

# DECLARATION OF THE COVENANTS, CONDITIONS, AND EASEMENTS FOR QUAIL CREEK

THIS DECLARATION is made as of the 1st day of December, 1994, by QUAIL CREEK ASSOCIATES, a joint venture partnership ("Declarant"), as the owner and developer of certain real property situated in King County, State of Washington, and known as Quail Creek, which property is more specifically described in Exhibit A.

## RECITALS

Declarant desires to develop Quail Creek as a residential community. Declarant also desires to create common areas and facilities for the benefit of the Quail Creek community and to provide for the preservation and maintenance of the natural values in Quail Creek including Native Growth Protection Easement areas.

This Declaration establishes a plan for the private ownership of lots and the buildings constructed thereon, for the dedication of certain areas to the public, and for the beneficial ownership through Quail Creek Homeowners' Association of certain other land and related easement, hereafter defined and referred to as the "Common Areas". Quail Creek Homeowners' Association shall be delegated and assigned the duties and powers of maintaining and administering the Common Areas, administering and enforcing these covenants, conditions, restrictions and easements, and determining, collecting and disbursing the assessments and charges hereinafter created.

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

## ARTICLE 1. DEFINITIONS

Section 1.1 "Architectural Control Committee" shall mean and refer to the duly appointed Committee of the Association as further described in Section 2.7 and as sometimes referred to herein as the "Committee".

Section 1.2 "Association" shall mean and refer to the Quail Creek Homeowners' Association, a Washington nonprofit corporation, its successors and assigns.

Section 1.3 "Association Action" shall mean and refer to a written corporate action of the Association in the form of either a bylaw or resolution duly passed by either the Board or the Owners.

Section 1.4 "Board" shall mean and refer to the board of directors of the Association.

Section 1.5 "Building Setback Line" shall mean and refer to the various setback requirements designated on the face of the final plat of Quail Creek, beyond which no structures, filling, grading or other obstructions are permitted as set forth in Section 5.2.1 hereof.

Section 1.6 "Quail Creek" shall mean and refer to the entirety of that certain real property which is legally described on Exhibit A attached hereto and such easements and additions thereto as may hereafter be brought within the terms and conditions hereof by an appropriate recording.

Section 1.7 "Common Areas" shall mean and refer to all easements, including, but not limited to Native Growth protection Easement areas, swale and drainage easements and ingress and egress easements, if any, and Tracts (including without limitation Tracts A and B of Quail Creek and the wetlands located thereon) and any improvements thereto including, without limitation the Quail Creek entryway, signs (including the Quail Creek entry sign), lighting, fencing, berms, landscaping and the like that are owned or become owned by or are granted for the benefit of the Association, for the benefit of the Lot Owners, and subjected to this Declaration by an appropriate recording. Rights of way and tracts that are dedicated to King county are not currently Common Areas, but may become so if abandoned by King County or other applicable governmental entity or conveyed to the Association and subjected to this Declaration. As of the date of this Declaration the Common Areas consist of: the Native Growth Protection Easement areas, the swale and drainage easements, and the utilities easements.

Section 1.8 "Declarant" shall mean and refer to Quail Creek Associates, a joint venture partnership, its successors and assigns, if such successors or assigns should acquire all or substantially all of the partnership's interest in Quail Creek (excluding participating Builders).

Section 1.9 "Declaration" shall mean and refer to this instrument, as the same may be supplemented or amended from time to time.

Section 1.10 "Development Period" shall mean and refer to that period of time beginning on the date of this Declaration and ending on the first to occur of: (i) the sale of ninety percent (90%) of the residential lots comprising Quail Creek; or (ii) receipt by the Association of written notice from Declarant in which Declarant elects to terminate the Development Period.

Section 1.11 "Governing Documents" shall mean and refer to this Declaration and the Articles of Incorporation, Bylaws and rules and regulations of the Association, as the case may be, and rules and procedures of the Architectural Control Committee as any of the foregoing may be amended from time to time.

Section 1.12 "Lot" shall mean and refer to any legally segmented and alienable portion of Quail Creek created through subdivision or any other legal process for dividing land and subjected to this Declaration by an appropriate recording, with the exception of dedicated rights of way and Tracts and those areas designated as Common Areas.

Section 1.13 "Mortgage" shall mean and refer to any recorded mortgage or deed of trust encumbering one or more of the Lots. "First Mortgage" shall mean and refer to a Mortgage with priority over the other

Mortgages encumbering such Lot or Lots. "Mortgagee" shall mean and refer to the holder or beneficiary of any Mortgage and shall not be limited to Institutional Mortgagees. As used herein, the term "Institutional Mortgagee" or "Institutional Holder" shall include banks, trust companies, insurance companies, mortgage companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, all corporations, and any agency or department of the United States Government or of any state or municipal government.

Section 1.14 "Owner" shall mean and refer to the record owner (whether one or more persons or entities) of a fee interest in any Lot, including the Declarant, and Participating Builders but excluding Mortgagees or other persons or entities having such interest merely as security for the performance of any obligation. Purchasers or assignees under recorded real estate contracts shall be deemed Owners as against their respective sellers or assignors.

Section 1.15 "Participating Builder" shall mean and refer to a person or entity that acquires a portion of Quail Creek or [*sic*] the purpose of improving such portion for resale to individual Owners.

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

Section 1.17 "Tract" shall mean and refers to any legally segmented and alienable portion of Quail Creek created through subdivision or any other legal process for dividing land and subjected to this Declaration by an appropriate recording, with the exception of Lots and dedicated rights-of-way and tracts.

## **ARTICLE 2. QUAIL CREEK**

Section 2.1 Description of Association. The Association is a nonprofit corporation organized and existing under the laws of the State of Washington charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as they may be amended from time to time; provided, however, that no Governing Documents of the Association other than this Declaration shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 2.2 Association Board. During the Development Period, the Declarant shall manage the Association and shall have all the powers of the Board set forth herein. Upon termination of the Development Period, a Board shall be elected from among the Owners, as provided in the Bylaws to manage the Association. The Board shall elect officers of the Association from among the Board members, which shall include a president who shall preside over the meetings of the Board and meetings of the Association.

Section 2.3 Votes Appurtenant to Lots. Every Owner shall be a member of the Association and shall be entitled to cast one (1) vote in the Association for each Lot owned. A vote shall be appurtenant to and held and owned in the same manner as the beneficial fee interest in the Lot to which it relates. A vote shall not be separated from ownership of the Lot to which it relates; provided, however, that when more than one entity holds the beneficial fee interest in any Lot, the vote therefor shall be cast as the Owners among themselves determine, but in no event shall more than one vote be cast with respect to any Lot; and if the several Owners of a Lot are unable agree as to the casting of their vote, such vote shall not be counted. If a Lot is

further subdivided as provide [*sic*] in Section 5.1 hereof, the Owner of each additional Lot created shall be entitled to one vote in the Association for each Lot owned.

Section 2.4 Initial Number of Votes. From the commencement of the existence of the Association, there shall a total number of forty (40) outstanding votes in the Association. During the Development Period, the Declarant shall be entitled to cast all such votes, less one vote for each Lot then owned by an Owner other than Declarant.

Section 2.5 Owner's Compliance With Governing Documents. By acceptance of a deed to a Lot, recording of a real estate contract conveying title to a Lot, or any other means of acquisition or transfer of an ownership interest, the Owner thereof covenants and agrees, on behalf of himself and his heirs, successors, and assigns, to observe and comply with all terms of the Governing Documents of the Association and all rules and regulations duly promulgated pursuant to the Association Action.

Section 2.6 Bylaws, Rules and Regulations. On behalf of the Association, the Board shall have the power to adopt, modify, and amend rules and regulations governing the use of Quail Creek. The rules and regulations shall apply uniformly to all Owners, except as specifically provided herein. The Board shall have the power to enforce the rules and regulations on behalf of the Association and may prescribe penalties for the violation of such rules and regulations, including, but not limited to, monetary penalties. Any such rules and regulations shall become effective thirty (30) days after promulgation and shall be mailed to all Owners prior to their effective date. A copy of the rules and regulations then in force shall be retained by the secretary of the Association. On behalf of the Board, the Declarant may adopt the initial Bylaws and rules and regulations of the Association.

Section 2.7 Architectural Control Committee. Prior to the commencement of construction of any structure upon a Lot, Declarant shall appoint one (1) or more individuals to the Architectural Control Committee who need not be members of the Association. Upon termination of the Development Period, the Board shall appoint three (3) members to the Committee, who need not be members of the Association. The Board shall appoint one (1) member of the Committee for a term of one (1) year, one (1) member for a term of two (2) years, and one (1) member for a term of three (3) years.

2.7.1 Jurisdiction and Purpose. The Committee shall review proposed plans and specifications for construction of all residences and other structures within Quail Creek including any additions, exterior alterations, fences, landscaping, clearing, painting, paving and excavation. During the Development Period, a prospective Owner shall submit architectural and landscaping plans and specifications to the Committee for its review prior to commencing construction of any improvements on the Lot. As conditions precedent to the approval of any matter submitted to it, the Committee shall find:

- (a) The approval of the plan is in the best interest of the Owner and consistent with this Declaration.
- (b) General architectural considerations, including relationship and layout of structures to natural features and adjacent homes, orientation, footprint and location of buildings, maintenance of view corridors and natural sight lines, vehicular access, circulation and parking, setbacks, height, grades, walls, fences, and similar elements have been designed to be compatible with the overall design and concept of Quail Creek.
- (c) General site considerations, including site layout, relationship of site and any subsequent grading to vegetation, natural features, view corridors, open space and topography, orientation, footprint and locations

of buildings, vehicular access and driveway lighting, circulation and parking, setbacks, height, walls, fences and similar elements have been designed to be compatible with the overall design of Quail Creek.

(d) General landscape considerations, including the location, type, size, color, texture and coverage of plant materials, provisions for irrigation, drainage, maintenance and protection of existing landscaped areas and similar elements have been considered to ensure visual relief, to complement buildings and structures, and to provide an attractive environment for the enjoyment of the Owners in general and the enhancement of the property values in Quail Creek.

(e) Each single family residence shall contain a minimum of 1,800 square feet for one story and 2,200 square feet for two stories exclusive of open decks (covered or uncovered), garages, carports, sheds or outbuildings. No residence shall contain more than two stories in height. Roof materials shall be hand split shakes unless otherwise approved as specified in Section 2.7. Driveways shall be class "B" asphalt from existing street to property line at which time they may be concrete continuing to the garage. Driveways shall not exceed fifteen (15) feet in width where they intersect any roadway.

2.7.2 Approval Procedures. A preliminary application detailing the proposed improvements must be submitted in writing to the Committee at the registered office of the Association. Within fifteen (15) days following receipt of a preliminary application, the Committee shall notify the applicant in writing whether the application is complete and, if not, shall list the additional information that is required before the Committee can review the application. The Committee shall review the application in accordance with the provisions of this Section 2.7 as soon as possible after a complete application has been filed. The decision of a majority of the members of the committee shall be the decision of the Committee. One copy of approved plans will remain in the Committee's files. All disapproved plans will be returned to the applicant.

2.7.3 Failure of Committee to Take Action. Except as provided in Section 2.7.5 below, in the event that the Committee fails to respond to an applicant's complete and properly submitted application within thirty (30) days after the Committee has notified the applicant that the application is complete, formal written approval will not be required, and the applicant shall be deemed to have fully complied with the provisions for approval.

2.7.4 Committee Obligation. In its deliberations and in the discharge of its obligations hereunder, the Committee shall act objectively and fairly in making decisions concerning various plans, specifications, plot plans and landscape plans submitted to it by various applicants for consideration in accordance with the provisions of this Declaration. Further, the determinations of the Committee as to noncompliance shall be in writing, signed by the Committee, and shall set forth in reasonable detail the reason for noncompliance. Committee may approve, approve with conditions, or disapprove an application or any part thereof. In all cases, the sole responsibility for satisfying the provisions of this Declaration and all local building codes and governmental requirements rests with the applicant. In consideration of the Committee's review of an applicant's application, the applicant shall indemnify and hold the Committee harmless from any claim or damages resulting from applicant's failure to comply with applicable building codes or other governmental requirements.

2.7.5 Exemptions and Variances From Committee Requirements. Upon request, the Committee may grant exemptions and variances from the rules and procedures of the Committee and the requirements of this Declaration when the party requesting such exemption or variance establishes to the satisfaction of the Committee that the improvements or other matters which are desired by the applicant are aesthetically as appealing, suited to climatic conditions, and compatible with the overall character of the development as are

similar improvements or matters which conform to the requirements of this Declaration. Request for an exemption or variance shall be submitted in writing to the Committee and shall contain such information as the Committee shall from time to time require. The Committee shall consider applications for exemption or variance and shall render its decisions within thirty (30) days after notice to the applicant of proper submission. The failure of the Committee to approve an application for an exemption or variance shall constitute disapproval of such application.

2.7.6 Failure of Applicant to Comply. Failure of the applicant to comply with the rules and procedures of the Committee or the final application as approved by the Committee shall, at the election of the Association's Board exercised after thirty (30) days' written notice to such applicant, constitute a violation of this Declaration. In that event, the Board shall be empowered to assess a penalty commensurate with the violation, which shall constitute a lien against such Lot, enforceable as provided herein and/or pursue any other remedy, including, but not limited to, an action for injunctive relief or specific performance.

### **ARTICLE 3. ASSOCIATION BUDGET, ASSESSMENTS, AND LIENS**

Section 3.1 Owner's Covenants to Pay Assessments. By acquisition or transfer of any ownership interest in a Lot, the Owner thereof covenants and agrees thereby, on behalf of himself and his heirs, successors, and assigns, to pay the Association, in advance, all general and specific assessments levied as provided herein.

Section 3.2 Association Budget. The Association shall prepare, or cause the preparation of, an operating budget for the Association at least annually, in accordance with generally accepted accounting principles. The operating budget shall set forth all sums required by the Association, as estimated by the Association, to meet its annual costs and expenses, including, but not limited to, all management and administration costs, operating, maintenance, upkeep and repair expenses of the Common Areas, and services furnished to or in connection with the Common Areas, including the amount of all taxes and assessments levied against, and the cost of liability and other insurance on the Common Areas, and including charges for any services furnished by or to the Association; the cost of utilities and other services; and the cost of funding all reserves established by the Association. The funds required to meet the Association's annual expenses shall be raised from a general assessment against each Owner as provided hereafter. The Association may revise the operating budget after its preparation, as it deems necessary or advisable in order to take into account and defray additional costs and expenses of the Association.

Section 3.3 Levy of General Assessment. In order to meet the costs and expenses projected in its operating budget, the Association shall by Association Action determine and levy in advance on every Owner a general assessment. The amount of each Owner's general assessment shall be one fortieth (1/40th) of the amount of the Association's operating budget for each Lot owned. The Association shall make reasonable efforts to determine the amount of the general assessment payable by each Owner for an assessment period at least thirty (30) days in advance of the beginning of such period and shall at that time prepare a roster of the Owners and the general assessment allocated to each, which shall be open to inspection by any Owner upon reasonable notice to the Association. Notice of the general assessment shall thereupon be sent to each Owner provided, however, that notification to an Owner of the amount of an assessment shall not be necessary to the validity thereof. The omission by the Association, before the expiration of any assessment period, to fix the amount of the general assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any Owner from the obligation to pay the general assessment, or any installment thereof, for that

or any subsequent assessment period, but the general assessment fixed for the preceding period shall continue until a new assessment is fixed. Upon any revision by the Association of the operating budget during the assessment period for which such budget was prepared, the Association shall, if necessary, revise the general assessment levied against Owners and give notice to each Owner.

Section 3.4 Payment of General Assessment. Upon Association Action, installments of general assessments may be collected on a monthly, quarterly, semi-annual, or annual basis. Any Owner may prepay one or more installments on any assessment levied by the Association without penalty.

Section 3.5 Nondiscriminatory Assessment. No assessment shall be made at any time which may unreasonably discriminate against any particular Owner or group of Owners in favor of other Owners. However, a special assessment may be made against a particular Owner by a two-thirds majority vote of the Board if, after notice from the Association of failure to maintain such Lot in a condition comparable to the other Lots has been given, the Association elects to expend funds to bring such Owner's Lot up to such comparable standard.

Section 3.6 Commencement of Assessments. Liability of an Owner for assessments shall commence on the first day of the month following the date upon which any instrument of transfer to such Owner becomes operative (such as the date of a deed or the date of a recorded real estate contract for the sale of any Lot or, if earlier, the first day of the calendar month following Owner's occupancy of such Lot); provided, however, that the first month's assessment shall be payable at the closing of the sale of a Lot; provided further, however, that a Participating Builder shall not be liable for any assessments with respect to a Lot acquired from Declarant for a period of one year from the date of acquisition. The Declarant, its successors and assigns shall not be liable for any assessments with respect to any Lot unless such Lot is improved with a structure.

Section 3.7 Certificates of Assessment Payment. Upon request, the Board shall furnish written certificates certifying the extent to which assessment payments on a specified Lot are paid and current to the date stated therein. reasonable charge may be made by the Association for the issuance of such certificate.

Section 3.8 Special Assessments. In addition to the general assessments authorized by this Article, the Association may, by Association Action, levy a special assessment or assessments at any time, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, inordinate repair, or replacement of a capital improvement owned or maintained by the Association including the entry way sign and landscaping and/or fixtures and personal property related thereto, for the purpose of setting aside adequate reserves, or for such other purpose as the Association may consider appropriate; provided, however, that any such special assessment in excess of \$250.00 per lot must be approved with the vote of two-thirds of the Owners. The due dates of any special assessment payments shall be fixed by the Association Action authorizing such special assessment.

Section 3.9 Effect of Nonpayment of Assessment. If any assessment payment is not made in full within thirty (30) days after it was first due and payable, the unpaid amounts shall constitute a lien against the Lot assessed and shall bear interest from such due date at a rate set by the Board in its rules and regulations which shall not exceed the highest rate then permitted by law. By acceptance of a deed to a Lot, recording of a real estate 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 Declarant 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 created by this Declaration in favor of the Association by foreclosure of the continuing liens in the same form of action as is then provided for the foreclosure of a mortgage on real property. The liens provided for in this Declaration shall be for the benefit of the Association, and shall arise in accordance with the terms of this Declaration without the necessity of any further action by the Association. Association shall have the power to bid at any lien foreclosure sale and to acquire, hold, lease, mortgage, and convey the Lot foreclosed against.

Section 3.10 Duration of Lien. Any lien arising pursuant to Section 3.9 shall be a continuing lien in the amount stated in the assessment from the time of the assessment, but expiring pro rata 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.

Section 3.11 Suspension for Nonpayment of Assessment. If an Owner shall be in arrears in the payment of any assessment due, or shall otherwise be in default of the performance of any terms of the Governing Documents of the Association for a period of 30 days, without the necessity of any further action by the Association, said Owner's voting rights shall be suspended (except as against foreclosing secured parties) and shall remain suspended until all payments, including interest thereon, are brought current and any other default is remedied. No Owner is relieved of liability for assessments by nonuse of the Common Areas or by abandonment of a Lot.

Section 3.12 Certain Areas Exempt. The tracts, rights of way and all portions of Quail Creek dedicated to and accepted by King County or other public authority shall be exempt from assessments by the Association unless and until such tracts, rights of way, and other dedicated portion of Quail Creek become Common Areas, if ever.

#### **ARTICLE 4. SUBORDINATION OF LIENS**

Section 4.1 Intent of Provisions. The provisions of this Article 4 apply for the benefit of each Mortgagee who lends money for purposes of construction or to secure the payment of purchase price of a Lot.

Section 4.2 Mortgagee's Nonliability. The holder of a Mortgage shall not, by reason of its security interest only, be liable for the payment of any assessment or charge, nor for the observance or performance of any covenant or restriction, excepting only those enforceable by equitable relief and not requiring the payment of money, and except as hereafter provided.

Section 4.3 Mortgagee's Rights During Foreclosure. During foreclosure of a Mortgage, including any period of redemption, the holder of the Mortgage may exercise any or all of the rights and privileges of the Owner of the encumbered Lot, including but not limited to the right to vote in the Association to the exclusion of the Owner's exercise of such rights and privileges.

Section 4.4 Mortgagee as Owner. At such time as a Mortgagee shall become the record Owner of the Lot previously encumbered by the Mortgage, the Mortgagee shall be subject to all of the terms and conditions of this Declaration, including the obligation to pay for all assessments and charges in the same manner as any Owner.



Section 4.5 Mortgagee's Title Free and Clear of Liens. A Mortgagee or other secured party acquiring title to a Lot through foreclosure, deed in lieu of foreclosure, or equivalent method, shall acquire title to the encumbered Lot free and clear of any lien authorized by or arising out of the provisions of this Declaration, insofar as such lien secures the payment of any assessment due but unpaid before the final conclusion of any such proceeding, including the expiration date of any period of redemption. The Association may treat any unpaid assessments against a Lot foreclosed against as an expense of the Association pursuant to Section 3.2.

Section 4.6 Survival of Assessment Obligation. After the foreclosure of a security interest in a Lot, any unpaid assessments shall continue to exist and remain as a personal obligation of the Owner against whom the same was levied, and the Association shall use reasonable efforts to collect the same from such Owner.

Section 4.7 Subordination of Assessment Liens. The liens for assessments provided for in this Declaration shall be subordinate to the lien of any first Mortgage or other security interest placed upon a Lot as a construction loan security interest or as a purchase price security interest, and, upon demand, the Association will execute a written subordination document to confirm such priority. The sale or transfer of any Lot or of 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.

## **ARTICLE 5. USE COVENANTS, CONDITIONS AND RESTRICTIONS**

Section 5.1 Authorized Uses. Lots in Quail Creek shall be used solely for residential purposes and related facilities and activities normally incidental to a residential community. During the Development Period, no Lot shall be further subdivided without Declarant's prior written approval. Therefore no Lot shall be further subdivided except as permitted in this Declaration without prior approval conferred by Association Action.

Section 5.2 Approval of Building or Clearing Plans Required. No building, fence, gate, deck, patio, terrace, wall, kennel, or other structure shall be constructed, erected, or maintained upon a Lot or any other portion of Quail Creek, nor shall any exterior addition to or change or alteration therein be made, nor shall a Lot be cleared or excavated for use, until the written plans and specifications showing the nature, kind, shape, height, materials, colors, and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee. Any structure so approved must be completed as to external appearance, including finished painting or staining, within six (6) months after the date construction is commenced unless the Committee elects to grant an extension. Although the Committee shall have full authority to approve or disapprove of any specific proposal, the following restrictions shall apply to Quail Creek in general:

5.2.1 Building Setbacks. No structures, filling, grading or obstruction, including but not limited to decks, patios, terraces, outbuildings or overhangs, shall be permitted beyond the Building Setback Lines, or within any Common Area, dedicated tract or other dedicated area, or Native Growth Protection Easement area as shown on the face of the final plat unless otherwise approved by the Committee and applicable public authorities. In addition, construction of any nature shall not be permitted within any Common Area nor shall clearing or removal of trees or vegetation be permitted therein, unless trees or vegetation represent a threat to life or property due to decay or other natural causes, and unless otherwise approved by the

Committee. In addition, the clearing or removal of trees or vegetation shall not be permitted within any dedicated tract or other dedicated area or within any Native Growth Protection Easement area without the written approval of King County and all other applicable governmental authorities.

5.2.2 Building Materials. Each home constructed on a Lot shall be built of new materials except with the approval of the Architectural Control Committee.

5.2.3 Landscaping. Front yards (which includes both streets of corner lots) shall be fully landscaped upon completion of the home and prior to occupancy unless such period has been extended by the Committee. Front yards, for no less than the first fifteen (15) feet from the edge of any adjacent improved street, shall be maintained as a lawn. No trees outside the building footprint which are greater than twelve (12) inches in diameter when measured one foot above ground shall be cut without the approval of the Committee.

5.2.4 Fencing. All fences to be built on Lots shall conform to a design and specification set by the Architectural Control Committee. No fence erected within Quail Creek shall be over six (6) feet in height.

5.2.5 Contractor. No home may be constructed on any Lot by other than a contractor licensed as a general contractor under the statutes of the State of Washington without the prior approval of the Architectural Control Committee.

Section 5.3 Leasing Restrictions. No Lot, or any portion thereof, may be leased or rented by any Owner to a non- Owner for a period of fewer than thirty (30) days. Each lease or rental agreement shall be in writing and shall by its terms provide that it is subject in all respects to the provisions of the Governing Documents and this Declaration. Any failure by a lessee to comply with the terms of the Governing Documents and this Declaration shall be a default under the lease, whether or not it is so expressed therein.

Section 5.4 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept; provided, however, that dogs, cats, or other conventional household pets may be kept or bred if they are not kept, bred, or maintained as a part of a regularly operated commercial enterprise. In no event may more than two (2) dogs or two (2) cats be kept on any Lot on a permanent basis, although offspring of family pets will be allowed for a reasonable period after birth. No domestic pet may be kept if it is a source of annoyance or a nuisance. The Board shall have the authority to determine whether a particular pet is a nuisance or a source of annoyance, and such determination shall be final and conclusive. Pets shall be registered, licensed, and inoculated from time to time as required by law. When not confined to the Owner's Lot, pets within Quail Creek shall be leashed and accompanied by a person responsible for cleaning up any animal waste.

Section 5.5 Commercial Uses. Commercial enterprise, including itinerant vendors, shall not be permitted on any Lot; provided, however, that, subject to the authority of the Association to adopt reasonable rules and regulations, home occupations may be conducted if permitted by King County and if such occupation will not cause vehicular traffic or other disruption of the Quail Creek community; and provided further that no signs or advertising devices of any character shall be permitted.

Section 5.6 Vehicle Parking and Storage. No storage of goods, vehicles, boats, trailers, trucks, campers, recreational vehicles or other equipment or device shall be permitted on a Lot if visible from any street within Quail Creek except that the temporary (less than forty-eight (48) hours) parking of vehicles on the driveway areas adjacent to garages on the Lots shall be permitted. Upon forty-eight (48) hours' notice to the

owner of an improperly parked or stored vehicle, boat, or other equipment, the Association has authority to have removed at the Owner's expense any such vehicle visible from the street that has been parked on any Lot, dedicated right of way or tract, or Common Area, for more than forty-eight (48) hours.

Section 5.7 Garbage. No garbage, refuse, or rubbish shall be deposited or left in Quail Creek, unless placed in a suitable covered container. Trash and garbage containers shall not be permitted to remain in public view. No incinerator shall be kept or maintained, and no burning of any trash, refuse, or scrap of any kind shall be permitted.

Section 5.8 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.

Section 5.9 Signs. Except for entrance, street, directional, traffic control, and safety signs, no promotional signs or advertising devices of any character shall be posted or displayed in Quail Creek without prior approval of the Architectural Control Committee; provided, however, that one temporary real estate sign not exceeding six (6) square feet in area may be erected upon any Lot or attached to any residence placed upon the market for sale or lease. Any such temporary real estate sign shall be removed promptly following the sale or rental of such Lot or residence.

[There is no Section 5.10]

Section 5.11 No Obstruction of Easements. No structure, planting, or other material shall be placed or permitted to remain upon Quail Creek which may damage or interfere with any easement or the installation or maintenance of utilities, or which may unreasonably change, obstruct, or retard direction or flow of any drainage channels. No decorative planting, structure or fence may be maintained within an easement area unless specifically approved by the Architectural Control Committee and applicable governmental authorities.

Section 5.12 Antennas and Clotheslines. No external aerial antenna, free-standing antenna towers, satellite reception dishes of any kind or clotheslines shall be permitted except that satellite reception dishes and clotheslines shall be permitted in the backyard of Lots which have been improved with a residential structure.

Section 5.13 Owners' Maintenance Responsibilities. The maintenance, upkeep, and repair of individual Lots, driveway and parking improvements located solely within individual Lots and improvements thereto, shall be the sole responsibility of the individual Owners thereof, and in no way shall it be the responsibility of the Association, its agents, officers or directors. Without limitation as to the foregoing, each Owner shall be obligated to keep his Lot, driveways, parking areas, and improvements thereto in a clean, sightly and sanitary condition and maintain the landscaping on his Lot in a healthy and attractive state and in a manner comparable to that on the other Lots in Quail Creek. No storage of firewood shall be permitted in front yards. After thirty (30) days' written notice to an Owner from the Association of such Owners' failure to maintain his home or Lot, and after approval by a two-thirds (2/3) majority vote by the Board, the Association shall have the right, through its agents and employees, to enter upon any Lot which has been found to violate the foregoing standards in order to restore the Lot or the improvements thereto to such standards. The cost of such work shall be a special assessment on such Owner and his Lot only.

Section 5.14 Association's Maintenance Responsibilities. Without limitation as to the foregoing, the maintenance, upkeep and repair of the Common Areas, and all improvements within the Common Areas shall be the sole responsibility of the Association. The Association shall maintain the Common Areas and all improvements within the Common Areas in good repair and in a clean, sightly, and sanitary condition at all times.

Section 5.15 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 Quail Creek except by authorized governmental officials.

Section 5.16 Nuisances Prohibited. No noxious or offensive activity shall be conducted in any portion of Quail Creek, nor shall anything be done or maintained therein in derogation or violation of the laws of the State of Washington or any other applicable governmental entity. Nothing shall be done or maintained on any portion of Quail Creek which may be or become an annoyance or nuisance to the neighborhood or detract from the value of the Quail Creek community. All equipment used in and around the residences for maintenance purposes shall be kept in good condition and properly muffled where applicable. Parties, receptions and other functions shall be reasonably subdued, conducted at reasonable hours and with outdoor music kept at a low volume. The Association shall determine by Association Action whether any given use of a Lot unreasonably interferes with the rights of the other Owners to the use and enjoyment of their respective Lots or of the Common Areas, and such determination shall be final and conclusive.

Section 5.17 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or any other out building shall be used on any lot at any time as a residence.

## **ARTICLE 6. COMMON AREAS**

Section 6.1 Title to Common Areas. Declarant may from time to time during the Development Period convey to the Association by deed or easement the Common Areas designated on a final plat or other recorded map or plan creating Quail Creek. Upon its creation as a Common Area, every Common Area shall be subject to an easement of common use and enjoyment in favor of the Association and every Owner, their heirs, successors, and assigns, in accordance with the terms and conditions of the Governing Documents. Areas of Quail Creek which are dedicated to King County are not Common Areas, but may become Common Areas in the event that they are abandoned by King County as set forth in Section 1.7.

Section 6.2 Maintenance of Common Areas. The Association shall maintain, repair, replace, improve, and otherwise manage all of the Common Areas so as to keep them in good repair and condition and shall conduct such additional maintenance, repair, replacement, construction, or reconstruction as may be determined pursuant to Association Action. The Association shall take any action necessary or appropriate to the maintenance and upkeep of the Common Areas and improvements thereon.

## **ARTICLE 7. INSURANCE: CASUALTY LOSSES; CONDEMNATION**

Section 7.1 Insurance Coverage. Subject to change by Association Action, the Association shall maintain at all times as an Association expense a policy or policies and bonds written by companies licensed to do business in Washington providing:

7.1.1 General commercial liability insurance with a combined single limit of \$1,000,000 insuring the Association, the Owners, and Declarant against any liability to the public or to the Owners and their guests, invitees, licensees, or tenants, incident to the ownership or use of the Common Areas.

7.1.2 Such other insurance as the Association deems advisable.

Section 7.2 Casualty Losses. In the event of substantial damage to or destruction of any of the Common Areas, the Association shall give prompt written notice of such damage or destruction to the Owners and to the holders of all First Mortgages. Insurance proceeds for damage or destruction to any part of the Common Areas shall be paid to the Association as a trustee for the Owners, or its authorized representative, including an insurance trustee, which shall segregate such proceeds from other funds of the Association.

Section 7.3 Condemnation. In the event any part of the Common Areas is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, the Association shall give prompt notice of any such proceeding or proposed acquisition to the Owners and to the holders of all First Mortgages who have requested from the Association notification of any such proceeding or proposed acquisition. All compensation, damages, or other proceeds therefrom, shall be payable to the Association.

## **ARTICLE 8. ENFORCEMENT**

Section 8.1 Right to Enforce. The Association, Declarant or any Owner, shall have the right to enforce, by any appropriate proceeding at law or in equity, all covenants, conditions, restrictions, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure or forbearance by any person or entity so entitled to enforce the provisions of this Declaration to pursue enforcement shall in no event be deemed a waiver of the right to do so thereafter.

Section 8.2 Remedies Cumulative. Remedies provided by this Declaration are in addition to, cumulative with, and are not in lieu of, other remedies provided by law. There shall be, and there is hereby created, a conclusive presumption that any breach or attempted breach of the covenants, conditions, and restrictions herein cannot be adequately remedied by an action at law or exclusively by recovery of damages.

Section 8.3 Covenants Running with the Land. The covenants, conditions, restrictions, liens, easements, enjoyment rights, and other provisions contained herein are intended to and shall run with the land and shall be binding upon all persons purchasing, leasing, subleasing, or otherwise occupying any portion of Quail Creek, their heirs, executors, administrators, successors, grantees, and assigns. All instruments granting or conveying any interest in any Lot shall be subject to this Declaration.

## **ARTICLE 9. AMENDMENT AND REVOCATION**

Section 9.1 Amendment by Declarant or Association. Declarant may, on its sole signature, during the Development Period, amend this Declaration. This Declaration may also be amended at any time by an instrument executed by the Association for and on behalf of the Owners, provided, however, that such amendments shall have received the prior approval of a vote of the Owners having two-thirds of the total

outstanding votes in the Association; and provided, further, that no such amendment shall be valid during the Development Period without the prior written consent of the Declarant.

Section 9.2 Consent of Mortgagee. The prior written approval of fifty-one percent (51%) of all Mortgagees who have requested from the Association notification of amendments shall be required for any material amendment to the Declaration or the Association's Bylaws of any of the following: voting rights; assessments, assessment liens, and subordination of such liens; reserves for maintenance, repair, and replacement of any Common Areas; insurance or fidelity bonds; responsibility for maintenance and repair; reallocation of interest in the Common Areas; leasing of Lots other than as set forth herein; imposition of any restrictions on the right of an Owner to sell or transfer his Lot; a decision by the Association to establish self-management when professional management had been required previously by an eligible Mortgagee; any action to terminate the legal status of Quail Creek after substantial destruction or condemnation occurs; or any provisions which are for the express benefit of Mortgagees or eligible insurers or guarantors of First Mortgages.

Section 9.3 Unanimous Consent for Certain Amendments. The unanimous consent of all Owners shall be required for the adoption of either (i) an amendment changing the voting power or the pro rata portion of assessments chargeable to each lot, or (ii) an amendment of this Article 9.

Section 9.4 Effective Date. Amendments shall take effect only upon their recording with the King County Department of Records and Elections.

## **ARTICLE 10. GENERAL PROVISIONS**

Section 10.1 Taxes. Each Owner shall pay without abatement, deduction, or offset, all real and personal property taxes, general and special assessments, including local improvement assessments, fire protection assessments and other charges of every description levied on or assessed against his Lot, or personal property located on or in the Lot. The Association shall likewise pay without abatement, deduction, or offset, all of the foregoing taxes, assessments, and charges levied or assessed against the Common Areas.

Section 10.2 Non-Waiver. No waiver of any breach of this Declaration or failure to enforce any covenant of this Declaration shall constitute a waiver of any other breach, whether of the same or any other covenant, condition, or restriction.

Section 10.3 Attorneys' Fees. In the event of a suit or action to enforce any provision of this Declaration or to collect any money due hereunder or to foreclose a lien, the unsuccessful party in such suit or action shall pay to the prevailing party all costs and expenses, including title reports, and all attorneys' fees that the prevailing party has incurred in connection with the suit or action, in such amounts as the court may deem to be reasonable therein, and also including all costs, expenses, and attorneys' fees incurred in connection with any appeal from the decision of a trial court or any intermediate appellate court.

Section 10.4 No Abandonment of Obligation. No Owner, through his non-use of any Common Area, or by abandonment of his Lot, may avoid or diminish the burdens or obligations imposed by this Declaration.

Section 10.5 Captions. The captions of the various articles, sections and paragraphs of this Declaration are for convenience of use and reference only and do not define, limit, augment, or describe the scope, content or intent of this Declaration or any parts of this Declaration.

Section 10.6 Severability. Invalidation of any one of these covenants, conditions, restrictions, easements, or provisions by judgment or court order shall in no way affect any other of the same, all of which shall remain in full force and effect.

Section 10.7 Notices. All notices, demands, or other communications ("Notices") permitted or required to be given by this Declaration shall be in writing and, if mailed postage prepaid by certified or registered mail, return receipt requested, shall be deemed given three (3) days after the date mailing thereof, or on the date of actual receipt, if sooner; otherwise, Notices shall be deemed given on the date of actual receipt. Notice to any Owner may be given at any Lot owned by such Owner; provided, however, that an Owner may from time to time by Notice to the Association designate such other place or places or individuals for the receipt of future Notices. If there is more than one Owner of a Lot, Notice to any one such Owner shall be sufficient. The address of Declarant and of the Association shall be given to each Owner at or before the time he becomes an Owner. If the address of Declarant or the Association shall be changed, Notice shall be given to all Owners.

Section 10.8 Indemnification. The Association shall indemnify every officer, director, agent and any member of any committee authorized to act on behalf of the Association by the Board or by this Declaration against any and all expenses, including attorneys' fees, reasonably incurred by, or imposed upon, any officer, director, agent or committee member in connection with any action, suit or proceeding if approved by the then Board to which he or she may be a party by reason of being or having been an officer, director, agent or committee member. The officers, directors, agents and committee members shall not be liable for any mistakes of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors, agents and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers, directors, agents and committee members may also be members of the Association), and the Association shall indemnify and forever hold each officer, director, agent and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Association shall, as a common expense, maintain adequate general liability and officers', directors', agents' and committee members' liability insurance to fund this obligation.

Section 10.9 Applicable Law. This Declaration shall be construed in all respects under the laws of the State of Washington.

Section 10.10 Duration. The covenants, conditions, and restrictions of this Declaration shall run with, and bind the Property and shall inure to the benefit of, and be enforceable by the Owners, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded, after which time the covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument concurred in and signed by a majority of the then Owners has been recorded, terminating the covenants, conditions and restrictions.

Section 10.11 Assignment by Declarant. Declarant reserves the right to assign, transfer, sell, lease or rent all or any portion of the Property and reserves the right to assign all or any of its rights, duties, and obligations created under this Declaration.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the day and year first above written

QUAIL CREEK ASSOCIATES, a joint venture partnership

WELLINGTON-MORRIS CORPORATION, partner

by: STEPHEN NIELSEN, its President