

RECORDING RETURN TO:  
B. STRAIGHT, P.S.  
4TH STREET, #850  
WA 98004

Copy  
of Div III  
CCRS

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, AND EASEMENTS FOR ELK RUN

THIS DECLARATION is made this 28<sup>th</sup> day of February,  
1994, by COVINGTON GREEN ASSOCIATES II LIMITED PARTNERSHIP  
(hereinafter referred to as "Declarant").

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain land situated in  
the State of Washington, County of King, known as Elk Run,  
hereafter referred to and defined and more particularly described  
on Exhibit "A," which is attached hereto and incorporated herein by  
this reference as fully set forth.

DESCRIPTION OF DECLARATION

Declarant desires to create in Elk Run as defined herein a  
planned residential community. Declarant also desires to create  
common areas for the benefit of the Elk Run community, to provide  
for the preservation of the natural value and amenities in Elk Run,  
and to provide for the maintenance of the common facilities.

This Declaration establishes a plan for the private ownership  
of lots and buildings constructed thereon, and for the beneficial  
ownership through a non-profit corporation of all the remaining  
land and related easements, hereafter referred to and defined as  
the "Association," to which shall be delegated and assigned the  
duties and power of maintaining and administering the Common Areas  
and administering and enforcing the covenants, conditions, and  
restrictions, and collecting and disbursing the assessments and  
charges hereinafter created.

Subject to King County approval, this Declaration contemplates  
a plan for the phased development of Elk Run pursuant to  
Declarant's Master Plan, as hereafter referred to and defined, in  
order that the Elk Run community may grow in an orderly fashion  
under a rational scheme of development. The Declaration further  
establishes the right and power of the Association to levy general  
and special assessments on each Owner, as hereafter referred to and  
defined, in order to finance the construction and maintenance of  
improvements to the Common Areas, and in order to effectuate all  
the powers and duties of the Association, as described herein. The  
Declaration further establishes certain restrictions on the various  
uses and activities that may be permitted in Elk Run and further  
establishes the right of the Association to promulgate rules and  
regulations which may further define and limit permissible uses and  
activities consistent with the provisions of this Declaration.

NOW, THEREFORE, the undersigned hereby covenants, agrees and declares that all of Elk Run as defined herein and the buildings and structures hereafter constructed thereon are, and will be, held, sold, and conveyed subject to and burdened by the following covenants, conditions, restrictions, and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of Elk Run and all for the benefit of the Owners thereof, their heirs, successors, grantees, and assigns. All provisions of this Declaration shall be binding upon all parties having or acquiring any right, title, or interest in Elk Run or any part thereof, and shall inure to the benefit of the Owners thereof and to the benefit of the Association and are intended to be and shall in all respects be regarded as covenants running with the land.

## ARTICLE 1

### DEFINITIONS

1.1 "Association" shall mean and refer to the Elk Run Division III Homeowners' Association, a Washington non-profit corporation, its successors and assigns.

1.2 "Association Action" shall mean and refer to a written corporate action of the Association in the form of either a bylaw or resolution duly passed by either the Board or the Owners.

1.3 "Board" shall mean and refer to the Board of Directors of the Association.

1.4 "Common Areas" shall mean and refer to all real property that is owned by the Association for the common use and enjoyment of the Owners; including landscaping and other utility systems which may be located on or in the Common Areas or between the Common Areas and the streets or on or in other public or utility easements. The Common Areas to be owned by the Association at the time of the conveyance of the first lot is described as follows:

- a) Entry Planters and associated landscaping
- b) All wetlands shown on the plat map for the Property, unless dedicated to King County (in which case the Association may still be required to maintain such wetlands.

1.5 "Declarant" shall mean and refer to Covington Green Associates II Limited Partnership, its successors and assigns, if such successors or assigns should acquire all or substantially all of the then-developed Parcels of Elk Run from Declarant for the purpose of development; provided, however, that no successor or assigns of Declarant shall have any rights or obligations of Declarant hereunder shall have any rights and obligations are

specifically set forth in the instrument of succession or assignment or other recorded instrument or passed by operation of law.

1.6 "Declaration" shall mean and refer to this instrument, as the same may be supplemented or amended from time to time.

1.7 "Development Period" shall mean and refer to that period of time beginning on the date of this Declaration and ending whenever any of the following first occurs: (i) 30 years from the date hereof; or (ii) at such time as Declarant has transferred title to purchasers of Lots representing ninety percent (90%) of the total voting power of all Owners as then constituted; or (iii) such earlier date as may be agreed upon by the Federal Housing Authority and Declarant.

1.8 "Governing Documents" shall mean and refer to this Declaration, Supplementary Declarations, and the Articles of Incorporation and Bylaws of the Association, as any of the foregoing may be amended from time to time.

1.9 "Elk Run" shall mean and refer to that certain real property described on Exhibit "A" attached hereto and such additions thereto as may hereafter be brought within the terms and conditions hereof, in accordance with Article 2 of this Declaration.

1.10 "Living Unit" shall mean and refer to a building or structure or any portion thereof situated in Elk Run that is designed and intended for use and occupancy as a residence by a Single Family, and the appurtenant landscaping, fences, garages, driveways, or parking areas occupying any Lot on which a Living Unit is situated. If a Living Unit is constructed on a Lot, the definition of Living Unit shall be deemed to encompass the underlying Lot, as well, but the definition shall not include any Lot in which a Living Unit has not yet received a certificate of occupancy or analogous certificate from the applicable governmental authority.

1.11 "Lot" shall mean and refer to any legally segmented and alienable portion of Elk Run shown on any subdivision map of the Property already or hereafter recorded, with the exception of streets and other public areas and Common Areas.

1.12 "Mortgage" shall mean and refer to any recorded mortgage or deed of trust encumbering one or more of the Lots or Living Units. "First Mortgage" shall mean and refer to a Mortgage with priority over other Mortgages.

1.13 "Mortgagee" shall mean and refer to the holder or beneficiary of any Mortgage and shall not be limited to Institutional Mortgagees. As used herein, the term "Institutional

Mortgagee" or "Institutional Holder" shall include banks, trust companies, insurance companies, mortgage companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), Federal Housing Administration ("FHA"), all corporations and any agency or department of the United States Government or of any state or municipal government.

1.14 "Native Growth Protection Easement Area" shall mean and refer to an area in a Lot or Common Area designated on a final plat, short plat, binding site plan, or other analogous recorded plan or map creating a Phase, in which the removal of trees and significant natural ground cover, as well as the conduct of other activities, are restricted pursuant to the provisions of Article 7 herein.

1.15 "Owner" shall mean and refer to the record owner (whether one or more persons or entities) of a fee interest in any Lot or Living Unit, including Participating Builders but excluding Mortgagees or other persons or entities having such interest merely as security for the performance of an obligation. Purchasers or assignees under recorded real estate contracts shall be deemed Owners as against their respective sellers or assignors.

1.16 "Single Family" shall mean and refer to a single housekeeping unit that includes not more than four (4) adults who are legally unrelated.

1.17 "Supplementary Declaration" shall mean and refer to any recorded Declaration of covenants, conditions and restrictions which extend the provisions of this Declaration to include additional property.

## ARTICLE 2

### ADDITIONS OF PROPERTY

The Declarant may, from time to time, subject additional real property to the conditions, restrictions, covenants, reservations and charges herein set forth by appropriate reference hereto. Declarant shall effect such addition by obtaining the approval of two-thirds (2/3) of each class of members, as well as either recording a Subdivision Map or Plat of the real property to be added or by Deed or conveyance containing appropriate dedication language and refer to this Declaration by:

2.1 Designating the real property being added and designate the permissible uses thereof.

2.2 Setting forth any new or supplemental restrictions or covenants which may be applicable to such added property, including limited or restrictive use of Common Areas. Such Supplemental Declaration may contain such additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties. In the event that a new plat or subdivision of lots is hereafter included in this Declaration, then any additions and modifications to this Declaration made in connection with such additional properties shall be subject to review and approval by the King County Building and Land Division, or its successor agency. In no event, however, shall such Supplemental Declaration revoke, modify or add to the covenants established by this Declaration with respect to the specific real property already subject to this Declaration.

2.3 Declaring that such added property is held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the provisions of this Declaration. Upon the recording of such plat or conveyance, the added property shall become a part of Elk Run.

### ARTICLE 3

#### ELK RUN ASSOCIATION

3.1 Description of Association. The Association is a non-profit corporation organized and existing under the laws of the State of Washington charged with the duties and vested with the power prescribed by law and set forth in the Governing Documents, as they may be amended from time to time; provided, however, that no Governing Document other than this Declaration shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

3.2 Association Board. Declarant shall within 90 days of execution of this Declaration, select an initial Board of not fewer than three (3) person who need not be Owners. The initial Board shall have the full authority and all rights, responsibilities, privileges, and duties to manage the Association under the Governing Documents and shall be subject to all provisions of the Governing Documents. The term of the initial directors of the Board shall expire at the first annual meeting of the Association following their appointment by Declarant. The Board shall elect officers of the Association from among the Board members, which shall include a president who shall preside over meetings of the Board and meetings of the Association.

3.3 Association Membership. Every person or entity who is an Owner shall by reason thereof be a member of the Association. Such

membership shall be appurtenant to and held and owned in the same manner as the beneficial fee interest in the Lot or Living Unit to which it relates. Membership shall not be separated from ownership of the Lot or Living Unit to which it relates; provided, however, that any Owner may delegate his rights of membership in the Association and rights of enjoyment in the Common Areas to the members of his family and to his tenants occupying a Living Unit.

3.4 Votes Appurtenant to Living Units. The Association shall have two classes of voting membership:

Class A: Class A members shall be all Owners with the exception of the Declarant, and shall be entitled to one vote for each Lot owned.

Class B: The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) On January 1, 2000.

Every Owner shall be entitled to cast one vote in the Association for each Lot or Living Unit owned. A vote shall be appurtenant to and held and owned in the same manner as the beneficial fee interest in the Lot or Living Unit to which it relates. A vote shall not be separate from ownership of the Lot or Living Unit to which it relates; provided, however, that when more than one entity holds the beneficial fee interest in any Lot or Living Unit, the vote therefor shall be cast as the Owners among themselves determine, but in no event shall more than one vote be cast with respect to any Living Unit; and if the several Owners of a Lot or Living Unit are unable to agree as to the casting of their vote, such vote shall not be counted. When a single entity owns more than one Lot or Living Unit, each vote may be cast separately.

3.5 Adjustment to Number of Votes. If more than 18 Lots are authorized by King County for Elk Run Division 3 at any time during the Development Period, the number of votes in the Association shall be readjusted at such time to reflect the increased number of Lots. If additional property is added to Elk Run, then the Lots in such newly added property shall, so long as they are owned by Declarant, be treated as Class B Lots for voting purposes, such that the Declarant will have three votes for each new Lot.

3.6 Owner's Compliance with Governing Documents. By acceptance of a deed to a Lot or Living Unit, execution of a

contract therefore, or any other means of acquisition of an ownership interest, whether or not it shall be so expressed in any such deed or other instruments, the Owner thereof covenants and agrees thereby, on behalf of himself and his heirs, successors, and assigns, to observe and comply with all terms of the Governing Documents of the Association, and all rules and regulations duly promulgated pursuant to Association Action.

3.7 Rules and Regulations. The Association shall have the power to adopt from time to time by Association Action and to enforce rules and regulations governing the use of Elk Run, in addition to the use restrictions contained in this Declaration and whether or not expressly contemplated herein, provided that such rules and regulations shall not be inconsistent with this Declaration. The rules and regulations may not discriminate among Owners. The Association may prescribe penalties for the violation of such rules and regulations, including but not limited to suspension of the right to use the Common Areas or portions thereof. Any such rules and regulations shall become effective 30 days after promulgation or amendment and shall be mailed to all Owners within 30 days after promulgation or amendment. A copy of the rules and regulations then in force shall be retained by the secretary of the Association and shall be available for inspection by any Owner during reasonable business hours. Such rules shall have the same force and effect as if set forth herein.

3.8 Architectural Control Committee. The Association shall establish and continuously maintain an Architectural Control Committee composed of three or more representatives as provided in the Bylaws of the Association, to review and approve or disapprove the details and written plans and specifications showing the nature, kind, shape, heights, materials, colors, and location of proposed Living Units, buildings, fences, walls or other structures, exterior additions to or changes or alterations therein, clearing or excavation of Lots, or cutting of trees within Elk Run. The Association shall have the power to adopt from time to time by Association Action and to enforce guidelines, criteria, and procedures governing the Architectural Control Committee and the Owners' compliance with the provisions of Section 6.2 hereof. The provisions of Section 3.7 hereof shall apply to such guidelines, criteria, and procedures as if fully set forth in this Section 3.8. The Declarant shall appoint the initial members of the Architectural Control Committee, who may not be replaced during the Development period without Declarant's consent.

#### ARTICLE 4

##### ASSOCIATION BUDGET, ASSESSMENTS, AND LIENS

4.1 Owner's Covenant to Pay Assessments. By acceptance of a deed to a Lot or Living Unit, execution of a contract therefor, or

any other means of acquisition of an ownership interest, whether or not it shall be so expressed in any such deed or other instrument, the Owner thereof covenants and agrees thereby, on behalf of himself and his heirs, successors, and assigns, to pay the Association, in advance, all general and special assessments levied as provided herein.

4.2 Association Budget. The Association shall prepare, or cause the preparation of, an operating budget for the Association at least annually, in accordance with generally accepted accounting principles. The operating budget shall set forth all sums required by the Association, as estimated by the Association, to meet its annual costs and expenses, including but in no way limited to all management and administration costs, operating and maintenance expenses of entry planters, entry signs, and services furnished to or in connection with the Common Areas, including the amount of all taxes and assessments levied against, and the cost of liability and other insurance on, the Common Areas, and including charges for any services furnished by or to the Association; the cost of utilities and other services; and the cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and a reserve for replacements. The funds required to meet the Association's annual expenses shall be raised from a general assessment against each Owner and Living Unit as provided hereafter. The Association may revise the operating budget after its preparation at any time and from time to time, as it deems necessary or advisable in order to take into account and defray additional costs and expenses of the Association.

4.3 Levy of General Assessment. In order to meet the costs and expenses projected in its operating budget, the Association shall by Association Action determine and levy in advance on every Owner a general assessment. The amount of each Owner's general assessment shall be the amount of the Association's operating budget divided by the sum of the number of Lots. The Association shall make reasonable efforts to determine the amount of the general assessment payable by each Owner for an assessment period at least 30 days in advance of the beginning of such period and shall at that time prepare a roster of the Owners and the general assessment allocated to each, which shall be kept in the office of the Association, and shall be open to inspection by any Owner upon reasonable notice to the Association. Notice of the general assessment shall thereupon be sent to each Owner; provided, however, that notification to an Owner of the amount of an assessment shall not be necessary to the validity thereof. The omission by the Association, before the expiration of any assessment period, to fix the amount of the general assessment hereunder for that or the next period, shall not be deemed a waiver of modification in any respect of the provisions of this Article or a release of any Owner from the obligation to pay the general assessment, or any installment thereof, for that or any subsequent assessment period, but the general assessment fixed for the



preceding period shall continue until a new assessment period, but the general assessment fixed for the preceding period shall continue until a new assessment is fixed. Upon any revision by the Association of the operating budget during the assessment period for which such budget was prepared, the Association shall, if necessary, revise the general assessment levied against the Owners and give notice of the same in the manner as the initial levy of a general assessment for an assessment period.

Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Sixty Dollars (\$60.00) per Lot.

4.3.1 From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year by not more than twelve percent (12%) of the maximum assessment for the previous year without a vote of the membership.

4.3.2 From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above twelve percent (12%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

4.3.3 The authority of the Board of Directors of the Association as described to fix annual assessments shall be limited to the authority to fix annual assessments at an amount not in excess of the maximum, without prior owner approval as specified above.

4.4 Payment of General Assessment. Upon Association Action, installments of general assessments may be collected on a monthly, quarterly, semi-annual, or annual basis. Any Owner may prepay one or more installments on any assessment levied by the Association without premium or penalty.

4.5 Non-Discriminatory Assessment. Except as provided in Section 6.14 hereof, no assessment shall be made at any time which may unreasonably discriminate against any particular Owner or group of Owners in favor of other Owners. However, a special assessment may be made against a particular Owner by a two-thirds majority vote of the Board to which such oversight responsibility has been delegated, in the event that, after notice from the Association of failing to maintain the same in a condition comparable to the other Lots or Living Units in Elk Run has been given to the Owner thereof, the Association elects to expend funds to bring such Owner's Lot or Living Unit up to such comparable standard.

4.6 Commencement of Assessments. The general assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Areas. The due

dates of any special assessment payments shall be fixed by the Association Action authorizing such special assessment.

4.7 Certificates of Assessment Payment. Upon request, the Board shall furnish written certificates certifying the extent to which assessment payments on a specified Lot or Living Unit are paid and current to the date stated therein. Issuance of such certificates shall be conclusive evidence of payment of any assessments therein declared to have been paid. A reasonable charge may be made by the Association for the issuance of such certificate.

4.8 Special Assessments. In addition to the general assessments authorized by this Article, the Association may, by Association Action, levy a special assessment or assessments at any time, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, inordinate repair, or replacement of a described capital improvement located upon or forming a part of the Common Areas, including necessary fixtures and personal property related thereto, or for such other purpose as the Association may consider appropriate; provided, however, that any such assessment must have the prior favorable vote of Owners representing two-thirds of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. The amount of each Owner's special assessment for any year shall be the total special assessment for such year, divided by the sum of the number of Lots. Special Assessments shall also be made against the lots for their respective hook up fees as may be imposed by the local sewer district. If charge on any other than a one time basis, such fee shall be charged as part of the general assessment.

4.9 Effect of Non-Payment of Assessment. If any assessment payment is not made in full within thirty (30) days after it was first due and payable, there shall be assessed a late payment penalty of ten (10) percent of the assessment, the unpaid amounts shall constitute a lien against the Lot assessed and shall bear interest from such due date at the rate of twelve (12) percent per annum until paid. By acceptance of a deed to a Lot or Living Unit, execution of a contract therefor, or any other means of acquisition of an ownership interest, and whether or not it shall be so expressed in any such deed or other instrument, each Owner shall be deemed to grant thereby to the Association, its agents and employees, the right and power to bring all actions against such Owner personally for the collection of such assessments as a debt, and to enforce the liens created by this Declaration in favor of the Association by foreclosure of the continuing liens in the same form of action as is then provided for the foreclosure of a mortgage on real property. The liens provided for in this Declaration shall be for the benefit of the Association as a corporate entity, and the Association shall have the power to bid

in at any lien foreclosure sale and to acquire, hold, lease, mortgage, and convey the Lot or Living Unit foreclosed against.

4.10 Lien to Secure Payment of Assessments. Declarant hereby creates in the Association perpetually the power to create a lien in favor of the Association against each Lot and Living Unit, to secure to the Association the payment to it of all assessments, interest, costs, and attorneys fees; and Declarant hereby subjects all Lots and Living Units perpetually to such power of the Association. Such lien shall arise in accordance with the terms of this Declaration without the necessity of any further action by the Association, and any such lien when created, shall be a security interest in the nature of a mortgage in favor of the Association. Such lien shall become a continuing lien in the amount stated in the assessment from the time of the assessment, but expiring prorata as the assessment payments are made, and shall also be the personal obligation of the person or entity who is the Owner of the Lot or Living Unit at the time of the assessment. The personal obligation to pay a prior assessment shall not pass to successors in interest unless expressly assumed by them; provided, however, that in the case of a sale or contract for the sale of any Lot or Living Unit which is charged with the payment of an assessment, the person or entity who is the Owner immediately prior to the date of such sale shall be personally liable for the amounts of the monthly installments due prior to said date, and the new Owner shall be personally liable for monthly installments becoming due on or after such date. The foregoing limitation on the duration of the personal obligation of an Owner to pay assessments shall not, however, affect the validity or duration of the continuing lien for unpaid assessments against the respective Lot or Living Units.

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

4.12 Reserves for Replacement. As a common expense the Association shall establish and maintain a reserve fund for replacement of the Common Areas and any improvements thereon, or on planter strips and entry signs, by the allocation and payment monthly to such reserve fund of an amount to be designed from time to time by the Association. Such fund shall either be deposited with a banking institution, the accounts of which are insured by any state or by any agency of the United States of America or, in the discretion of the Association, be invested in obligations of,

or fully guaranteed as to principal by, the United States of America. The reserve fund shall be expended only for the purpose of affecting the replacement of the Common Areas and any improvements thereon, developed as a part of Elk Run, and for start-up expenses and operating contingencies of a nonrecurring nature. The Association may establish such other reserves for such other purposes as it may from time to time consider to be necessary or appropriate. The proportional interest of any Owner in any such reserves shall be considered an appurtenance of his Lot or Living Unit and shall not be separately withdrawn, assigned, or transferred, or otherwise separated from the Lot or Living Unit to which it appertains and shall be deemed to be transferred with such Lot or Living Unit.

## ARTICLE 5

### SUBORDINATION OF LIENS

5.1 Intent of Provisions. The provisions of this Article 5 apply for the benefit of each Mortgagee who lends money for purposes of construction or to secure the payment of the purchase price of a Lot or Living Unit.

5.2 Mortgagee's Non-Liability. The holder of a Mortgage shall not, by reason of the security interest only, be liable for the payment of any assessment or charge, nor for the observance or performance of any covenant or restriction, excepting only those enforceable by equitable relief and not requiring the payment of money, and except as hereafter provided.

5.3 Mortgagee's Rights During Foreclosure. During the pendency of any proceeding to foreclose a Mortgage, including any period of redemption, the holder of the Mortgage, or the receiver, if any, may exercise any or all of the rights and privileges of the Owner of the encumbered Lot or Living Unit, including but not limited to the right to vote in the Association to the exclusion of the Owner's exercise of such rights and privileges.

5.4 Mortgagee as Owner. At such time as a Mortgagee shall become the record Owner of the Lot or Living Unit previously encumbered by the Mortgage, the Mortgagee shall be subject to all of the terms and conditions of this Declaration, including the obligation to pay for all assessments and charges in the same manner as any Owner.

5.5 Mortgagee's Title Free and Clear of Liens. A Mortgagee or other secured party acquiring title to a Lot or Living Unit through foreclosure, suit, deed of trust sale, deed in lieu of foreclosure, or equivalent method, shall acquire title to the encumbered Lot or Living Unit free and clear of any lien authorized by or arising out of the provision of this Declaration, insofar as

such lien secures the payment of any assessment or charge installment due but unpaid before the final conclusion of any such proceeding, including the expiration date of any period of redemption. The Association may treat any unpaid assessments against a Lot or Living Unit foreclosed against as a common expense, in which case it shall prorate such unpaid assessments among the remaining Lots and Living Units, and each such remaining Lot and Living Unit shall be liable for its prorated share of such expense in the same manner as for any other assessment.

5.6 Survival of Assessment Obligation. After the foreclosure of a security interest in a Lot or Living Unit, any unpaid assessments shall continue to exist and remain as a personal obligation of the Owner against whom the same was levied, and the Association shall use reasonable efforts to collect the same from such Owner.

5.7 Subordination of Assessment Liens. The liens for assessments provided for in this Declaration shall be subordinate to the lien of any Mortgage or other security interest placed upon a Lot or Living 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. The sale or transfer of any Lot or Living Unit or any interest therein shall not affect the liens provided for in this Declaration except as otherwise specifically provided for herein, and in the case of a transfer of a Lot or Living Unit for purposes of realizing a security interest, liens shall arise against the Lot or Living Unit for any assessment payments coming due after the date of completion of foreclosure (including the expiration date of any period of redemption).

## ARTICLE 6

### USE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

6.1 Authorized Uses. Elk Run shall be used solely for the uses authorized in the Master Plan, as amended from time to time. Such uses may include, but are not limited to, residential, and active and passive recreational uses. No Lot or Living Unit shall be further subdivided without prior approval conferred by Association Action.

6.2 Approval of Building or Clearing Plans Required. No Living Unit, building, fence, wall or other structure shall be commenced, erected, or maintained upon a Lot or any other portion of Elk Run, nor shall any exterior addition to or change or alteration therein be made, nor shall a Lot be cleared or excavated for use, nor shall any tree of 6 inches or more diameter on any Lot, measured one foot above ground level, be cut, until after the details and written plans and specifications showing the nature,

kind, shape, height, materials, colors, and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to the harmony of external design and location in relation to surrounding structures, vegetation, and topography. In the event said Architectural Control Committee fails to approve or disapprove such design or location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Section will be deemed to have been fully complied with.

6.3 Leasing Restrictions. No Lot or Living Unit may be leased or rented by any party for a period of fewer than thirty (30) days, nor shall less than the whole of any Lot or Living Unit be leased or rented. Each lease or rental agreement shall be in writing and shall by its terms provide that it is subject in all respects to the provisions of the Declaration, Bylaws and Association Rules ("Governing Documents"). Any failure by a lessee to comply with the terms of the Governing Documents shall be a default under the lease, whether or not it is so expressed therein. Other than the foregoing, there is no restriction on the right of any Owner to lease his Lot or Living Unit.

6.4 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept; provided, however, that dogs, cats, or other conventional household pets may be kept if they are not kept, bred, or maintained for any commercial purposes. No domestic pet may be kept if it is a source of annoyance or a nuisance. The Association shall have the authority to determine whether a particular pet is a nuisance or a source of annoyance, and such determination shall be final and conclusive. Pets shall be attended at all times and shall be registered, licensed, and inoculated from time to time as required by law. When not confined to the Owner's Lot or Living Unit, pets within Elk Run must be accompanied by a responsible person. Efforts should be made by the person accompanying an animal to remove animal waste deposited on lawns and right-of-way.

6.5 Commercial Uses. No commercial enterprise, including itinerant vendors, shall be permitted on any Lot or in any Living Unit; provided, however, that the Association may permit specified home occupations to be conducted if allowed by law and if such occupation will not, in the reasonable judgment of the Association, cause traffic congestion or other disruption of the Elk Run community.

6.6 Recreational Vehicles. No boats, trailers or recreational vehicles shall be stored or kept on any lot for a period of more than 24 hours, unless said boat, trailer or R.V. is enclosed or screened such that it is not visible from any street or any other lot in the plat. The streets within Elk Run shall not be used for overnight parking of vehicles other than private

automobiles. This covenant specifically restricts street parking of boats, trailers and other R.V. vehicles.

6.7 Garbage. No garbage, refuse, or rubbish shall be deposited or left in Elk Run, unless placed in a suitable covered container. Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No incinerator shall be kept or maintained, and no burning of any trash, refuse, or scrap of any kind shall be permitted.

6.8 Utilities Underground. Except for hoses and the like which are reasonably necessary in connection with normal lawn maintenance, no water pipe, sewer pipe, gas pipe, drainage pipe, telephone, power, or television or similar transmission line shall be installed or maintained above the surface of the ground.

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

6.10 Signs. Except for entrance, street, directional, traffic control, and safety signs, and such promotional signs as may be maintained by Declarant and Participating Builders, or agents or contractors thereof, or the Association, no signs or advertising devices of any character shall be erected, posted, or displayed upon, in, or about Elk Run; provided, however, that one temporary real estate sign not exceeding 6 square feet in an area may be erected upon any Lot or attached to any Living Unit placed upon the market for sale or lease. Any such temporary real estate sign shall be removed promptly following the sale or rental of such Lot or Living Unit. This prohibition shall not prohibit entrance signs identifying the Elk Run Community.

6.11 No Obstruction of Easements. No structure, planting, or other material shall be placed or permitted to remain upon Elk Run which may damage or interfere with any easement or the installation of maintenance of utilities, or which may reasonably change, obstruct, or retard direction of flow of any drainage channels.

6.12 Antennae. No external shortwave or citizens' band antennae, free-standing or roof antenna towers, or satellite reception dishes of any kind shall be permitted in Elk Run.

6.13 Owners' Maintenance Responsibilities. The maintenance, upkeep, and repair of individual Lots and Living Units shall be the sole responsibility of the individual Owner thereof, and in no way shall it be the responsibility of the Association, its agents, subagents, officers or directors. Owners shall maintain their Lots and Living Units and any and all appurtenances thereto in good order, condition, and repair, and in a clean, sightly, and sanitary condition at all times. Without limitations to the foregoing, each Owner shall be obligated to promptly complete and maintain the

landscaping on his Lot in a healthy and attractive state and in a manner comparable to that on the other Lots of Elk Run. After notice to an Owner from the Association of such Owner's failure to so maintain his landscaping, and after approval of a two-thirds majority vote by the Board or other Association committee, to which such oversight responsibility shall have been delegated, the Association shall have the right, through its agents and employees, to enter upon any Lot which has been found to violate the foregoing standards in order to repair, maintain, and/or restore the landscaping to such standards. The cost of such work shall be a special assessment on such Owner and his Lot only, and the provisions of this Declaration regarding collection of assessments shall apply thereto.

6.14 Weapons. No firearms of any kind or nature, including rifles, handguns, bows, slingshots, BB guns, slings, traps, or any other like weapon, shall be used or discharged within Elk Run except by authorized governmental officials. No hunting shall be permitted within Elk Run.

6.15 Sales and Construction Facilities. Despite any other provisions of this Declaration, it is expressly permissible for Declarant and Participating Builders, or agents or contractors thereof, to maintain on any portion of Elk Run owned by Declarant or Participating Buildings such facilities as in the sole opinion of Declarant may be reasonably required, convenience, or incidental to the construction and sale of Lots or Living Units, including without limitation business offices, storage areas, construction yards, signs, model Living Units, or sales offices. This right shall terminate upon the sale of all Lots in Elk Run by Declarant and Participating Buildings.

6.16 Nuisances Prohibited. No noxious or offensive trade or activity shall be conducted in any portion of Elk Run, nor shall anything be done or maintained therein in derogation or violation of the laws of the State of Washington, King County, or any other applicable governmental entity. Nothing shall be done or maintained on any portion of Elk Run which may be or become an annoyance or nuisance to the neighborhood or other Owners or detract from the value of the Elk Run community. The Association shall determine by Association Action whether any given use of a Lot or Living Unit reasonably interferes with the rights of the other Owners to the use and enjoyment of their respective Lots and Living Units, or of the Common Areas, and such determination shall be final and conclusive.

6.17 Fences. No fence, wall, hedge or mass planting, other than a foundation planting, shall be permitted to extend nearer to any street than the minimum setback line required; provided, further, that no fence, wall, hedge or mass planting shall extend higher than five feet above the ground. The finished side of all fences shall face the exterior of the lot.



6.18 Preservation of Trees. On all lots not abutting the Elk Run Golf Course, no tree may be cut if it is greater than four inches in diameter measured 54 inches above existing grade ("protected trees"); provided, however, that such protected trees may be removed if either (1) the removal of such tree is necessary to construct a Living Unit on a Lot or (2) such tree, in the opinion of a licensed tree removal expert is either diseased or a safety hazard. The foregoing restriction and exceptions shall also apply to all Lots abutting the Elk Run Golf Course, with the only difference being that the definition of a "protected tree" on such Lots abutting the Elk River Golf Course shall mean trees greater than two inches in diameter measured 54 inches above existing grade. No Protected Tree may be limbed higher than 96 inches above existing grade.

6.19 Reservation of Rights for Adjoining Property. Declarant anticipates that either it, an affiliate or successor may ultimately develop a single family subdivision on property adjoining the subject property governed by this document. Declarant therefore has reserved in the plat map for this Elk Run Division No. 3 an easement for the benefit of such adjoining property over, under and across said Elk Run Division No. 3. Such easement will be for the purpose of extending the public street located in said Elk Run Division No. 3 to provide ingress and egress to such adjoining property. The exact location of such easement is shown in the Plat Map for this Elk Run Division No. 3.

## ARTICLE 7

### COMMON AREAS

7.1 Title to Common Areas. Declarant shall, prior to the conveyance of the first Lot, convey to the Association the Common Areas, if any, designated on the final plat or other recorded map. Upon its creation as a Common Area, every Common Area shall be subject to an easement of common use and enjoyment in favor of the Association and every Owner, their heirs, successors, and assigns, in accordance with the terms and conditions of the Governing Documents. Such easement shall be appurtenant to and shall not be separated from ownership of any Lot or Living Unit and shall not be assigned or conveyed in any way except upon the transfer of title to such Lot or Living Unit, and then only to the transferee of such title and shall be deemed so transferred and conveyed whether or not it shall be so expressed in the deed or other instrument conveying title. All Common Areas when conveyed to the Association shall be free and clear of financial liens and encumbrances.

7.2 Owners' Common Rights. Upon the addition of additional properties to Elk Run, all Owners shall have equal rights to use the Common Areas in all the property unless certain Common Areas are specifically designated as limited Common Areas on the face of

a Plat or other recorded instrument adding the additional property or in an amendment to this Declaration or in a Supplementary Declaration. All easements for ingress, egress, utilities, and use of facilities, unless otherwise specifically limited, shall exist in favor of all Owners.

7.3 Maintenance of Common Areas. The Association shall maintain, repair, replace, improve, and otherwise manage all of the Common Areas, if any, so as to keep them in good repair and condition and shall conduct such additional maintenance, repair, replacement, construction, or reconstruction as may be determined pursuant to Association Action to promote the recreation, health, safety, and welfare of the Owners. Any action necessary or appropriate to the maintenance and upkeep of the Common Areas, the landscaping, irrigation, sewer and water systems, all buildings, gas, telephone, or electrical or television facilities applicable to the Common Areas shall be taken by the Association only. The expense of maintaining, repairing, replacing, improving and managing any Common Area shall be shared by Owners on the basis described in Section 4, regardless of where in Elk Run such Common Area is located. This obligation shall include the expense of repairing, replacing, improving and managing any entry signs, light poles, guard houses, landscaping or other improvements located or constructed on either any Common Area or any property (including wetlands) dedicated or conveyed to King County by Declarant.

7.4 Maintenance of Planter Strips and Signs. The Association shall also maintain, repair, replace, improve and otherwise manage planters and pedestrian path(s) and bridge(s) (if any) located in Elk Run as well as all entrance and other signs identifying Elk Run in the same manner as specified in Paragraph 7.3 above.

7.5 Description of Native Growth Protection Easement Areas. Native Growth Protection Easement Areas may include, but are not limited to, portions of Lots located in the plat, certain Common Areas that have as one of their major functions the natural retention and transmission of storm water drainage, and major hydrological features of Elk Run, such as certain valuable wetlands; provided, however, that no area shall be deemed to be a Native Growth Protection Easement Area unless it is so designated on the face of a plat or other recorded instrument adding additional properties.

7.6 Prohibitions Within Native Growth Protection Easements. Within the boundaries of Native Growth Protection Easements, no tree or significant ground cover shall be cut, removed, or destroyed, except as specifically provided herein, but such areas shall instead be kept and maintained in their native, undeveloped state. No structure, stairway, patio, building, or other improvement ("Development" herein), shall be constructed within a Native Growth Protection Easement except for the following

specified Developments, which shall be constructed only by Declarant or the Association:

7.6.1 Recreational areas, streets, and other vehicular access ways, pedestrian, and bicycle paths, and other walks, driveways, and utility service paths, if shown on a final plat or other recorded map or plan adding additional properties;

7.6.2 Utility transmission lines, including sanitary sewer, water, natural gas, telephone, cable, television, or other utility lines, together with facilities and appurtenances related thereto; and

7.6.3 Storm water retention/detention ponds or basins, storm water drainage lines, and all other elements, appurtenances, and facilities of the storm water drainage system.

7.7 Pruning and Vegetation Removal in Native Growth Protection Easement Areas. Pruning of trees for view maintenance or solar access within a Native Growth Protection Easement Area located on an Owner's Lot shall be permitted only upon prior written approval of the Association, which approval shall not be given unless the King County Building and Land Division, or its successor agency, has first approved this pruning in writing to the lot owner and the Association after having been applied for by the lot owner. Such approval shall be granted only after the Association has determined that the proposed pruning will not endanger soil stability, will not defeat the intent or purposes meant to be served by the establishment of Native Growth Protection Easement Areas, and will not adversely affect the tree or trees to be pruned. The Association shall require that any such pruning be done in a competent and workmanlike manner, and the Association may require that such pruning be done by a professional gardening service or licensed tree surgeon. Trees and significant ground cover within a Native Growth Protection Easement located on a Lot may be removed by the Owner of such Lot if such action is necessary to remove a clear and present danger to life or property, and dead, dying, or diseased trees and ground cover, or trees and ground cover which present a fire hazard, may also be removed; provided, however, that prior written approval of the Association and King County Building and Land Development shall be obtained before any such removal. Trees and significant ground cover within Native Growth Protection Easement Areas located in Common Areas may be pruned, cut, or removed only by the Association and only after prior written approval of such action by the Association and King County Building and Land Development. Pruning, cutting, or removal of trees or significant ground cover within Native Growth Protection Easement Areas in Common Areas shall be subject to the same conditions and restrictions on such actions as imposed above for such actions within Native Growth Protection Easements on Lots.

7.8 Ownership of Golf Course. Nothing herein shall create any rights in an owner to use or enter upon or across the golf course located adjacent to the property. Such golf course is owned by a third party not a party to this Declaration, and such property shall be owned and operated free of any right or restriction set forth in this document. Any owner's right to use the golf course shall be expressly subject to complying with all membership and/or use rules and regulations as may be established by the owner of such golf course. Further, nothing herein shall require that such golf course continue to be operated as a golf course in the future.

## ARTICLE 8

### INSURANCE; CASUALTY LOSSES; CONDEMNATION

8.1 Insurance Coverage. The Association shall obtain and maintain at all times as a common expense a policy or policies and bonds written by companies licensed to do business in Washington required to provide:

8.1.1 Insurance against loss or damage by fire and other hazards covered by the standard extended coverage endorsement in an amount as near as practicable to the full insurable replacement value (without deduction for depreciation) of the Common Areas, with the Association named as insured as trustee for the benefit of Owners and Mortgages as their interests appear, or such other fire and casualty insurance as the Association shall determine will give substantially equal or greater protection insuring the Owners and their Mortgagees, as their interests may appear.

8.1.2 General comprehensive liability insurance insuring the Association, the Owners, Declarant, and any managing agent, against any liability to the public or to the Owners and their guests, invitees, licensees, or tenants, incident to the ownership or use of the Common Areas.

8.1.3 Worker's compensation insurance to the extent required by applicable laws.

8.1.4 Fidelity coverage naming the Association as an obligee to protect against dishonest acts by the Board, Association officers, committees, managers, and employees and any of them, and all others who are responsible for handling Association funds, in an amount equal to three months' general assessments on all Lots and Living Units, including reserves.

8.1.5 Insurance against loss of personal property of the Association by fire, theft, and other losses with deductible provisions as the Association deems advisable.

8.1.6 Such other insurance as the Association deems advisable; provided, that notwithstanding any other provisions herein, the Association shall continuously maintain in effect casualty, flood, and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for similar projects established by Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Association, and Veterans Administration, so long as any of them is a Mortgagee or Owner, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Veterans Administration.

8.2 Casualty Losses. In the event of substantial damage to or destruction of the any of the Common Areas, the Association shall give prompt written notice of such damage or destruction to the Owners and to the holders of all First Mortgages. Insurance proceeds for damage or destruction to any part of the Common Areas shall be paid to the Association as a trustee for the Owners or its authorized representative, including an insurance trustee, which shall segregate such proceeds from other funds of the Association.

8.3 Condemnation. In the event any part of the Common Areas is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, the Association shall give prompt notice of any such proceeding or proposed acquisition to the Owners and to the holders of all First Mortgages who have requested from the Association notification of any such proceeding or proposed acquisition. All compensation, damages, or other proceeds therefrom, shall be payable to the Association.

## ARTICLE 9

### ENFORCEMENT

9.1 Right to Enforce. The Association, Declarant, or any Owner, shall have the right to enforce, by any appropriate proceeding at law or in equity, all covenants, conditions, restrictions, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure or forbearance by any person or entity so entitled to enforce the provisions of this Declaration to pursue enforcement shall in no event be deemed a waiver of the right to do so thereafter.

9.2 Remedies Cumulative. Remedies provided by this Declaration are in addition to, cumulative with, and are not in lieu of, other remedies provided by law. There shall be, and there is hereby created and declared to be, a conclusive presumption that

any violation or breach or attempted violation or breach of the covenants, conditions, and restrictions herein cannot be adequately remedied by an action at law or exclusively by recovery of damages.

9.3 Covenants Running with the Land. The covenants, conditions, restrictions, liens, easements, enjoyment rights, and other provisions contained herein are intended to and shall run with the land and shall be binding upon all person purchasing, leasing, subleasing or otherwise occupying any portion of Elk Run, their heirs, executors, administrators, successors, grantees, and assigns. All instruments granting or conveying any interest in any Lot or Living Unit and all leases or subleases shall refer to this Declaration and shall recite that it is subject to the terms hereof as if fully set forth herein. However, all terms and provisions of this Declaration are binding upon all successors in interest despite an absence of reference thereto in the instrument of conveyance, lease, or sublease.

## ARTICLE 10

### AMENDMENT AND REVOCATION

10.1 Amendment by Declarant or Association. This Declaration may be amended by an instrument executed by the Association for and on behalf of the Owners, provided, however, that such amendments shall have received the prior approval of a vote of the Owners having ninety percent (90%) of the total outstanding votes in the Association.

10.2 Effective Date. Amendments shall take effect only upon recording with the King County Department of Records and Elections or any successor recording office.

## ARTICLE 11

### GENERAL PROVISIONS

11.1 Taxes. Each Owner shall pay without abatement, deduction, or offset, all real and personal property taxes, general and special assessments, including local improvement assessments, and other charges of every description levied on or assessed against his Lot or Living Unit, or personal property located on or in the Lot or Living Unit. The Association shall likewise pay without abatement, deduction, or offset, all of the foregoing taxes, assessments, and charges levied or assessed against the Common Areas.

11.2 Transfer of Certain Utilities, Utility Repair Easement. Declarant, and the Association after conveyance thereto, may transfer and convey any sewer, water, storm drainage, or other general utility in Elk Run to a public body for ownership and maintenance, together with any necessary easements relating thereto, and each Lot and Living Unit shall become burdened thereby.

11.3 Non-Waiver. No waiver of any breach of this Declaration shall constitute a waiver of any other breach, whether of the same or any other covenant, condition, or restriction.

11.4 Attorneys' Fees. In the event of a suit or action to enforce any provision of this Declaration or to collect any money due hereunder or to foreclose a lien, the unsuccessful party in such suit or action shall pay to the prevailing party all costs and expenses, including title reports, and all attorneys' fees that the prevailing party has incurred in connection with the suit or action, in such amounts as the court may deem to be reasonable therein, and also including all costs, expenses, and attorneys' fees incurred in connection with any appeal from the decision of a trial court or any intermediate appellate court.

11.5 No Abandonment of Obligation. No Owner, through his non-use of any Common Area, or by abandonment of his Lot or Living Unit, may avoid or diminish the burdens or obligations imposed by this Declaration.

11.6 Interpretation. The captions of the various articles, sections and paragraphs of this Declaration are for convenience of use and reference only and do not define, limit, augment, or describe the scope, content or intent of this Declaration or any parts of this Declaration. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes a legal entity when the context so requires. The single number includes the plural whenever the context so requires.

11.7 Severability. Invalidation of any one of these covenants, conditions, restrictions, easements, or provisions by judgment or court order shall in no way affect any other of the same, all of which shall remain in full force and effect.

11.8 Notices. All notices, demands, or other communications ("Notices") permitted or required to be given by this Declaration shall be in writing and, if mailed, postage prepaid by certified or registered mail, return receipt requested (if a Notice to Declarant, the Association, or to fewer than all Owners), or if mailed first-class postage prepaid (if a Notice to all Owners), shall be deemed given three days after the date of mailing thereof, or on the date of actual receipt, if sooner; otherwise, Notices shall be deemed given on the date of actual receipt. Notices shall

be addressed to the last known address of the addressee. Notice to any Owner may be given at any Lot or Living Unit owned by such Owner; provided, however, that any Owner may from time to time by Notice to the Association designate such other place or places or individuals for the receipt of future Notices. If there is more than one Owner of a Lot or Living Unit, notice to any one such Owner shall be sufficient. The address of Declarant and of the Association shall be given to each Owner at or before the time he becomes an Owner. If the address of Declarant or the Association shall be changed, notice shall be given to all Owners.

11.9 Applicable Law. This Declaration shall be construed in all respects under the laws of the State of Washington.

11.10 Consent to Development of Golf Course--Agreement to Forbear. The Association and each Owner hereby consents by acquiring any Lot, to all future modifications to, and expansions of, the Elk Run Golf Course located adjacent to the Property. The Association and Owners acknowledge that such expansion may include the development of nine (9) additional holes on property leased from King County directly east of the existing Elk Run Golf Course. To the fullest extent possible, the Association and each Owner agrees not to protest any action taken by the owner of the Elk Run Golf Course to accomplish either such expansion or any other expansion, modification or reconfiguration of any portion of such golf course, and shall not object at public hearings, file any lawsuits or take any other action which in any way impedes, impairs or delays the expansion, modification or reconfiguration of such golf course.

Each Owner hereby covenants and agrees, on behalf of himself and his heirs, successors, assigns and tenants of his Lot, to forebear from taking any action, including commencement of legal action, which would delay or prevent the operation of the Summit Pit Mining Operation ("Summit Pit") as a gravel pit, specifically including, but not limited to, protesting issuance of grading or mining permits, or any renewals thereof, on Summit Pit. This Agreement to Forbear shall be effective for so long as a public golf course is operated in the approximately 300 foot buffer zone around the perimeter of Summit Pit. Summit Pit is owned by King County and is located in the Northwest corner of Section 34, Township 22 North, Range 6 East.

11.11 Consent to Golf Course Fence and Driving Range; Waiver of Damages. The Association hereby consents to, and each Owner hereby consents by acquiring any Lot, to the future construction by the Owner of the Elk Run Golf Course adjoining the Property of any fence on the Elk Run Golf Course. The Association Owners acknowledge that the decision by the Owner of the Elk Run Golf Course to so construct a fence shall be within the sole discretion of the Owner of the Elk Run Golf Course, and the Association and Owners agree to take no action to either prevent, or delay in any



way the construction of such fence, although such fence may partially obstruct the view of the Elk Run Golf Course from lot.

Each Owner hereby further waives all claims or causes of action either now existing or which may hereafter arise against either a) Declarant, b) all future owners of all or any portion of the Elk Run Golf Course and c) any customer, invitee or user of the Elk Run Golf Course, as a result of any damage to person or property caused by golf balls coming from the Elk Run Golf Course. Each Owner acknowledges that they hereby assume all risks associated with owning property adjacent to a golf course and that damage to their lots, and any improvements thereon, may occasionally occur.

Each Owner hereby further acknowledges that a driving range is currently located on or adjacent to the Elk Run Golf Course, and consents to the operation of such driving range including the use of lights for such driving range during evening hours. Each Owner acknowledges that they hereby assume all risks associated with owning property adjacent or near to such driving range and that damage to their lots, and any improvements thereon, may occasionally occur from flying golf balls.

Each Owner further agrees to fully supervise their pets and children so as to avoid (1) any trespassing onto the Elk Run Golf Course by pets or children, (2) the allowance or occurrence of any pet waste or dog excrement on any part of the Elk Run Golf Course and (3) any children playing around, on or in any hazardous conditions located on the Elk Run Golf Course including, but not limited to, ponds, machinery, sand traps, etc.

11.12 Waiver Regarding Electrical Distribution Lines. A portion of the Property including, but not limited to, Lots 1 THROUGH 8 are located under, adjacent to and/or near electrical distribution lines installed and operated by the Bonneville Power Administration (or its successor). Each Owner hereby fully and forever holds both Declarant and the builder of any house in Elk Run, harmless and waives all claims or causes of action of any nature whatsoever against either Declarant or any other party, hereafter arising as a result of any damage or injury to person or property (including diminished property value) caused by or connected in any way with the existence or operation of such electrical distribution lines and all related improvements. Each Owner, by purchasing a Lot in Elk Run, acknowledges that they thereby assume all risk associated with owning any property or living either under, adjacent to and/or near such electrical distribution lines.

IN WITNESS WHEREOF, THE UNDERSIGNED DECLARANT HAS EXECUTED THIS DECLARATION THE DAY AND YEAR FIRST ABOVE WRITTEN.

COVINGTON GREEN ASSOCIATES II  
LIMITED PARTNERSHIP,

By: DRC, Inc., its General Partner

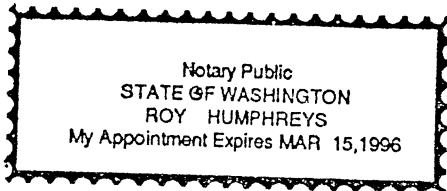
By:   
Its President

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Doreen Connors is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the president of DRC, Inc., the general partner of COVINGTON GREEN ASSOCIATES II LIMITED PARTNERSHIP, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 2-28-94

[SEAL OR STAMP]



[Signature]  
NOTARY PUBLIC in and for the State  
of Washington, residing at  
KIMWOOD

My Commission Expires 3-15-96