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DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
THE COMMUNITY OF MARINA VISTA ESTATES

**THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE COMMUNITY OF MARINA VISTA ESTATES** ("Declaration") is made by MARINA VISTA ESTATES, LLC, a Washington Limited Liability Company, ("Developer") by and through its Manager, to set forth, among other things, provisions which will subject the Community of Marina Vista Estates ("Development") located in Richland, Benton County, Washington, to certain covenants, conditions, restrictions, easements and other provisions. The Development is legally described as Tract J, Columbia Point, Richland, Benton County, Washington having Tax Parcel No. 1-1398-302-0006-000.

**NOW, THEREFORE, THE DEVELOPER HEREBY DECLARES** that all of the Lots within the boundary of the Development, depicted on attached Exhibit "1", the Homes built thereon and all Easement Areas and Association Property shall be held, sold, and conveyed subject to the following easements, covenants, conditions, and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of all of the Development and Owners thereof. These Protective Covenants, as hereafter defined, shall run with real property of the Development, and shall be binding on all parties having or acquiring any right, title or interest in one or more of the described Lots and on the Association with regard to Easement Areas and Association Property and all of their successors and assigns and shall inure to the benefit of each present and subsequent Owner thereof. All parties that hold any interest in any Lot or Home shall be deemed to agree that this Declaration and the Protection Covenants contained within are reasonably necessary and rationally related to furthering the Declaration's purposes.

ARTICLE I. DEFINITIONS AND EXPLANATIONS

1.1 "Architectural Control Action" means any action taken by the Developer or, after the Development Period has expired, the Architectural Control Committee, to enforce the Architectural Guidelines (*as may be adopted by the Board*) and Protective Covenants of this Declaration or to grant Approvals of Variances.

1.2 "Association" means Marina Vista Estates Homeowners Association, a Washington Non-Profit Mutual and Miscellaneous Corporation, its successors and assigns, whose Members shall, after the Development Period, annually elect a Board of Directors. The Board of Directors shall govern the Association in accordance with the Governing Documents.

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1.3 "Association Property" means all Easement Areas and other easements and licenses with regard to real property, all personal property and all real property (or security interest therein) held in the name of the Association; understanding that all property that is not legally described as a Lot is or shall be Association Property.

1.4 "Board Action" means action taken by the Developer, or, after the Development Period, the Board of Directors or any duly appointed Committee, including Architectural Control Action.

1.5 "Board of Directors" and "Board" means the initial Directors appointed by the Developer and after the Development period, those Owners (individually a "Director") duly elected by the Membership to conduct Association business.

1.6 "Declaration" means this Declaration, including any amendments thereto that have been recorded in the records of Benton County, Washington.

1.7 "Development Period" means that time until the earliest of Developer relinquishing its position as Developer of the Development or the closing on the last of the twenty two (22) planned Lots.

1.8 "Governing Documents" means the Master Declaration, this Declaration, and all Association Articles of Incorporation, Bylaws, Rules and Regulations and Resolutions as they may be promulgated or amended along with all statutory and regulatory matters governing developments of this nature relating to water and water rights. A copy of the Governing Documents then in force shall be retained by the Association Secretary and shall be available for inspection by any Owner during reasonable business hours.

1.9 "Home" means the single family dwelling on a Lot used solely for residential purposes which shall not be a mobile, modular or manufactured home, by whatever name, and must comply with all Governing Documents.

1.10 "Lot" means any parcel of real property (before or after a Home is built thereon) within the Development as depicted on the attached Exhibit "1", a recorded subdivision plat map, hereby incorporated herein by this reference.

1.11 "Master Declaration" means the Declaration of Covenants, Conditions, Restrictions and Easements for Columbia Point, recorded in the Benton County Property Records under Auditor's File No. 96-30008, hereby incorporated herein by this reference, whose terms and conditions are superior to this Declaration to the extent there is a conflict.

1.12 "Mortgage" means any duly recorded consensual real property security instrument including without limitation, a Mortgage, deed of trust and real estate contract, however not including non-consensual liens or other such encumbrances.

1.13 "Owner" shall mean the record owners, whether one or more persons or entities, of a fee simple title to any Lot, Lots or, after improvement, any Home which is a part of the Development, including contract purchasers (those who are purchasing Lots or Homes from Developer or any third party), but excluding those having such interest merely as security for the performance of an obligation, however including all tenants, successors, heirs and assigns of an Owner.

1.14 "Protective Covenants" mean collectively all of the easements, covenants, conditions, restrictions, reservations, liens, charges, grants, and other terms and conditions of the Governing Documents that further the purpose of enhancing and protecting the value, desirability and attractiveness of the Development. These Protective Covenants are intended to apply to each Home, Lot, Owner and all matters with regard to the Association, Easement Areas and Association Property.

All other terms, words or phrases shall carry their normal meaning unless otherwise defined herein or have a special meaning in the context of real property law.

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ARTICLE II. MARINA VISTA ESTATES HOMEOWNER'S ASSOCIATION

2.1 Description of Marina Vista Estates Association/Nature of Association Duties. The Association shall have all powers prescribed by law and set forth in the Governing Documents, as they may be amended from time to time. The Association shall maintain, repair, replace, improve and otherwise manage the Easement Areas so as to keep them in good repair and condition. The Association shall conduct such maintenance, repair, replacement, construction or reconstruction as may be determined pursuant to Board Action to promote the health, safety and welfare of the Easement Areas and Association Property, including landscaping, irrigation, snow removal, and storm drainage attributable to the Easement Areas and Association Property. The Association shall mow all lawns, maintain all landscaping and trees and perform all irrigation in all landscaped and lawn areas of all Lots, Association Property and Easement Areas. The Association shall be responsible for compliance with any and all requirements of the City of Richland or its successor regarding maintenance of the Easement Areas and Association Property to the extent required after the conveyance thereof from the Developer or the Association to the City of Richland.

2.2 Association Board of Directors. During the Development Period, the Developer shall appoint the Board of Directors. After the Development Period, the Membership shall elect the Board of Directors. The Board shall have the full authority and all rights, responsibilities, privileges and duties to manage the Association under the Governing Documents and shall be subject to all provisions of the Governing Documents. The Board shall elect Officers of the Association from among the Board members, which shall include a President who shall preside over the Association, a Secretary who shall record Board Action and a Treasurer who will report and control the Association's Financial Affairs. The Board of Directors shall consist of not less than three (3) Directors. The initial Bylaws of the Association shall be adopted by the Developer. The Board may amend the Bylaws of the Association by majority vote, which amendments may be overruled by a two-thirds (2/3) majority vote of the Members.

2.3 Marina Vista Estates Association Membership. Every person or entity who is an Owner shall by reason thereof be a Member of the Association. Association Membership shall be appurtenant to and shall not be separated from ownership of the Lot or Home to which it relates.

2.4 Votes Appurtenant to Lots. After the Development Period, every Owner shall be entitled to cast one (1) vote in the Association for each Lot owned. When more than one (1) person or entity owns a Lot, the vote therefor shall be cast as the Owners shall determine among themselves. If the several Owners of a Lot are unable to agree as to the casting of their vote, such vote shall not be counted. When an Owner owns more than one (1) Lot, each vote shall be separately cast. An Owner may delegate its vote to family members, trustees, officers or tenants.

2.5 Number of Votes. From the commencement of the existence of the Association, there shall be a total of twenty two (22) votes in the Association, representing one (1) vote for each of the twenty two (22) Lots, the maximum number presently authorized in the Development by the City of Richland. Unless expressly provided herein, during the Development Period, the Developer shall be entitled to cast twenty two (22) votes and shall hold all offices. If other than twenty two (22) Lots are authorized by the City of Richland in the Development during the Development Period, the number of votes in the Association shall be adjusted to reflect the changed number of Lots. After the Development Period, the number of votes in the Association shall be adjusted from time to time so there shall always be one (1) vote for each Lot in the Development.

2.6 Association Property. The Association shall have the power and right to own real and personal property. After the Development Period, the Developer shall convey all of its right, title and interest to the Association of all real property and fixtures in the Development not held by Owners or previously deeded to the City of Richland, and the Association, thereafter, shall be responsible for all such Association Property and whatever other Association Property it acquires. Such property shall be "AS IS, WHERE IS," and without warranty by the Developer other than any manufacturer's warranties, if any. DEVELOPER HEREBY DISCLAIMS ALL WARRANTIES, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

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2.7 Utility Easements. The Owners, as Grantors, for themselves, their successors and assigns, hereby dedicate easements for utilities, ingress, egress and view as shown in the recorded plats (see Exhibit "I") (Collectively "Easement Areas"). All easements hereby granted are for the purpose of ingress, egress, access and to maintain, construct, and reconstruct and repair irrigation and domestic water lines, communication and television lines, gas, electrical and all other utility lines and all roads, sidewalks, pathways, commons areas and entries as they are planned, constructed or installed at the time of the conveyance of each of the Lots in the Development. Whenever the uses of the easement shall cease, the same shall revert to the Owner of the Lot affected by the easement.

2.8 Rules and Regulations. The Board shall have the power to adopt, amend and enforce Rules and Regulations in addition to the Protective Covenants contained in the Governing Documents, provided that such Rules and Regulations shall not be inconsistent with the purposes of the Governing Documents. The Rules and Regulations shall not discriminate among Owners except as may be necessary to reflect different requirements or restrictions applicable to different Lots in the Development (i.e. *golf course Lots, river view Lots, etc.*). The Board may prescribe penalties for the violation of such Rules and Regulations. Any such Rules and Regulations shall become effective thirty (30) days after notice thereof is mailed to all Owners. Such Rules and Regulations shall have the same force and effect as if set forth herein, however, shall be promulgated and amended by majority Board Action.

2.9 Architectural Controls Committee. After the Development Period, the Board shall establish and continuously maintain an Architectural Controls Committee composed of three (3) or more Owners to review and approve or disapprove the details and written plans and specifications of all exterior and common wall construction and enhancement, including conversions, additions to or exterior alterations of Lots and Homes and landscaping that is inconsistent with original landscape design and motif. The prior approval of the Architectural Controls Committee shall also be required for any changes to the Easement Areas or improvements to Association Property. The Board shall have the power to adopt, amend and enforce Architectural Guidelines, criteria, and procedures governing the Architectural Controls Committee and the Owners' compliance therewith. The Architectural Controls Committee's written approval or disapproval of plans shall be made within thirty (30) days of submission of a complete set of plans or actions and shall be delivered to the Owner of the Lot upon which the construction is proposed with specific exceptions if disapproved.

2.10 Association Right to Subcontract. The Board may contract or subcontract for any service or matter that would otherwise be the responsibility of the Association, including, without limitation, Association administration, management, billing and maintenance of Easement Areas and Association Property.

2.11 No Warranty. Architectural Controls Action shall not be deemed to be representations or warranties that the plans or actions reviewed by the Architectural Controls Committee do or do not comply with applicable governmental laws, codes or regulations, do or do not meet the standards in the industry for such plans or actions or do or do not meet the needs or desires of the Owner submitting the plans or actions. Owners shall assume all risks and be responsible for compliance with all such laws, standards and needs.

2.12 Immunity. So long as a Director or the Architectural Controls Committee Member, other committee member or Developer, during the Development Period, has acted in good faith, without willful or intentional misconduct, upon the basis of such actual information as is then possessed by such person, then no such person shall be personally liable to any Owner, or to any other person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error or negligence of such person.

2.13 Indemnification. Each Director, Architectural Controls Committee Member, other committee member, and Developer shall be defended and indemnified by the Association against all expenses and liabilities, including attorneys' fees reasonably incurred by or imposed in connection with any proceeding to which such person may be a party or any settlement thereof, or in which such person may become involved, by reason of holding or having held such position, whether or not such person holds such position at the time such expenses or liabilities are incurred (*except to the extent such expenses and liabilities are covered by insurance actually obtained by the Board*), except in such cases wherein such person is adjudged guilty of willful misfeasance in the performance of his or her duties; provided, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and

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reimbursement as being in the best interests of the Association. The Board may purchase insurance to augment its indemnification requirement.

ARTICLE III. POWER OF ASSESSMENT

3.1 Owner's Covenant to Pay Assessments/Reasonableness. All Owners, by virtue of accepting ownership of a Lot, knowingly and voluntarily covenant and agree thereby to pay the Association, in advance, all General and Special Assessments (collectively "Assessments") including any Assessments that accrue prior to such ownership as provided herein and, by virtue of this provision of this Declaration, hereby agree that all provisions hereof are reasonable. No Owner is relieved of liability for Assessments by abandonment of a Lot.

3.2 Commencement of Assessments. Liability of an Owner for General Assessments shall commence on the date upon which any instrument of transfer to such Owner becomes operative (i.e. *initial Certificate of Occupancy, recording date of a Deed, recorded Real Estate Contract or a transfer by will, intestate succession, joint tenancy succession, etc.*) and shall commence upon passage by the Membership with regard to Special Assessments (See *Section 3.8*). The Board may in its Rules and Regulations provide for an administratively convenient date for payment of Assessments that is not more than ninety (90) days after the effective date established above.

3.3 Reserves for Replacement. The Developer, or, after the Development Period, the Board shall establish and maintain a Reserve Fund for replacement of the Easement Areas and Association Property and any improvements thereon by the allocation and payment monthly to such Reserve Fund of an amount to be designated from time to time. The Reserve Fund may be deposited with an insured banking institution and/or, in the discretion of the Board, be invested in guaranteed bonds. The Reserve Fund shall be expended only for the purpose of affecting the replacement of Easement Areas, Association Property and any improvements thereon, equipment replacement, and for start-up expenses and operating contingencies of a non-recurring nature or for such other purposes as it may from time to time consider to be necessary or appropriate; understanding that the primary purpose of the Reserve Fund is to fund the replacement of existing facilities. Reserves shall be considered an appurtenance to each Lot and shall not be separately withdrawn, assigned, or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot to successors in interest.

3.4 Exempt Areas. Lots without Occupancy Certificates held by Developer, held by the Association after foreclosure, all Easement Areas and Association Property shall not be subject to Assessment.

3.5 Insurance Coverage. After the Development Period, the Association shall obtain and maintain at all times the following insurance policy or policies and bonds: Worker's compensation insurance to the extent required by applicable laws; fidelity coverage to protect against dishonest acts by the Board, Association officers, committees, managers, and employees of any of them and all others who are responsible for handling Association funds, in an amount equal to three (3) months General Assessments (i.e. *one quarter (1/4) of the Operating Budget*), including reserves; insurance against loss of personal Association Property by fire, theft, and other losses with deductible provisions as the Board deems advisable; premises liability insurance for all Association Property and Easement Areas; such other insurance as the Board deems advisable, including Board and Committee liability and errors and omissions insurance and such insurance that may be required by governmental lenders or guarantors, including any casualty, flood and liability insurance as the Board deems advisable.

3.6 Association Operating Budget. Developer and, after the Development Period, the Board, shall annually prepare, or cause to be prepared, and approve, an Operating Budget for the Association in accordance with Generally Accepted Accounting Principles. The Operating Budget shall set forth all sums required by the Association, as estimated by the Board, to meet its annual costs and expenses, including, without limitation, all management and administration costs and services furnished to or in connection with Association Property and all Easement Areas and including charges for any services furnished by or to the Association; the cost of utilities and other services; and the cost of funding all Reserves established by the Developer or, after the Development Period, the Board, including, Reserve Fund (See *Section 3.3*) and a reserve for replacements, along with a moderate contingency amount to prepare for

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unforeseen expenses. The funds required to meet the Association's annual expenses shall be assessed through a General Assessment against each Owner and Lot as provided hereafter. Developer or, after the Development Period, the Board may necessarily revise the Operating Budget as it deems reasonably necessary or advisable.

3.7 Levy of General Assessment/Payment. Based on the Operating Budget, the Board shall determine and levy a General Assessment calculated as the amount of the Operating Budget divided by the number of Lots in the Development. Notice of the General Assessment or any revision thereof along with a payment due date shall be sent to each Owner. The omission to fix the General Assessment amount for any period shall not be deemed a waiver or a release by the Association from the obligation of any Owner to pay the General Assessment or any installment thereof. The General Assessment fixed for the preceding period shall continue until a new Assessment is fixed. Installment payments of General Assessments may be monthly, quarterly, semi-annual, or annual basis as determined by the Board. Any Owner may prepay one (1) or more installments on any General Assessment without discount, premium or penalty. The payment of General Assessments shall be pursuant to duly adopted Rules and Regulations. The Treasurer shall provide proof of payment upon reasonable request. During the Development Period, each Owner shall pay one-twenty second (1/22nd) of the Operating Budget and, until Developer conveys any Lot, Developer shall not be required to pay any Assessments.

3.8 Special Assessments/Payment. In addition to the General Assessments authorized by this Article, Developer, and after the Development Period the Board, may levy Special Assessments for such purposes as the Developer, and after the Development Period, the Board may consider appropriate; provided, however, that any such Special Assessments must have the prior two-thirds (2/3) Membership Approval. Such Approval shall be pursuant to a Special or Annual Meeting of the Association. If appropriate, a Special Assessment may be against a portion of the Lots in cases where some, but not all, of the Lots would benefit by the Special Assessment, in which case two-third (2/3) of the affected Lots must authorize the Special Assessment. The amount of each Owner's Special Assessment for any year shall be the total Special Assessment for such year, divided by the sum of the number of existing Lots affected by the Special Assessment. The due dates of any Special Assessment payment shall be fixed by Board Action authorizing such Special Assessment. Special Assessments levied by the Developer shall be assessed only upon a two-thirds (2/3) Majority Vote of the Owners that hold Lots at the time of the Special Assessment. Those Owners that abstain or refuse to vote shall be deemed to assent.

3.9 Lien to Secure Payment of Assessments/Personal Obligation of Owner. Developer hereby creates in the Association perpetually the power to create a lien in favor of the Association against each Lot to secure to the Association the payment to it of all Assessments, interest, costs and attorneys' fees. Developer hereby subjects all Lots perpetually to such power of the Association. Such lien shall arise in accordance with the terms of this Declaration without the necessity of any further action by the Association, and any such lien when created, shall be a security interest in the nature of a Mortgage in favor of the Association. Such lien shall become a continuing lien in the amount stated in the Assessment from the time of the Assessment, but expiring prorata as the Assessment payments are made, and shall also be the personal obligation of the person or entity who is the Owner of the Lot at the time of the Assessment. The lien created hereunder shall pass to successors in interest of any Lot. The personal obligation to pay a prior Assessment shall only pass to successors in interest when expressly assumed by them.

3.10 Effect of Non-Payment of Assessment. If any Assessment payment is not made in full within thirty (30) days after it is first due and payable, the unpaid amounts along with all fees and costs of collection, including reasonable attorney's fees, shall constitute a lien against the Lot assessed and such unpaid amounts, costs and fees shall bear interest from the date on which payment was first due and payable at the rate applicable to judgments in Washington. Returned check fee and rebilling fee shall carry a charge established by the Board as published in the Rules and Regulations, which amount shall be added to principal. All payments shall first be applied to interest and then to principal. By virtue of Lot Ownership, execution of a contract therefor, or any other means of acquisition of an Ownership interest, and whether or not it shall be so expressed in any such deed or other instrument, each Owner shall be deemed to grant thereby to the Association, its agents and employees, and to Developer during the Development Period, the right and power to bring all actions against such Owner personally for the collection of such Assessments as a debt, and to enforce the liens by foreclosure in the same form of action as is then provided for the foreclosure of a Mortgage on real property.

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The liens provided for in this Declaration shall be for the benefit of the Association as a non-profit corporate entity with the reserved power to bid in at any lien foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot foreclosed against.

3.11 Voting Suspension for Non-Payment of Assessment. A defaulting Owner's Voting rights in the Association shall be automatically suspended upon default of the payment of any Assessment or performance of any terms of the Governing Documents commencing thirty (30) days after such default (*except as against foreclosing secured parties*) and shall remain suspended until all payments, including interest and all costs thereon, are brought current and any other non-monetary default is remedied.

3.12 Mortgage Protected. Nothing herein contained shall impair or defeat the lien of any Mortgage now or hereafter recorded covering any Lot or Lots, but title to any Lot obtained as a result of foreclosure shall hereafter be held subject to all of the provisions herein.

ARTICLE IV. PROTECTIVE COVENANTS AND USE RESTRICTIONS

4.1 Compliance with Governing Documents. All Owners shall, by virtue of acquiring an Ownership interest, whether or not expressed in a conveyance document, strictly comply with all Governing Documents.

4.2 Reasonable Enjoyment of Property. The Owners shall use their respective Lots to their enjoyment in such a manner so as to not offend or detract from other Owners' enjoyment of their own respective Homes.

4.3 Residential Character of Property. No structures or buildings of any kind shall be erected, altered, placed, or permitted to remain on any Lot other than the Homes.

4.4 Architectural Control. The Developer, or after the Development Period, the Board of Directors, may, in their respective discretion, appoint and delegate its architectural control function to a committee. Notwithstanding the guidelines set forth in this Declaration, no improvement or demolition on a Lot or to a Home shall commence or be erected, placed, or until the building plans, specifications, landscaping fencing and other detailed plan, showing the nature, kind, shape, height, material, and location of such improvement or demolition have been approved in writing by Board Action as to conformity and harmony of external design with existing Homes, in its sole discretion. In the event a submitted design is not approved or affirmatively rejected in writing, within forty five (45) days after said plans and specifications have been submitted to the Developer or Board of Directors approval will not be required, and this Article shall be deemed to have been fully complied with.

4.5 Prohibited Uses and Activities. The following uses and activities and any other use or activity not expressly permitted herein, are prohibited in the Development. Additional specific uses and Activities may be duly adopted by the Board as Rules and Regulations. In addition to the Protective Covenants of this Declaration and by way of augmentation, the following sections of the Master Declaration are incorporated herein: 6.3 Leasing Restrictions; 6.4 Limitations on Keeping of Animals; 6.5 Commercial Uses; 6.6 Prohibited Vehicles and Equipment; 6.7, Refuse and Recycling; 6.8 Underground Utilities; 6.9 Mining Prohibited; 6.10 Signs; 6.11 No Obstruction of Easements; 6.12 Antennas; 6.13 Public Water, Sewer Systems; 6.15 Weapons; 6.18 Motorcycles and ATV's; 6.19 Solid Fuel Burning; 6.20 Nuisance Prohibited. To the extent the provisions of the Master Declaration are inconsistent with the Protective Covenants and use Restrictions contained herein, the provisions of the Master Declaration shall be favored.

4.6 Manufactured Homes Prohibited/Clothes Lines Prohibited. Erection of a manufactured home, mobile home, or modular home (*by whatever name*) on any Lot is expressly prohibited. No clothes lines shall be erected on any Lot nor shall any rugs, clothes or similar materials be hung or draped so as to be visible from the outside.

4.7 Storage of Automobiles, Boats, Trailers and Campers. Non-running automobiles or vans, boats, house trailers, campers, camp trucks, boat trailers, junk vehicles, or any other similar machinery or equipment of any kind or character may not be stored in the Development unless provided otherwise in this Declaration or pursuant to the Rules

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and Regulations. However, an Owner may keep such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any Lot or Home, provided such equipment and machinery when not in use is stored indoors or otherwise away from view. Except for bona fide emergencies, the repair or extraordinary maintenance of automobiles or other vehicles shall not be carried out in the Development.

4.8 Utilities Underground. Except for hoses and the like which are reasonably necessary in connection with normal lawn maintenance, no water pipe, sewer pipe, gas pipe, drainage pipe, telephone, power or television cable, or similar transmission line shall be installed or maintained above the surface of the ground without the prior written approval of the Architectural Controls Committee.

4.9 Leasing Restrictions. No Lot or Home may be leased or rented by any party for a period of fewer than thirty (30) days, nor shall less than the whole of any Lot or Home be leased or rented. Each lease or rental agreement shall be in writing and shall by express terms provide that the Tenant is subject in all respects to the provisions of the Governing Documents. Any failure by a Tenant to comply with the terms of the Governing Documents shall automatically place the Owner/Landlord in default as if the Owner/Landlord were in occupancy. Other than the foregoing, there is no restriction on the right of any Owner to lease a Lot or Home.

4.10 Signs. Not more than two (2) temporary real estate signs not exceeding six (6) square feet in area may be erected upon any Lot or attached to any Home advertising the sale or lease thereof. Any such temporary real estate sign shall be removed promptly following the sale or rental of such Lot or Home.

4.11 Spas; Outdoor Courts. No spas, hot tubs or outdoor courts shall be constructed on any Lot without the prior written approval of the Architectural Controls Committee.

4.12 Fences; Walls; Decks. Fences, walls and decks are prohibited on any portion of a Lot without the prior approval of the Architectural Controls Committee. All fences, walls and decks, if approved, shall be constructed in a good and workmanlike manner of suitable materials and shall not detract from the aesthetic quality and enjoyment of an adjacent Home or aesthetically vary from the Development.

4.13 Outdoor Lighting. Outdoor lighting on Lots and Homes shall be of a type and in a location to provide illumination of specific areas and not provide general lighting that shines on other Lots. All outdoor lighting shall be screened or shielded to prevent unwanted lighting or glare on adjacent Lots and public areas. No sodium vapor, quartz or metal halide lighting is permitted in Development without the prior written approval of the Architectural Controls Committee.

4.14 Water and Sewer Systems. Owners shall be required at all times to connect their Homes to the public water and sewer facilities administered by the City of Richland, or its successor, and at all times to maintain such facilities in good working order and repair.

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

4.16 No Obstruction of Easements. No electronic transmission, structure, planting or other material shall be placed or permitted to remain upon the Development which may damage or interfere with any easement or the installation or maintenance of utilities, which may unreasonably interfere with another Owners easement, view, solar easement or which may unreasonably change, obstruct or retard direction or flow of any drainage channels.

4.17 Approval of Variances. Any Owner desiring to vary from the terms and conditions of the Governing Documents shall have the right to appeal to the Developer, or, after the Development Period, the Board of Directors for approval of such variance ("Variance") to the extent the Developer or Board of Directors is empowered to allow a Variance. After considering the views of other potentially affected Owners, such Variance may be granted by Developer

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or the Architectural Controls Committee. The Variance shall carry specific time limitations for the activity in question, and shall apply only to the specific case and a specific Owner involved. No such Variance shall be considered a precedent for the granting of other Variances. The Developer or Architectural Controls Committee may revoke any such Variance if at any time the grantee does not comply with the restrictions or conditions established in the Variance approval. Variances shall be deemed granted unless denied within forty five (45) days of being submitted to Developer or the Architectural Controls Committee. Any such variance shall be in the sole discretion of the Architectural Controls Committee. The granting of one (1) Variance shall not require the granting of any other Variance. In the event any Variance does not comply with the time requirement within which substantial completion must occur, the Association may complete the job and the cost thereof shall constitute a lien.

**4.18 Owners' Maintenance Responsibilities.** Except for those duties outlined in Section 2.1, the maintenance, upkeep and repair of individual Homes and Lots shall be the sole responsibility of the individual Owners thereof, and in no way shall individual Lot or Home maintenance be the responsibility of the Association, its agents, subagents, officers or directors. Owners shall maintain the Homes and Lots and any and all appurtenances thereto in good order, condition and repair and in a clean, sightly and sanitary condition at all times. Without limitation as to the foregoing, each Owner shall be obligated to maintain the landscaping on each Lot owned in healthy and attractive state and in a manner comparable to that on the other Lots in the Development to the extent within an Owner's direct control. Each Owner shall maintain the landscaping on its Lot such that it does not interfere unreasonably with the view from any adjacent Lot or Home to the extent the same is within the direct control of such Owner. After notice to an Owner from the Association of such Owner's failure to so maintain a Lot, and after approval of a two thirds (2/3) majority vote by the Board or other Association committee to which such oversight responsibility shall have been delegated, the Association shall have the right, through its agents and employees and upon not less than forty eight (48) hours prior written notice, to enter upon any Lot which has been found to violate the foregoing standards in order to repair, maintain and/or restore the landscaping to such standards. For such purposes, each Owner hereby grants the Association a license restricted to the foregoing purposes. The cost of such work shall constitute a Special Assessment burdening such Owner and the subject Lot only, and the provisions of this Declaration regarding collection of Assessments shall apply thereto.

ARTICLE V. GENERAL PROVISIONS

**5.1 Enforcement/No Waiver/Attorneys Fees and Costs.** The Developer and, after the Development Period, the Association, the Board of Directors and each Owner of a Lot or Lots subject to this Declaration shall have the right to enforce, by any proceeding at law or in equity, all Protective Covenants, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Developer, the Association, its Board of Directors, or any such Owner to enforce any Protective Covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any such enforcement action, the prevailing party shall be entitled to their respective attorney's fees and costs as established by the Court or by an Arbitrator.

**5.2 Severability.** Invalidation of any one of these Protective Covenants contained in this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**5.3 Term/Amendment.** The Protective Covenants and restrictions contained in this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Developer, the Association, its Board of Directors, and the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for three (3) successive periods of ten (10) years each unless an instrument terminating this Declaration which is signed by not less than seventy five percent (75%) of the Owners. The Protective Covenants, Use Restrictions and other terms of this Declaration may be amended at any time upon the recording of an amendment signed by not less than the Owners then owning seventy five percent (75%) of the Lots in the Development. Amendments shall take effect only after such Amendments have been recorded with the Auditor of Benton County, Washington. During the Development Period, Developer may unilaterally amend any provisions of this Declaration



with the consent of not less than fifty percent (50%) of the Owners of any Lot held by an Owner other than Developer. Provided, however, Developer may unilaterally effectuate amendments to this Declaration that subject certain Special Protective Covenants on certain sections of the Development; by way of example, golf course Lots, river view Lots, etc. In the event Developer resigns as the Developer prior to the development and construction of substantially all the Lots in the Development, the Association may adopt Construction and Architectural Guidelines to govern the development of any undeveloped portion of the Development.

5.4 Indemnification. The Association shall defend, indemnify and hold the Developer and the Board (and all Members/Managers individually signing below) unconditionally harmless from all claims whatsoever, whether arising during or after Developer's control of the Development.

5.5 Conflict with Master Declaration. Any conflict between this Declaration and the Master Declaration shall be ruled in favor of the Master Declaration.

5.6 Taxes. Each Owner shall pay without abatement, deduction, or offset, all real and personal property taxes, General and Special Assessments, including local improvement assessments and other charges of every description levied on or assessed against each Lot owned and all applicable personal property taxes levied against the Lot or Home or personalty thereon.

5.7 Transfer of Property/Easements. Developer and the Association after the Development Period may transfer and convey any real property or sewer, water, storm drainage, irrigation or other general utility in the Development to a public body for ownership and maintenance, together with any necessary easements relating thereto, and each Lot shall become burdened thereby.

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

5.9 Notices. Any Notice required to be given shall be deemed effective upon personal service, electronic delivery by fax or email or three (3) days after being mailed, postage prepaid. All Notices shall be addressed to the Owner at the Lot and Home unless otherwise directed in writing by an Owner.

5.10 Arbitration. With exception to Unlawful Detainer (RCW 59.12) and statutory foreclosure and forfeiture provisions under RCW Title 60, the parties hereby stipulate to the following jurisdiction: (a) all claims and disputes relating to or arising out of this Agreement that are less than Two Thousand Five Hundred Dollars (\$2,500.00) shall be filed in the Small Claims Division of the Benton County, Washington, District Court; (b) all claims and disputes related to or arising out of this Agreement in excess of Two Thousand Five Hundred One Dollars (\$2,501.00) shall be subjected to binding arbitration as the sole and exclusive remedy. In the event the parties cannot agree on an arbitrator within fifteen (15) days after demand, the Presiding Judge of the Benton County, Washington Superior Court shall appoint an arbitrator versed in the subject matter of the claim or dispute. Substantive discovery shall be allowed in the sole discretion of the arbitrator. The arbitrator may award damages and injunctive relief and may register a judgment in the court of competent jurisdiction in Benton County, including judgment by default. The judge or arbitrator shall award the prevailing party all costs and attorneys fees, including fees for demands and notices. In any suit, arbitration or proceeding or action to enforce any term, condition or covenant of this Agreement or to procure an adjudication or determination of the rights of the parties hereto, the most prevailing party shall be entitled to recover from the other party reasonable sums as attorney fees and costs. There shall be, and there is hereby created and declared to be, a conclusive presumption that any violation or breach or attempted violation or breach of the covenants, conditions, and restrictions herein cannot be adequately remedied by an action at law or exclusively by recovery of damages, thereby requiring equitable relief.

5.11 Sales and Construction Facilities. Notwithstanding any other provisions of this Declaration, it is expressly permissible during the Development Period for Developer or agents or contractors thereof to maintain on any portion

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of the Development owned by Developer such facilities as in the sole opinion of Developer may be reasonably required, convenient, or incidental to the construction and sale of Lots or Homes, including without limitation business offices, storage areas, construction yards, signs, model Homes or sales offices.

ARTICLE VI. SUBORDINATION OF LIENS

This Article is intended to benefit each Mortgagee who lends money for purposes of purchase, refinance, construction of a Lot, Home, Association Property or Easement Area.

6.1 Mortgagee's Non-Liability. A Mortgagee shall not, by reason of the security interest only, be liable for the payment of any Assessment.

6.2 Mortgagee's Rights During Foreclosure. During the pendency of any forfeiture or foreclosure proceeding, including any period of redemption, the holder of the Mortgage, or the receiver, if any, may exercise any and all of the rights and privileges of the Owner of the encumbered Lot or Home, including, without limitation, the right to vote in the Association in place of the Owner during the pendency of a foreclosure or forfeiture. During a foreclosure or forfeiture proceeding, all Assessments shall accrue and be due and payable to the Association sixty (60) days after title vests in the Mortgagee.

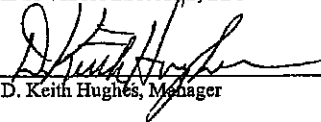
6.3 Mortgagee as Owner. If a Mortgagee becomes the record Owner of the Lot by virtue of a foreclosure or forfeiture, the Mortgagee shall be subject to all of the terms and conditions of this Declaration, including the obligation to pay for all Assessments and charges in the same manner as any Owner.

6.4 Survival of Assessment Obligation. After the foreclosure or forfeiture, any unpaid Assessments shall survive and remain as a lien against the Lot.

6.5 Subordination of Assessment Liens. The Assessment lien created hereunder shall be subordinate to any Mortgage placed upon a Lot as a construction loan security interest or as a purchase money security interest. The Association shall reasonably execute a written subordination confirmation in favor of eligible Mortgagees. The sale or transfer of any Lot or Home or any interest therein shall not affect the liens provided for in this Declaration except as otherwise specifically provided for herein, and in the case of a transfer of a Lot for purposes of realizing a security interest, liens shall arise against the Lot for any Assessment Payments coming due after the date of completion of foreclosure (including the expiration date of any period of redemption).

Dated this 19th day of February, 2000.

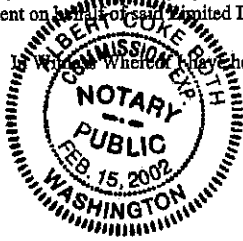
DEVELOPER: MARINA VISTA ESTATES, LLC

  
D. Keith Hughes, Manager

STATE OF WASHINGTON )  
                                  : ss  
County of Benton        )



On this 19 day of February, 2000, before me personally appeared D. Keith Hughes, to me known to be the Manager of Marina Vista Estates, LLC, the Limited Liability Company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said Limited Liability Company for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument on behalf of said Limited Liability Company.



Wherefore, I, the Notary Public, hereunto set my hand and affixed seal the day and year first above written.

Albert Coke Roth III  
NOTARY PUBLIC in and for the State of  
Washington, residing at: Richland  
My Commission Expires: 2/15/02

