

After Recording Return to:
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Thurston County Treasurer

Real Estate Excise Tax paid None

By D. Dille Deputy

**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, EASEMENTS & RESTRICTIONS FOR
THE OVERLOOK AT SOMERSET HILL**

Grantor: Carbon River Construction Company, a Washington corporation

Grantee: The Overlook at Somerset Hill

Legal Description (abbreviated): Tract "V" of the Highlands at Somerset Hill, per plat recorded May 31, 2006 under Thurston County Auditor's Recording No. 3836480 and amendment thereto recorded under Thurston County Auditor's Recording No. 3839660, a portion of Section 27, Township 18 North, Range 2 West of the W.M.

Assessor's Tax Parcel No.: 5431 0000 002

**DECLARATION OF PROTECTIVE
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EASEMENTS & RESTRICTIONS**

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03/19/2008 10:32 AM Easement
Thurston County Washington
CITY OF TUMWATER

Page 1 of 47



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03/19/2008 10:32 AM Covenant
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Page 1 of 47



TABLE OF CONTENTS

THE OVERLOOK AT SOMERSET HILL DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS EASEMENTS RESTRICTIONS

<u>Article</u>	<u>Page</u>
One: Definitions	2
Two: Management of Common Areas and Enforcement of Declaration	6
Three: Membership	7
Four: Voting Rights	7
Five: Common Areas	7
Six: Maintenance and Common Expenses	8
Seven: Assessments	16
Eight: Collection of Assessment	18
Nine: Building, Use and Architectural Restrictions	19
Ten: Land Use Restrictions	24
Eleven: Easements	36
Twelve: Mortgagee Protection	36
Thirteen: Management Contracts	38
Fourteen: Insurance	38
Fifteen: Rules and Regulations	39
Sixteen: Remedies and Waiver	39
Seventeen: Condemnation	40
Eighteen: General Provisions	40
Nineteen: Amendment and Revocation	43

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, EASEMENTS & RESTRICTIONS

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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, EASEMENTS & RESTRICTIONS FOR THE OVERLOOK AT SOMERSET HILL

This Declaration of Covenants, Conditions, and Restrictions is made on the day and year below written by Carbon River Construction Company, a Washington corporation.

RECITALS:

A. Declarant owns certain real property situated in the City of Tumwater, Thurston County, Washington, and shall constitute Lots 1 through 138 of the plat of The Overlook at Somerset Hill recorded with the Thurston County Auditor (hereinafter referred to as "The Overlook at Somerset Hill").

B. Declarant hereby imposes covenants, conditions, restrictions and easements upon the entire property identified above and is part of a comprehensive plan of development of the property, which shall be for the mutual benefit of the current and future Owners of Lots within the property and which will operate as binding covenants which will run with the land in perpetuity.

DECLARATION

The Grantor, as the Declarant, does hereby declare that The Overlook at Somerset Hill shall be held, sold, used and conveyed subject to the provisions of this Declaration. This Declaration shall be binding upon all parties having an interest in The Overlook at Somerset Hill, their heirs, successors and assigns and shall inure to the benefit of each Owner and run with title to The Overlook at Somerset Hill. This Declaration is being made for the purpose of enhancing and protecting the value, the desirability and attractiveness of the real property for the benefit of said property and its Owners. The covenants, restrictions, reservations and conditions, contained in this Declaration shall run with the land as easements and equitable servitudes.

ARTICLE ONE: 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:

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Except as set forth herein to the contrary, all capitalized terms have the same definitions as set forth herein.

1. "Articles" shall mean the Association's Articles of Incorporation and any amendments.

2. "Association" shall mean The Overlook at Somerset Hill Homeowners Association formed as a nonprofit corporation for the purpose of administering this Declaration.

3. "Board" or "Board of Directors" shall mean the Board of Directors of the Association. For purposes of exercising the powers and duties assigned in this Declaration to the Board during the Development Period, this term shall also mean the "Temporary Board" or "Declarant" as provided in this Declaration unless the language or content clearly indicates otherwise.

4. "Builder" shall mean any entity which purchases multiple Lots from the Declarant for the purposes of constructing residences thereon. Until such time as the Declarant has sold all the Lots and as designated by the Declarant, the Builder, subject to such designation, may jointly exercise all rights reserved to the Declarant as set forth in this Declaration together with any other Builders until the Builder has sold all of the Lots. At any time as such party has sold or conveyed all the Lots held by that entity then that party shall no longer be considered a Builder or Declarant.

5. "Bylaws" shall mean the Association's Bylaws and any amendments.

6. "Common Areas" shall include but not be limited to Tracts B, C, D, E, F, and G and any private roads as designated as streets on the Plat of The Overlook at Somerset Hill. Common areas shall also mean the property both real and personal in which the Association and/or the Lot Owners have been granted easement or right of control or interest and/or management by any written instrument including this Declaration or by delineation and declaration of the same on the Plat Map recorded for The Overlook at Somerset Hill.

7. "Declaration" shall mean this Declaration of Protective Covenants, Conditions, Easements and Restrictions.

8. "Declarant" shall mean Carbon River Construction Company, a Washington corporation, or its successors and assigns, but only if the rights of Declarant as set forth in this Declaration are specifically assigned in writing to the successors.

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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9. "Declarant Reservations" shall mean specific rights for easements which the Declarant reserves for the benefit of itself or its assigns relative to the use of any of the common areas as further delineated in this Declaration.

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 100% of the Lots have been sold by the Declarant or a Builder 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. In the event any loans with respect to any of the Lots are insured through the Federal Housing Administration (FHA), the Veteran's Administration (VA), the Federal National Mortgage Association (FNMA), or the Federal Home Loan Mortgage Corporation, then in that event, the Development Period shall terminate at such time as 75% of all of the Lots have been sold and closed to other than builders.

11. "Drainage Facilities" shall mean, collectively, all drain pipes, detention ponds, sumps, infiltration or dispersion systems, swales, culverts, ditches and other drainage facilities and improvements located in the easement areas. The materials, design, configurations and specifications of the drainage facilities, and the scheduling and phasing for initial installation of the drainage facilities, shall be determined by Declarant in its sole and absolute discretion.

12. "Housing Unit" shall mean the building occupying a Lot.

13. "Improvements" shall mean, collectively, all improvements, additions, and modifications to the property that are included within the definition of "roadways," "utility facilities," "drainage facilities," or rockeries, as set forth herein, and all improvements, structures, facilities, and equipment related thereto. The design, configurations, and specifications of all improvements, and the scheduling and phasing for initial installation of all improvements, shall be determined by the Declarant in its sole and absolute discretion.

14. "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 note or deed of trust against a Lot or housing unit thereon.

15. "Lot" shall initially refer to one of the Lots 1 through 138 of the Plat of The Overlook at Somerset Hill.

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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16. "Member" shall mean every person or entity that holds a membership in the Association.

17. "Mortgage" shall mean a mortgage or deed of trust encumbering a Lot or other portion of the real property.

18. "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.

19. "Person" shall mean a natural person, a corporation, a partnership, trustee or other legal entity.

20. "Real Property" that is subject to this Declaration is legally described as Lots 1 through 138 of the Plat of The Overlook at Somerset Hill.

21. "Roadways" shall mean, collectively, the improved private roadways located in the easement areas, and all equipment, facilities and other improvements related or appurtenant to such roadways, including without limitation (i) the roadbeds and all improvements which make up the road surface and substructure; (ii) all curbs, gutters, sidewalks, improved walkways, and paths, fences and guardrails, and culverts and ditches in or around the areas of the roadbeds; (iii) all slopes, cuts, fills and other improvements necessary to protect the roads located in the easement areas, or which may extend outside of the easement areas into areas adjacent to such roads; and (iv) all berms, levies and regraded surfaces that make up, support, or are necessary to the functioning of the roads. The surface, materials, design, configurations, and specifications of the roadways, and the scheduling and phasing for initial installation of the roadways, shall be determined by Declarant, in its sole and absolute discretion.

22. "Sale" or "Sold" 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.

23. "Utility Facilities" shall mean, collectively, all lines, pipes, conduits, cables, pumps, valves, equipment and other facilities and improvements located in the easement areas, necessary or useful in the delivery of any utility services to one or more Lots, including without limitation, electric power, natural gas, telephones, water and sewer, storm drainage, water runoff, optical fiber, cable television and other communications or information services. The materials, design, configuration and specifications of the utility

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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facilities, and the scheduling and phasing for initial installation of the utility facilities shall be determined by Declarant, in its sole and absolute discretion.

ARTICLE TWO: MANAGEMENT OF COMMON AREAS AND ENFORCEMENT OF DECLARATION

Section One: Development Period. During the Development Period the Declarant shall appoint the sole director of the Association. The Declarant may also appoint members of the Association to other committees or positions in the Association as the Declarant deems appropriate to serve at the Declarant's discretion and may assign such responsibilities, privileges, and duties to the Members as the Declarant determines for such time as the Declarant determines. Any member appointed by the Declarant during the Development Period may be dismissed at the Declarant's discretion. At such time as the Declarant has sold and conveyed all Lots, then the Declarant may resign as a director of the Association and from any other committees for the duration of the development.

At such time as the Declarant has sold and conveyed all Lots then any Builder as defined in this Agreement for the duration of the Development Period shall be entitled to appoint a director to the Association.

Section Two: Purpose of Development Period. The Declarant's and Builder's control of the Association during the Development Period is established in order to ensure that the real property and the Association will be adequately administered in the initial phases of development, ensure an orderly transition of Association operations, and to facilitate the Builders' completion of construction of housing units.

Section Three: Authority of Association After Development Period. At the expiration of Declarant's and Builder'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 its responsibilities as described in this Declaration.

Section Four: Delegation of Authority. The Board of Directors, Declarant or the Builder may delegate any of its managerial duties, powers, or functions to any person, firm, or corporation. The Board, Declarant or the Builder 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 Builder.

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, EASEMENTS & RESTRICTIONS

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Section Five: Termination of Development. Upon termination of the Development Period, the Declarant, or in the event the Declarant has resigned as a director of the association, then the Builder, in accordance with the by-laws, shall conduct by mail an election of a Board of Directors who shall then act in accordance and in connection with the terms and provisions of the Articles of Amendment of Incorporation, by-laws and this Declaration. However, in the alternative, not less than ten (10), nor more than thirty (30), days prior to the termination of the Development Period, the Declarant, or any Builder who then constitute the Board, may give written notice of termination of the Development Period to the Owner of each Lot. Said notice shall specify the date when the Development Period will terminate and that at such time a meeting of the Members shall be called in accordance with the by-laws at which time Members shall then elect directors in accordance with the terms and provisions of the Articles of Amendment of Incorporation, By-Laws and this Declaration.

ARTICLE THREE: MEMBERSHIP

Every person or entity who is an Owner of any Lot agrees to be a Member of the Association by acceptance of a deed for such Lot. Membership may not be separated from ownership of any Lot. All Members shall have rights and duties as specified in this Declaration, and in the Articles and Bylaws of the Associations.

ARTICLE FOUR: VOTING RIGHTS

Members shall be entitled to one vote for each Lot owned. No more than one vote shall be cast with respect to any Lot. The voting rights of any Member may be suspended as provided in the Declaration, or the Articles or Bylaws of the Association. Members' votes may be solicited and tabulated by mail or facsimile.

ARTICLE FIVE: COMMON AREAS

Section One: Dedication of Common Areas to Association. The Declarant hereby conveys and quit claims to the Association Tracts B, C, D, E, F and G as shown the Plat Map of The Overlook at Somerset Hill and, if necessary, the Declarant, prior to the end of Declarant's control, shall convey by Quit Claim Deed said tracts to the Association. The Association, upon recoding of the Plat Map and this Declaration, shall become exclusively liable for and shall indemnify and hold the Declarant harmless from all taxes, assessments, charges, and other liabilities which arise from the ownership of the tracts so deeded as Common Areas.

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, EASEMENTS & RESTRICTIONS

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Section Two: Common Areas. The Declarant does hereby grant and convey to The Overlook at Somerset Hill Homeowners Association, and each Lot Owner by accepting a deed of said Lot, does hereby agree that said Association shall have the sole right, management, and control of all of the common areas as defined in this Declaration as the Owner thereof. The Declarant, however, reserves for the benefit of the Declarant, its successors and assigns, those certain rights of use, ingress, egress, occupation, and control indicated elsewhere in this Declaration for the duration of the development, at which time this reservation shall cease and then be of no further force and effect. The common areas as defined previously are those tracts, private streets, and alleys as delineated on the plat together with any other real property and improvements as described herein as Common Areas together with any easements which are for the benefit of the Association or Members which are also defined as being Common Areas under the terms of this Declaration.

Section Three: Property Rights in Common Areas. The Association shall have the right and obligation to maintain improvements, vegetation, signage and utilities in and on all common areas subject to any restrictions delineated on the Plat of the real property. The Association shall have the exclusive right to use and manage the common areas in a manner consistent with the provisions as set forth on the Plat Map, this Declaration.

ARTICLE SIX: MAINTENANCE AND COMMON EXPENSES

Section One: 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 to those defined below together with all easements which are for the benefit of the Association and/or Lot Owners. These common areas include but are not limited to the following:

1. Tracts B, C, D, E, F and G are designated as open space and the ownership and maintenance shall be the responsibility of Association.
2. Tract E is a storm drainage tract and the ownership and maintenance shall be the responsibility of Association.
3. Tract G is a storm drainage and sewer tract and the ownership and maintenance shall be the responsibility of Association.

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, EASEMENTS & RESTRICTIONS

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4. All roadways which are designated as private streets on the Plat Map of The Overlook at Somerset Hill and the ownership and maintenance shall be the responsibility of Association.

5. Any pedestrian walkways as designated on the Plat.

6. All sidewalks and street lighting which may be constructed by the Declarant within the private or public road right-of-ways and the ownership and maintenance shall be the responsibility of Association, unless the sidewalks and street lighting in the public road right-of-ways shall be maintained by the City of Tumwater.

7. All perimeter and tract fences which may be constructed by the Declarant.

8. Any monument/entrance area which may be constructed by the Declarant.

9. All storm water drainage facilities which shall be constructed by the Declarant and the ownership and maintenance shall be the responsibility of Association.

10. The school bus waiting areas and shelters located within the plat and the ownership and maintenance shall be the responsibility of Association.

11. All easements which have been established for the benefit of Lot Owners or the Association or which may be delineated on the Plat of The Overlook at Somerset Hill, which easements are reserved for the benefit of all Lot Owners and/or the Association, as well as easements which are reserved for the benefit of the Association for the purpose of the installation, maintenance, and repairing of any improvements or any other installations constructed within said easement areas.

Section Two: Standard of Maintenance - Lots. Each Lot Owner hereby covenants and agrees to maintain his respective Lot and the housing unit located thereon in the same condition as a reasonably prudent homeowner would maintain his own home 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 his Lot. Each Lot Owner does hereby covenant and agree to maintain the planting strip, if any, located between the street and sidewalk adjacent to the Owner's Lot. In the event there are any common area improvements such as landscaping or fencing maintained by the Association on property owned by such Owner but provided for by easement on the face of The Overlook at Somerset Hill plat or plats, they shall not be removed or otherwise modified without the express written approval of the Association Board of Directors.

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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Section Three: 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 fails to preserve 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 monthly or special assessment. The Association shall have all remedies for collection as provided in this Declaration. In the event that emergency repairs are needed to correct a condition on a Lot which poses 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 Four: Common Expenses. The Association shall perform such work as is necessary to carry out the duties described in this Declaration or as otherwise required by the appropriate governmental authorities, and shall delegate the responsibility for management and supervision of such work to the Board, 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;
2. The cost, expenses, obligations and liabilities to repair, preserve, maintain, replace, and restore (a) the private roadways and sidewalks; (b) the storm water drainage facilities; and (c) the rockeries.

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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The Association shall maintain, repair and preserve the roadways as paved roads, suitable for all weather vehicular and pedestrian traffic and in accordance with all terms of this Declaration and applicable law, with such maintenance to include repair of potholes and chuckholes, removal of trees, limbs and other debris, all necessary regrading and resurfacing, cleaning and maintenance of necessary drainage ditches and all other reasonable repairs and maintenance (this does not include public roadways which have been dedicated to the City of Tumwater). The Association shall maintain, repair and preserve the drainage facilities to standards set by and requirements imposed by all applicable codes, ordinances, other legal requirements, all agreements entered into with the City of Tumwater related to drainage facilities and all reasonable standards of maintenance customarily applicable to similar drainage systems including, without limitation, any recorded storm water maintenance agreement on file with the Thurston County Auditor.

3. The cost of maintaining, repairing and replacing all common area improvements including, but not limited to, sidewalks, signs, lights, and fences constructed by the Declarant, and any monument or entrance area constructed by the Declarant.

4. The cost of maintaining, repairing and replacing all vegetation and any other improvements within the planter, buffer and open space strips or located in any rights-of-way maintaining the same in a healthy and growing manner in perpetuity including, but not limited to, weeding, mowing, and pruning of street trees.

5. The cost of maintaining, repairing and replacing any irrigation lines located within the public or private right-of-way strips, buffer areas, open space tracts, or any other location outside of a Lot.

6. The cost of maintaining the school bus waiting areas and shelters.

7. Any other expense which shall be designated as a common expense in the Declaration, Plat Map, or which shall be designated as a neighborhood or Association expense as a requirement for plat approval by the City of Tumwater, or may be designated as a common expense from time to time by the Association.

Section Five: 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, the individual subjecting the common area to such use shall have the obligation to repair such damage upon demand by the Association

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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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.

Section Six: Street Repair, Maintenance and Cleaning. All Builders or Owners shall use due diligence to avoid placing unnecessary dirt, debris, and any other material washing onto or coming on the street as a result of any construction activities and each Builder or Owner shall at all times remain responsible for keeping the street clean of any such debris, dirt and material. In addition, all Builders or Owners shall use due diligence to avoid causing any damage to the street or sidewalks and all streets and sidewalks and other improvements constructed by the Grantor as a condition for obtaining plat approval shall remain in the same condition as they were as of the date of final plat approval. Any Builder or Owner who violates the provisions of this paragraph shall reimburse the Declarant upon request for any expenses incurred by Declarant because of the failure of the Builder or Owner to abide by the terms and provisions of this Declaration. In the event any Builder or Owner does not pay the same upon request, then the Declarant shall have a lien against the property of said Builder or Owner to secure payment of said reimbursement. In the event it cannot be determined which Builder or Owner was responsible for the violation of the above referenced provisions, the Association shall reimburse the Declarant for any expenses incurred by the Declarant. Regardless of any other provision in this Declaration, this paragraph cannot be amended for a period of ten (10) years after recording of this Declaration.

Section Seven: Maintenance of Storm Drain System. All Builders or Owners shall use due diligence to avoid having materials wash into or be put into the storm water drain system as a result of construction activities conducted by the Builder or Owner. This would include any sediment, cement slurry, or any other material washing off of or coming off of any Lot upon which a Builder or Owner is constructing a residence or engaging in other construction activities. In the event any Builder or Owner is in violation of the terms and provisions of this paragraph, this Builder or Owner shall agree to pay a maintenance charge to the Declarant in an amount to be determined by the Declarant but not to exceed \$500.00 for each such violation by a Builder or Owner. In addition, each Builder or Owner agrees to indemnify the Declarant from any costs or charges which the Declarant may incur in connection with the cleaning and maintenance of the storm water system as a result of any violation of this paragraph by such Builder or Owner and that this liability on the part of the Builder or Owner shall be joint and several. Any Builder or Owner who violates the provisions of this paragraph shall reimburse the Declarant upon request for any expenses incurred by Declarant because of the failure of the Builder or Owner to abide by the terms and provisions of this Declaration. In the event any Builder or Owner does not pay the same upon request, then the Declarant shall have a lien against the property of said Builder or Owner to secure payment of said reimbursement. In the event it cannot be

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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determined which Builder or Owner was responsible for the violation of the above referenced provisions, the Association shall reimburse the Declarant for any expenses incurred by the Declarant. Regardless of any other provision in this Declaration, this paragraph cannot be amended for a period of ten (10) years after recording of this Declaration.

Section Eight: Street Trees. As a condition of plat approval, the Declarant or any Builder may have had to install certain trees either within the street right-of-way easement or on Lots as a condition for obtaining final plat approval. Each Lot Owner shall be responsible to maintain said trees situated within said Lot Owner's Lot. The Association shall be responsible to maintain all street trees situated in common areas or within street right-of-ways. In the event any tree is removed for any reason, the Association shall immediately replace the tree and if necessary shall reimburse the Declarant for the cost of replacing said tree. In the event any Owner does not maintain any street trees which are required to be maintained as set forth above, then the Association shall have the right to come on said property and maintain and replace said tree if necessary and shall then assess the Lot Owner for the cost of the same. Regardless of any other provision in this declaration, this paragraph cannot be amended for a period of ten (10) years after recording of this Declaration.

Section Nine: Owners' Easements of Enjoyment. Each Owner shall have a right in a easement of enjoyment in and to the common areas which shall be appurtenant to and shall pass with title (or, if applicable, with the equitable title held by real estate contract purchaser) to every Lot subject to the following provisions:

The right of the Declarant or the Association to establish use and operation standards for all common areas to be binding upon all Association Members along with enforcement standards.

The right of the Declarant during the Development Period (including any Builder during the Development Period) or the Association after the Development Period to suspend an Owner's right to vote and to use any recreational facilities for any period during which assessments against his or her Lot remain unpaid for a period not to exceed sixty (60) days, and for any and each separate infraction of its prohibited rules and regulations.

The right of the Declarant (during the Development Period) or the Association (after the Development Period) to dedicate or transfer all or any part of the common areas to any public agency, authority or utility for such purposes and subject to such conditions as the Declarant or Members as applicable may deem appropriate. After the Development Period, no such dedication or transfer shall be effective unless the instrument agreeing to

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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such dedication or transfer is signed by Owners of two-thirds of the Lots that have been recorded.

Any Owner may delegate his right of enjoyment to the common areas and facilities to members of his family, his tenants, or his guests, subject to the limitations set forth above.

Section Ten: Grants of Easement. Subject to the terms and conditions stated herein, as part of Declarant's common plan for development of the Property, Declarant hereby reserves, establishes, grants and declares for the benefit of all present and future Owners, their heirs, successors and assigns, all of the Easements set forth on the face of the Plat, including the following perpetual, nonexclusive appurtenant easements (collectively the "Easements"):

a. Easements for Roadways, Utility Facilities and Drainage Easements. Ingress, egress, utility and drainage Easements under, over, through and across portions of the Property shown on the face of the Plat. The purposes of the Easements shall be for installation, maintenance, repair, restoration, inspection and preservation of the Roadways, Utility Facilities and Drainage Facilities.

b. Easements for Slopes, Cuts, Fills. Declarant hereby reserves, establishes, grants and declares Easements, over, under, through and across that portion of the Property contiguous and/or adjacent to the Roadways for the purpose of making all slopes, cuts, fills and all other improvements, to the extent reasonably necessary, to protect the Improvements within the Easements.

c. Easements for Surface and Ground Water Flow. Declarant hereby reserves, establishes, grants and declares Easements under, over, through and across the Property for the flow of surface water, runoff and groundwater to drain from, over and across the Roadways and the Lots, and through the Drainage Facilities, in all locations and routes where such water might flow around, across and/or away from any Improvements.

d. Easements for Repairs and Maintenance. Declarant hereby reserves, establishes, grants and declares Easements under, over, through and across all portions of the Property to the extent reasonably necessary or helpful to permit the Declarant, the Association, and any employees, agents or contractors of either of them to access any portion of the Roadways, Utility Facilities, Drainage Facilities, Rockeries, and all other Improvements, for purposes of inspection, installation, construction, repairs, maintenance, replacement and restoration of the same.

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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Section Eleven: Insurance. Nothing shall be done or kept in any common areas which will increase the rate of insurance on the common areas or other Lots or improvements without the prior written consent of the Board. Nothing shall be kept in any common area which will result in cancellation of insurance on any part of the common areas or which would be in violation of any laws or ordinances.

Section Twelve: Alteration of Common Areas. Nothing shall be altered or constructed in, or removed from any common areas except upon prior written consent of the Board. There shall be no construction of any kind within the common areas except that community improvements may be constructed if two-thirds of the Members of the Association authorize (1) the construction of such improvements, and (2) assessment for such improvements. Also, any such improvements would be subject to the acquisition of all required permits from governmental agencies. This Section shall not limit or prohibit Declarant (and no Member's consent shall be necessary) during the Development Period from constructing or altering any such improvements to any common area or any common maintenance area, which Declarant in Declarant's sole discretion, deems as an enhancement of said area for the benefit of the Association in general.

Section Thirteen: Dumping in Common Areas or Easements. No trash, construction debris or waste, plant or grass clippings, other debris of any kind, nor any hazardous waste (as defined in federal, state or local law regulation) shall be dumped, deposited or placed on any common areas or easements. The Declarant (during the Development Period) and the Board thereafter, shall retain the rights for enforcement and initiation of penalties for violations of this policy.

Section Fourteen: Landscaping and Fencing. No permanent structures or landscaping of any kind, including fences, walls or shrubs, may be built or placed within any right of way easements or other easements as delineated on the Plat except as deemed appropriate by the Board. This prohibition shall not apply to the landscaping and any improvements in the common areas installed by the Declarant, nor shall this Section prohibit the Association from installing additional improvements or landscaping within the designated common areas, nor shall this section prohibit the installation of fences as may be otherwise allowed in this Declaration, nor shall this section prohibit the installation of landscaping on private Lot areas encumbered by utility easements not otherwise restricted in this Declaration. Also, this prohibition shall not apply to landscaping of front or side yards of Lots extending to the edge of the curb or sidewalk.

Section Fifteen: Management. Each Owner expressly covenants that the Declarant (during the Development Period) and the Board thereafter, may delegate all or any portion of management authority to a managing agent, manager or officer of the Association and may enter into such management contracts or other service contracts to provide for the

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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maintenance of the common areas or any portion thereof. Any management agreement or employment agreement for maintenance or management may be terminable by the Association without cause, upon not more than ninety (90) days written notice thereof. (However, this shall not be applicable if the management agreement provides for any other specific termination.) The term of any such agreement shall not exceed one year, renewable by agreement of the parties for successive periods of up to three years each. Each Owner is bound to observe the terms and conditions of any management agreement or employment contract, all of which shall be made available for inspection by any Owner upon request. Any fees or salary applicable to any such management employment or service agreement shall be assessed to each Owner.

ARTICLE SEVEN: ASSESSMENTS

Section One: Assessments to The Overlook at Somerset Hill Homeowners Association. Each Owner of a Lot, by acceptance of a deed therefore, is subject to assessments both regular and special which are assessed according to the provisions of this Declaration by The Overlook at Somerset Hill Homeowners Association and each Lot Owner is deemed to pay to The Overlook at Somerset Hill Homeowners Association such annual or other assessments to which it is responsible under the terms of this Declaration.

Section Two: Purpose of Maintenance 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 real property which includes the improvement, repair and maintenance of the common areas and the services and facilities related to the use and enjoyment of said areas, the payment of insurance premiums on the common areas, and the maintenance of other areas as provided for in this Declaration.

Section Three: Board to Fix Annual or Regular Assessment. The Board 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 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 By-Laws of the Association which are incorporated herein as though fully set forth.

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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Section Four: Special Assessments. In addition to the assessments authorized above, the Association by its Board of Directors may levy, in any year, a special assessment applicable to that year only, for the purpose of defraying the cost of any construction or reconstruction, unexpected repair or replacement of facilities in the common areas. However, the Builder shall not be obligated to pay any special assessments on Lots owned by the Builder. Assessments may be made based upon the estimated cost of such work, prior to the work's commencement, provided such estimate has been provided by a contractor retained by the Board for the purpose of such estimate. All special assessments for construction of new facilities or acquisition of new equipment, which is not for the upgrade, repair or replacement of existing construction or equipment, shall require the approval as set forth in the By-Laws.

Section Five: Rate of Assessment. Both annually or regular and special assessments shall be fixed at a uniform rate for all Lots.

Section Six: Initial Assessment. The initial assessment, which shall be paid by any Builder who acquires a Lot from the Declarant or a successor Declarant, shall be \$200.00 for each Lot so acquired, which amount shall be paid directly to the Association to pay for and defray the expenses of the Association incurred prior to the collection of dues as provided below.

Section Seven: Reimbursement Assessment. A reimbursement assessment of \$200.00 shall be paid by each Lot Owner at the time of closing of each Lot to the Builder (or to the Declarant if it also constructed a residence on said Lot) to reimburse the Builder and/or Declarant for expenses paid relative to common expenses paid for the Plat improvements and partial reimbursement to the Builder for the initial assessment paid by the Builder as set forth above.

Section Eight: Assessment. The annual assessment shall be \$432.00 per Lot commencing on January 1st of each year which shall be payable monthly at the rate of \$36.00 per month on or before the 10th day of each month. The above referenced assessment and all subsequent assessments shall be paid to the Association who shall then pay for the expenses of the Association as required under the terms of this Declaration. In the event the expenses of the Association are in excess of the assessments collected, then the Builders who subsequently purchase from the Declarant shall pay the difference to the Association on a pro rata basis as determined by the number of Lots owned by all such Builders. At such time as there had been sufficient assessments collected by the Association, then said Builder shall be reimbursed. The Declarant shall not be responsible or liable for the payment of any assessment against any Lot owned by the Declarant.

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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The annual assessment as set forth above may be increased during the Development Period to reflect (1) maintenance costs; (2) repair costs; or (3) Plat management costs. All increases during the Development Period must directly reflect increase in the above cited costs. During the Development Period, the Declarant or the Builder (if the Declarant has sold all Lots to Builder) shall have the authority to reduce the annual assessments if economic data support such a reduction because of reduced maintenance costs or any other anticipated decrease in Association expenses.

Section Nine: Certificate of Payment. The Association shall, upon written demand, furnish a certificate in writing setting forth whether the assessment on a specified Lot has been paid. A reasonable charge may be made for the issuance of the certificate. Such certificate shall be conclusive evidence of payment of any assessment stated to have been paid.

Section Ten: 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 this Declaration.

ARTICLE EIGHT: COLLECTION OF ASSESSMENT

Section One: Lien - Personal Obligation. All assessments, together with interest and the cost of collection shall be a continuing lien upon the Lot against which each such assessment is made. The lien shall have all the incidents of a mortgage on real property. Each such 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 at the time the assessment was due. No Owner may waive or otherwise avoid liability for assessments by non-use of the common areas or abandonment of the Lot.

Section Two: Delinquency. If any assessment is not paid within thirty (30) days after its due date, the assessment shall bear interest from said date at twelve percent (12%), or, in the event that twelve percent (12%) exceeds the maximum amount of interest that can be charged by law, then the highest permissible rate as provided for by law. A late charge of five percent (5%) of the amount overdue shall be charged for any payment more than ten (10) days past due. Each Member hereby expressly grants to the Association, or its agents, the authority to bring all actions against each Member personally for the collection of such assessments as a debt and to enforce lien rights of the Association by all methods for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage of real property, and such Member hereby expressly grants to the Association the power of sale in connection with such liens. The liens provided for in this section shall be in favor of the Association, and

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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shall be for the benefit of the Association. The Association shall have the power to bid at a foreclosure sale and to acquire, hold, lease, mortgage and convey any Lot obtained by the Association.

Section Three: Suspension of Voting Rights. In the event any Member shall be in arrears in the payment of the assessments due or shall be in default of the performance of any of the terms of the Articles and Bylaws of the Association, the rules or regulations adopted by the Association, or the Declaration for a period of thirty (30) days, the Member's right to vote shall be suspended and shall remain suspended until all payments are brought current and all defaults remedied. In addition, the Association shall have such other remedies against such delinquent Members as may be provided in the Articles, Bylaws or Declaration.

Section Four: Enforcement of Assessments. The Board may take such action as is necessary, including the institution of legal proceedings, to enforce the provisions of this Article Eight. In the event the Board begins an action to enforce any such rights, the prevailing party shall be entitled to its attorney's fees, costs and expenses incurred in the course of such enforcement action as provided in this Declaration.

ARTICLE NINE: BUILDING, USE AND ARCHITECTURAL RESTRICTIONS

Section One: Development Period. The Declarant hereby reserves the right to exercise any and all powers and controls herein given to the Board of Directors, the Architectural Control Committee (ACC) or its authorized representative in this Article of the Declaration, during the Development Period. At the expiration of the Development Period, Declarant reserves the right to continue to exercise all powers and controls granted herein to the ACC and to appoint Members of the ACC until such time as there has been constructed on all Lots a residence and said residence has been sold and conveyed by either a Builder or the Declarant.

Section Two: Authority of ACC After Relinquishment of Control by Declarant. At such time as all residences have been constructed on all Lots and said residences have been sold and conveyed by either a Builder or the Declarant, 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 this Article and to enforce those 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 amended, and all authority granted to the ACC by this Declaration.

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, EASEMENTS & RESTRICTIONS

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Section Three: 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 Four: Appointment of ACC. The Declarant during the Development Period reserves the right to act as the ACC or to appoint the Member(s) of the ACC. At such time as all of the Lots have been sold by the Declarant or Builders, then the Board shall appoint at least one but not more than three Members of the ACC. If all the Members of the ACC shall resign and no replacements have been appointed by the Board, then the Board shall act as the ACC until the Members of the ACC are appointed by the Board.

Section Five: Approval by ACC Required. Except as to construction, alterations 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 plans 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 Six: 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.

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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Section Seven: Donation of Time. No member of the ACC shall be entitled to any compensation for services performed on behalf of the ACC. ACC members shall have no financial liability resulting from ACC actions.

Section Eight: Address of the ACC. The address of the ACC shall be at the registered office address of the Association.

Section Nine: Voting. ACC decisions shall be determined by a majority vote of the members of the ACC.

Section Ten: Submission of Plans. All plans and specifications required to be submitted to the ACC shall be submitted by mail to the address of the ACC in duplicate. The written submission shall contain the name and address of the Owner submitting the plans and specifications, identify the Lot involved, and the following information about the proposed structures:

- A. The location of the structure upon the Lot;
- B. The elevation of the structure with reference to the existing and finished Lot grades;
- C. The general design;
- D. The interior layout;
- E. The exterior finish materials and color, including roof materials; and,
- F. Other information which may be required in order to determine whether the structure conforms to the standards articulated in this Declaration and the standards employed by the ACC in evaluating development proposals.

Section Eleven: Evaluating Development Proposals. The ACC shall have the authority to establish aesthetic standards for evaluating development proposals. In addition to these guidelines, in evaluating development proposals, the ACC shall determine whether the external design, color, building materials, appearance, height, configuration, location on the Lot, and landscaping of the proposed structure (the "design elements") harmonize with (1) the various features of the natural and built environment, (2) the aesthetic character of the other homes in The Overlook at Somerset Hill, and (3) any other factors which affect the desirability or suitability of a proposed structure or alteration (collectively the "approval factors"). The ACC shall decline to approve any design in which (1) the design elements fail to harmonize with the approval factors described in the previous sentence or which fail to meet any aesthetic standards promulgated by the ACC, (2) impacts adversely on nearby Properties and Common Areas, or (3) is of a temporary or non-permanent nature. ACC determinations may be amended by a majority vote of ACC

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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members. Any alterations or changes subject to review per the terms set forth herein which are undertaken without submission to the Architectural Control ACC shall be deemed to have been disapproved. The ACC has the authority to stop further work as well as the authority to have prior work undone.

Section Twelve: Exclusions. The Declarant shall have the right to waive the plans and specifications review for Builders in The Overlook at Somerset Hill. Any such waiver shall not exempt said Builder from any of the standards or restrictions articulated in this Declaration and all structures and improvements shall meet all standards and restrictions contained in these declarations.

Section Thirteen: Approval Procedures. Within thirty (30) days after the receipt of plans and specifications, the ACC shall approve or disapprove the proposed structure. The ACC may decline to approve plans and specifications which, in its opinion, do not conform to restrictions articulated in this Declaration and criteria or to its aesthetic standards. The ACC shall indicate its approval or disapproval on one of the copies of the plans and specifications provided by the applicant and shall return the plans and specifications to the address shown on the plans and specifications. In the event that no disapproval of such plans and specification is given within thirty (30) days of submission, then the plans shall be deemed to be approved. In any event, the Association shall hold the ACC members (and the Declarant) harmless from any actions taken (or actions not taken) relative to the approval, disapproval or non-action on any plans submitted for review. "Non-action" on the part of the ACC shall not exempt the applicant from any of the provisions of this Declaration or the restrictions articulated herein. By purchasing a Lot in The Overlook at Somerset Hill, the Owners agree that, to the extent permitted by law, the Declarant shall have no liability to the Owners or the Association for any actions taken, or actions not taken, while acting as the ACC.

Section Fourteen: Compliance with Codes/Environmental Laws. In all cases, ultimate responsibility for satisfying all local building codes and requirements rests with the Owner and contractor employed by the Owner. The ACC has no responsibility for ensuring that plans and specifications which it reviews comply with local building codes and requirements. The Owner shall hold the ACC members (and Declarant) harmless in the event that a structure which the ACC (or Declarant) authorizes fails to comply with relevant building and zoning requirements or these covenants and restrictions contained herein. No person on the ACC or acting on behalf of the ACC, nor the Declarant acting as the ACC, or anyone acting on behalf of the Declarant, shall be held responsible for any defect in any plans or specifications which are approved by the ACC or Declarant nor shall any member of the ACC or any person acting on behalf of the ACC or Declarant be held

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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responsible for any defect in a structure which was built pursuant to plans and specification approved by the ACC or by the Declarant. Neither the Declarant, the ACC, nor any member of the ACC, nor the Association, nor anyone acting on behalf of the ACC or the Association shall have any responsibility for compliance by the Owner (or any agent, representative, guest, or invitee of Owner) with any environmental laws, regulations or rules including, but not limited to, those relating to hazardous waste and placement of underground oil tanks.

Section Fifteen: Variation. The ACC shall have the authority to approve plans and specifications which do not conform to these restrictions in order to (1) overcome practical difficulties or (2) prevent undue hardship from being imposed on an Owner as a result of applying these restrictions. However, such variations may only be approved in the event that the variation will not (1) detrimentally impact on the overall appearance of the development, (2) impair the attractive development of the subdivision or (3) adversely affect the character of nearby Lots. Granting such a variation shall not constitute a waiver of the restrictions articulated in this Declaration. Variations shall only be granted if the ACC determines that the variation would further the purposes and intent of these restrictions. Variations shall only be granted in extraordinary circumstances.

Section Sixteen: Enforcement. The Association (including the Declarant on behalf of the Association), the Board, or any Owner shall have the right to bring a suit for judicial enforcement of a determination of the ACC, or, after the Development Period, to seek an order requiring the ACC to exercise its authority, and perform its functions, under this Article Nine. In any judicial action to enforce a determination of the ACC, the losing party shall pay the prevailing party's attorney's fees, expert witness fees, and other costs incurred in connection with such a legal action or appeal.

Section Seventeen: ACC/Declarant Liability. The Association shall hold the ACC Members and the Declarant, if acting as the ACC, harmless from any actions taken (or actions not taken) under any provision of this Declaration including, but not limited to, actions taken (or not taken) under the Articles of this Declaration. By purchasing a Lot in The Overlook at Somerset Hill the Owners agree that, to the extent permitted by the law, neither the Declarant (nor any officer, director, or representative of the Declarant), nor the ACC (nor any member of the ACC) shall have any liability to the Owners or to the Association for any actions taken, or actions not taken, while acting as the Declarant or the ACC under this Declaration. "Non-action" on the part of the ACC or the Declarant shall not exempt the applicant from any of the provisions of this Declaration or restrictions contained in this Declaration.

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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Section Eighteen: 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 Nineteen: 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 Twenty: Consultation. The ACC may retain and consult persons or entities to assist in the evaluation of plans submitted to the Board for review.

Section Twenty One: Appeals. After the Development Period, 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.

ARTICLE TEN: LAND USE RESTRICTIONS

Section One: 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 real property shall at any time be used as living quarters.

Section Two: Nuisances. No noxious or undesirable thing, activity or use of any Lot in the real property shall be permitted or maintained. If the Board determines that a thing or use of property is undesirable or noxious, such determination shall be conclusive. 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 any thing or terminate any use of property which is determined by the Board to be undesirable or noxious. Playing of loud music, operation of electrical or mechanical equipment (except in connection with permitted construction activities) and all other activities which constitute unreasonable loud noise which may be heard on neighboring Lots is prohibited.

Section Three: Use of Lots. All Lots within the real property shall be used solely for private single-family residential purposes and not for business purposes except (a) a

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, EASEMENTS & RESTRICTIONS

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home business subject to the approval of the Board shall be permitted provided that no customers, guests or business invitees come to the Lot on which said home business is located and there are no signs or advertising of any nature with respect to said home business; and (b) that within such single family residences the Owner(s) thereof may, upon formal written application to the Board, request permission to operate a licensed day care business. The Board shall be authorized, but not obligated, to grant such approval for a day care business and such approval may only be granted, in the sole discretion of the Board if: 1) all applicable governmental zoning and land use classifications lawfully permit such usage; and 2) the business and Owner(s) are licensed by all applicable governmental authorities to operate such a day care business; and 3) the day care business will be operated only between the hours of 7 a.m. and 6 p.m. and only on Monday through Friday; and 4) no more than four (4) children, in addition to those of the Owner's immediate family, are enrolled in either a part or full-time capacity in such day care; and 5) the Owner(s) of such Lot(s) operating such day care facility will fully oversee, restrict and supervise all children enrolled and will limit such activities strictly within the confines of their residence(s) and Lot(s) and not outside the same; and 6) the Owner(s) of said Lot(s) agree to indemnify and hold the Declarant and the Association fully harmless from any and all liability and causes of action of whatever kind arising by virtue of the Owner's operation of such a day care business; and 7) the Owner(s) of said Lot(s) will provide the Association prior to commencing such business operations, and at all times during such business operations, with verification of liability insurance coverage in an amount not less than \$1,000,000.00 naming the Association and the Declarant and such other parties as the Association may deem appropriate as additional insured; and 8) such operation does not interfere or otherwise violate any other provisions of this Declaration, including but not limited to, vehicle parking and signage restrictions. Should the Board give written authorization for such usage, such authorization may be revoked by at least five (5) days' prior written notice delivered to Owner should the Owner(s) operating such day care business fail to strictly adhere to the provisions contained within the Declaration as well as any additional Rules and Regulations imposed, from time to time, by the Board. No other uses are permitted. Neither the Declarant, the Board or the Association shall be deemed to be a partner or joint venturer or an interest in such business operation to the extent permission to operate such a day care business is authorized.

Section Four: Limitation on Animals. No animals, except dogs, cats, caged birds, fish in tanks, and other small household pets, will be permitted on the Lots. Dogs shall not be allowed to run at large or to create a disturbance for other Owners in the Plat. No animals will be allowed to be leashed, chained, or otherwise tied to any portion of the front or sides of residences. Leashed animals are permitted within rights-of-way when accompanied by their owners. The person accompanying the animal must exercise

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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"scooping" of animal waste. All pens and enclosures must be screened from view of other Residences and Lots and must be approved by the Board prior to construction and shall be kept clean and odor free at all times. If the investigation of the Board indicates that animals are kept in violation of this Section, the Declarant, during the Development Period, or the Board thereafter, will give the Owner ten (10) days written notice of the violation. Such violation must be remedied by the Owner within such ten (10) day period. Failure to comply with the written notice will result in a fine of \$25.00 per day. Any fine imposed by this Section shall be the personal obligation of the fined Owner and a lien on the Lot of the fined Owner. The Association shall be entitled to attorneys' fees and costs for any action taken to collect such fines in accordance with the provisions of this Declaration.

Section Five: Completion of Construction. The work and construction of all buildings and structures shall be pursued diligently and continuously from the commencement of construction until structures are fully completed and painted. All structures shall be completed as to external appearance, including finish painting, within nine (9) months of the date of commencement of construction unless an extension has been granted by the Board. 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 Six: 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 six (6) months from the date of issuance of the occupancy permit for the Lot.

Section Seven: View Protection. Notwithstanding any terms herein to the contrary, no Owner shall cause or permit any trees, bushes, or other landscaping elements located anywhere on such Owner's Lot (each a "Burdened Lot") to exceed 20' in height, measured from the mean grade elevation of the Burdened Lot. No Owner shall cause or permit any building, structure or other Lot improvement located anywhere on such Owner's Lot (each a "Burdened Lot") to exceed 35' in height, measured from the average mean grade elevation of the Burdened Lot. The Owner of each Lot is exclusively and entirely liable for all costs and expenses related to the pruning, topping, or other cutting of trees and bushes, or the removal of other improvements on such Lot to the extent required by the terms of this Section. In the event that the Owner of a Burdened Lot fails to cut, prune or top trees and bushes as required herein, then the Owner of any Lot (each a "Benefitted

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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Lot”) is entitled to provide 30 days’ written notice to the Owner of the Burdened Lot stating his desire to enter onto the Burdened Lot to cut, prune, or top trees and bushes as necessary to enforce compliance with the terms of this Section. Prior to the end of the 30-day period, the Owners shall meet together, in good faith, and attempt to agree on the cutting, pruning, or topping necessary to comply with this Section. If the Owners are able to reach such an agreement, then the agreed upon cutting, pruning or topping shall be completed by the Owner of the Burdened Lot within 30 days, at no cost to the Owner of the Benefitted Lot. If the Owners are not able to reach an agreement, then the matter shall be submitted to arbitration before an arbitrator acceptable to both parties. In the absence of agreement on the arbitrator, the arbitrator shall be selected by the presiding judge of the Thurston County Superior Court, after petition by either Owner.

Section Eight: Unsightly Conditions. No unsightly conditions shall be permitted to exist on any Lot. Unsightly conditions shall include, but not be limited to, 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. 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 has been obtained from the Board.

Section Nine: Antennas, Satellite Reception. No antennas are permitted to be constructed or placed on any Lot with the exception of 18' or smaller satellite dishes, which must be installed on the sides or rear of the home, and reasonably shielded from view of the roadways and public streets.

Section Ten: 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 real property.

Section Eleven: Fences, Walls. Fences, walls and shrubs are permitted on side and rear property lines, up to within the greater of: (1) twenty (20) feet of the front property line; or (2) the distance between the front Lot line and the front wall (facade) of the primary residence, subject to: (i) the approval of the Board; and (ii) determination of whether such fence, walls or shrubs would interfere with utility easements reflected on the face of the Plat and other easements elsewhere recorded. In no event shall any fence be allowed between the front Lot line and the front wall facade of the primary residence. Fences shall not be allowed on portions of side yards of houses where buildings are set back less than four (4) feet. No barbed wire, chainlink or corrugated fiberglass fences shall be constructed on any Lot. All fences of any size constructed on the premises and

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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wherever located must be constructed and painted (or stained, if applicable) in accordance with the Association guidelines for design and color. The initial color specified for fences may be stated in that guideline. Any fence constructed which fails to conform with the guidelines shall be removed by the Owner or modified to conform with the guidelines. The Board may change these guidelines from time to time, and upon adoption of the change in fence guidelines, this Article shall be deemed to have been amended to conform with the new guidelines as adopted. In the event that an alternative type of fence (such as a different design or chainlink material) is required to comply with the requirements of any governmental jurisdiction, such alternative type of fence shall be exempt from these restrictions, and may be constructed as required by the governmental jurisdiction.

Section Twelve: 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 Thirteen: Vehicle Parking and Storage. No vehicles, boats, or trailers shall be parked on any common areas. No vehicle may be parked on any building Lot or sidewalks, with the exception that vehicles may be parked on designated and approved driveways or parking areas which shall be hard-surfaced or within garages. No Lot shall be used for the storage, maintenance or construction of any vehicles including, but not limited to, antique automobiles, boats, campers and trailers, whether operable or not. Vehicles shall be deemed stored if not removed from the Lot for a minimum of four (4) hours during each forty-eight (48) hour period. Upon forty-eight (48) hours' notice to the owner of an improperly parked vehicle, the Board has authority to have the same towed, at the owner's expense.

Notwithstanding the foregoing, Lot Owners who have visiting guests who have a camper, trailer, or other form of vehicle which is prohibited from being parked or stored on a Lot unless screened from view, may secure permission from the Board for guests to park a vehicle upon the Lot for a period not to exceed two (2) weeks in any calendar year. This privilege shall only exist, however, after written permission has been obtained from the Board or its authorized representative. Any Lot Owner who stores a recreational vehicle either on-site or off-site may park the vehicle on the driveway for purposes of preparing the same for either departure or return, which in any event shall not exceed twenty-four (24) hours.

No more than one (1) commercial vehicle, not to exceed twenty-four (24') feet in length, shall be parked overnight on any Lot. For purposes of this Section, a commercial vehicle is any vehicle that is licensed as a commercial vehicle or that bears signage or other

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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markings identifying it as associated with a business.

Section Fourteen: Signs. No signs, billboards, or other advertising structures or device shall be displayed to the public view on any Lot except one sign not to exceed three (3) square feet in area may be placed on a Lot to offer the property for sale or rent and with the exception of any entry monumentation and signage which may be installed by the Declarant. Political yard signs, not more than three (3) square feet in area, of a temporary nature (not to exceed thirty (30) days) will be allowed during campaign periods. Within five (5) days after the date of the election to which the sign refers, such signs must be removed. This section including, but not limited to, the restrictions on the number of signs and sign size limit shall not apply to signs approved under this Declaration by the Declarant during the Development Period.

The Declarant may establish, for the duration of the development, signage guidelines and standards for Lot identification, Realtor identification signs, "For Sale" signs and other signage that may be placed by parties other than the Declarant on any part of the Lots within The Overlook at Somerset Hill, the common areas, or the public rights-of-way. The Declarant may also develop an overall theme for signage within the project, including specific requirements for physical sign installations and size requirements, which theme will then become a part of the established guidelines and standards for signage in The Overlook at Somerset Hill during the Development Period.

During the Development Period, the Declarant shall have the sole and exclusive right to approve, in the Declarant's sole discretion, any and all signage installations within any part of the real property encompassed within The Overlook at Somerset Hill including the adjacent rights-of-way. Each Owner of a Lot in The Overlook at Somerset Hill and any Builder or real estate agent on behalf of an Owner, shall submit any proposed signs to the Declarant for approval prior to the installation of the signs.

Any signs not specifically approved by the Declarant found anywhere within The Overlook at Somerset Hill, or in the common areas, or on any Lot, or on adjacent rights-of-way may be promptly removed and disposed of by Declarant. This absolute right of the Declarant to remove unauthorized signs from the property or adjacent rights-of-way specifically includes, but is not limited to, the Declarant's right to remove any and all signs placed by real estate agencies or their representatives, including temporary reader board signs and other signage installations.

No person including, but not limited to, the person or persons owning any interest in the signs removed, shall be entitled to compensation of any kind for signs removed by

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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Declarant pursuant to the section.

The Board may cause any sign placed on the property or on any adjacent rights-of-way in violation of this Declaration to be removed and destroyed without compensation of any kind to anyone including, but not limited to, any persons having any ownership interest in the sign. This section shall not apply to signage placed by Declarant.

Additional signage may be installed by Declarant during the Development Period to promote the sale of Lots or houses and to promote Declarant's project and company and representatives. Notwithstanding anything in this Declaration to the contrary, signs placed by the Declarant shall not be subject to any sign restrictions and specifically shall not be subject to the limitations set forth in this Declaration on the number of signs and size of signs. The Declarant also shall not be subject to any guidelines or standards established by Declarant for other parties pursuant to this Declaration.

Under no circumstances shall the Declarant be liable for, or be required to pay for, all or any part of the construction, installation or maintenance of any signs which are placed on any Lot not owned by the Declarant. This section shall apply even if Declarant requires an Owner to place a sign pursuant to this Declaration.

Section Fifteen: Easements for Enforcement Purposes: Owners hereby grant to the Association an express easement for the purpose of going upon the Lots of Owners for the purpose of removing vehicles or other similar objects which are parked or stored in violation of the terms of this Declaration.

Section Sixteen: Excavation and Fill. Except with the permission of the Board, 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 Seventeen: 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 Board. All drainage improvements must be completed prior to occupancy in accordance with the drainage plan submitted to the Board.

Section Eighteen: 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

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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improvements to be erected thereon in accordance with the plans and specifications approved by the Board have been completed.

Section Nineteen: 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 Twenty: Tanks, Etc. No elevated tank of any kind shall be erected, placed, or permitted on any part of any Lot where it is within view of neighboring Lots, streets, or common areas. Any tank 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 it from the view from neighboring Lots, streets, or common areas. 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, streets, or common areas. Plans for all enclosures of this nature must be approved by the Board prior to construction.

Section Twenty-One: 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 real property are occasional casual repairs and maintenance activities such as tune-ups or oil changes.

Section Twenty-Two: Driveways. 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 or such other materials and shall be approved by the Board of Directors, and shall be completed prior to the final building inspection.

Section Twenty-Three: 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 Twenty-Four: Firearms. No firearms of any kind shall be discharged, at any time, in any location on the property. No hunting is permitted on the property at any time, and no bow and arrows, crossbows, and other weapons of any type are to be discharged anywhere on the property. No fireworks or explosives of any type may be used at any time, in any location, on the property, except as reasonably necessary to the construction of a permitted improvement on a Lot, provided such activities are conducted by an appropriately licensed contractor who has obtained all legally required permits.

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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Section Twenty-Five: Motorcycles, Dirt Bikes and ATV. All motorcycles and motor bikes anywhere on the property must be muffled and fully licensed for street use. All such motorcycles or motor bikes may only be used for transportation purposes on the roadways. No unlicensed motor vehicles including, but not limited to, motorcycles, motor scooters, ATV's etc., shall be permitted to operate within the property. Bicycles and dirt bikes also shall not be permitted on any common areas unless operated in areas specifically approved by the Association.

Section Twenty-Six: 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 Twenty-Seven: 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 construction, including the latest revisions thereof.

Section Twenty-Eight: 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 real property, 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 Twenty-Nine: Leasing of Lots and Timesharing. Leasing for purposes of this Declaration is defined as a regular, exclusive occupancy of a Lot and the structure located thereon by any purpose other than the Owner, for which the Owner receives any consideration or benefit including, but not limited to, a fee, service or gratuity. Lots may be leased only in their entirety. No fracture or portion may be leased. There shall be no subleasing of Lots or assignment of leases unless prior written approval is obtained from the Board. No transient tenants may be accommodated on a Lot. All leases shall be in writing and shall be for initial terms of not less than thirty (30) days, except with prior written consent of the Board. Notice of any lease, together with such additional information as required by the Board, shall be given to the Board by the Owner within ten (10) days of the execution of the lease. All leases shall provide that lessee shall be bound by the terms and provisions of this Declaration. The Owner must make available to the

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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lessee copies of said Declarations, By-Laws and any rules adopted pursuant thereto. The Board may adopt reasonable rules regulating leasing and subleasing.

Section Thirty: Exterior Materials. All roofing materials used on any Lot must be cedar shingle, cedar shake, tile, metal tile or 30-year (or more) architectural grade composition. Flat roofs are allowed but must use 80 mil PVC or "Traditions" 50 mil patterned PVC (or similar ACC-approved product) with mechanical fasteners. Roof decks are allowed but must use 50 mil PVC Deck-Shield (or similar ACC-approved product) with adhesive. Vinyl siding, T-111, or other similar material may not be used for final exterior siding on any side of a building located on a Lot.

Section Thirty-One: Subdivision of Lots. In no event shall any Owner subdivide, plat or otherwise legally divide any Lot included in the property.

Section Thirty-Two: Manufactured Housing. Modular or manufactured homes (including without limitation single, double or triple wide mobile homes) and any other form or type of structure that is substantially built or constructed off of the Owner's Lot, shall be expressly prohibited on the property.

Section Thirty-Three: Additional Structures. No accessory or additional detached dwelling units, guest houses or detached garages or carports shall be permitted on any Lot unless plans have been submitted to and approved by the ACC.

Section Thirty-Four: Dwelling Size. The total enclosed floor area for any primary dwelling to be located on a Lot shall not be less than 1,500 square feet. The foregoing square footage calculations shall exclude basements (other than daylight basements), porches, decks and garages. For purposes of this Declaration, a basement shall be deemed a "daylight" basement if at least one wall is substantially above ground and has at least one window.

Section Thirty-Five: Damage and Construction Debris Due to Construction Activities. Each Owner and occupant shall be exclusively responsible and liable for any and all damage to sidewalks, curbs, roadways, drainage facilities, rockeries, utility facilities, and any other improvements, resulting or arising from construction or repair activities on such Owner's Lot. Any Owner and occupant performing or contracting for any construction activities on the property must arrange for the clean up and repair of all such improvements and areas impacted by such construction activities. In the event an Owner and occupant does not perform all clean up and repair activities required in this Section within 30 days following the completion of construction activities or within 15

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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days following written notice by the Association, the Association or Declarant is entitled to proceed with said clean up and repairs and to collect the cost of doing so from the Owner as an unpaid assessment due by such Owner. At the election of the Association or Declarant (each in its sole discretion), the Association or Declarant may require any Owner and occupant to make a deposit of \$1,000 as security for performance of such Owner's obligations under this Section, which can be collected at any time after commencement by such Owner and occupant of construction activities on the Owner's Lot. The deposit, less any amounts due under this Section, will be refunded to the Owner and occupant after completion of all such construction activities.

Section Thirty-Six: Burning. No burning, either inside or outside of a structure, is permitted on any portion of the property unless expressly permitted under applicable laws and regulations.

Section Thirty-Seven: Drainage Facility Hook-Ups. Owners shall install yard drains, down spout drains and other improvements as necessary to connect with the drainage facilities, and otherwise comply with all laws and regulations applicable to drainage matters.

Section Thirty-Eight: Regulations for Contractors and Service Personnel. Every Owner of a Lot shall be obligated to ensure that the Owner, and all of his guests, family members, contractors, employees, agents and service personnel (collectively the "Contractors") who perform work at, or deliver goods to, the Owner's Lot shall strictly comply with all of the following regulations:

a. The Owner's Lot shall be kept in a reasonably neat and clean condition. Trash and discarded materials shall be cleaned up and removed daily. All debris shall be stockpiled at the rear of the Lot, to the maximum extent feasible. Stockpiling of materials on adjacent Lots, open spaces, or streets is not permitted.

b. Proper erosion control methods, in accordance with applicable law and good building practices, shall be used on the Owner's Lot. The streets and storm drain system adjacent to the Lot shall be kept clear of mud, silt and debris from the Lot. Adequate silt fencing shall be maintained on and around the Lot. Gravel shall be placed and maintained at all vehicular entry points to the Lot.

c. Appropriate portable toilets for Lots under construction shall be provided, cleaned and maintained, and must be located off of rights-of-way, streets and adjacent Lots.

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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d. All vehicles shall be parked on one side of the street only, or on the Owner's Lot. Construction equipment may be left on the Lot overnight, but must be kept off of the street.

e. Washing of any trucks or vehicles on the street is prohibited. Washing of concrete delivery trucks must be done on the Lot and not on any street, nor in a manner where run-off would migrate to a street. No drainage from concrete trucks shall be released or deposited into storm drain catch basins.

f. No materials of any nature can be spilled, released or disposed of anywhere on the Property. In the event of accidental spillage of any materials, the Contractor responsible for such spillage shall clean up the area, at no expense to the Association or any Owner other than the Owner who retained the Contractor responsible.

g. All damage to sidewalks, gutters, curbs, streetlights, signs, fences, landscaping, roadways, drainage facilities, rockeries, utility facilities or any other improvements arising from the actions of an Owner or his Contractors shall be promptly repaired by such Owner (at the Owner's sole expense), or the Association may elect (in its sole discretion) to make such repairs and assess all costs and expenses for such repairs against the Owner as a special Assessment under this Declaration.

h. Loud radios or other music systems and excessive noise not reasonably related to the construction activities on the Lot, shall not be permitted.

i. Upon an Owner's receipt of a notification from the Association of any violation of this Section, the Owner shall correct the violation within five (5) business days, or the Association may (in its sole discretion) elect to take all actions necessary to correct the violation, including without limitation, entering onto the Property without notice or permission for the purpose of correcting the violation, and the exercise by the Association of all other enforcement rights permitted by law. All costs and expenses incurred by the Association in connection with such correction of violations shall be assessed against the Owner as a special Assessment under this Declaration.

Section Thirty-Nine: Enforcement. The Association, or the Declarant during the Development Period, may, but is not required to, take an 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

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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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 Ten, the Association shall not be in any way obligated to join in such action, or pay any of the attorney's fees, costs or expenses incurred in such action.

ARTICLE ELEVEN: EASEMENTS

Section One: 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 Two: Association's Easement of Access. The Association 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; (e) cleaning, maintenance, repair and restoration work, which the Association is obligated to perform under the terms of this Declaration; and (f) all acts necessary to enforce these Covenants.

ARTICLE TWELVE: MORTGAGEE PROTECTION

Section One: Mortgagees. Notwithstanding and prevailing over any other provisions of the Declaration, the Association's Articles of Amendment 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 Two: 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.

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, EASEMENTS & RESTRICTIONS

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Section Three: 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 Four: 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 Five: 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 Six: 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 Seven: Mortgagee's Rights. Any Mortgagee shall have the right on request therefore to: (a) inspect the books and records of the Association during normal business hours; (b) receive an annual audited 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 meetings.

Section Eight: 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.

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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Section Nine: 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 THIRTEEN: MANAGEMENT CONTRACTS

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

ARTICLE FOURTEEN: INSURANCE

Section One: Coverage. The Association, through its Board or duly authorized representative, shall purchase as a common expense, insurance insuring 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, provided that any such improvements within each Lot shall be insured solely by the Owner of that Lot. The Board shall also obtain a comprehensive public liability policy insuring the Association and its members for any damage or injury caused by the negligence of the Association or any of its members, employees, agents or contractors acting on its behalf, if available at a reasonable cost, coverage in the amount of at least \$1,000,000.00 combined single limit per occurrence and in the aggregate.

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

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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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 Two: 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 FIFTEEN: 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 real property 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 SIXTEEN: REMEDIES AND WAIVER

Section One: 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 or Declarant, are in addition to, and not in limitation of, any other remedies provided by law.

Section Two: No Waiver. The failure of the Association, 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

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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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 SEVENTEEN: CONDEMNATION

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

In the event that the entire common areas 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 in derogation of the rights of the First Mortgagee of any Lot.

ARTICLE EIGHTEEN: 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 Declarant, Builder, 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.

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, EASEMENTS & RESTRICTIONS

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3. Enforcement by Self Help. The Declarant, 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 lien upon such Lot, enforceable as other liens herein.

6. Owner Objection. Should a Lot Owner object to the complaints of the Declarant or the Association 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 any legal action to enforce any of the terms and provisions of this Declaration or any legal action arising out of or in connection with the terms and provisions of this Declaration, the prevailing party shall be entitled to recover actual costs and reasonable 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 actual 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,

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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conditions, reservations or restrictions set forth in the Declaration, or abandonment of the enforcement of the same. 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 real property by providing a common plan for the development of The Overlook at Somerset Hill.

11. Term. This Declaration shall run with and bind the Lots and property and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot, their respective representatives, heirs, successors and assigns, perpetually to the extent allowed by law.

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.

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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ARTICLE NINETEEN: AMENDMENT AND REVOCATION

Section One: Exclusive Method. This instrument may be amended, and partially or completely revoked only as herein provided or otherwise provided by law.

Section Two: 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 100% of the Lots have been sold to others than Builders. 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 Three: Certain Rights of Declarant. For such time as the Declarant shall own Lots, there shall be no amendments to the Declaration, Articles of Incorporation, By-Laws, or any rules or regulations of the Association which (a) discriminate or tend to discriminate against Declarant's rights as an Owner; (b) amend any provisions of the Declaration, Articles of Incorporation or By-Laws which in any manner alters Declarant's rights or status; (c) alter the character and rights of membership or the rights of the Declarant under this Declaration; (d) alter previously recorded or written agreements with public or quasi-public agencies regarding easements and rights of way; (e) alter its rights relating to architectural controls; (f) alter the basis for assessments; (f) alter the provisions of the use restrictions as set forth in this Declaration; or (g) alter the number or selection of directors as established in the By-Laws.

Section Four: Prior Approval by FHA/HUD. Regardless of whether or not 75% of the Lots have been sold to others than 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 real property
- b) Dedication of any real property
- c) Amendment to this Declaration

Section Five: 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

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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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 real property;
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 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 real property after substantial destruction or condemnation occurs; or
13. Any provisions which are for the express benefit of Institutional First

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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Mortgagees.

Section Six: Effective Date. Amendments shall take effect only upon recording with the Thurston County Auditor.

Section Seven: Protection of Declarant. For such time as Declarant shall own Lots located in the real property there shall be no amendments to the Declaration, the Articles of Amendment of Incorporation, the By-Laws 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 this Declaration.
4. Alter the Declarant's rights as set forth in this Declaration relating to architectural controls.
5. Alter the basis for assessments, or the Declarant's exemption or Builder's exemption from certain assessments.
6. Alter the number or selection of Directors as established in the By-Laws.
7. Alter the Declarant's rights as they appear under this Declaration.

Section Eight: Notice. Any notice required hereunder shall be deemed effective when personally delivered or three (3) days after mailing by certified 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 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.

**DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
EASEMENTS & RESTRICTIONS**

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