

RECORDED BY SNOHOMISH AUDITOR-BOB TERWILLIGER, COUNTY AUDITOR

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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

OF

AMBERLEIGH HOMEOWNERS' ASSOCIATION

CROSS REFERENCE: 9503305004

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RECORDED BY SNOHOMISH AUDITOR-BOB TERWILLIGER, COUNTY AUDITOR

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
AMBERLEIGH HOMEOWNERS' ASSOCIATION

THIS DECLARATION is made on the date hereinafter set forth by WILLIAM E. BUCHAN, INC. ("Declarant"), who is the owner of certain land situated in the State of Washington, County of Snohomish, known as Amberleigh, which is more particularly described in *Exhibit A*. In order to ensure preservation of the gracious residential environment at Amberleigh, Declarant agrees and covenants that all land and improvements now existing or hereafter constructed thereon will be held, sold, conveyed subject to, and burdened by the following covenants, conditions, restrictions, reservations, limitations, liens and easements in perpetuity, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of such lands for the benefit of all of such lands and the owners thereof and their heirs, successors, grantees and assigns. All provisions of this Declaration shall be perpetually binding upon all parties having or acquiring any right, title or interest in such lands or any portion thereof and shall inure to the benefit of each owner thereof and to the benefit of Amberleigh Homeowners' Association and shall otherwise in all respects be regarded as perpetual covenants binding and running with the land. Invalidation of any one of these covenants by judgment or court order shall in no way affect the other provisions which shall remain in full force and effect.

ARTICLE I

DEFINITIONS

For purposes of the Declaration and the Articles of Incorporation and the Bylaws of the Amberleigh Homeowners' Association, certain words and phrases shall have particular meanings as follows:

Section 1. "Association" shall mean and refer to the AMBERLEIGH HOMEOWNERS' ASSOCIATION, its successors and assigns.

Section 2. "Board" shall mean and refer to the Board of Directors of the Association, as provided for in Article X. For purposes of exercising the powers and duties assigned in this Declaration to the Board, this term shall also mean the "Temporary Board" or "Declarant" as provided in Article IV unless the language or context clearly indicates otherwise.

Section 3. "Properties" shall mean and refer to the real property described with particularity in *Exhibit A* and such additions to that property which may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Maintenance Areas" shall mean those portions of all real property (including the improvements thereto) maintained by the Association for the benefit of the members of the Association. The areas to be maintained by the Association at the time of recording this Declaration are described as follows:

1. Landscaping tracts located at entry of Plat (Tract H and I);
2. Cutting preserve area (Trace A, B, D and G);
3. Landscaped screening buffer area (Tract E);

4. Private pedestrian easements (Tract C and F) (concrete walks within the public easements will be maintained by the City of Mill Creek);
5. Private street lights (structures and lights);
6. Landscaping adjacent to pedestrian easements;
7. Front lawns and planting beds up to the edge of buildings and courtyards (does not include plantings/lawns in side yards);
8. Neighborhood park (Tract J);
9. Irrigation systems utilized in common maintenance areas; and
10. Detention system located in Tract A and drainage easements.

All lawns are Common Maintenance Areas. Members of the Association shall have no right to use lawns or planting beds of other members of the Association for any purpose. The homes and lots in this plat are privately owned.

Section 5. "Lot" shall mean and refer to any plot of land other than those designated as tracts shown upon the recorded subdivision map of the Properties which shall be numbered (1-88).

Section 6. "Declarant" shall mean and refer to **WILLIAM E. BUCHAN, INC.**, its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

Section 7. "Development Period" shall mean and refer to that period of time defined in Article IV of this Declaration.

Section 8. "Other Parcels" shall mean those parcels of land selected by the Declarant which may be added to the Properties by Declarant in accordance with Article III.

Section 9. "Plat" shall mean and refer to the Plat of Amberleigh as recorded in Volume \_\_\_\_ of Plats, Pages \_\_\_\_ through \_\_\_\_, Records of Snohomish County, State of Washington, under Recording No. \_\_\_\_\_.

Section 10. "Residence" shall mean and refer to buildings occupying any Lot, including the common walls of such structures.

Section 11. "Cutting Preserve Tracts" are those tracts so designated on the Plat. These tracts have been set aside, in the areas indicated on the Plat, for the protection and preservation of native growth located on the Properties and are subject to the control of the City of Mill Creek.

Section 12. Common Areas. "Common Area" shall mean any real property located in the plat, which is owned by the Association for the common use and enjoyment of the members of the Association, designated on the face of the Plat and consist of:

1. Cutting preserve tracts;
2. Private pedestrian easement tracts;
3. Landscaping located adjacent to pedestrian easements;
4. Landscaped screening buffer in Tract E;
5. Neighborhood park;
6. Landscaped tracts (H and I) located at entrance to Plat.

## ARTICLE II

### PRE-EXISTING RESTRICTIONS

The Properties covered by this Declaration shall continue to be subject to previous covenants, conditions, encumbrances and restrictions, to the extent that such restrictions are valid.



These properties are subject to the Covenants and Restrictions of the Mill Creek Community Association.

ARTICLE III  
OTHER PARCELS  
RESERVED

ARTICLE IV  
DEVELOPMENT PERIOD; MANAGEMENT RIGHTS OF  
DECLARANT DURING DEVELOPMENT

Section 1. Management by Declarant. Development Period shall mean that period of time from the date of recording this Declaration until (1) a date five years from the date of recording this Declaration or (2) the thirtieth day after Declarant has transferred title to the purchasers of Lots representing 99 percent of the total voting power of all Lot Owners as then constituted or (3) the date on which Declarant elects to permanently relinquish all of Declarant's authority under this Article IV by written notice to all Owners, whichever date first occurs. Until termination of the Development Period, the Property shall be managed and the Association organized at the sole discretion of the Declarant.

Section 2. Notices to Owners. Not less than 10 nor more than 30 days prior to the termination of the Development Period, the

Declarant shall give written notice of the termination of the Development Period to the Owner of each Lot. Said notice shall specify the date when the Development Period will terminate and shall further notify the Owners of the date, place and time when a meeting of the Association will be held. The notice shall specify that the purpose of the Association meeting is to elect new Officers and Directors of the Association. Notwithstanding any provision of the Articles or Bylaws of the Association to the contrary, for the purpose of this meeting, the presence, either in person or by proxy, of the Owners of five Lots shall constitute a quorum. The Board of Directors and Officers of the Association may be elected by a majority vote of said quorum. If a quorum shall not be present, the Development Period shall nevertheless terminate on that date specified in said notice and it shall thereafter be the responsibility of the Lot Owners to provide for the operation of the Association.

Section 3. Temporary Board. Declarant may in his sole discretion, and at such times as the Declarant deems appropriate, appoint three persons who may be Lot Owners, or are representatives of corporate entities or other entities which are Lot Owners, as a Temporary Board. This Temporary Board shall have full authority and all rights, responsibilities, privileges and duties to manage the Properties under this Declaration and shall be subject to all provisions of this Declaration, the Articles and the Bylaws, provided that after selecting a Temporary Board, the Declarant, in the exercise of his sole discretion, may at any time terminate the

Temporary Board and resume his management authority under Article IV or select a new Temporary Board under this section of Article IV. During the Development Period, it will not be necessary to conduct the affairs of the Association in accord with the provisions of the Bylaws. It shall only be necessary to adhere to the Bylaws if a Temporary Board is appointed during this period.

Section 4. Absence of Temporary Board. So long as no Temporary Board is managing the Properties or until such time as the first permanent Board is elected, should Declarant choose not to appoint a Temporary Board, Declarant or a managing agent selected by the Declarant shall have the power and authority to exercise all the rights, duties and functions of the Board and generally exercise all powers necessary to carry out the provisions of this Declaration, including but not limited to enacting reasonable administrative rules, contracting for required services, obtaining property and liability insurance, and collecting and expending all assessments and Association funds. Any such managing agent or the Declarant shall have the exclusive right to contract for all goods and services, payment for which is to be made from any monies collected from assessments.

#### ARTICLE V

#### EASEMENTS, OPEN SPACE AND BUILDING SETBACK AREAS

Section 1. Conveyance of Common Areas. Declarant hereby transfers and conveys to the Amberleigh Homeowners' Association for the common use and enjoyment of the Association and the Owners all common areas which are designated on the face of the Plat and an

easement which allows residents of Amberleigh to make use of Common Areas located in Amberleigh.

Section 2. Cutting Preserve/Landscaped Screening Buffer. No clearing, grading or filling of any kind, building construction or placement, or road construction shall occur within any cutting preserve except for necessary utility installations without prior written permission from the City of Mill Creek. Removal of trees by the adjacent property owner shall be limited to those which are dead, diseased or hazardous, upon receiving permission to do so from the City of Mill Creek. No adjustment to the boundary of such tracts shall occur unless first approved through the formal plat process.

Section 3. Landscaped Screening Buffer. The purpose of this buffer is to benefit the Plat of Amberleigh (rather than the adjacent Plat of Miller's Village) by providing a vegetative buffer or fence which screens views of adjacent development. No clearing, grading or filling of any kind, building construction or placement, or road construction shall occur in these areas except for necessary utility installations. No adjustment to the boundary of these areas shall occur unless first approved through the formal platting process.

#### ARTICLE VI

#### AREAS OF THE PLAT

Section 1. Neighborhood Park. There is a neighborhood park on Tract J, which is privately owned and is to be used only by residents of Amberleigh and their invited guests. The park can be

used only during daylight hours. Homeowners will bear total financial responsibility for any problems which result from the use which they and their invitees make of the park.

No use of the park will be made which unreasonably interferes with the ability of homeowners to enjoy their property. The Board will develop rules which will regulate use of the park. If owners, their relatives, invitees or guests breach the regulations of the Board governing park use, their privilege to use the park shall be revoked. Each individual owner covenants for itself, its heirs, successors, assigns and tenants, that it shall assume all risks associated with park use, including but not limited to the risk of property damage or personal injuries resulting from the use of the park and shall indemnify and hold harmless the Declarant, the Association and the Board of Directors of the Association from any liability, claims or expenses, including attorneys' fees arising from property damage or personal injuries resulting from the use of the park.

Section 2. Public Pedestrian Easement. There are pedestrian easements in Amberleigh which are open to members of the public and which will be maintained by the City of Mill Creek which are described on the recorded plat.

Section 3. Common Driveways. Some homes shall share common driveways as shown on the recorded plat. Such driveways shall only be used for ingress and egress or other uses for such driveways, described on the face of the plat. Cars cannot be parked in the common driveway and the driveways are not a recreational area and

shall not be used as a sport court or playground. No activity shall be conducted in this area which unreasonably interferes with the right of other property owners to enjoy their homes.

If it becomes necessary to repair common driveways, either the owners who use the driveway or the Board shall make repairs and adjacent owners utilizing the common driveway shall each bear an equal share of the repair expense. If homeowners fail to make timely repairs to driveways, the Board will determine if the repairs are necessary, give the owners notice of the need to make repairs, and make such repairs and assess the property owners equally for repair costs.

Section 4. Private Courtyards. All homes have private courtyards. No use shall be made of the courtyard area which unreasonably interferes with the right of nearby property owners to enjoy their homes and courtyards.

#### ARTICLE VII

##### MAINTENANCE AND MANAGEMENT OF THE COMMON AREAS

Section 1. Responsibility for Maintaining Common Maintenance Areas. The Association is responsible for maintaining and preserving the character of areas designated as Common Areas and Common Maintenance Areas, which are for the exclusive use of Amberleigh residents except that the public pedestrian trails.

Section 2. Determination of Need for Maintenance or Repair. The need for maintenance or repair of the Common Areas and Common Maintenance Areas shall be determined by the Board of Directors.

Section 3. Repair of Common Maintenance Areas. Any damage to Common Maintenance Areas or Common Areas or improvements thereon, including landscaping, plantings, irrigation systems, fences, berms, furniture and lights etc., by the Owners or their children, relatives or guests, shall be repaired within one week by the Owner who caused the area to be damaged. If such repairs are not made timely, the Association shall make the repair and the Owner will be obliged to immediately remit funds for the repair. If the Owner fails to promptly make payment for such repairs (within 30 days of the repair), the Owner will be charged interest at the rate of 12 percent per annum until debt is paid.

Section 4. Dumping in Common Areas and Common Maintenance Areas Prohibited. No trash, plant, or grass clippings or other debris of any kind shall be dumped or deposited on common maintenance areas within the Plat.

Section 5. Lawn Maintenance. All front lawns, plantings and landscaping between the street and the edge of the building or the private courtyard shall be maintained by the Association. No changes may be made in the landscaping of these yards, such as planting ornamental trees without obtaining written permission of the Board. Each individual homeowner shall be responsible for maintaining all areas of each lot which are not a common maintenance area.

Section 6. Management. Each Owner expressly covenants that the Board and the Declarant, during the Development Period, may

delegate all or any portion of their 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 maintenance and the operation of Common Areas and/or portion thereof. Any management agreement or employment agreement for the maintenance or management of the Common Areas or any portion thereof shall be terminable by the Association without cause upon 90 days' written notice thereof; the term of any such agreement shall not exceed three years, renewable by agreement of the parties for successive three-year periods. Each Owner is bound to observe the terms and conditions of any such management agreement or employment contract, all of which shall be made available for inspection by any Owner on request. Any fees or salaries applicable to any such management, employment or service agreement shall be paid out of dues which are assessed to each Owner.

#### ARTICLE VIII

#### ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation. Each owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges and (2) special assessments. Annual and special assessments shall be established and collected in accord with the following provisions. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall



be a continuing lien upon the property against which such assessment is made. Each assessment, together with the interest, costs and reasonable attorneys' fees incurred to collect such assessments, shall be the personal obligation of the individual who is the Owner of the Property at the time that the assessment fell due.

Section 2. Purpose of Assessments. The assessments imposed by the Association shall be used (1) to promote the recreation, health, safety and welfare of the residents of the Properties, (2) for the improvement, maintenance and repair of Common Areas and Common Maintenance Areas, (3) for legal fees or damages incurred in any action in which the Association or a member of the Board acting in behalf of the Homeowners Association is named as a party, and (4) for the repair of Amberleigh improvements and (5) costs incurred collecting MCCA dues.

Section 3. Annual Assessment. Until January 1996, the annual assessment shall be \$395.57 per Lot; eight percent of which shall be allocated and paid to the Declarant for Plat management services provided by the Declarant to the Association or by a professional management firm. Such allocation of funds to the Declarant shall cease when the Development Period expires and the Association assumes collection costs, bookkeeping, and other management responsibilities which are described with particularity in the Bylaws of the Association. Residents are also subject to MCCA which shall be collected by the Board of Amberleigh.

The annual assessment may be increased during the Development Period to reflect increased (1) maintenance costs, (2) repair costs, or (3) plat management costs. All increases in the annual assessment during the Development Period must directly reflect increases in the above recited costs. It shall not be necessary to amend this Declaration to increase the annual assessment during the Development Period. During this period, the Declarant will give members of the Association notice of increased assessments thirty days before such assessments become effective.

(a) After the Development Period expires, the maximum annual assessment may be increased each year not more than 10 percent above the maximum annual assessment for the previous year without a vote of the membership.

(b) After the Development Period expires, the maximum annual assessment may be increased by more than 10 percent only if 51 percent of the members of the Association, who are voting in person or by proxy at a meeting duly called for this purpose, consent to such an increase.

(c) After the Development Period expires, the Board of Directors shall fix the annual assessment in accord with the above-recited standards.

Section 4. Special Assessments for Capital Improvement. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a common assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of

a capital improvement upon the Common Maintenance Areas or any improvements upon the Common Areas not prohibited by this Declaration, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of 51 percent of the members of the Association who are voting in person or by proxy at a meeting duly called for this purpose. Any capital improvements which exceed \$15,000. must be approved by 51 percent of the Owners.

**Section 5. Special Assessments for Legal Fees and Damages.** In addition to the annual and special assessments authorized in Section 3 and 4, the Declarant or the Association may levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, (1) the cost of legal fees and costs incurred in legal actions in which the Board is a party, (2) the cost of legal fees and costs incurred in any action in which a member of either the Board is named as a party as a result of a decision made or action performed while acting in behalf of the Homeowners Association, or (3) any other reasonable expenses incurred by the Homeowners Association. This assessment shall require the consent of 51 percent of the members of the Association.

**Section 6. Notice and Quorum for Any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 of this Article shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first annual meeting called, the presence of 51 percent of the members of the Association and/or of

proxies entitled to cast 51 percent of the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement; the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and must be collected on an annual basis.

Section 8. Date of Commencement of Annual Assessment; Due Dates. The annual assessments described in this Article shall commence in 1995. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the annual assessment shall be sent to every Owner subject to such assessments. The due date shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment not paid within 30 days after the due date shall bear interest at the rate of 12 percent per annum. Each Owner hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such assessments as debts and to enforce lien

rights of the Association by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in like manner as a mortgage of real property. Such Owner 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 shall be for the benefit of the Association. The Association shall have the power to bid in an interest at foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Owner is responsible for payment of all attorneys' fees incurred in collecting past due assessments or enforcing the terms of assessment liens (see Article XV, Section 4). No Owner may waive or otherwise escape liability for the assessments provided herein by non-use of the Common Areas or abandonment of his Lot.

The Association shall have the right to suspend the voting rights of an Owner for any period during which any assessment against the Lot remains unpaid and for a period not to exceed 60 days for any infraction of the terms of either this Declaration, the Articles or the Bylaws of the Association.

Section 10. Subordination of the Lien to Mortgage. The lien for assessments, provided for in this Article, shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien created pursuant to this

Article as to payments which become due prior to such sale or transfer. No sale or transfer, however, shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. All property dedicated to and accepted by local public authority shall be exempt from the assessments provided for in this Article.

Section 12. Management by Declarant During the Development Period. Declarant, at its option, shall have and may exercise all of the rights and powers herein given to the Board. Such rights and powers are reserved by the Declarant, its successors and assigns as provided in Article IV. Declarant shall have the right and option to assess owners for actual costs of maintaining Common Areas, Common Maintenance Areas and rights-of-way and a Plat management fee during the Development Period. The Declarant shall also have the authority to assess members of the Association for monies to fund any enforcement action during the Development Period.

#### ARTICLE IX

##### WALLS CONNECTING ATTACHED SINGLE FAMILY HOMES

Section 1. Contiguous Walls. Adjacent property owners must take care to avoid damaging or destroying the exterior walls of the adjoining house. If a property owner damages or destroys the exterior walls of the contiguous home, that property owner shall bear the expense of repairing or reconstructing the adjacent wall.

No repair or reconstruction shall be commenced until all necessary permits and approvals have been obtained.

Section 2. Damage and Destruction of Connecting Walls. If adjoining exterior walls are destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance or repaired out of the proceeds of insurance, any owner who has use of the wall may restore it and if the other owner or owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal portions without prejudice, however, to the right of any owners' right to call for a larger contribution from the others under rules of law regarding liability for negligence or willful acts or omissions.

Section 3. Right to Contribution Runs With the Land. The right of any owner to contribution from any other owner under this Section shall be appurtenant to the land and shall pass to the owners' successor in title.

Section 4. Easement for Maintenance and Repair on Walls of Adjoining Houses. Easement for maintenance and repair on walls of adjoining houses is conveyed to property owners for the purpose of making repairs to their property (e.g., roofs and walls) which allows owners or their agents to go onto adjacent property for purposes of matching building materials and placing building materials when making structural repairs. This is a very restricted easement which does not allow, for example, the storage of materials on adjacent property or physical presence on adjacent property except to the extent necessary to make repairs or perform maintenance activities.

RECORDED BY SNOHOMISH AUDITOR-BOB TERWILLIGER, COUNTY AUDITOR

ARTICLE X

MAINTENANCE OF LOTS AND RESIDENCES

Section 1. Exterior Maintenance by Owner. Each Residence shall be maintained by the Owner in accord with the standards imposed by the MCCA.

ARTICLE XI

HOMEOWNERS' ASSOCIATION

Section 1. Non-Profit Corporation. The Association shall be a non-profit corporation under the laws of the State of Washington. The Association shall be incorporated at least thirty days prior to the termination of the Development Period or upon appointment of a Temporary Board of Directors. Until the time that the Association is incorporated, it shall function as an unincorporated association consisting of owners of properties in the Plat.

Section 2. Membership. Every person or entity which is an Owner of any Lot shall become a member of the Association. Membership shall be appurtenant to the Lot and may not be separated from ownership of any Lot and shall not be assigned or conveyed in any way except upon the transfer of title to said Lot and then only to the transferee of title to the Lot. All Owners shall have the rights and duties specified in this Declaration, the Articles and the Bylaws of the Association. All Homeowners are also members of the Mill Creek Community Association.



Section 3. Voting Rights. Owners, including the Declarant, shall be entitled to one vote for each Lot owned. When more than one person or entity owns an interest in any Lot, the vote for that Lot shall be exercised as the Owners decide to exercise that vote but, in no event, shall more than one vote be cast with respect to any Lot nor shall any vote be divided. The voting rights of any Owner may be suspended as provided for in this Declaration, the Articles and the Bylaws of the Association.

Section 4. Meetings. Meetings after the termination of the Development Period, or upon appointment of a Temporary Board, shall be conducted in accord with the specifications set forth in the Bylaws of the Amberleigh Homeowners' Association. Bylaws are available to members of the Association upon request.

## ARTICLE XII

### MANAGEMENT BY BOARD

Section 1. Expiration of the Development Period. Upon expiration of the Declarant's management authority under Article IV, all administrative power and authority shall vest in a Board of three directors who shall be members of the Association. The Association, by amendment of the Bylaws, may increase the number of directors. All Board positions shall be open for election at the first annual meeting after termination of the Development Period under Article IV. At the first meeting of either the temporary or permanent Board of Directors, the new Board shall be given copies

of Bylaws and shall govern the Association in accord with the Bylaws and Declaration.

Section 2. Terms. The terms of the Board are defined in the Bylaws.

Section 3. Powers of the Board. All powers of the Board must be exercised in accord with the specifications which are set forth in the Bylaws and Declaration. The Board, for the benefit of all the Properties and the Lot Owners, shall enforce the provisions of this Declaration and the Bylaws. In addition to the duties and powers imposed by the Bylaws and any resolution of the Association that may be hereafter adopted, the Board shall have the power and be responsible for the following, in way of explanation but not limitation:

(a) Insurance. Obtain policies of general liability insurance.

(b) Legal and Accounting Services. Obtain legal and accounting services if necessary to the administration of Association affairs, administration of the Common Areas, or the enforcement of this Declaration.

(c) Maintenance. Maintain Common Areas and Common Maintenance Areas.

(d) Discharge of Liens. The Board may also pay any amount necessary to discharge any lien or encumbrance levied against the entire Properties or any part thereof which is claimed or may, in the opinion of the Board, constitute a lien against the Properties

or against the Common Areas rather than merely against the interest therein of particular Owners. Where one or more Owners are responsible for the existence of such liens, they shall be jointly and severally liable for the cost of discharging it and any costs or expenses, including reasonable attorneys' fees and costs of title search incurred by the Board by reason of such lien or liens. Such fees and costs shall be assessed against the Owner or Owners of the Lot responsible to the extent of their responsibility.

(e) Utilities. Pay all utility, maintenance and repair charges attributable to Common Areas and Common Maintenance Areas. Authorize the installation of utility or service lines which the Board deems to be in the best interest of the Association.

(f) Right to Contract. Have the exclusive right to contract for all goods, services, maintenance, and capital improvements provided, however, that such right of contract shall be subject to Association approval.

(g) Improvement of Common Areas. Improve the Common Areas with capital improvements to such Common Areas; provided that for those capital improvements exceeding \$15,000, 51 percent of the Owners must approve the addition of such capital improvements.

(h) Right of Entry. Enter any Lot or Residence, when reasonably necessary, in the event of emergencies or in connection with any maintenance, landscaping or construction for which the Board is responsible. Such entry must be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Board if the entry was due to an

emergency (unless the emergency was caused by the Owner of the Lot entered, in which case the cost shall be specially assessed to the Lot). If the repairs or maintenance activities were necessitated by the Owner's neglect of the Lot, the cost of such repair or maintenance activity shall be specially assessed to that Lot. If the emergency or the need for maintenance or repair was caused by another Owner of another Lot, the cost thereof shall be specially assessed against the Owner of the other Lot.

(i) Promulgation of Rules. Adopt and publish rules and regulations governing the members and their guests and establish penalties for any infraction thereof.

(j) Declaration of Vacancies. Declare the office of a member of the Board to be vacant in the event that a member of the Board is absent from three consecutive regular meetings of the Board.

(k) Employment of Manager. Employ a manager, an independent contractor, or such other employees as the Board deems necessary and describe the duties of such employees.

(l) Payment for Goods and Services. Pay for all goods and services required for the proper functioning of the Common Areas and Common Maintenance Areas.

(m) Impose Assessments. Impose annual and special assessments.

(n) Bank Account. Open a bank account on behalf of the Association and designate the signatories required.

(o) Legal Actions. Commence legal actions for the enforcement of these covenants or any other legal action which the Board of Directors deems necessary for the protection of the Plat. The Board also has the authority to defend against legal actions initiated against the Association.

(p) Exercise of Powers, Duties and Authority. Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of the Bylaws, Articles of Incorporation, or this Declaration. The Board shall have all powers and authority permitted to it under this Declaration and the Bylaws. However, nothing herein contained shall be construed to give the Board authority to conduct a business for profit on behalf of all the Owners or any of them.

### ARTICLE XIII

#### PROPERTY RESTRICTIONS

Section 1. New Development Must be Approved by MCCA. Before any new construction or alterations occur in Amberleigh, including construction of a fence, it will be necessary to have the MCCA Architectural Control Committee approve the proposed structure.

Section 3. Enforcement. The MCCA will have responsibility for bringing enforcement actions if the MCCA Covenants are violated.

ARTICLE XIV

EASEMENTS

Section 1. Easement for Access. Each owner shall have the right to ingress and egress over, upon and across common areas necessary for access to his or her lot and shall have the right to lateral support for his or her lot. Such right shall be appurtenant to and pass with the title to each lot.

Section 2. Easement for Utilities. There is hereby reserved to the Homeowners' Association blanket easements as shown on the final plat upon, across, and under all property within the community for access, ingress, egress, installing, repairing, replacing and maintaining all utilities serving the community or any portion thereof, including but not limited to gas, water, sanitary sewer, telephone and electricity as well as storm drainage and other service such as, but not limited to, cable television system or a security system which the Association might have installed to serve the community. It shall be permissible for the Homeowners' Association or its agent, as the case may be, to install, repair, replace, or maintain, or to authorize the installation, repair, replacement and maintenance of such wires, conduits, cables and other equipment relating to the provision of any utility or service. Should any party furnishing such utility or service request a specific license or easement by a separate recordable document, the Declarant, during the Development Period, and the Board of Directors shall have the right to grant such easement or license. Within these easements, no structure, planting or

material shall be placed which may interfere with utility or drainage facilities. Any utilities or service lines which the Board deems necessary shall be installed within such areas or under right-of-way areas located within the Plat.

Section 3. Grant of Easement for Maintenance. The residents grant members of the Board or their agents an easement to go onto lots to mow lawn and work on flower beds, and to do any work to maintain utility lines.

#### ARTICLE XV

#### COMMON AREAS, COMMON ELEMENTS, AND COMMON MAINTENANCE AREAS

Section 1. Common Areas and Elements. The Common Areas and elements shall include all areas designated on the face of the Plat and all property not located within the individual lots.

Section 2. Use of Common Areas. No gardening, or planting shall be done by owners in common areas and no fences, hedges, or walls shall be erected or maintained by homeowners in such areas, except for those improvements and landscaping placed in such areas by the Declarant or the Board of Directors. It is expressly acknowledged and agreed by all parties that this Section is for the mutual benefit of all Owners and is necessary for the protection of all Owners.

Section 3. No Partition of Common Areas. Except as permitted in this Declaration, there shall be no physical partition of the common areas or any part thereof, nor shall any person acquiring any interest in the properties or any part thereof seek any such

judicial partition unless such properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring or disposing of tangible personal property which may or may not be subject to this Declaration.

Section 4. Maintenance and Repair of Utility Systems. Individual homeowners shall be assessed for expenses incurred to maintain and repair utility systems and common driveways serving individual homes in the Plat when such expenses are not incurred for the benefit of all homes in Amberleigh or are occasioned by the conduct of less than all of the owners. A special assessment will be imposed on such owners. Homeowners must reimburse the Homeowners' Association within 30 days of being billed for such maintenance or repair expenses and, if the homeowner fails timely to reimburse the Homeowners' Association, such expenses shall become a lien against an individual property owner's home.

ARTICLE XVI

UTILITIES

RESERVED

ARTICLE XVII

GENERAL PROVISIONS

Section 1. Covenants Running with the Land. These covenants are to run with the land and be binding on all parties and persons claiming under them for a period of 30 years from the date these



covenants are recorded, after which time the covenants shall be automatically extended for successive periods of 10 years unless an instrument signed by seventy-five percent of the individuals then owning Lots has been recorded which reflects their intent to amend the covenants in whole or in part.

Section 2. Amendment. The covenants and restrictions articulated in this Declaration shall run with the land and bind the land for a term of 30 years from the date that this Declaration is recorded. After 30 years have expired, the covenants shall be automatically extended in accordance with the provisions set forth in Section 1 of this Article. This Declaration and the Bylaws may be amended during the initial 30 year period if 51 percent of the members vote to amend particular provisions of either instrument. This Declaration may be amended during the Development Period by any instrument signed by both the Declarant and the Owners of at least 51 percent of the Lots, including those owned by the Declarant. The provisions expressly referring to the Declarant may not be amended without the Declarant's approval. All amendments must be filed with the office of the Snohomish County Auditor.

Section 3. Enforcement. The Association, the Board, or any Owner shall have the right to enforce, by any legal proceeding, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration.

Section 4. Attorneys' Fees. In the event that it is necessary to seek the services of an attorney in order to enforce any

(1) provision of this Declaration or (2) lien created pursuant to the authority of this Declaration, the individual against whom enforcement is sought shall be obliged to pay any attorneys' fees and any expert witness fees incurred. If the Owner fails to pay such fees within 60 days, such fees shall become a lien against the Owner's Lot.

Section 5. Compensation for Witnesses. In any action to enforce the terms of this Declaration, or any action in which the Association is a party, members of the Board, the Board or the Declarant who testify in behalf of the Association, shall be compensated for time spent at depositions and at trial at the rate of \$25.00 per hour by the Association.

Section 6. Responsibility of Association for Attorney Fees of Board Members. If a member of the Board is named personally in a legal action involving the Association business, the Association shall pay attorneys fees incurred by that Board member if the Board member has not engaged in intentional misconduct. The Board member shall ask the Board to assume responsibility for attorneys fees and the Board shall be allowed to select the attorney and control litigation.

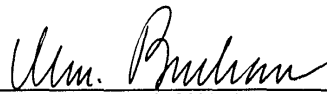
Section 7. Successors and Assigns. The covenants, restrictions and conditions articulated in this Declaration shall run with the land and shall accordingly be binding on all successors and assigns.

Section 8. Severability. The invalidity of any one or more phrases, clauses, sentences, paragraphs or sections hereof shall not affect the remaining portions of this Declaration or any part

thereof. In the event that one or more of the phrases, clauses, sentences, paragraphs or sections contained herein should be invalid, this Declaration shall be construed as if the invalid phrase, clause, sentence, paragraph or section had not been inserted.

Section 9. Rule Against Perpetuities. In the event that any provision or provisions of this Declaration violate the rule against perpetuities, such provision or provisions shall be construed as being void and of no effect as of 21 years after the death of the last surviving incorporator of the Association or 21 years after the death of the last survivor of all of the incorporators' children and grandchildren who shall be living at the time this instrument is executed, whichever is later.

IN WITNESS WHEREOF the undersigned, being the Declarant herein, have hereunto set their hand and seal this 22nd day of March, 1995.

  
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WILLIAM E. BUCHAN, Chairman of William E. Buchan, Inc.

RECORDED BY SNOHOMISH AUDITOR-BOB TERWILLIGER, COUNTY AUDITOR

STATE OF WASHINGTON )  
 )  
COUNTY OF KING )

On this 22nd day of March, 1995, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared WILLIAM E. BUCHAN, to me known to be the Chairman of WILLIAM E. BUCHAN INC., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

Gail Johnson  
Signature of Notary

Gail Johnson  
Printed Name of Notary

NOTARY PUBLIC in and for the  
State of Washington.

My commission expires 1-1-96

