

# Declaration of Protective Covenants, Conditions, Easements & Restrictions for Madera

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

**Article I: Definitions**

For purposes of the Declaration, Articles of Incorporation and Bylaws of the Association, certain words and phrases have particular meanings, which are as follows:

1. “ACC” shall mean the Architectural Control Committee, as described in this Declaration.
2. “Adjacent Real Property” includes that property which shall constitute all of the lots in Madera - Phase 2 a plat which as of this date has not yet been recorded.
3. “Articles” shall mean the Association’s articles of incorporation and any amendments.
4. “Association” shall mean the homeowner’s association formed as a nonprofit corporation for the purpose of administering/his Declaration.
5. “Board” or “Board of Directors” shall mean the Board of Directors of the Association.
6. “Bylaws” shall mean the Association’s Bylaws and any amendments.

7. "Common Areas" shall mean the real property (including the improvements and facilities thereon) described as all areas of the property outside the lots including roadways, walkways, parking areas, parks, open space buffer, storm drainage area, all of which will be conveyed by the Declarant to the Association and held for the common use and enjoyment of the members of the Association, but shall not include any streets or other areas now or hereafter dedicated for public use. Common Areas specifically shall include tracts A, B, and C as shown on the face of the plat. The term shall also include any easements, or rights of control by written instrument granted to the association, and/or for the benefit of the lot owners which are set forth either in this declaration or by delineation on the plat.

Editorial Note: The prior paragraph was amended by the First Amendment to the Declaration.

8. "Declaration" shall mean this Declaration of Protective Covenants, Conditions and Restrictions.
9. "Declarant" shall mean Harr Family Homes, Inc. The term "Declarant-Builder" shall include any entity which acquires multiple lots for the purpose of constructing residences thereon. Until such time as Harr Family Homes, Inc., or any other entity purchasing multiple lots ("Declarant-Building") has sold all of the lots held by that party, then such party shall be considered a Declarant and shall jointly exercise all rights reserved to the Declarant as set forth in this Declaration. At such time as such party has sold and conveyed all the lots held by that party, then that party shall not longer be considered a Declarant.
10. "Development Period" shall mean the period of time from the date of recording of this Declaration until 180 days after the date upon which 75% of the lots have been sold by the Declarant or any shorter period, as determined by the Declarant. A partial delegation of authority by the Declarant of any of the management duties described in this Declaration shall not terminate the development period.
11. "Housing Unit" shall mean the building occupying a Lot.
12. "Institutional First Mortgagee" or "Mortgagee" shall mean a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company or state or federal agency which holds a first mote or deed of trust against a Lot or Housing Unit thereon.
13. "Lot" shall initially refer to one of the Lots located in the Real Property described herein. At such time as additional Adjacent Real Property may be subjected to the Declaration. "Lot" shall include those lots shown on and included in the plat of Adjacent Real Property.
14. "Member" shall mean every person or entity that holds a membership in the Association.
15. "Mortgage" shall mean a mortgage or deed of trust encumbering a Lot or ocher portion of the Properties.
16. "Owner" shall mean the recorded owner of a Lot, whether one or more persons or entities, but excluding those having such interest merely as security. A real estate contract purchaser shall be deemed the Owner.
17. "Participating Builder" shall mean a person who acquires from Declarant one or more lots for the purpose of improving the same for resale to future owners.
18. "Person" shall mean a natural person, a corporation, a partnership, trustee or other legal entity.
19. "Real Property" that is subject to this declaration is legally described as Lots 1 through 74 of Phase I of the plat of Madera, as recorded under Thurston County Auditor's Recording No. 3344527.
20. "Sale", "Sold", or "Conveyed", shall mean the date upon which ownership of a Lot is transferred from an Owner to another person or entity by recordation of an instrument of transfer such as a deed or real estate contract.

## **Article II: Reservation of Right to Include Additional Adjacent Real Property**

The Declarant reserves the right by amendment to this Declaration to subject additional real property to the provisions of this Declaration which property shall be known as Phase 2 of the plat of Madera which shall consist of multiple lots. The Declarant shall have the right to amend the Declaration by subjecting

those properties to the provisions of this Declaration by executing an amendment to this Declaration and the Declarant also reserves the right that in such amendment there may be certain restrictions, reservations, and conditions imposed upon the lots in Phase 2 which are different than the provisions set forth in this Declaration. In the event the Declarant shall amend the Declaration by subjecting those additional properties to this Declaration, then all lot owners shall become members of the Association.

## **Article III: Management of Common Areas and Enforcement of Declaration**

### **Section 1: Development Period**

During the development period, the Declarant Harr Family Homes shall appoint the sole director of the Association. The Declarant Harr Family Homes may also appoint members of the Association to other committees or positions in the Association as the Declarant Harr Family Homes deems appropriate and to have such responsibilities, privileges and duties as determined by said Declarant and to serve in that capacity for such period as said Declarant shall determine in its sole discretion. The Declarant Harr Family Homes shall appoint either itself or any other member or members to the Architectural Control Committee. At such time as the Declarant Harr Family Homes has sold and conveyed all lots, then any Declarant-Builders as defined in this Agreement during the development period as defined herein shall each appoint an Association Director and members of the Architectural Control Committee. If there is more than one Declarant-Builder, then each Declarant-Builder shall be entitled to appoint a Director to the Association as well as a Member to the Architectural Control Committee.

### **Section 2: Purpose of Development Period**

The Declarant's control of the Association during the Development Period is established in order to ensure that the Properties and the Association will be adequately administered in the initial phases of development, ensure an orderly transition of Association operations, and to facilitate the Declarant completion of construction of Housing Units.

### **Section 3: Authority of Association After Development Period**

At the expiration of Declarant's management authority the Association shall have the authority and obligation to manage and administer the Common Areas and to enforce this Declaration. Such authority shall include all authority provided for in the Association's Articles, Bylaws, rules and regulations and this Declaration. The Association shall also have the authority and obligation to manage and administer the activities of the ACC in its responsibilities as described in Article Six, Section Five.

### **Section 4: Delegation of Authority**

The Board of Directors or the Declarant may delegate any of its managerial duties, powers, or functions to any person, firm, or corporation. The Board and the Declarant shall not be liable for any breach of duty, negligence, omission, intentional act or improper exercise by a person who is delegated any duty, power or function by the Board of Directors or the Declarant.

## **Article IV: Maintenance and Common Expenses**

### **Section 1: Conveyance to Association**

Declarant does hereby covenant and convey all of the common areas to the Association at the recording of the plat and filing of the Articles of Incorporation of the Association.

### **Section 2: Standard of Maintenance—Common Areas**

The Association shall maintain the Common Areas in a manner consistent with good building and nursery practices, and in compliance with all applicable codes and regulations. The common areas shall include but not be limited as defined below together with any other easements which are for the benefit of all lot

owners and any other common areas which are so designated on the plat map of Madera, Phase 1 or Phase 2. Each lot owner shall have an equal undivided ownership interest in Tracts A, B, and C, in phases 1 and 2 of the plat of Madera for ownership and tax purposes and the homeowner's association shall have the sole responsibility and authority for managing, controlling and maintaining said common areas and tracts. These common areas are as follows:

Editorial Note: The prior paragraph was amended by the First Amendment to the Declaration.

- A. Any entrance or monument area, if any, as constructed by the Declarant.
- B. Tracts B.

Editorial Note: The prior subparagraph was amended by the First Amendment to the Declaration.

- C. Tract A which is designated as an open space/community area and storm drainage as designated on the plat of Madera in Phase 1.
- D. Tract C which is designated as a 'tot lot' as shown on the plat of Madera in Phase 1.

Editorial Note: The prior subparagraph was amended by the First Amendment to the Declaration.

E. All easements which have been established for the benefit of all lot owners as may be delineated on the plat of Madera in Phase 1 or Phase 2 or any easements which are reserved for the benefit of the lot owners as well as easements which are reserved for the benefit of the Association for the purpose of installation, maintenance, and repair of any improvements or any installations constructed with any easement or common area.

- A. Tracts D and C.

Editorial Note: The prior subparagraph was added by the Second Amendment to the Declaration.

### **Section 3: Standard of Maintenance—Lots and Planting Strips**

Each Lot Owner hereby covenants and agrees to maintain his respective Lot (including as a part of said Lot the Planting Strip located between the street and the sidewalk (if any) adjacent to the Owner's respective Lot), and the Housing Unit located thereon, in the same condition as a reasonably prudent homeowner would maintain so that the real property will reflect a high pride of ownership. Each Lot Owner shall perform at the Lot Owner's expense the maintenance and upkeep of any drainage swales and/or underground drain lines and catch basins installed on their Lot.

### **Section 4: Remedies for Failure to Maintain**

If any Lot Owner shall fail to conduct maintenance on his Lot or the exterior of the Housing Unit located thereon, or fails to maintain the Lot and the exterior of the Housing Unit in the same condition as a reasonably prudent homeowner, or in a manner which preserves the drainage for other Lots, the Association shall notify the Lot Owner in writing of the maintenance required. If the maintenance is not performed within thirty (30) days of the date notice is delivered, the Association shall have the right to provide such maintenance, and to levy an assessment against the non-performing Lot Owner and its Lot for the cost of providing the maintenance. The assessment shall constitute a lien against the Lot owned by the non-performing Lot Owner and may be collected and foreclosed in the same manner as any other delinquent annual or special assessment. The Association shall have all remedies for collection as provided in Article Six of the Declaration. In the event that emergency repairs are needed to correct a condition on a Lot which pose a substantial risk of injury or significant property damage to others, the Association may immediately perform such repairs as may be necessary after the Association has attempted to give notice to the Lot Owner of the repairs necessary. Such notice in emergency circumstances shall be sufficient if attempted orally or in writing immediately prior to the Association's undertaking the necessary repairs. Emergency repairs performed by the Association, if not paid for by the Lot Owner, may be collected by the Association in the manner provided for herein notwithstanding the failure of the Association to give the Lot Owner the thirty (30) day notice.

## **Section 5: Common Expenses**

The Association shall perform such work as is necessary to carry out the duties described in this Declaration, and shall delegate the responsibility for management and supervision of such work to the Board, the ACC or to a manager or agent hired by the Board for the purpose of such management and supervision. Expenses for such work shall be paid by the Association for the benefit of all Lot Owners and shall be referred to as Common Expenses. The Common Expenses shall be paid by the Association from funds collected from assessments paid by Lot Owners. The Common Expenses shall include, but shall not be limited to, the following:

1. The cost of maintaining all required insurance coverage and fidelity bonds on any Common Areas, and for directors and officers of the Association and the ACC;
2. The cost of maintaining, repairing, and replacing all Common Area improvements, (together with all utility charges for services provided to the Common Areas) including, but not limited to lights, open space tracts, storm water systems including retention ponds, sidewalks, if any, monument and monument area, if installed by Declarant, perimeter fences, if any, and any plantings and landscaping on common areas;
3. Payment of any monthly utility charges due and owing for operation of the street lights, if any, located within the plat.
4. Any other expense which shall be designated as a Common Expense in the Declaration, in its Exhibits, or from time to time by the Association.

## **Section 6: Extraordinary Use Expenses**

In the event that one or more lot owners should by their use of the common areas cause it to be subjected to other than reasonable wear and tear or by their actions damage those common areas or any improvements located thereon or therein, then individual subjecting the common area to such use shall have the obligation to repair such damage upon demand by the Association and to restore such common area to the condition that existed prior to such use or action and all expenses therefore shall be paid by such individual.

## **Article V: Assessments**

### **1. Covenants for Maintenance Assessments**

- (a) Declarant, for each Lot owned by it, agrees, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to agree to pay to the Association annual or other regular assessments.
- (b) The annual or other regular and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment is made. Such lien may be foreclosed by the Association in like manner as a Mortgage on real property.
- (c) Each assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot assessed at the time the assessment fell due. The personal obligation shall not pass to the Owner's successors-in-interest unless expressly assumed by them. The new Owner shall be personally liable for assessments which become due on and after the date of sale or transfer.

### **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 of the Property, including the improvement, repair and maintenance of the Common Areas and the services and facilities related to the use and enjoyment of said areas, for the payment of insurance premiums on the Common Areas, and for the maintenance of other areas as provided for in this Declaration.

### **3. Board to Fix Annual or Regular Assessment**

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

### **4. Special Assessments for Capital Improvements**

In addition to the annually or regular assessments authorized above, the Association may levy in any assessment 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 capital improvements upon the Common Area, including the necessary fixtures and personal property related thereto. That any special assessment for capital improvements must be approved in accordance with the provisions of the Bylaws of the Association which are incorporated herein as though fully set forth.

### **5. Rate of Assessment**

Both annually or regular and special assessments shall be fixed at a uniform rate for all Lots.

### **6. Reimbursement Charge**

Each person or entity purchasing from the Declarant at the time of closing shall pay \$300.00 to the Declarant Harr Family Homes to partially reimburse said Declarant for expenses associated with the establishment of and improvements installed by said Declarant on behalf of the Association.

Editorial Note: The prior subparagraph was amended by the First Amendment to the Declaration.

### **7. Initial Assessment**

The initial assessment until changed by action of the Association shall be \$300.00 per year for each lot and which will be paid at time of closing of each lot which amount will be paid to the Association in an amount equal to the prorated portion of the initial assessment against that lot for the balance of the calendar year. Said assessment will be paid at the time of the closing of any sale to any person or entity by the Declarant Harr Family Homes, Inc. Commencing on the 1st of January of each year subsequent to the date of closing of the sale of a lot from the Declarant, the purchaser and its successors or assigns shall pay an annual assessment of \$300.00 per year which will be due and payable on or before the 15th of January of each year.

### **8. Initial Expenses of the Association**

In the event there are insufficient funds received from lot assessments as provided for above to pay for the actual costs incurred by the Association to pay for common expenses as set forth in this Declaration, then the Declarant shall pay the difference to the Association as long as the Declarant Harr Family Homes, Inc., is the owner of any lot. However, said Declarant shall be entitled to be reimbursed the amount of any such difference from assessments as they are subsequently collected. Once said Declarant has sold or conveyed all lots owned by said Declarant, then said Declarant shall no longer be liable under the provisions of this Paragraph. Said Declarant is not liable for any annual or special assessment relative to any lot owned by the Declarant.

## **9. Effects of Nonpayment of Assessments: Remedies of Association**

Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and the Association may bring an action at law against the Owner obligated to pay the assessment, or may foreclose the lien against the Property, and in either event, interest, costs, and reasonable attorney's fees shall be added to the amount of such assessments. No Owner may waive or otherwise escape liability for annually or regular or special assessments by nonuse of the Common Area or by abandonment of his Lot.

## **10. Subordination of Lien to Mortgages**

The lien of the assessments provided for in this Declaration shall be subordinated to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, where the mortgagee or a Mortgage of record or other purchaser of a lot obtains possession of the Lot as the result of foreclosure of a Mortgage, or by deed or assignment in lieu of foreclosure, such possessor, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to such possession. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Owners, including such possessor, his successors and assigns.

## **11. Certificate**

The Association shall upon demand furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified lot or dwelling unit have been paid. A reasonable charge may be made by the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment stated in the certificate to have been paid.

## **12. Fines Treated as Special Assessments**

Any fines levied by the Association pursuant to RCW Chapter 64.38 (or successor statute authorizing the imposition of fines) shall be treated as a special assessment of the Owner fined, and may be collected by the Association in the manner described in Article Six.

# **Article VI: Building, Use, and Architectural Restrictions**

## **Section 1: Declarant Shall Appoint ACC**

The Declarant hereby reserves the right to appoint any Member or Members of the ACC until the Declarant or any Declarant-Builder has sold and conveyed all of the lots held in the name of said Declarant or Declarant-Builder. This reserved right shall automatically terminate at such time as the Declarant or any Declarant-Builder no longer owns any lots in either Madera Phase 1 or Madera Phase 2. When this right is relinquished, then the Board of Directors shall appoint the Members of the ACC.

## **Section 2: Authority of ACC**

At the expiration of the Declarant's management authority, the ACC shall have the authority and obligation to manage and administer the review of building plans, specifications and plot plans and such other submissions as described in Section Five herein, and to enforce these covenants, conditions and restrictions. Such authority shall include all authority provided for the ACC in the Association's Articles, Bylaws, Rules and Regulations, as initially adopted, or as amended, and all the authority granted to the ACC by this Declaration.

## **Section 3: Delegation of Authority of ACC**

The ACC or the Declarant may delegate any of its duties, powers, or functions described in this Article to any person, firm, or corporation.

#### **Section 4: Appointment of ACC**

The Declarant reserves the right to exercise any and all powers and controls herein given to the Board of Directors or the ACC until all of the lots held in the name of the Declarant have been sold, however, subsequent to the termination of that control, the Board shall appoint the members of the ACC. At that time, there shall be three members of the ACC. If the Board fails to appoint members of the ACC, or Members of the ACC resign and no replacements assume the office, the Board shall act as the ACC until members of the ACC are appointed and take office.

#### **Section 5: Approval by ACC Required**

Except as to construction, alteration, or improvements performed by the Declarant, no construction activity of any type including clearing and grading, cutting or transplanting of significant natural vegetation may begin on a Lot or Common Area and no building, structure, fence or other improvement shall be erected, placed or altered on any Lot or Common Area until, at a minimum, the building plans, specifications, plot plans, and landscape plan showing the nature, kind, shape, height, materials, exterior color and location of such building, structure or other improvements have been submitted and approved in writing by the ACC or its authorized representative as to harmony of exterior design and location in relation to and its effect upon surrounding structures and topography. Further, no fences, hedges or walls shall be erected or altered and no significant exterior changes shall be made to any building including, but not limited to, exterior color changes, additions or alterations until such written approval shall have been obtained.

#### **Section 6: Time Limits**

If the ACC or its authorized representative shall fail to notify the Owner of its action for a period of thirty (30) days following the date of the submission of the required information to the ACC, or its authorized representative, the Owner may proceed with the proposed work notwithstanding the lack of written approval by the ACC or its authorized representative. The required information shall be considered submitted to the ACC upon personal delivery of a complete set of all required information to the person designated to receive such items by the ACC or by mail three days after deposit in the U.S. Mail, postage prepaid, certified, return receipt requested, to the ACC in care of the Board of Directors of the Association at the address designated in the most recent notice of assessment by the Board, or at such other address as is designated by the Board by written notice to the Members.

#### **Section 7: Guidelines**

The ACC may adopt and amend, subject to approval by the Board, written guidelines to be applied in its review of plans and specifications, in order to further the intent and purpose of this Declaration and any other covenants or restrictions covering Real Property. If such guidelines are adopted, they shall be available to all interested parties upon request.

#### **Section 8: Meetings**

The ACC shall meet as is necessary to review any plans or specifications provided pursuant to this Section, and shall keep and maintain a record of all actions taken at meetings or otherwise.

#### **Section 9: No Waiver**

Approval by the ACC of any plans, drawings or specifications shall not be a waiver of the right to withhold approval of any similar plan, drawing, specification or matter submitted for approval.

#### **Section 10: Consultation**

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

**Section 11: Appeals**

At such time as the Declarant no longer has the right to appoint members of the ACC or to act as the ACC, the Board shall serve as an appellate panel to review decisions of the ACC upon request of a party aggrieved by the ACC's decision. The Board shall provide, through rules and regulations, a procedure by which decisions of the ACC may be appealed to the Board. The Board may choose, in its discretion, to limit the scope of such appeal and provide time limitations for appeals to be made to the Board.

**Section 12: Enforcement**

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

**Section 13: No Liability**

The ACC, its agents and consultants shall not be liable to the Association, its members, to any Owner or to any other person for any damage, loss or prejudice resulting from any action or failure to act on a matter submitted to the ACC for determination, or for failure of the ACC to approve any matter submitted to the ACC. The ACC shall not be liable for any damage, loss or prejudice resulting from any action by a person who is delegated a duty, power or function by the ACC.

**Section 14: Fees**

The ACC may charge a fee for the review of any matter submitted to it. Any fee schedule adopted by the ACC must be approved by the Board.

**Section 15: Temporary Structures Prohibited**

No basement, tent, shack, garage, barn or other outbuilding or buildings or any structure of a temporary or moveable character erected or placed on the Properties shall at any time be used as living quarters except as specifically authorized by the ACC.

**Section 16: Nuisances**

No noxious or undesirable thing, activity or use of any Lot in the Properties shall be permitted or maintained. If the ACC shall determine that a thing or use of property is undesirable or noxious, such determination shall be conclusive. The ACC may recommend and the Board may direct that steps be taken as is reasonably necessary, including the institution of legal action or the Imposition of fines in the manner authorized by RCW Chapter 64.38, to abate any activity, remove anything or terminate any use of property which is determined by the ACC or described in this Declaration to constitute a nuisance.

**Section 17: Land Use and Building Type**

All lots subject to these protective covenants shall be used only for residential purposes. No structures of any kind shall be erected or permitted to be maintained on any lot other than single family residences, garages, workshops, and structures normally accessory to such residences which have been approved in accordance with the provisions of this Declaration. No carports will be allowed and all garages must have doors. All dwellings shall be of a "stick-built" variety. Mobile and manufactured homes, and modular homes are specifically not permitted. A two car or a three car garage are permitted and they shall be incorporated in or made part of the dwelling house and no detached garages shall be permitted except with express written approval by the Architectural Control Committee or the Declarant if the same is erected during the development period.

**Section 18: Limitation on Animals**

No animal, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except cats, dogs, birds or fish may be kept if they are not kept, bred or maintained for any commercial purpose, and they shall not

be kept in numbers or under conditions reasonably objectionable in a closely built-up residential community. Animals shall not be allowed to roam loose outside the limits of any Lot on which they are kept. Any dogs must be kept so as to minimize excessive noise from barking or otherwise shall be considered a nuisance according to the terms of this Declaration.

**Section 19: Completion of Construction**

The construction of any building on any lot, including painting and all exterior finish, shall be completed within six months of beginning of construction so as to present a finished appearance when viewed from any angle. The building area shall be kept in a reasonably clean and workman-like manner during construction. All lots shall be kept in a neat and orderly condition, free of brush, vines, weeds and debris. The grass thereon shall be cut and mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

**Section 20: Landscape Completion and Standards**

The entire front yard, including up to the edge of the hard surface of the street fronting any lot, shall be landscaped in accordance with the provisions of this section and said landscaping shall be installed and completed within thirty days of the date of occupancy. If inclement weather conditions prevent the timely installation of said landscaping improvements, the lot owner must make application to the ACC for an extension of time until weather conditions sufficiently improve. For corner lots, the "front yard" shall mean the frontage on both streets, such that both street frontages and yards must be landscaped. "Front yard" shall be defined as the lot area extending from the front property line back to a line measured parallel with the front property line which would coincide with the front wall of the main dwelling on the lot, exclusive of any garage projections. At least 75 percent of every front yard less driveway and walk shall be maintained as lawn area unless otherwise approved by the ACC.

Within 30 days after occupancy, all corner lots with visible backyard areas from adjacent street right-of-ways shall have landscaping completed on the entire lot area unless otherwise approved by the ACC.

Within 30 days after occupancy, all other rear yards not otherwise landscaped must be seeded in lawn.

**Section 21: Unsightly Conditions**

No unsightly conditions shall be permitted to exist on any Lot. Unsightly conditions shall include, without limitation, laundry hanging or exposed in view for drying, litter, trash, junk or other debris; inappropriate, broken or damaged furniture or plants; non-decorative gear, equipment, cans, bottles, ladders, trash barrels and other such items; and no awnings, air conditioning units, heat pumps or other projections shall be placed on the exterior walls of any housing Unit unless prior written approval shall have been obtained from the ACC.

**Section 22: Antennas, Satellite Reception**

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

**Section 23: Setbacks**

No building shall be located on any Lot nearer to the front lot line or nearer to the side street than the minimum building setback lines adopted by the governmental authority with jurisdiction over the Properties.

**Section 24: Roofs**

The roofing shall be of a composition roof material with a twenty-year/life or such other materials as may be approved by the ACC.

**Section 25: Fences, Walls**

Fences, walls or shrubs are permitted on the side and rear property line subject to the approval of the ACC. Said fences, walls or shrubs in the front yard shall not be higher than forty two inches (42") and in any side and back yard said fencing or shrub shall not exceed six feet (6') in height. All fences must be constructed of cedar unless otherwise approved by the ACC. No barbwire, chain link, corrugated fiberglass or similar fencing shall be permitted on any lot except that subject to the approval of the ACC a chain link fence required to enclose any sports facility may be constructed provided that the height and location shall be approved by the ACC. No fence, wall, hedge or shrub may obstruct corner intersection line of site within a triangular area formed by a street, property lines and a line connecting them at points twenty five feet (25') from the intersection of the street. The Declarant, the ACC, or the Board may adopt a guideline policy for fence construction and color. Any fence constructed which fails to conform to said guidelines, if adopted, shall be removed by the owner, or modified to conform with the guidelines. These guidelines may be modified from time to time. No fencing shall be constructed closer to the street than half the distance from the front of the house to the street and no fence shall be constructed closer to the road than six feet (6') from the front of the garage.

**Section 26: Residential Use Only: Home Businesses Limited**

Except for Declarant's temporary sales offices and model homes, no Lot shall be used for other than one detached single-family dwelling with driveway parking for not more than three cars. However, Declarant reserves the right to have attached units constructed on adjacent real property which may be subjected to these provisions by the Declarant. A trade, craft business, or business or commercial activity ("Home Business") may be conducted or carried on within any building located on a Lot, provided that any goods, materials or supplies used in connection with any trade, service or business, wherever the same may be conducted, be kept or stored inside any building on any Lot and that they not be visible from the exterior of the home; nor shall any goods, used for private purposes and not for trade or business be kept or stored outside any building on any Lot. The provisions of this Section shall permit such Home Businesses to the extent permitted by applicable zoning laws and other government laws, regulations, rules and ordinances. Nothing in this Section shall permit (1) the use of a Lot for a purpose which violates law, regulations, rules or applicable zoning codes, or (2) Home Business activities that cause a significant increase in neighborhood traffic, or (3) modification of the exterior of the home. The Association may, from time to time, promulgate rules restricting the activities of Home Businesses located on the Properties pursuant to the authority granted to the Association under these Covenants, the Bylaws, and RCW Chapter 64.38.

**Section 27: Underground Utilities Required**

Except for any facilities or equipment provided by the Declarant or any utility, all electrical service, telephone lines and other outdoor utility lines shall be placed underground.

**Section 28: Vehicle Parking and Storage**

No Vehicle may be parked on any building Lot, except on designated and approved driveways or parking areas which areas shall be hard-surfaced. Only the cars of guests and visitors may be parked on a temporary basis on the sidewalk side of streets within the plats of Madera 1 and Madera 2. All other vehicles shall be parked in garages or on driveways located entirely on a Lot.

Except with the approval of the board of directors, owners at no time shall keep or permit to be kept on any lot any house trailer, unattached camper, recreational vehicles (R.V.), mobile home, boat or trailer unless the same is housed within a garage or fully screened from view. Such screening must be approved by the ACC.

At no time shall owners be permitted to keep tractor-trailers (or other large trucks as determined by the association) on their lot.

### **Section 29: Excavation and Fill**

Except with the permission of the ACC, or except as may be necessary in connection with the construction of any approved improvement, no excavation or fill shall be made nor shall any dirt be removed from any Lot herein.

### **Section 30: Drainage**

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

### **Section 31: Use During Construction**

Except with the approval of the Board, no persons shall reside upon the premises of any Lot until such time as the improvements to be erected thereon in accordance with the plans and specifications approved by the Board have been completed.

### **Section 32: Garbage and Refuse**

No garbage, refuse, rubbish, cuttings or debris of any kind shall be deposited on or left upon any Lot unless placed in an attractive container suitably located and screened from public view. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

### **Section 33: Tanks, Etc.**

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

### **Section 34: Auto Repair**

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

### **Section 35: Exterior Finish**

All siding material other than masonry or stucco shall be of wood or composite siding painted or stained with colors approved by the ACC. All metal fire place chimneys shall be either wood or stone wrap.

### **Section 36: Driveways**

That all driveways including any access to the rear yard of any residence shall be of a hard surface construction of either concrete or washed aggregate and shall be completed prior to final building inspection.

### **Section 37: Maintenance of Structures and Grounds**

Each owner shall maintain his lot and residence thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire hazard.

**Section 38: Firearms**

The use of firearms is expressly prohibited.

**Section 39: Dirt Bikes and/or ATV**

No unlicensed motor vehicles, including motorcycles, dirt bikes, motor scooters, ATV's etc., shall be permitted on any road within the plat, nor shall dirt bikes or ATV's be permitted to operate on any owner's lot.

**Section 40: Damage Repair**

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

**Section 41: Building Materials**

All homes constructed on each lot shall be built of new materials, with the exception of "decor" items such as used brick, weathered planking, and similar items. The ACC will determine if a used material is a "decor" item. In making this determination the ACC will consider whether the material harmonizes with the aesthetic character of the other residences within the subdivision and whether the material would add to the attractive development of the subdivision.

The exterior of all construction of any lot shall be designed, built, and maintained in such a manner as to blend in with the natural surroundings and landscaping within the subdivision. Exterior colors must be approved by the ACC. Exterior trim, fences, doors, railings, decks, eaves, gutters, and the exterior finish of garages and other accessory buildings shall be designed, built, and maintained to be compatible with the exterior of the structure they adjoin. Generally, colors shall be muted earth tones, grays, beiges, and similar shades.

**Section 42: Square Footage**

Minimum square footage requirements:

- (a) Floor area. The floor area of the main house structure exclusive of open porches and garages shall not be less than (a) 1,200 square feet for a dwelling containing a single level and (b) 1,500 square feet for a dwelling containing two levels.
- (b) No dwelling shall contain more than two stories in height, excluding daylight basements.
- (c) Garages and Unheated areas. Garages and unheated areas shall not be included in determining square footage.

**Section 43: Codes**

All construction shall conform to the requirements of the State of Washington's rules and regulations for installing electric wires and equipment, and the uniform codes (building mechanical, plumbing), in force at the commencement of the construction, including the latest revisions thereof.

**Section 44: Entry for Inspection**

Any agent or member of the Declarant or any member of the architectural control committee may at any reasonable predetermined hour upon 24 hours notice during construction or exterior remodeling, enter and inspect the structure to determine if there has been complied with the provisions of this Declaration. The above recited individuals shall not be guilty of trespass for such entry or inspection. There is created an easement over, under, and across, residential lots for the purpose of making and carrying out such inspections.

**Section 45: Authority to Adopt Additional Rules and Restrictions**

The Association shall have the authority to adopt additional written rules and restrictions governing the use of the Properties, provided such rules and restrictions are consistent with the purposes of the Declaration, and to establish penalties for violation of those rules and restrictions. If rules and restrictions are adopted, they, along with the established penalties, shall be available to all Members upon request.

**Section 46: Enforcement**

The Association, or the Declarant during the Development Period, may, but is not required to, take any action to enforce the provisions of the Declaration available to it under law, including but not limited to imposition of fines as authorized by RCW Chapter 64.38, specific performance, injunctive relief, and damages. Any Member may also enforce the terms of this Article (although a Member may not impose a fine as authorized by RCW Chapter 64.38) but the Member must first obtain an order from a court of competent jurisdiction entitling the Member to relief. In the event that a Member takes any action to enforce the terms of this Article, the Association shall not be in any way obligated to join in such action, or pay any of the attorney's fees, costs and expenses incurred in such action.

**Article VII: Easements**

**Section 1: Easement for Encroachments**

Each Lot is, and the Common Areas are subject to an easement for encroachments created by construction, settlement, and overhangs as designed or constructed by the Declarant, and a valid easement for encroachments and for maintenance of the same as long as said improvements remain.

**Section 2: Easements on Exterior Lot Lines**

In addition to easements reserved on any plat of the Properties or shown by instrument of record, easements for utilities and drainage are reserved for the Declarant or its assigns, over a five-foot wide strip along each side of the interior Lot lines, and ten feet over the rear and front of each Lot, and over, under, and on the Common Areas. Within all of the easements, no structure, planting or fill material shall be placed or permitted to remain which may, in the opinion of the Board or ACC, damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through drainage channels and the easements. The easement area of each Lot and all improvements within it shall be maintained continuously by the Owner of such Lot, except those improvements for which a public authority, utility company or the Association is responsible.

**Section 3: Association's Easement of Access**

The Association, the ACC, and its agents shall have an easement for access to each Lot and to the exterior of any building located thereon during reasonable hours as may be necessary for the following purposes: (a) cleaning, maintenance, or repair of any home or Lot as provided in this Declaration; (b) repair, replacement or improvement of any Common Area accessible from that Lot; (c) emergency repairs necessary to prevent damage to the Common Areas or to another Lot, or to the improvements thereon; (d) cleaning, maintenance, repair or restoration work which the Owner is required to do but has failed or refused to do; and (e) all acts necessary to enforce these Covenants.

**Section 4: Easement for Declarant**

Declarant shall have an easement across all Common Areas for ingress, egress, storage and placement of equipment and materials, and other actions necessary or related to the development or maintenance of the Real Property.

## **Article VIII: Mortgagee Protection**

### **Section 1: Mortgagees**

Notwithstanding and prevailing over any other provisions of the Declaration, the Association's Articles of Incorporation or Bylaws, or any rules, regulations or management agreements, the following provisions shall apply to and benefit each Institutional First Mortgagee ("Mortgagee") which holds a Mortgage given for the purpose of obtaining funds for the construction or purchase of a Housing Unit on any Lot or the improvement of any Lot.

### **Section 2: Liability Limited**

The Mortgagee entitled to the protection hereof shall not in any case or manner be personally liable for the payment of any assessment or charge, nor for the observance or performance of any covenant, restriction, rule, Association Article of Incorporation or Bylaw, or management agreement, except for those matters which are enforceable by injunctive or other equitable relief, not requiring the payment of money, except as hereinafter provided.

### **Section 3: Mortgagees's Rights During Foreclosure**

During the pendency of any proceeding to foreclose the Mortgage, the Mortgagee or the receiver, if any, may exercise any or all of the rights and privileges of the Owner of the mortgaged Lot, including but not limited to the right to vote as a Member of the Association to the exclusion of the Owner's exercise of such rights and privileges.

### **Section 4: Acquisition of Lot by Mortgagee**

At such time as the Mortgagee shall become entitled to possession of the Lot, the Mortgagee shall be subject to all of the terms and conditions of the Declaration, and the Articles, Bylaws, rules and regulations of the Association, including but not limited to the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any Owner; provided, however, the Mortgagee shall acquire the title to said Lot free and clear of any lien authorized by or arising out of any provisions of the Declaration which secure the payment of any assessment for charges accrued prior to the date the Mortgagee became entitled to possession of the Lot.

### **Section 5: Reallocation of Unpaid Assessment**

If it is deemed necessary by the Association, any unpaid assessment against a Housing Unit foreclosed against may be treated as a common expense of other Lots. Any such unpaid assessment shall continue to exist as a personal obligation of the defaulting Owner of the respective Lot to the Association.

### **Section 6: Subordination**

The liens for assessments provided for in this instrument shall be subordinate to the lien of any Mortgage, or other security interest placed upon a Lot or Housing Unit as a construction loan security interest or as a purchase price security interest, and the Association will, upon demand, execute a written subordination document to confirm the particular superior security interest.

### **Section 7: Mortgagee's Rights**

Any Mortgagee shall have the right on request therefor to (a) inspect the books and records of the Association during normal business hours; (b) receive an annual financial statement of the association within (90) days following the end of any fiscal year; and (c) receive written notice of all meetings of the Association and designate a representative to attend all such meeting.

## **Section 8: Limitation on Abandonment of Common Areas**

The Association shall not, without the prior written approval of sixty-seven percent (67%) of the Mortgagees, seek to abandon the Common Areas for reasons other than substantial destruction or condemnation of the property.

## **Section 9: Notice**

If such notice has been requested in writing, Mortgagees shall be entitled to timely written notice of: (a) substantial damage or destruction of any Housing Unit or any part of the Common Areas or facilities; (b) any condemnation or eminent domain proceedings involving any Housing Units or any portion of Common Areas or facilities; (c) any default under this Declaration or the Articles, Bylaws or rules and regulations of the Association by an Owner of any Housing Unit on which it holds the mortgage which is not cured within thirty (30) days; (d) any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Housing Unit on which it holds the mortgage; (e) ten (10) days' prior written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (f) any proposed action that requires the consent of a specific percentage of Mortgagees.

## **Article IX: Management Contracts**

Each Member hereby agrees that the Association and the ACC may enter into agreements for the performance of any or all of the functions of the Association and the ACC with such persons or entities as the Association deems appropriate; however, any agreement for professional management of the Properties, or any other contract providing for services by the Declarant must provide for termination by either party without cause after reasonable notice.

## **Article X: Insurance**

### **Section 1: Coverage**

The Association may purchase as a Common Area Expense and shall have authority to and may obtain insurance for the Common Areas against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement value in the event of damage or destruction. It may also obtain a comprehensive public liability policy covering the Common Areas. The comprehensive public liability coverage shall be in an amount to be determined by the Association. It may also obtain insurance to cover the Board, the ACC, its agents and employees from any action brought against them arising out of actions taken in furtherance of the Association's duties under this Declaration.

Following the development period, all such insurance coverage shall be written in the name of the Association as trustee for each of the Members of the Association. The Association shall review the adequacy of the Association's insurance coverage at least annually. All policies shall include a standard mortgagee's clause and shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to any and all insured named therein, including Owners and Institutional First Mortgagees that have requested notice.

### **Section 2: Replacement, Repair After Loss**

In the event of the damage or destruction of the Common Areas covered by insurance written in the name of the Association, the Association may, upon receipt of the insurance proceeds, and to the extent of such proceeds contract to rebuild or repair such damaged or destroyed portions of the Common Areas to as good a condition as they were when the loss occurred; provided, however, that the Association's election not to rebuild the Common Areas shall require the approval of two-thirds (2/3) of the Association. The Association may in its sole discretion contract with any contractor for reconstruction or rebuilding of such destroyed portions of the Common Areas.

## **Article XI: Rules and Regulations**

The Association and/or its Board of Directors is hereby authorized and empowered to adopt rules and regulations governing the use of the Properties and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof, in the manner described by RCW Chapter 64.38, the Bylaws and any resolutions passed by the Board. All Lot Owners shall be given written notice of the rules and regulations in the manner required by RCW Chapter 64.38.

## **Article XII: Remedies and Waiver**

### **Section 1: Remedies Not Limited**

The remedies provided herein, including those for collection of any assessment or other charge or claim against any Member, for and on behalf of the Association, the ACC, or Declarant, are in addition to, and not in limitation of, any other remedies provided by law.

### **Section 2: No Waiver**

The failure of the Association, the ACC, the Declarant or of any of their duly authorized agents or any of the Owners to insist upon the strict performance of or compliance with the Declaration or any of the Articles, Bylaws or rules or regulations of the Association, or to exercise any right or option contained therein, or to serve any notice or to institute any action or summary proceedings, shall not be construed as a waiver or relinquishment of such right for the future, but such right to enforce any of the provisions of the Declaration or of the Articles, Bylaws or rules or regulations of the Association shall continue and remain in full force and effect. No waiver of any provision of the Declaration or of the Articles, Bylaws, rules or regulations of the Association shall be deemed to have been made, either expressly or implied, unless such waiver shall be in writing and signed by the Board of Directors of the Association pursuant to authority contained in a resolution of the Board of Directors.

## **Article XIII: Condemnation**

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

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

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

## **Article XIV: General Provisions**

### **1. Binding Effect**

All present and future Owners or occupants of Lots shall be subject to and shall comply with the provisions of this Declaration, and the Bylaws and rules and regulations of the Association, as they may be amended from time to time, are accepted and ratified by such Owner or occupant, and all such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at the time any interest or estate in such Lot, as though such provisions were recited and stipulated at length in each and every deed and conveyance or lease thereof.

### **2. Enforcement by Court Action**

The Association, the Declaration, the ACC, the Homeowner's Association, or any lot owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Should the Association or any Owner employ counsel to enforce any of the foregoing covenants, conditions, reservations, or restrictions,

all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the Owner found to be in violation of said condition, covenants, reservation, or restriction, or found to be delinquent in the payment of said lien or charge.

### **3. Enforcement by Self Help**

The Declarant, the ACC, the Association, or the duly appointed agent of either, may enter upon any lot, which entry shall not be deemed a trespass, and take whatever steps are necessary to correct a violation of the provisions of this Declaration. Provided, this provision shall not be construed as a permission to breach the peace.

### **4. Condition Precedent to Action**

Prior to taking action either by court or by self help, written notice shall be given to the offending lot owner. Such notice shall specify the nature of the offense and shall also specify the action necessary to cure. Such action shall also provide a reasonable opportunity to cure which, except in the case of an emergency, shall not be less than 30 days.

### **5. Expenses of Action**

The expenses of any corrective action or enforcement of this declaration, if not paid by the offending owner within thirty (30) days after written notice and billing, may be filed as a line upon such lot, enforceable as other liens herein.

### **6. Owner Objection**

Should a lot owner object to the complaints of the Declarant, the Association or ACC in writing within a period of fifteen (15) days after the complaint is made and, further, should the parties not agree on property maintenance or other matters complained of, the matter shall be submitted to arbitration. The arbitration shall be binding upon the parties. If the parties cannot agree upon an arbitrator, each party shall choose one arbitrator and they, in turn, shall choose a third. The arbitration shall be conducted in accordance with the rules of arbitration under the laws of the State of Washington in existence at the time of any such arbitration.

### **7. Costs and Attorneys Fees**

In the event of legal action, the prevailing party shall be entitled to recover actual costs and attorney fees. For the purposes of this declaration "legal action" shall include arbitration, law suit, trial, appeals, and any action, negotiations, demands, counseling or otherwise where the prevailing party has hired an attorney. It is the intent of this provision to reimburse the prevailing party for all reasonable attorney fees and actual costs incurred in defending or enforcing the provisions of this Declaration, or the owner's rights hereunder.

### **8. Failure to Enforce**

No delay or omission on the part of the Declarant or the Owners of other Lots in exercising any rights, power, or remedy provided in this Declaration shall be construed as a waiver or acquiescence in any breach of the covenants, conditions, reservations, or restrictions set forth in the Declaration. No action shall be brought or maintained by anyone whatsoever against the Declarant for or on account of its failure to bring any action for any breach of these covenants, conditions, reservations, or restrictions, or for imposing restrictions which may be unenforceable.

### **9. Severability**

Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

## **10. Interpretation**

In interpreting this Declaration, the term "person" may include natural persons, partnerships, corporations, Associations, and personal representatives. The singular may also include the plural and the masculine may include the feminine, or vice versa, where the context so admits or requires. This Declaration shall be liberally construed in favor of the party seeking to enforce its provisions to effectuate the purpose of protecting and enhancing the value, marketability, and desirability of the Properties by providing a common plan for the development of Madera.

## **11. Term**

This Declaration shall be effective for an initial term of 30 years, and thereafter by automatic extension for successive periods of 10 years each, unless terminated, at the expiration of the initial term or any succeeding 10 year term by a termination agreement executed by the then owners of not less than 75% of the lots then subject to this Declaration. Any termination agreement must be in writing, signed by the approving owners, and must be recorded with the County Auditor.

## **12. Perpetuities**

In the event that any provision of this Declaration violates the rule against perpetuities, such provision shall be construed as being void and of no effect as of twenty-one (21) years after the death of the last surviving incorporator of the Association, or twenty-one (21) years after the death of the last survivor of all of the said incorporators' children and grandchildren who shall be living at the time this instrument is executed, whichever is later.

## **13. Method of Notice**

Any notice required by the Declaration or the Articles or Bylaws of the Association or the rules and regulations adopted by the Association shall be deemed properly given when personally delivered, deposited in the United States mail, postage prepaid, or when transmitted by facsimile.

## **14. Successors and Assigns**

This Declaration binds and is for the benefit of the heirs, successors and assigns of Declarant, the Declarant, the Members and the Owners.

## **Article XV: Amendment and Revocation**

### **Section 1: Exclusive Method**

This instrument may be amended, and partially or completely revoked only as herein provided or otherwise provided by law.

### **Section 2: Amendment by Declarant**

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

### **Section 3: Prior Approval by FHA/HUD**

Regardless of whether or not 75% of the lots have been sold to others than Declarant builders, in the event any loan with respect to any lot or building constructed thereon is insured through either the Federal Housing Administration or the Department of Veterans Affairs or any programs sponsored by either such agency, then the insuring agency must give written approval before any of the following actions can be approved by either the Declarant or the lot owners:

- a) Annexation of additional properties
- b) Dedication of any properties
- c) Amendment to this declaration

#### **Section 4: Voting**

This Declaration may be amended at any annual meeting of the Association, or at a special meeting called for such purpose, if sixty-seven percent (67%) or more of the Owners vote for such amendment, or without such meeting if all Owners are notified in writing of such amendment, and if sixty-seven percent (67%) or more of the Owners vote for such amendment by written ballot. Notice of any proposed amendment shall be given to all Owners not less than ten (10) days prior to the date of the annual meeting or of any special meeting at which the proposed amendment shall be considered. Notwithstanding any of the foregoing, fifty-one percent (51%) of all Institutional First Mortgagees who have requested notification of amendments must give prior written approval to any material amendment to the Declaration or Bylaws, including any of the following:

1. Voting rights;
2. Assessments, assessment liens and subordination of such liens;
3. Reserves for maintenance, repair and replacement of Common Areas;
4. Insurance or fidelity bonds;
5. Responsibility for maintenance and repair;
6. Contraction of the project or the withdrawal of property from the Properties;
7. The boundaries of any Lot;
8. Leasing of Housing Units other than as set forth herein;
9. Imposition of any restrictions on the right of an Owner to sell or transfer his or her Lot;
10. Any decision by the Association to establish self-management when professional management had been required previously by an Institutional First Mortgagee;
11. Restoration or repair (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration.
12. Any action to terminate the legal status of the Properties after substantial destruction or condemnation occurs; or
13. Any provisions which are for the express benefit of Institutional First Mortgagees.

#### **Section 5: Effective Date**

Amendments shall take effect only upon recording with the Thurston County Auditor of the county in which this Declaration is recorded.

#### **Section 6: Protection of Declarant**

For such time as Declarant shall own Lots located in the Properties there shall be no amendments to the Declaration, the Articles of Incorporation, the Bylaws of the Association, or any Rules and Regulations adopted by the Association which:

1. Discriminate or tend to discriminate against the Declarant's rights.
2. Change Article One ("Definitions") in a manner which alters the Declarant's right or status.
3. Alter the character and rights of membership or the rights of the Declarant as set forth in Article Three.
4. Alter its rights as set forth in Article Six relating to architectural controls.
5. Alter the basis for assessments, or the Declarant's exemption from assessments.
6. Alter the number or selection of Directors as established in the Bylaws.
7. Alter the Declarant's rights as they appear under this Article.

## **Section 7: Notice**

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

## **Second Amendment to the Declaration of Covenants, Conditions and Restrictions For Madera (Adding Phase II)**

1. Pursuant to Article Two of the above referenced Declaration, the Declarant does hereby subject to the terms and provisions of said Declaration as herein amended all of the lots contained in Madera - Phase II consisting of lots 75 through 155 of the same. These lots shall be subject to all of the terms and provisions of the above referenced Declaration to the same extent as if they had been specifically described in the Declaration when it was recorded as set forth above. All lot owners shall become members of the Madera Homeowners Association and subject to the Articles of Incorporation and By-Laws of said Association.
2. Each lot owner in all of the lots in Phases I and II of Madera shall have an equal undivided ownership interest in all of the tracts which are common area tracts in both Phases as described in the original Declaration as well as this Amendment. The common areas described above with respect to Madera - Phase II shall be subject to all of the terms and provisions of the Declaration on file herein.
3. All other remaining terms and provisions of the Declaration shall remain in full force and effect, except as expressly modified or amended herein.

Editorial Note: First recorded April 4, 2001. First Amendment recorded November 30, 2001.  
Second Amendment recorded March 27, 2003.