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Lexington Fine Homes
12835 Bel Red Road, Suite 123
Bellevue, WA 98005



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05/21/2014 14:02
KING COUNTY, WA

Reference # (if applicable): N/A
Grantor: Lexington Development, Inc.
Grantee: Lexington Development, Inc.
Legal Description: Lots 9 through 12, Two Kens, Volume 181 of Plats, Pages 50 through 53, located in King County, Washington;
Assessor's Tax Parcel ID #: 873239-0108, 873239-0109, 873239-0110 and 873239-0120

**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS AND RESERVATIONS
OF
HEATHERSTONE II**

THIS DOCUMENT IS RECORDED
AS A COURTESY ONLY.
FIRST AMERICAN TITLE INSURANCE
CO. ASSUMES NO LIABILITY FOR
SUFFICIENCY, VALIDITY OR
ACCURACY

**COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS AND RESERVATIONS
OF
HEATHERSTONE II**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RESERVATIONS, (this "Declaration") is made by **LEXINGTON DEVELOPMENT, INC**, a Washington corporation ("Declarant") this 14th day of May 2014.

RECITALS

Declarant is the owner of that certain real property in King County, Washington recorded as Lots 9 through 12 in the plat of Two Kens and legally described on Exhibit A ("the Property").

Declarant wishes to subject the Property to this Declaration.

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

ARTICLE I. DEFINITIONS

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

"Architectural Control Committee" or **"Committee"** or **"ACC"** shall mean the Architectural Control Committee of Heatherstone II pursuant to Section 3.5.

"Association" shall mean Heatherstone II Homeowners' Association described in Article 4 of this Declaration, its successors and assigns.

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

"Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

“City of Kirkland” shall mean the City of Kirkland, a municipal corporation in the State of Washington.

“Common Areas” are defined in Section 2.1.1.

“Common Area Improvements” are defined in Section 2.1.2.

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

“Declarant” shall mean Lexington Development, Inc., a Washington corporation, or any successor, successor in title, or assign who takes title to any portion of the Property.

“Declaration” shall mean this Declaration of Covenants, Conditions, Restrictions, Easements and Reservations of Heatherstone II, as it may from time to time be amended.

“Development Period” shall mean the period of time from the recording of the Declaration until such time as all lots within the Property are sold by the Declarant, or that date on which Declarant elects to permanently relinquish its authority by written notice to all Owners, whichever event shall first occur.

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

“Future Easements” is defined in Section 2.1.3.

“Future Improvements” is defined in Section 2.1.4.

“Governing Documents” shall mean, collectively, the Declaration, Bylaws, Articles and all additional covenants governing any portion of the Property, as may be amended from time to time.

“King County” shall mean King County, a political subdivision of the State of Washington.

“Lot” shall mean any one of the 4 lots numbered 9 through 12 on the plat of Two Kens, as described in the Plat thereof, recorded in Volume 181, Pages 50 through 53, inclusive, and as recorded under King County Auditor’s File No. 9708190979, records of King County, Washington.

“Member” shall mean every person or entity who or which holds a membership in the Association.

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

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

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

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

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

“Plat” shall mean the recorded plat of Two Kens as described in the Plat thereof, recorded in Volume 181, Pages 50 through 53, inclusive, and as recorded under King County Auditor’s File No. 9708190979, records of King County, Washington and any amendments, corrections or addenda thereto subsequently recorded.

“Property” shall mean the land contained in Lots 9 through 12, Plat of Two Kens described hereinabove and subject to this Declaration.

“Structure” shall mean any building, fence, wall, driveway, walkway, patio or the like.

“Supplemental Declaration” means an instrument filed in the Public Records which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

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

Section 1.3 Construction. Words used herein shall have their usual and ordinary meaning, except as specifically defined herein or in any other documents recorded with

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

Section 1.4 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate the intent of this Declaration creating a uniform plan for the development and operation of Heatherstone Lots 9 through 12.

ARTICLE II. COMMON AREAS, IMPROVEMENTS AND EASEMENTS

Section 2.1 Common Areas and Common Area Improvements

2.1.1. Common Areas. Common Areas shall mean and include landscape improvements located adjacent to 116th Avenue NE and NE 94th Place (such as tree plantings, planter strips, irrigation, fencing and monuments, etc.) within the right of way within or adjacent to the Plat, Tract A, Tract B and all areas reserved for easements benefiting the Association and/or all of the Owners, as set forth, described or depicted in the Plat or otherwise reserved by Declarant, including without limitation, access easements, storm drainage easements and any and all other utilities easements.

2.1.2. Common Area Improvements. Common Area Improvements shall mean and include all improvements and facilities installed upon any of the Common Areas, including without limitation, roadway surfaces, sidewalks, signs, street lighting, landscaping, fences, rockeries, retaining walls, storm drainage facilities, irrigation systems, mailboxes, entryway monuments, plantings and all other amenities.

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

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

2.1.5. Future Easements and the Future Improvements. Future Easements and the Future Improvements shall be for the benefit of the Association and all Owners; and be deemed part of the Common Areas and Common Area Improvements upon the recording of such recorded instrument.

2.1.6. Use. The Owners of Lots which contain or are burdened by any Common Areas shall not in any manner interfere with the maintenance, use and operation of the Common Areas, but such Owners may use the Common Areas within their respective Lots

in any manner that does not so interfere and shall promptly restore such area to a condition as close to its original condition as reasonably practical after making such use.

Section 2.2 Owners' Easement of Enjoyment. Every Owner shall have a nonexclusive perpetual right and easement of enjoyment in and to the Common Areas. Such easement shall be appurtenant to and shall be conveyed with the title to or real estate contract purchaser's interest in, every Lot, even though such easement is not expressly mentioned or described in the conveyance or other instrument. Such easement shall be subject to the following:

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

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

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

Section 2.3 Maintenance of Common Areas and Common Area Improvements. The cost and expense of maintaining and operating the Common Areas and Common Area Improvements shall be the responsibility of and paid for by the Association and shall be funded from the Assessments to be made by the Association and charged to the Owners of Lots as further described in Section 6.4 below. As may be approved by the Board, maintenance and operating costs may be shared with the Heatherstone Homeowners Association.

Section 2.4 No Interference. No Owner shall allow or permit any structure or landscaping to be located, installed or grown upon the Common Areas (including, but not limited to, Common Area easements for utilities and drainage, entryway monuments, street lighting and landscaping and the like), which might in any way damage or interfere with the installation, operation, maintenance and repair of such Common Areas. Each Owner shall maintain the area of his Lot subject to any Common Area easements in such a manner and condition that will not interfere with the installation, operation, maintenance and repair of such Common Area.

ARTICLE III. CONSTRUCTION ON LOTS AND USE OF LOTS

Section 3.1 Uniformity of Use and Aesthetic Appearance. The purposes of this Declaration include assurance within the Property of a uniformity of use and quality of workmanship, materials, design, maintenance and location of Structures with respect to topography and finish grade elevation and no undue repetition of external designs.

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

Section 3.2 Submission and Approval of Plans.

3.2.1. Submission of Plans and Plan Review Fee. Before commencing Construction of any Structure on any Lot, the Owner shall submit to the Architectural Control Committee one (1) complete sets of detailed building (including, but not limited to, proposed paint color and roofing materials), construction, surface water-run-off and landscaping plans and specifications, and a site plan showing the topography and location of all proposed Structures (the plans, specifications and site plans are collectively referred to herein as the "Plans"), together with a Plan Review Fee in an amount, as may from time to time, be established by the Architectural Control Committee for the Plans to be reviewed in connection with a particular Lot. The Plan Review Fee should be in the form of a check made payable to the Association. The initial Plan Review Fee may not exceed \$500.

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

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

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

3.2.5. Inspection of Construction. Inspection of construction and correction of defects therein may proceed as follows, at the sole discretion of the Architectural Control Committee:

a. Upon the completion of any Construction for which approved Plans are required under this Article 3, the Owner shall give written notice of completion to the Architectural Control Committee. In the event the Owner fails or refuses to give said notice of completion to the Architectural Control Committee, the Architectural Control Committee, upon ten (10) days notice to the Owner, may declare a completion and proceed with the inspection and approval process as herein provided.

b. Following receipt of the notice of completion, the Architectural Control Committee, or its duly authorized representative, may inspect such improvement. If the Architectural Control Committee finds that such Construction was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within a sixty (60) day period following receipt of the notice of completion, specifying the particulars of non-compliance, and shall require the Owner to remedy the same.

c. If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such non-compliance, the Architectural Control Committee shall notify the Board in writing of such failure. Upon notice and hearing, the Board shall determine whether there is a non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the non-complying improvement or remedy the non-compliance, and the Owner shall reimburse the Association upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an assessment against such Owner for reimbursement pursuant to Article 6 hereof.

d. If for any reason the Architectural Control Committee fails to notify the Owner of any non-compliance within sixty (60) days after receipt of said written notice of completion, the improvements shall be deemed to be in accordance with said approved Plans.

3.2.6. Completion of Construction of Dwelling Structure. The construction of a Dwelling Structure on any Lot must be completed on or before one (1) year after commencement of construction (provided that for reasonable cause the Architectural Control Committee may grant six (6) month extension(s) of the construction.

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

Section 3.3 Size, Materials and Height Requirements and Restrictions.

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

- a. 1,700 square feet for a dwelling containing a single level;
- b. 2,750 square feet for a multi-level dwelling (i.e. a "tri-level" as that term is used in the construction industry); and
- c. 2,750 square feet for a standard two-story dwelling.

3.3.2. Roofs and Siding. Roofs on all Structures must be finished with materials as approved by the Architectural Control Committee prior to Construction.

The exterior of the dwelling Structure shall be finished with cedar, brick, stucco, authentic stone siding, cultured stone siding or cement fiberboard siding. Final approval of siding materials, and any deviations, shall be at the sole and absolute discretion of the Architectural Control Committee.

3.3.3. Height. No Structure may be built to a level higher than that allowed by the Kirkland Land Use Code.

3.3.4. Garages. Garages are required. No detached garages shall be allowed without the prior written approval of the Architectural Control Committee, which approval may be withheld or given in its sole and absolute discretion. Single-car garages are specifically prohibited.

Section 3.4 Use Restrictions.

3.4.1. Residential Use. Except for incidental home business use as provided in Section 3.4.19 below, the Lots are intended for and restricted to use for single family residences only, on an ownership, rental or lease basis, and for social, recreational, or other reasonable activities normally incident to such use. Notwithstanding the above, Declarant and builders may use dwellings owned by them as sales offices and models.

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

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

3.4.4. Completion of Construction and Landscaping. Any Structure erected or placed on any Lot shall be completed as to external appearance (including finish painting and landscaping) within twelve (12) months after the date of commencement of Construction, and subject to extension provision described in Section 3.2.6. All Lots shall be maintained in a neat and orderly condition during Construction.

3.4.5. Parking. No recreation and/or commercial vehicle of any kind including, but not limited to, boats, campers, motor homes, trucks in excess of 3/4 tons, and trailers (whether operable or not) shall be parked, stored, maintained, constructed on any street or driveway unless the length of stay and location has been approved by the Architectural Control Committee.

Commercial or inoperable cars or other unsightly vehicles shall not be stored on any Lot in view of the roads or the homes of other Owners. This shall include automobiles that display any type of commercial signage on the automobile. Additionally, vehicles shall be adequately maintained to assure that leaking fluids from the vehicles will not occur. If any leaking occurs on the driveway of the home, the leaking shall be promptly cleaned to return the driveway to its normal condition.

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

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

3.4.7. Animals. No animals other than dogs, cats, caged birds, or other conventional small household pets may be kept on any Lot. Owners shall observe and obey all laws applicable to the City of Kirkland and King County residents pertaining to care, control and husbandry of animals and pets. Owners shall immunize all dogs and cats, and upon request by the Association, provide proof of immunization. In no event shall any dog be allowed to run free away from its Owner's Lot without a leash, or to create a nuisance. Efforts should be made by the person accompanying the animal to remove animal waste deposited on lawns or rights-of-ways. The Board's determination of a "nuisance" shall be binding and final. Structures to shelter domestic pets shall be permitted only with ACC approval prior to building and shall be kept clean and odor free at all times. If the Board finds that animals are kept in violation of this Section, the Board will give Owner written notice of the violation. Such violations must be remedied by Owner within 10 days.

3.4.8. Temporary Structures. No out building, basement, tent, shack, garage, trailer or shed or temporary building of any kind shall be used as a residence either temporarily or permanently, except for a construction shack or sales trailer used in connection with the construction and sale of a dwelling Structure. Additionally, Declarant may utilize trailers, trash bins and storage containers for construction purposes.

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

3.4.10. Radio and Television Aerials. Exterior antennas and satellite dishes must have the prior written approval of the Architectural Control Committee.

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

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

3.4.13. Setbacks & Height Restrictions. Owner must also have specific written approval from the Architectural Control Committee on the placement of a Structure prior to commencing Construction.

3.4.14. Fences. Fences shall be no higher than six feet. Fencing shall be not permitted in the front yard, except with prior written approval by the Architectural Control Committee. All fencing material, design and placement shall be approved by the Architectural Control Committee.

3.4.15. Underground Utilities. All utility lines located outside a Structure shall be placed underground.

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

3.4.17. Driveways, Walkways and Patios. All driveways, exterior walks, and patios shall be concrete, brick or pavers unless approval for use of other material is granted by the Architectural Control Committee.

3.4.18. Roof and Yard Drains. All roof and yard drains must be directed so as to not adversely affect adjacent Lots or properties.

3.4.19. Home Business Use. As noted in Section 3.4.1 above, the *primary use* of any Lot shall be for residential purposes; provided, however, that any Owner may, subject to applicable laws and the limitations and restrictions set forth below, use the Lot and the Structures located thereon for the purpose of conducting a home business incidental to such primary residential use. The restrictions and limitations are as follows:

a. **Rules, Regulations and Restrictions.** Any such home business shall be subject to and governed by such additional rules, regulations and restrictions as may be adopted from time to time by the Board of Directors of the Association.

b. **No Automobile or Marine Business.** No automobile or marine service, repair or mechanic business shall be allowed.

c. **No Heavy Equipment.** No heavy equipment shall be stored or used on any Lot in connection with the operation of the home business.

d. Deliveries. No deliveries of any equipment, inventory or supplies used in connection with the home business shall be made to or from the Lot in any vehicle larger than a 3/4 ton panel van or pick-up truck.

e. Parking. The parking requirements applicable to commercial vehicles and described in Section 3.4.5 above are also applicable to commercial vehicles utilized in connection with any home business conducted on a Lot.

f. Employees. No more than two (2) employees are permitted to be engaged in the home business utilizing the Lot as their primary office/work facility. Employees are required to park their cars in the driveway of the Lot, and must leave the Lot by 6:00 p.m. each day.

g. No Interference with Quiet Enjoyment. The home business use of any Lot must not interfere with the quiet enjoyment for residential purposes of any other Lot in the Plat.

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

3.5.1. Membership. The Architectural Control Committee ("ACC") shall be composed of three (3) Members unless the Declarant determines to increase the number of Members. The Declarant may appoint all of the original Members of ACC. In the event any Member is or becomes unable to serve, resigns or is removed, the Declarant shall appoint a replacement. Until such replacement is selected, the other Members shall comprise the Committee with full power to act. The Declarant may remove any or all of the Members of the Architectural Control Committee or their replacements at any time with or without cause.

3.5.2. Termination of Initial Membership. The initial member(s) of the Committee as described in Section 3.5.1 above or as replaced shall serve up to: (1) twelve (12) months after Declarant has sold and closed one hundred percent (100%) of the Lots; or (2) that date on which Declarant elects to permanently relinquish its authority by written notice to all Owners, whichever event shall first occur. Following termination of the service of the initial member(s) of the Committee, the Board shall either select successors to serve for such time as the Board may determine, or shall assume the duties of the Committee and shall thereafter have all of the rights, duties and powers of the Committee. If the Board selects successors, it may remove any or all of them at any time with or without cause, and may appoint replacements for any members who die, become unable to serve, resign or are removed. The Board may assume the duties of the Committee at any time thereafter.

3.5.3. Action by Committee. The Committee may unanimously designate one or more of its members or a third person to act for and on behalf of the Committee with respect to both ministerial matters and the exercise of judgments vested in the Committee,

subject to review by the full Committee at the request of any member thereof. In all matters, the decision of the majority of the Committee shall be the decision of the Committee.

ARTICLE IV. HEATHERSTONE II HOMEOWNERS' ASSOCIATION

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

Section 4.2 Membership.

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

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

Section 4.3 Voting.

4.3.1. Voting Rights. The total voting power of the Association shall be vested in two classes of Voting Membership:

Class A Membership. Class A Members shall be the Owner or Owners of each Lot within the Property, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned.

Class B Membership. The Class B Member shall be the Declarant and shall be entitled to three (3) votes of each Lot owned. The Class B Membership shall cease and be converted to Class A Membership upon the conclusion of the Development Period or December 31, 2019, whichever occurs earlier.

Owners shall be entitled to the prescribed number of votes for each Lot owned. When more than one person or entity owns an interest in any Lot, the vote for that Lot shall be exercised as the Owners decide to exercise that vote but, in no event, shall more than the prescribed

number of votes be cast with respect to any Lot nor shall any vote be divided. The voting rights of any Owner may be suspended as provided for in this Declaration or the other Governing Documents.

4.3.2. Voting Representative. There shall be one (1) "Voting Representative" for each Lot. Each Member shall designate a voting representative for each Lot he owns by giving written notice to the Board of the name of the representative designated. If a Member (including Declarant) owns more than one Lot, he may have one or more voting representatives, and each voting representative may exercise the votes appertaining to one or more of the Lots owned, provided that the voting representative(s) or the voting representatives together may not exercise more votes than the number of Lots owned by the Member. Voting representatives need not be Owners.

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

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

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

4.3.5. Proxies. Votes may be cast in person or by proxy. Proxies shall be in writing and signed by the Voting Representative for the Lot. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting. No proxy shall be valid for a period longer than 11 months after the date thereof, unless otherwise provided in the proxy. A proxy may be revoked at any time either by written notice to the Secretary of the Association or by the Voting Representative's attendance at a meeting at which a vote will be taken. A proxy is automatically revoked upon conveyance of the Lot to which it pertains.

4.3.6. Balloting. On each vote cast by written ballot, the Voting Representative shall identify on the ballot the Lot number(s) for which the vote is cast. After the ballots have been received, accepted and counted, the ballots shall be destroyed and the persons who counted the ballot count shall treat as confidential the manner in which the vote of each Lot was cast. The President shall have the right to designate the person or persons who shall count the ballots.

4.3.7. Majority Vote. Except as otherwise provided in this Declaration or as required by law, passage of any matter submitted to a vote at a meeting where a quorum is in attendance, shall require the affirmative vote of a majority of the voting power present in person or by proxy.

Section 4.4 Meetings and Notice of Meetings.

4.4.1. Annual Meetings. There shall be an annual meeting of the Members of the Association at such reasonable place and time as may be designated by written notice from the Board delivered to the Members no less than fourteen (14) and no more than sixty (60) days before the meeting. The financial statement for the preceding fiscal year and the budget the Board as adopted for the pending fiscal year shall be presented at the annual meeting. Unless at that meeting the Owners of more than seventy-five percent (75%) of the votes in the Association reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present.

4.4.2. Special Meetings. Special meetings of the Members of the Association may be called at any time for the purpose of considering matters which require the approval of all or some of the Members (Owners), or for any other reasonable purpose. Such special meetings shall be called by written notice from the President of the Association upon: the decision of the President; his receipt of a request signed by a majority of the Board; or written request of the Owners having at least ten percent (10%) of the total voting power of the Association. Said notice shall be given to all Owners not less than fourteen (14) and not more than sixty (60) days before the date fixed for the meeting; shall specify the date, time and place of the meeting; and shall include a general statement of the matters to be considered.

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

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

ARTICLE V. MANAGEMENT OF THE ASSOCIATION

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

Section 5.1 Initial Board of Directors. The Initial Board of Directors shall be composed of three (3) Members appointed by the Declarant unless the Declarant determines to increase the number of Members. The Initial Board of Directors shall govern the affairs of the Association until: (1) Declarant has sold and closed one-hundred percent (100%) of the Lots, but in no event later than ten (10) years from the date of this Declaration; or (2) that date on which Declarant elects to permanently relinquish its authority by written notice to all Owners, whichever date first occurs (hereinafter sometimes referred to as the term of the Initial Board of Directors). The Declarant hereby appoints John C. Cochenour, Jeffrey W. Wright and Christine K. Schroeder as the members of the Initial Board of Directors. Declarant shall have the right to remove any Director hereby appointed at any time with or without cause. If any of the appointed Directors dies, becomes unable to serve, resigns or is removed during the term of the Initial Board of Directors, the Declarant shall appoint a successor.

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

Section 5.3 Removal - Vacancies. Any director serving on the Permanent Board of Directors may be removed from the Board with or without cause by the majority vote of

the voting representatives at a special meeting called for that purpose. Any vacancy in the Permanent Board of Directors created or caused by any reason whatsoever, may be filled by an election held at a special meeting of the Association called for that purpose or by the remaining directors if the special meeting of the Association does not occur within sixty (60) days of the occurrence of the vacancy. During the term of the Initial Board of Directors, only the Declarant shall have the right to remove, replace or appoint members of the Board.

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

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

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

Section 5.7 Limitation of Liability.

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

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

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

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

5.8.1. Adoption of Rules and Regulations. The Board is empowered to adopt, amend and revoke on behalf of the Association detailed administrative rules and regulations necessary or convenient from time to time to ensure compliance with the general guideline of this Declaration to promote the comfortable use and enjoyment of the Property and to govern the operation and procedures of the Association. The rules and regulations shall be binding upon all Owners, occupants and all other Persons claiming any interest in the Property after a copy has been given to each Owner in the manner prescribed for the giving of notices in Article 13 of this Declaration.

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

requirement shall be effective unless expressed in writing and signed by an authorized agent of the Board.

5.8.3. Goods and Services. The Board shall acquire and pay for, as common expenses of the Association, all goods and services reasonably necessary or convenient for the efficient and orderly maintenance of all portions of the Common Area, Common Area Improvements. The goods and services shall include (by way of illustration and not limitation) utility services for the Common Areas; policies of insurance; and maintenance, repair, landscaping, gardening, and general upkeep of the Common Area and Common Area Improvements.

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

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

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

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

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

ARTICLE VI. ASSESSMENT FOR COMMON EXPENSES

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

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

