the event more than one (1) vote is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

5.6 **Pledged Votes.** In the event the record Owner has pledged in writing his vote regarding specified matters to a Mortgagee under a duly recorded Mortgage, or to the vendor under a duly recorded real estate contract, only the vote of such Mortgagee or vendor shall be recognized in regard to the specific matters upon which the vote is so pledged, and only during a period of foreclosure involving a Mortgage and only during a period of forfeiture involving a real estate contract and only if a copy of the instrument with this pledge has been filed with the Board. Amendments to this subsection shall only be effective upon the written consent of all the voting Owners and their respective Mortgagees and vendors, if any.

5.7 **Annual Meetings, Audits.** Commencing in 1998, there shall be an annual meeting of the Owners in the first quarter of each fiscal year at such reasonable place and time as may be designated by written notice of the Board delivered to the Owner no less than ten (10) days nor more than thirty (30) days prior to the date fixed for said meeting. At the annual meeting, there shall be presented a report of the common expenses, itemizing receipts and disbursements for the preceding fiscal year, and the allocation thereof to each Owner, and the estimated common expenses for the coming fiscal year. The Board at any time, or at the written request of Owners having at least forty percent (40%) of the total votes, may require that an audit of the Association and management books be presented at a special or annual meeting. An Owner, at his own expense, may at any reasonable time make an audit of the books of the Board and Association. The audit of common expenses to be presented at the meeting shall be conducted by a person or entity outside of and removed from the Association as selected by the Board. The Board may require an audit of the Association books as often as deemed appropriate.

5.8 **Special Meetings.** Special meetings of the Owners may be called at any time for the purpose of considering matters which by the terms of this Declaration require the approval of all or some of the Owners, or for any other reasonable purpose. Such meetings shall be called by written notice of the president, or other request signed by a majority of the Board, or by written request by Owners having at least forty percent (40%) of the total votes, which notice shall be delivered not less than ten (10) days nor more than thirty (30) days prior to the date fixed for said meeting. The notice shall specify the date, time and place of the meeting and the matters to be considered. No business other than that set forth in the notice shall be transacted at the meeting.

5.9 **Adoption of Bylaws.** Bylaws for the administration of the Association and for other purposes not inconsistent with the intent of this Declaration shall be adopted at the first regular meeting of the Owners, or at a special meeting of the Owners called for that purpose, upon the vote of Owners holding at least sixty percent (60%) of the total voting power.

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Amendments to the Bylaws may be adopted in the same manner as provided for the original adoption of the Bylaws by the Owners pursuant to this Section 5.9. Declarant may adopt initial Bylaws.

5.10 **Bylaw Provisions.** The Bylaws may contain provisions identical to those provided in this Article 5, and may contain supplementary, not inconsistent, provisions regarding the operation of the Planned Unit Development and administration of the Property. The Bylaws shall establish such provisions for quorum, ordering of meeting and details regarding the giving of notice as may be required for the proper administration of the Association.

5.11 **Management by Declarant.** Until a date five (5) years from the date of recording this Declaration, or the date on which Declarant shall have closed the sales of ninety percent (90%) of the available Lots in all subdivisions of the PUD, or the date on which Declarant elects to permanently relinquish all of its authority under this Section 5.11 by written notice to all Owners, which date first occurs, the property shall be managed and the Association organized as follows, in the exercise of the sole discretion of the Declarant:

5.11.1 So long as no temporary Board is then entitled to exercise management authority under Section 5.11.2, Declarant, or a managing agent selected by Declarant, shall have the power and authority to exercise all the rights, duties and functions of the Board, including but not limited to, enacting reasonable administrative rules, contracting for required services, property and insurance, and collecting and expending all assessments and Association funds. Declarant, or any such managing agent, shall have the exclusive right to contract for all goods and services, payment for which is to be made from any common or maintenance funds.

5.11.2 Declarant may at such times as Declarant deems appropriate select as a temporary Board three (3) to seven (7) persons who own or are purchasers of Lots, or are officers of corporations, trusts, partnerships or other entities owning or purchasing such Lots. This temporary Board shall have full authority and all rights, responsibilities, privileges and duties to manage the Planned Unit Development under this Declaration and the Bylaws, and shall be subject to all provisions of this Declaration and the Bylaws; provided, that after selecting any such temporary Board, Declarant, in the exercise of its sole discretion, may at any time terminate such temporary Board, and reassume its management authority under Section 5.11.1 hereof or select a new temporary Board under this Section 5.11.2.

5.11.3 These requirements and covenants are made in order to assure that the Property and the Planned Unit Development will be adequately administered in the initial phases of development, and to assure an orderly transition to Association operation.

5.12 **Management By Board.** At the expiration of Declarant's management authority under Section 5.11 hereof, administrative power and authority shall vest in a Board

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of five (5) directors. The Board may delegate all or any portion of its administrative duties to a manager, managing agent, or officer of the Association, or in such manner as may be provided by the Bylaws.

5.12.1 Elections. Upon the expiration of the Declarants management authority the Declarant shall give notice of a special meeting, in accordance with Section 5.8, which special meeting may coincide with the annual meeting, for the purpose of electing directors to the Board. Directors' terms shall be for a period of three (3) years, except that the initial Board shall elect one (1) member to a one (1) year term, two (2) members to a two (2) year term, and two (2) members to a three (3) year term. Thereafter expired terms and vacancies shall be elected or re-elected in accordance with the Bylaws. Following the election, the Board shall elect its own officers in accordance with the Bylaws.

5.13 **Authority of the Board.** The Board (or Declarant, or Declarant's managing agent as provided in Section 5.11 hereof), for the benefit of the Planned Unit Development and the Owners, shall enforce the provisions of this Declaration and of the Bylaws, shall have the duties, powers, authority and responsibility set forth under this Declaration and the Bylaws; and shall acquire and pay for out of the common expense fund hereinafter provided for all goods and services requisite to the proper functioning of the Planned Unit Development, including but not limited to, the following:

5.13.1 Water and other necessary utility services as required for the Common Area.

5.13.2 Policies of insurance or bonds providing coverage for fire and other hazards, liability for personal injury and property damage, and for the fidelity of Association officers and other employees, as the same are more fully required in the Bylaws.

5.13.3 The services of persons or firms as required to properly manage the affairs of the Association to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine are necessary whether such personnel are employed directly by the Board or are furnished by the manager or management firm or agent.

5.13.4 Legal and accounting services necessary or proper to the operation of the Association's affairs, administration of the Common Areas, or the enforcement of this Declaration.

5.13.5 Painting, maintenance, repair and all landscaping and gardening work for the Common Areas, and such furnishings and equipment for the Common Area as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire the same for the Common Area.

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5.13.6 Any other materials, supplies, labor, services, maintenance, repairs, structural alternations, insurance, tax 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 Areas or for the enforcement of this Declaration.

5.13.7 Maintenance and repair of the exterior of any building including the roof, windows and doors, and maintenance of landscaping, as described in Section 5.13.9 hereof.

5.13.8 Maintenance, repair and replacement of the entrance sign and related landscaping.

5.13.9 The Board and its agents or employees may enter any Lot, Common Area or Limited Common Area when necessary in connection with the maintenance, landscaping or construction for which the Board is responsible or in the event of emergency. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaid by the Board out of the common expense fund if the entry was due to any emergency or for the purpose of maintenance or repairs. If the repairs or maintenance were necessitated by or for the Lot entered or its Owner, or requested by its Owner, the costs thereof shall be specially charged to such Lot.

5.13.10 The Board shall have the right to make minor changes and/or waive various use restrictions as recommended by the Board, provided that these changes or waivers shall not detract from the intent of the Declaration.

ARTICLE 6 NOTICES FOR ALL PURPOSES

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

ARTICLE 7 AUTHORITY OF THE BOARD

7.1 **Adoption of Rules and Regulations.** The Board is empowered to adopt, amend, and revoke on behalf of the Association detailed administrative rules and regulations necessary or convenient from time to time to insure compliance with the general guidelines

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of this Declaration to promote the comfortable use and enjoyment of the Property and to govern the operation and procedures of the Association. The rules and regulations may, without limitation, authorize voting by proxy or mail, or both, on Association matters. The rules and regulations of the Association shall be binding upon all Owners and occupants and all other Persons claiming any interest in the Existing Property.

7.2 **Adoption of Architectural Requirements.** The Board is empowered to adopt, amend, and revoke on behalf of the Association detailed architectural control requirements and considerations for use by Owners, home builders, architects and the Board in interpreting and enforcing the restrictions contained in this Declaration. Copies of such requirements and considerations shall be made available to Owners, home builders, architects and other interested parties upon request. When adopted, such architectural control requirements and considerations shall be enforceable as a part of this Declaration as though fully set forth herein.

7.3 **Enforcement of Declaration, Etc.** The Board shall have the power to enforce the provisions of this Declaration, and the rules and regulations of the Association for the benefit of the Association. The City of Mount Vernon shall also have the power to enforce the provisions of this Declaration. The failure of any Owner to comply with the provisions of this Declaration, or the rules and regulations of the Association will give rise to a cause of action in the Association (acting through the Board and/or the City of Mount Vernon) for recovery of damages, injunctive relief, or both. If a legal action is brought to interpret or enforce compliance with the provisions of this Declaration, or the rules or regulations of the Association, the prevailing party shall be entitled to judgment against the other party for its reasonable expenses, court costs, and attorneys' fees in the amount awarded by the Court.

7.4 **Authority to Create Architectural Control Committee.** The Board shall have the power to create an Architectural Control Committee as a committee of the Association and shall be empowered to delegate to the Architectural Control Committee the authority granted to the Board in Article 4 of this Declaration and the authority granted to the Board in Article 7.2 of this Declaration.

7.5 **Certificate of Unpaid Assessments.** Any failure by the Board or the Association to make the budget and assessments hereunder before the expiration of any fiscal year for the ensuing fiscal year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owners from the obligation to pay assessments during that or any subsequent year, and the assessment amount and payment method established for the preceding fiscal year (if any) shall continue until a new assessment is established. Upon the request of any Owner or Mortgagee or prospective Owner or prospective Mortgagee of a Lot, the Board will furnish a statement of the amount, if any, of unpaid assessments charged to the Lot. The statement shall be conclusive upon the Board and the Association as to the amount of such indebtedness on the date of the statement in favor of all Owners and Mortgagees of the Lot who rely on the statement in good faith. All

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assessments and other receipts received by the Association shall belong to the Association.

7.6 **Date of Commencement of Annual Assessments.** The annual assessments provided for herein shall commence as to all Lots at such time as the Board in its absolute discretion deems advisable. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year.

ARTICLE 8 COVENANT AND MAINTENANCE ASSESSMENTS

8.1 **Creation of Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned by him within the Property, hereby covenants and each Owner of any Lot by acceptance of a deed or document of purchase therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person or entity who was the Owner of such Lot at the time when the assessment fell due.

8.2 **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof. Specific purposes include, but are not limited to:

8.2.1 The care, maintenance and replacement of the entrance sign(s);
8.2.2 The care, maintenance and improvement of the Common Areas.

8.3 **Annual Assessment.** Beginning with 1996, the annual assessment shall be $50 per vacant Lot and $100 per Lot containing a residential unit. From and after January 1, 1998, the annual assessment may be increased annually by a majority vote of the Members. The Board may, without the consent of the Members, after consideration of current maintenance costs and future needs of the Association, reduce the actual assessment for any year to a lesser amount.

8.4 **Special Assessments for Capital Improvements.** In addition to the annual assessments authorized by Section 8.3 hereof, the Association may levy in any assessment

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year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance setting forth the purpose of the meeting. The due date of any special assessment under Section 8.4 hereof shall be fixed in the resolution authorizing said assessment.

8.5 **Duties of the Board.** The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessments shall thereupon be sent to every Owner subject thereto.

The Association shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

8.6 **Effect of Non-Payment of Assessment; The personal obligation of the Owner; the Lien; Remedies of Association.** If the assessments are not paid on the date when due (being the date specified in Section 8.5 hereof, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of twelve (12) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the Lot, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

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8.7 **Subordination of the Lien to First Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any First Mortgage now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

8.8 **Lender's Authorization.** Lenders of First Mortgages are authorized to inspect the Association's books and records, receive copies of any Audit and budgets, and receive notices of meetings and attend meetings if desired.

8.9 **Exempt Property.** The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Areas; (c) all properties exempted from taxation by the laws of the State of Washington, upon the terms and to the extent of such legal exemption.

8.10 **Liability and Maintenance for Common Areas.** The Association shall pay the real estate taxes, if assessed, and provide for maintenance of all Common Areas and shall enforce all rules and regulations established for use of those Common Areas. Additionally, the Association shall provide adequate liability insurance coverage to protect the Association from liability based upon the use of said Common Areas.

8.11 **Recovery of Attorney's Fees and Costs.** In any action to collect delinquent assessments, the prevailing party shall be entitled to recover as a part of its judgment a reasonable sum for attorney's fees and all costs and expenses reasonably incurred in connection with the action, in addition to taxable costs permitted by law.

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

8.13 **No Avoidance of Assessments.** No Owner may avoid or escape liability for assessments provided for herein by abandoning his or her Lot.

ARTICLE 9 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 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

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receipt by the Board of payment of any assessment from an Owner, with knowledge of anybreach 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 for the Board.

ARTICLE 10 LIMITATION OF LIABILITY

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

ARTICLE 11 INDEMNIFICATION

Each Board member, and Declarant shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not he holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by insurance and except in such cases wherein such Board member or Declarant is adjudged guilty of willful misfeasance in the performance of his or her 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.

ARTICLE 12 INSURANCE

At such times as the Board deems appropriate, the Board shall cause the Association to purchase and maintain as a common expense a policy or policies which the Board deems necessary or desirable to provide casualty insurance; comprehensive liability insurance; with such deductible provisions as the Board deems advisable; insurance, if available, for the protection of the Association's directors, and representatives from personal liability in the management of the Association's affairs; and such other insurance as the Board deems advisable. The board shall review the adequacy of the Association's insurance coverage at least annually.

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ARTICLE 13 AMENDMENTS OF DECLARATION

13.1 **Amendments by Declarant.** Prior to the Transition Date, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Records of Skagit County, Washington, without the approval of any Owner or Mortgagee; provided, however, that, with the exception of the addition of any portion of the Additional Property to the terms of this Declaration, (a) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Lot or the Common Areas as set forth in this Declaration or adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby, or (b) in the event that such amendment would materially and adversely affect the security, title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Notwithstanding the foregoing to the contrary, no consent or approval of any Owner, any Mortgagee or any other person shall be required in connection with Declarant's filing of amendments to the Declaration for the purpose of submitting the Additional Property or any portion thereof to the provisions of this Declaration as provided in Section 2.2 hereof.

Each Owner by acceptance of a deed or other conveyance of a Lot, agrees to be bound by such amendments as are permitted by this Section 13.1 and further agrees that, if requested to so do by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Property (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot or other improvements subject to this Declaration, or (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on the Lots or other improvements subject to this Declaration.

13.2 **Amendments by Association.** Any Owner may propose amendments to this Declaration to the Board. A majority of the members of the Board may cause a proposed amendment to be submitted to the members of the Association for their consideration. If an amendment is proposed by Owners of 20% or more of the Lots, then, irrespective of whether the Board concurs in the proposed amendment, it shall be submitted to the members of the Association for their consideration at their next regular or special meeting for which timely notice may be given. Notice of a meeting at which an amendment is to be considered shall include the text of the proposed amendment. Amendments may be adopted at a meeting of the Association or by written consent of the requisite number of Persons entitled to vote, after notice has been given to all Persons entitled to receive notice of a meeting of the Association.

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The unanimous consent of all Owners shall be required for adoption of either (1) an amendment changing the voting power or portion of assessments appurtenant to each Lot, or (2) an amendment of Section 4.7 or of this Article 13. All other amendments shall be adopted if approved by 70% of the Lot Owners. Once an amendment has been adopted by the Association, the amendment will become effective when a certificate of the amendment, executed by a member of the Board, has been recorded in the real property records of Skagit County, Washington.

ARTICLE 14 DURATION

The covenants, conditions, and restrictions of this Declaration shall run with and bind the Existing Property and shall inure to the benefit of and be enforceable by the Owners, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded, after which time the covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by a majority of the then Owners has been recorded agreeing to terminate or modify the covenants, conditions and restrictions.

ARTICLE 15 RESERVATION OF DECLARANT'S RIGHT TO AMEND TO COMPLY WITH FNMA, FHLMC OR FHA REQUIREMENTS

15.1 **Amendment by Declarant.** Declarant reserves the right to amend the Declaration as may be necessary to comply with Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA") or Federal Housing Administration ("FHA") regulations or requirements as necessary to enable the holders of First Mortgages to sell First Mortgages to FHLMC or FNMA or if such amendment is necessary to secure funds or financing provided by, through or in conjunction with FHLMC or FNMA or FHA.

15.2 **Authorization to Amend.** If Declarant, at its option, determines that it is necessary so to amend the Declaration, then Declarant, on behalf of all Owners in the Association, is hereby authorized to execute and to have recorded (or filed, in the case of the Articles) said required amendment or amendments. All Owners hereby grant to Declarant a full and complete power of attorney to take any and all actions necessary to effectuate and record said amendment or amendments and agree that said amendment or amendments shall be binding upon their respective Lots and upon them and their heirs, personal representatives, successors and assigns to the same extent as if they had personally executed said amendment or amendments. All Owners hereby acknowledge and agree that the power of attorney granted herein shall be deemed coupled with an interest and shall be irrevocable.

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15.3 **Duration.** Declarant's rights under this Article shall exist only until the Transition Date.

ARTICLE 16 SEVERABILITY

The provisions of this Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision, if the remainder affects the common plan.

ARTICLE 17 EFFECTIVE DATE

This Declaration shall be effective upon recording.

ARTICLE 18 ASSIGNMENT BY DECLARANT

Declarant reserves the right to assign, transfer, sell, lease, or rent all or any portion of the Property and reserves the right to assign all or any of its rights, duties, and obligations created under this Declaration.

DATED this 19 day of SEPTEMBER, 1996.

INTERWEST PROPERTIES, INC.
By:

Its: VICE PRESIDENT

9609200054

BK 1586 PG 0633

STATE OF WASHINGTON)
)ss
County of Island)

I certify that I know or have satisfactory evidence that JOSEPH SPELLA is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the President of INTERWEST PROPERTIES, INC. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 19 day of SEPTEMBER, 1996.

JUANITA M. MORRIS-ANDRES
STATE OF WASHINGTON
NOTARY--•-- PUBLIC
MY COMMISSION EXPIRES 5-10-98

(Signature)

Juanita M. Morris-Andres
(Print Name)
Notary Public
My Appointment Expires: 5/10/98.

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UNOFFICIAL DOCUMENT

EXHIBIT 1

LEGAL DESCRIPTION OF THE "PROPERTY"

EXHIBIT 1:

PARCEL A:

The Northwest Quarter of the Northeast Quarter and the North Half of the Southwest Quarter of the Northeast Quarter all located in Section 28, Township 34 North, Range 4 East of the Willamette Meridian;

> EXCEPT County roadway along the Northerly line thereof conveyed to Skagit County by deeds dated May 13, 1919, and March 8, 1950, and recorded under Auditor's File Nos. 132785 and 443183, records of Skagit County, Washington.

PARCEL B:

The West 429 feet of the East Half of the Northeast Quarter of Section 28, Township 34 North, Range 4 East of the Willamette Meridian;

> EXCEPT any portion thereof lying within the East 891 feet of said East Half of the Northeast Quarter;
>
> AND EXCEPT the South 30 feet and the North 30 feet thereof as conveyed to Skagit County for road purposes as recorded by deeds dated October 9, 1947, and February 2, 1950, and recorded under Auditor's File Nos. 410084 and 441162, records of Skagit County, Washington.

All situated in Skagit County, Washington.

> EXCEPT that portion known as "Tract City" as shown on page 2 of this **Exhibit 1.**

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EXHIBIT 1

June 4, 1996

"TRACT CITY", MADDOX CREEK P.U.D. PHASE 1

That portion of the Northeast 1/4 of Section 28, Township 34 North, Range 4 East, W.M., described as follows:

Commencing at the Northwest corner of said Northeast 1/4 of Section 28; thence South 01° 25' 41" West 30.04 feet along the West line of said Northeast 1/4 to the South line of the North 30.00 feet of said Northeast 1/4; thence North 88° 27' 57" East 434.70 feet along said South line to the TRUE POINT OF BEGINNING; thence South 19° 35' 55" East 107.14 feet; thence South 70° 24' 50" West 105.79 feet; thence South 23° 06' 37" East 204.61 feet; thence North 73° 56' 11" East 153.76 feet; thence South 75° 43' 23" East 50.80 feet; thence South 16° 16' 19" East 133.00 feet; thence South 35° 00' 02" East 25.12 feet; thence South 45° 49' 52" East 40.08 feet; thence South 14° 32' 37" East 64.96 feet; thence South 18° 25' 59" West 45.62 feet; thence South 62° 07' 54" East 74.80 feet; thence South 47° 12' 48" East 88.50 feet; thence North 35° 02' 56" East 60.00 feet; thence South 75° 38' 33" East 280.00 feet; thence South 46° 16' 03" East 80.00 feet; thence North 63° 23' 32" East 74.41 feet; thence North 88° 55' 55" East 110.00 feet; thence South 15° 59' 58" East 71.59 feet to a point on a curve concave to the South; thence Easterly along the arc of said curve to the right having an initial tangent bearing of North 74° 00' 02" East and a radius of 230.00 feet, through a central angle of 13° 09' 29", an arc distance of 52.82 feet to a point of reverse curvature; thence along the arc of said curve to the left having a radius of 25.00 feet, through a central angle of 85° 30' 06", an arc distance 37.31 feet; thence South 88° 20' 35" East 13.00 feet; thence North 01° 39' 26" East 25.43 feet to a point of curvature; thence along the arc of said curve to the left having a radius of 141.93 feet, through a central angle of 65° 08' 29", an arc distance of 161.37 feet to a point of tangency; thence North 63° 29' 03" West 69.73 feet to a point of curvature; thence along the arc of said curve to the left having a radius of 112.00 feet, through a central angle of 23° 16' 39", an arc distance of 45.50 feet; thence North 03° 14' 18" East 12.00 feet; thence North 38° 29' 24" West 52.88 feet; thence North 59° 34' 33" West 93.29 feet; thence North 72° 32' 15" West 91.88 feet; thence 60° 46' 34" West 95.48 feet; thence North 66° 55' 04" West 165.64 feet, thence South 19° 44' 46" West 69.00 feet; thence North 85° 23' 49" West 26.19 feet; thence South 18° 32' 27" West 11.96 feet; thence North 71° 27' 34" West 31.52 feet to a point of curvature; thence along the arc of said curve to the right having a radius of 60.93 feet, through a central angle of 84° 48' 16", an arc distance of 90.19 feet to a point of tangency; thence North 13° 20' 42" East 44.52 feet; thence North 19° 16' 21" East 130.59 feet, thence North 00° 25' 46" East 145.67 feet to said South line of the North 30.00 feet; thence South 88° 27' 57" West 387.18 feet along said south line to the TRUE POINT OF BEGINNING.

The above described "Tract City" to be shown as Tract City on the face of Maddox Creek P.U.D. Phase 1.

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