

**DECLARATION**  
**OF**  
**PROTECTIVE COVENANTS, CONDITIONS**  
**AND RESTRICTIONS**  
**FOR LEXINGTON HILLS**

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR LEXINGTON HILLS (the "Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 1993, by E. J. Rody & Sons, a Washington general partnership, hereafter referred to "Declarant", is the Owner in fee simple of the Property. BACKGROUND Declarant has created on the Property the first section of the residential community of Lexington Hills with permanently maintained common areas for the benefit of the residents of Lexington Hills. Declarant has been granted summary site approval for the entire plat of Lexington Hills consisting of Divisions I and II. Declarant desires to preserve and enhance the property values, amenities, and opportunities in Lexington Hills, and to provide for the health, safety, and welfare of residents, and to this end desires to subject Lexington Hills Division I, together with such additions as may be made to the Property (as provided for below in Article II) to the covenants, restrictions, easements, charges, and liens set forth in this Declaration, all of which are for the benefit of the Property and each Owner. Declarant has incorporated the Lexington Hills Homeowners Association to provide a means for meeting the purposes of this Declaration and the requirements of Pierce County.

**DECLARATION**

Declarant does hereby certify and declare that the portion of the plat of Lexington Hills known as Division I ("Lexington Hills Division I") recorded under Pierce County Auditor's File No. 9212040684, on December 4, 1992, in Volume 836 of Plats at page 1603, sheets 1, 2, 3, 4 of 4, records of Pierce County, Washington and such additions as may be made pursuant to Article II, is, are and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens set forth in this Declaration. A copy of that portion of the Plat defined as Lexington Hills Division I is attached as Exhibit "A," which is hereby incorporated and made a part of this Declaration by this reference.

As used in this Declaration, the terms set forth below shall have the following meanings:

- 1.1** "ACC" shall mean the Architectural Control Committee, as described in this Declaration.
- 1.2** "Approval" shall mean the issuance of written approval or any written waiver of approval rights or the issuance of a letter of "no objection".
- 1.3** "Association" shall mean and refer to an incorporated non-profit group of Owners formed to serve as an Owners' association known as the Lexington Hills Homeowners' Association, its successors and/or assigns.
- 1.4** "Basic Plans" shall mean and refer to all previously approved building plans which have been submitted to the Architectural Control Committee.
- 1.5** "Board" or "Board of Directors" shall mean the Board of Directors of the Association.
- 1.6** "Declarant" shall mean and refer to E. J. Rody & Sons, a Washington general partnership, and its respective successors and/or assigns; provided any such successors or assignees' status as declarant

is obtained by an express written agreement, foreclosure proceeding, or other legal process, transferring the former Declarant's right, title and interest in its status as a Declarant.

**1.7** "Declaration" shall mean the covenants, conditions, and restrictions and all other provisions set forth in this entire document, and as the document may from time to time be amended.

**1.8** "Development Plan" shall mean the total general plan of intended development approved by Pierce County and illustrated in Exhibit "B," as the plan may be amended from time to time, and as further defined in Article II. The amendments to the Development Plan may include the annexation of additional land for development.

**1.9** "Front Yard Landscaping" shall mean that the portion of the yard lying between all roads and the closest portion of the house to such roads shall be landscaped as provided for in this Declaration. In the case of an interior Lot, this definition shall also include the entire side yards lying between the front corner and the closest rear corner of the house; and, in the case of a corner Lot, the side yard bordering the street; this definition shall require landscaping the entire length of the side yard until it reaches the boundary of the neighboring Lot.

**1.10** "Improvement" shall mean and refer to every building or improvement of any kind, including, but not limited to, fence, wall, driveway, swimming pool, storage shelter, or other product of construction efforts on or in respect to Lexington Hills.

**1.11** "Landscaping" shall mean the surface treatment of the cleared portion of each Lot and shall extend to the edge of the paved street, all of which shall be fine graded, raked and rolled to a smooth uniform surface and covered with at least seventy-five percent (75%) sod or "hydroseeding" with the balance having plantings. All work shall be done in a "workmanlike manner". A landscaping plan must be submitted to and approved by the ACC prior to commencement of work.

**1.12** "Lexington Hills" shall mean and refer to Lexington Hills Divisions I and II, collectively, together with such additions as may be made to the Property as provided for in Article II.

**1.13** "Lexington Hills Division I" shall mean and refer to the 108 single family dwelling Lots created out of the Property described below in Article II by the plat of Lexington Hills Division I recorded under Pierce County Auditor's File No. 9212040684 on December 4, 1992, in Volume 836 of Plats at Page 1603, Sheets 1, 2, 3, 4 of 4, records of Pierce County, Washington.

**1.14** "Lot" shall mean and refer to: (i) any single-family dwelling numbered plot of land shown upon any recorded subdivision plat of Lexington Hills; and (ii) any other plot of land created by any lawful further subdivision of a Lot or Lots shown upon any subdivision plat of Lexington Hills described in the foregoing sentences; except those areas specifically

designated on such plats as "Common Areas," "Open Areas" or "Wetlands."

**1.15** "Member" shall mean every person or entity who holds membership in the Association.

**1.16** "Mortgage" shall include a mortgage, deed of trust, real estate contract, or other security instrument.

**1.17** "Notice" shall mean written notice delivered personally or mailed to the last known address of the intended recipient.

**1.18** "Occupant" shall refer to a person or persons renting or leasing a single-family dwelling in Lexington Hills.

1.19 "Owner" shall mean and refer to the person or persons (including Declarant, except where otherwise expressly provided) of record holding the beneficial ownership of a Lot. The rights, obligations and other status of being an Owner commence upon acquisition of the beneficial ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination. The term "Owner" shall not include those having such interest merely as a security for the performance of an obligation.

**1.20** "Property" or "Properties" shall mean and refer to that certain real property hereinafter described.

**1.21** "Sold" shall mean that legal title has been conveyed or that a contract of sale has been executed under which the purchaser has obtained the right to possession.

**1.22** "These Covenants" shall mean and refer to all of the limitations, restrictions, covenants and conditions set forth in this Declaration with respect to Lexington Hills, as the same may be amended and supplemented from time to time hereafter in accordance with the provisions of this Declaration.

## **2.1 THE PROPERTY**

The real property which is subject to this Declaration is described below and represents Division I of the residential community of Lexington Hills. The East one-half (1/2) of the Northeast Quarter of the Southwest Quarter of the Northeast Quarter of Section 31, Township 20, Range 4 East of the Willamette Meridian and The South one-half (Vi) of the Southwest Quarter of the Northeast Quarter of Section 31, Township 20, Range 4 East of the Willamette Meridian and The North one-half (Vi) of the Northwest Quarter of the Southeast Quarter of Section 31, Township 20, Range 4 East of the Willamette Meridian; Except Roads.

This Declaration shall also apply to any Lot or Lots created by any lawful further subdivision of the Property or any portion of the Property.

## **2.2 ADDITIONS TO THE PROPERTY**

Additional property may become subject to this Declaration in the following manner:

### **2.2.1 Additions by Declarant.**

Declarant, at its sole option, shall have the right to subject to this Declaration additional property referred, to as Division II of Lexington Hills which is covered by the Development Plan as it may be amended from time to time as set forth in Section 2.3 of this Article. This provision shall not apply if more than ten (10) years have elapsed since the filing of this Declaration.

### **2.2.2 Other Additions.**

Additional properties, other than those described in Section 2.2.1 above, may be annexed to the Property upon the approval of two-thirds (2/3) of the Owners at a meeting called for this purpose. Written notice of such meeting shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting and shall set forth the purpose of the meeting. The presence of the Members or the proxies entitled to cast sixty percent (60%) of the votes shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth above, and the required quorum at such subsequent meeting shall be one-half (1/2) of the quorum required at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Owners are not present in person or by proxy at any meeting conducted pursuant to this provision, Owners not present may give their written assent or dissent to the action taken at said meeting.

The additions authorized under Subsection 2.2.1 and 2.2.2 shall be made by complying with the applicable ordinances of Pierce County, by recording with the Pierce County Auditor one or more Supplementary Declarations of Protective Covenants, Conditions and Restrictions with respect to the additional property, and by filing with the Pierce County Auditor the preliminary plat for such additions.

## **2.3 THE DEVELOPMENT PLAN**

### **2.3.1 Purpose.**

The Development Plan, illustrated on Exhibit "B," is the Declarant's intended design for the phased development of Lexington Hills. At the present time, the Development Plan includes 221 dwelling units located on 85 acres. The Development Plan may be modified and amended as provided for in this Declaration, during the several years required to develop the plat of Lexington Hills. It is currently the intention of the Declarant to develop Lexington Hills in full accordance with the Development Plan. The Development Plan is, however, conceptual in nature, and does not bind the Declarant to add any of the properties that are shown on the Development Plan or to improve any portion of such properties.

### **2.3.2 Amendments.**

Declarant reserves the right to amend the Development Plan or to add or subtract parcels from the Development Plan. The right to modify, add or subtract such additional parcels shall be exercised by:

**2.3.2.1** Giving notice of the proposed changes to the Association; and,

**2.3.2.2** Securing the approval of Pierce County as required by applicable ordinances and laws.

### **2.3.3 Additional Covenants.**

Declarant may subject portions of the Property covered by the Development Plan to additional covenants or declarations governing particular aspects of the ownership such as party walls, condominium regimes, additional common areas, (e.g., wetlands, detention ponds, playgrounds, etc.) etc. Such covenants or declarations shall not require the approval of anyone other than the Declarant.

## **3.1 RESIDENTIAL USE**

No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling not to exceed two and one-half stories in height and a private garage for not less than two cars. The foregoing provisions shall not exclude construction of a private greenhouse, storage unit, private swimming pool or a shelter or port for the protection of such swimming pool, or for the storage of a boat and/or camping trailer kept for personal use, provided the location of such structures is in conformity with the applicable municipal regulations, and is compatible in design and decoration with the residence constructed on such Lot, and has been approved by the Architectural Control Committee. The provisions of this Section shall not be deemed to prohibit the right of any homebuilder to construct residences on any Lot, to store construction materials and equipment on said Lots in the normal course of construction, and to use a single-family dwelling as a sales office or model home for purposes of sales in Lexington Hills.

## **3.2 DWELLING SIZE**

The ground floor area of a one-story dwelling, exclusive of open porches and garages, shall not be less than 1,500 square feet. In the case of a two-story split-level, trilevel, or any multi-level dwelling, the total floor area, exclusive of open porches and garages, shall not be less than 1,700 square feet. Notwithstanding the above, with respect to up to a maximum of fifteen percent (15%) of the Lots, the ground floor area of a one story dwelling exclusive of open porches and garages, shall not be less than 1,200 square feet.

### **3.3 BUILDING SETBACKS**

No building shall be located on any Lot nearer to the front, rear or side Lot line than is permitted by applicable Pierce County Ordinances in effect at the time the building permit authorizing construction is applied for.

### **3.4 EASEMENTS; RESERVATIONS; MAINTENANCE AGREEMENTS**

Easements for installation and maintenance of utilities and drainage facilities are reserved over the front ten (10) feet of each Lot, over a two and one-half (2 1/2) feet wide strip along each side of interior Lot lines, and over the rear five (5) feet of each Lot, as well as on other portions of certain Lots, all of record. Within the existing easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in and/or on it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utilities company is responsible.

### **3.5 TREE REMOVAL**

No trees having a diameter of twelve (12) inches or more, measured at a height of thirty (30) feet above ground level, may be removed from any portion of any Lot except within ten (10) feet of the actual footprint of the dwelling to be constructed on each such Lot without prior written approval from the ACC.

### **3.6 BUSINESS AND COMMERCIAL USES**

No trade, craft, business, professions, commercial, or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service, or business be kept or stored on any Lot, excepting the right of any homebuilder and the Declarant to construct residences on any Lot, to store construction equipment and materials on said Lots in the normal course of said construction and to use any single-family dwelling as a sales office or model home for purposes of sale in Lexington Hills.

### **3.7 OFFENSIVE AND ILLEGAL ACTIVITIES**

No noxious, offensive, or illegal activity shall be carried on upon any Lot, nor shall anything be done or placed upon any Lot which interferes with or jeopardizes any Owner's use and enjoyment of his Lot within Lexington Hills.

### **3.8 PETS**

No animals or fowl shall be raised, kept or permitted on any Lot except domestic dogs and cats, and except caged birds, hamsters, turtles, gerbils, or any other normally accepted house pet kept within the dwelling house; provided, such dogs and cats are not permitted to run at large, and provided such dogs, cats, pet birds, hamsters, turtles, gerbils, etc., are not kept, bred or raised for commercial purposes or in unreasonable numbers. No such household pet which is or becomes an annoyance or nuisance to the neighborhood shall thereafter be kept on any Lot. A maximum of two (2) household pets per dwelling shall be permitted per household. No dog runs shall be allowed.

### **3.9 SIGNS**

No signs shall be erected or maintained on any Lot except that not more than one (1) "For Sale" or "For Rent" sign placed by an Owner, the Declarant, or a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches wide, may be temporarily displayed on any Lot.

This restriction shall not prohibit the temporary placement of "political" signs on any Lot by the Owner. Such political signs shall be promptly removed from the Lot after the election is held. Notwithstanding the above, the Declarant and/or his successor(s) in interest who construct houses on Lots in Lexington Hills Division I shall be permitted to install and maintain signs used for direction and marketing purposes during the selling of such new homes; providing, such signs comply with the Pierce County Sign Code and are promptly removed after all new houses so constructed are sold initially.

### **3.10 VEHICLES IN DISREPAIR**

No Owner or occupant shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot or on any street for a consecutive period of twenty-four (24) hours. A vehicle shall be deemed to be in an "extreme state of disrepair" when its presence offends occupants of the neighborhood or Lot Owners in Lexington Hills.

### **3.11 RECREATIONAL VEHICLES AND BOATS**

Recreational vehicles and boats may be parked on lots but must be screened from the road and other single-family dwellings.

### **3.12 GARBAGE AND TRASH**

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, and other waste shall not be kept except in sanitary containers properly screened and shielded from adjacent properties. All equipment for the storage or disposal of such material shall be kept in a clean, sanitary condition. No other trash, refuse pile, or other unsightly growth or objects shall be allowed to group, accumulate or remain on any Lot so as to be a detriment to the neighborhood or become a fire hazard.

### **3.13 TEMPORARY STRUCTURES**

No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently. All structures must comply with the Uniform Building Code, as adopted by Pierce County. This provision shall not be deemed to prevent the use of a construction shack or trailer for purposes of storage or security at any time during the initial period of construction.

### **3.14 COMPLETION OF CONSTRUCTION**

The construction of any building on any Lot, including painting and all exterior finish, shall be completed within six (6) months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the ACC.

### **3.15 LANDSCAPING**

#### **3.15.1 Landscape Completion**

All Front Yard Landscaping as defined above in Paragraph 1.9 must be completed in accordance with Paragraph 1.11, above, within six (6) months of the completion of construction or from date of occupancy, whichever occurs first. The Landscaping of all other portions of the Lot not defined in Paragraph 1.9 above must be completed within twelve (12) months of the completion of construction or from the date of occupancy, whichever occurs first. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval by the ACC. The obligation to Landscape is not assignable.

### **3.15.2 Landscaping Maintenance**

The landscaped portion of the Lot, including the landscaped portions of the front, side, and rear yards, shall be maintained in accordance with the provisions set forth in this Declaration. The yard shall be mowed, watered, and fertilized to maintain an overall quality look. If the yard is not maintained to the standards required, the ACC, or the Board of Directors, or its agent, may enter onto the Lot to affect the required maintenance at the Owner's expense. Such entry onto the Lot for purposes of effecting maintenance shall only be undertaken after the ACC, or the Board of Directors, or its agent, has given ten (10) days prior written notice to the Owner. In the event that the Owner fails to undertake and complete such maintenance as required by this Declaration, the Association may levy a special assessment against such Owner in an amount equal to the costs incurred in order to fulfill the Owner's obligation to perform Landscaping maintenance. In the event that the levying of such an assessment is necessary, it may be enforced in accordance with Article IX of this Declaration.

### **3.16 FENCES AND HEDGES**

As defined in this Section, "fencing" shall mean any barrier or wall other than natural living organic vegetation, including trees and shrubs. Plantings or site obscuring fences shall not exceed four (4) feet in height in the front yard or on side Lot lines forward of the building line with the greatest setback on the Lot or the adjoining residential Lot. The maximum height of a site obscuring fence located on the remainder of the Lot shall be six (6) feet. Fences shall be well constructed of wood materials and shall not detract from the appearance of the dwelling house located upon the Lot or building site, detract from the appearance of the dwelling houses located on the adjacent Lots, or be offensive to Owners or occupants thereof. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be placed or permitted to remain on any corner Lot within the triangle formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No vegetation shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight line.

### **3.17 EXTERIOR MATERIALS**

Exterior materials must be approved for use by the ACC in accordance with the provisions of Article V. Any architectural features subject to control will be approved or disapproved upon submission of plans to the ACC.

### **3.18 EXTERIOR FINISH**

The exterior of all construction on any Lot shall be designed, built, and maintained in such a manner as to blend in with the natural surroundings and Landscaping within Lexington Hills. Exterior colors must be approved by the ACC in accordance with the provisions of Article V. The use of bright or hard stains or paint will not be approved. Exterior trim, fences, doors, railings, decks, eaves, gutters, and the exterior finish of garages and other accessory buildings shall be designed, built, and maintained to be compatible with the exterior of existing structures situated on adjoining Lots.

### **3.19 ANTENNAS AND SERVICE FACILITIES**

Exterior antennas shall not be permitted to be placed upon the roof of any structure or on any Lot so as to be visible from the street in front of said Lot. All other service facilities shall be screened so as not to be viewed from any street or any adjacent Lot.

### **3.20 MAINTENANCE OF STRUCTURE AND GROUNDS**

Each Owner shall maintain his Lot and residence thereon in a clean and attractive condition, in good repair and in such fashion so as not to create a fire hazard. All trees, hedges, shrubs, flowers, and lawn growing on any Lot shall be maintained and cultivated so that the property is not detrimental to the neighborhood as a whole. No building or construction materials to be used for future improvements (except for homebuilders during construction and sales period) may be stored out of doors where they may be visible from any street or adjacent Lots or dwellings.

### **3.21 SEWAGE/WATER SUPPLY**

Since Lexington Hills will be served by a public sanitary sewer system and a public water system, neither individual on-site sewerage disposal systems nor individual on-site water supply systems shall be permitted on any Lot.

### **3.22 CLOTHESLINES**

No exterior clotheslines shall be allowed that can be seen from any street or adjacent Lots.

### **3.23 WOOD PILES**

No wood piles, for fireplace or other use, may be stored out of doors where they may be visible from any street, or where they create, in the opinion of the ACC, an objectionable condition aesthetically or in regards to pest infestation.

### **3.24 PREVIOUSLY OCCUPIED STRUCTURES**

No building or structure previously occupied and/or used while being situated on other real property may be moved onto any Lot in Lexington Hills, as defined in Article II of this Declaration.

### **3.25 PARKING**

No vehicles shall be parked on roads within Lexington Hills that serve as a means of ingress or egress for a consecutive period exceeding twenty-four (24) hours.

### **3.26 DIRT BIKES AND/OR A.T.V.**

No motor vehicles, including motorcycles, dirt bikes, motor scooters, A.T.V.'s, etc., shall be permitted on any road within the easements designated on the plat, nor shall any dirt bikes or A.T.V.'s be permitted to operate on any of the Property conveyed herein, nor shall any other similar vehicle(s) be permitted to operate on any Owner's Lot, or on adjacent roads in any unsafe manner, or in such a way as to create a hazard or nuisance.

### **3.27 PLAYGROUND-TYPE APPARATUS**

Any installation, either temporary or permanent, of playground equipment, including, but not limited to, Big Toys, Jungle Jims, swing sets, basketball backboards and hoops, slides and playhouses is strictly prohibited unless written consent is obtained from the ACC prior to installation with respect to location, size, color, etc. Under no circumstances shall any of the above enumerated playground-type apparatus be permitted in the front yard. For purposes of this paragraph, the geographic boundaries of the front yard shall be determined in the same manner as described under Paragraph 1.9 above regarding Front Yard Landscaping. For purposes of this paragraph, the term "temporary" shall mean any playground-type apparatus that is not permanently attached or anchored to, or buried in, the ground. This paragraph does not apply to the playground identified as Tract "C" on page 2 of the Plat of Lexington Hills, Division I.



### **3.28 "STICK BUILT" CONSTRUCTION**

All permanent dwellings shall be conventionally constructed from dimensional lumber in a manner often referred to as "stick built" construction. No mobile homes, manufactured housing and/or modular homes shall be permitted on any Lot, either temporarily or permanently.

### **3.29 ACCESSORY BUILDINGS**

Any construction, installation or placement of a detached accessory building, whether temporary or permanent, is strictly prohibited unless, prior to initiation of construction, installation, or placement of any such building on any lot, written consent is obtained from the ACC with respect to location, size (including height, width, and length), color, roofing material, siding, etc. It is the intent of this covenant to ensure that a detached accessory building is similar in appearance to the residence it serves. Under no circumstances shall an accessory building be permitted in the front yard. For purposes of this paragraph, the geographic boundaries of the front yard shall be determined in the same manner as described under Paragraph 1.9 above regarding Front Yard Landscaping. For purposes of this paragraph, the term "temporary" shall mean any accessory building that is not permanently attached or anchored to the ground or set on a foundation.

### **4.1 GENERAL**

The plat of Lexington Hills includes Tracts "A," "B," "C," "D," "E," "F" and "G" (collectively the "Common Areas" and individually a "Common Area"). Tracts "A," "B" and "D" have been designated as wetlands and/or buffer areas; Tract "C" has been designated as a playground; Tract "E" has been designated as a sanitary sewer pump station; Tract "F" has been designated as detention pond; and Tract "G" has been designated as a detention pond and buffer area. The Owners of Lots within Lexington Hills and their respective invitees shall be entitled to the use of Tract "C" and benefits arising from the other Common Areas within the project, subject, however, to the restriction that the Common Areas shall be dedicated for storm drainage detention, open space, and those recreational uses which do not harm or otherwise disturb the natural setting of the areas, trees or vegetation thereon. The Common Areas shall not be platted or otherwise divided into Lots for residential use. Nothing in this Declaration shall prevent the placing of a sign or signs on the Common Areas identifying the subdivision, provided such signs are approved by the ACC and comply with the applicable Pierce County sign ordinances. Declarant, upon approval in writing of the Owners of a majority of the Lots, may dedicate or convey any portion of the Common Areas to Pierce County, the Pierce County Parks and Recreation Department, Pierce County Utilities Department, or any other municipality or public body for open space or recreational use subject to the terms and conditions contained in this Declaration.

### **4.2 BUFFER AREAS ADJACENT TO DIRU CREEK**

#### **4.2.1 Prohibited Uses**

No use of the buffer areas adjacent to Tracts "A" and "B" and Diru Creek as shown on the Plat of Lexington Hills Division I (the "Buffer Areas") shall be allowed if such use might be harmful to downstream water quality ("Prohibited Uses"). Such Prohibited Uses shall include, but not be limited to, any use resulting in the: (i) application of pesticides and fertilizers to the Buffer Areas; or (ii) the discarding of yard waste or any other materials on the Buffer Areas that might be harmful to downstream water quality.

#### **4.2.2 Dissemination of Information By Puyaliup Indian Tribe**

The Puyallup Indian Tribe (the "Tribe") shall be given reasonable access to mailings and newsletters undertaken by the Association (or Declarant until so delegated to it), if any, for purposes of disseminating information to Members regarding the importance of the Tribe's fish hatchery situated

downstream and water quality in general, and to explain and recommend actions that Members should undertake to insure fishery protection and good water quality.

#### **4.2.3 Enforcement by Tribe**

Notwithstanding any other provision contained in this Declaration, the Tribe may unilaterally bring any suit or action to enforce this Section 4.2 of this Declaration to obtain an injunction(s) prohibiting the continuation of any Prohibited "Use(s), and the prevailing party shall be entitled to recover all costs and expenses incurred by it, him, her or them in connection with such suit or action, including such amount as the court may determine to be reasonable as attorney's fees at trial and/or upon any appeal thereof.

#### **4.3 WETLANDS**

##### **4.3.1 Wetland Mitigation**

As a condition of the approval of the Plat of Lexington Hills, the Declarant was required to comply with that certain revised Wetland Mitigation Determination of Non-Significance issued by the Pierce County Council on September 11, 1990 (the "MDNS").

##### **4.3.2 MDNS**

Monitoring and Contingency Plan Paragraph I.b.ii of the MDNS provides that a monitoring program and contingency plan be developed in cooperation with the Tribe (the "Monitoring and Contingency Plan").

##### **4.3.3 Federal Law Prohibitions**

Except as specified in the permit as of the date of the recording of these CC&Rs, any filling, mechanized land clearing, leveling or placement of buildings and roads on the areas depicted upon the plan sheet as jurisdictional wetlands and mitigation wetlands is prohibited by federal law (unless a permit is first secured pursuant to Section 404 of the Clean Water Act from the Army Corps of Engineers).

##### **4.3.4 Conveyance of Wetlands To Pierce County**

Upon completion, the Wetland Mitigation Area shall be conveyed to Pierce County, if Pierce County agrees to accept it. However, if Pierce County is unwilling to accept ownership, the wetland area shall continue to be held as a Common Area and shall be maintained by the Association.

#### **5.1 ARCHITECTURAL REVIEW**

No structure, including storage shelters, shall be commenced, erected, placed or altered (including painting and repainting) on any Lot until the construction plans, \_ specifications and a plot plan showing the nature, shape, heights, materials, colors, and proposed location of the structure have been submitted to and approved in writing by the ACC. It is the intention and purpose of this covenant to assure quality of workmanship and materials, harmony of external design with the existing structures as to location with respect to topography, finish grade elevations, and to avoid plan repetition; hence duplication of the same plan having the same exterior elevation on contiguous Lots shall be prohibited; except on adjacent corner Lots when the front elevations are approximately perpendicular to each other. In all cases in which the ACC consent is required by this Declaration, the following provisions shall apply:

### **5.1.1 Major Construction**

In the case of initial or substantial additional construction of the dwelling, the Owner shall prepare and submit to the ACC such plans and specifications for the proposed work as the ACC may require. Material required by the ACC may include, but not necessarily be limited to, (1) a plot plan indicating location of all improvements; (2) renderings showing elevations, exterior materials and exterior colors of all improvements; and, (3) certification of square footages contained within the structure and each floor thereof, notwithstanding the provision for Basic Plans as defined in Paragraph 1.4. The ACC shall render its decision with respect to the proposal within thirty (30) working days after it has received all material required by it with respect thereto.

### **5.1.2 Minor Work**

In the case of a minor addition or remodeling, change of existing exterior color scheme or exterior material, greenhouse, or swimming pool construction, or any other work not referred to in paragraph (A) above, the Owner shall submit to the ACC such plans and specifications for the proposed work as the ACC determines to be necessary to enable it to evaluate the proposal. The ACC shall render its decision with respect to the proposal within thirty (30) workings days after it has received all material required by it with respect thereto.

### **5.1.3 Exclusion (from Applicability)**

The improvements situated on Lot 108 at the time of the creation of this Declaration (the "Existing Improvements") shall not be subject to architectural review or any of the provisions included in this Article V of this Declaration (the "Exclusion"). This Exclusion shall remain effective notwithstanding any further lawful subdivision of Lot 108 whereby the Existing Improvements are situated on a newly created Lot that was formerly a portion of Lot 108 that is renamed or renumbered as a result of any such land use proceeding(s). However, any future modifications to the Existing Improvements after the creation of this Declaration, and/or any new improvements commenced, erected, placed or altered (including painting and repainting) on any future Lot created by the subsequent future lawful subdivision of Lot 108 shall be fully subject to all of the provisions of this Article V.

## **5.2 ARCHITECTURAL CONTROL COMMITTEE DISCRETION**

The ACC may, at its sole discretion, withhold consent to any proposed work if the ACC finds that the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the ACC intends for Lexington Hills. The ACC shall, when reviewing each submission, consider the construction plans, specifications and a plot plan showing the nature, shape, heights, materials, colors and proposed location of the structure, impairment of the view from other Lots within Lexington Hills, or other effects on the enjoyment of other Lots, disturbance of existing terrain and vegetation, and any other factors which the ACC reasonably believes to be relevant in determining whether or not to consent to any proposed work. Such structure shall conform to all codes and ordinances of Pierce County or other applicable jurisdictions. The ACC shall have the authority to adopt written design standards restricting and limiting proposed work. A copy of the initial design standards are attached as Exhibits "C," and "D," which are hereby incorporated and made a part of this Declaration by this reference. However, the ACC may modify the design standards at any time without any prior notice.

## **5.3 PROCEDURE**

In the event the ACC fails to render its approval or disapproval within thirty (30) days after plans and specifications have been submitted to it, approval will not be required, and the related covenants shall be deemed to have been complied with fully.

## **5.4 MEMBERSHIP APPOINTMENT AND REMOVAL**

The ACC shall consist of not more than five (5) persons, as the Declarant may from time to time appoint as provided for hereafter. The Declarant may remove any Member of the ACC from office at any time, other than those Members who have purchased or are purchasing Lots within Lexington Hills, and who are in compliance with their respective purchase agreements and may appoint new or additional Members at any time. The Declarant shall keep on file at its principal office a list of names and addresses of the Members of the ACC. A Member of the ACC shall not be entitled to compensation for services performed pursuant to these covenants. The powers and duties of Declarant provided for in this Declaration shall cease one year after completion of construction of all the single-family dwellings and the sale of said dwelling to the initial Owner/Occupant on all of the single-family dwelling Lots within Lexington Hills.

## **5.5 LIABILITY**

Neither the ACC nor any Member thereof shall be liable to any Owner, occupant, builder or developer for any damages, loss or prejudice suffered or claimed on account of any action or failure to act of the ACC or a Member thereof, provided that the Member has, in accordance with the actual knowledge possessed by him or her, acted in good faith.

## **5.6 ACTION**

Except as otherwise provided herein, any three (3) Members of the ACC shall have the power to act on behalf of the ACC, without the necessity of a meeting and without the necessity of consulting the remaining Members of the ACC. The ACC may render its decisions only by written instrument setting forth the action taken by the Members consenting thereto.

## **5.7 NON-WAIVER**

Consent by the ACC to any matter proposed to it, and within its jurisdiction under these Covenants, shall not be deemed to constitute a precedent or waiver impairing its rights to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

## **5.8 EFFECTIVE PERIOD OF CONSENT**

The ACC's consent to any proposed work shall automatically be revoked one (1) year after issuance unless construction of the work has been commenced and diligently pursued, or the Owner has applied for and received an extension of time from the ACC.

## **6.1 ORGANIZATION**

Declarant shall organize an association of all of the Owners of the Lots within Lexington Hills. Such association, and its successors and assigns, shall be organized as a non-profit incorporated association under the name of Lexington Hills Homeowners Association, or a name similar thereto, and shall have property, power, and obligations as set forth in these Covenants for the benefit of Lexington Hills Division I, and all Owners of property located therein, together with other future divisions of the plat of Lexington Hills, as set forth in Article II, if developed. The Articles of Incorporation shall provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated Association of the same name. In that event, all of the property, power, obligations of the incorporated Association shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed and evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles and Bylaws of the Association as if they have been made to constitute the governing documents of the incorporated Association.

## **6.2 MEMBERSHIP VOTING**

Every Owner of one (1) or more Lots within Lexington Hills, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one (1) or more Lots within Lexington Hills, shall be a Member of the Association. Such Membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by a certificate or acceptance of Membership. Each Owner shall have one (1) vote on all matters submitted to the Membership of the Association for each Lot owned by him, her, or them within Lexington Hills.

## **6.3 POWERS AND OBLIGATIONS**

The Association shall have the right to exercise and perform all of the following powers, duties and obligations:

- (a)** The powers, duties and obligations granted directly to the Association by these Covenants or granted by these Covenants to Declarant and in turn delegated, conveyed or otherwise assigned by Declarant to the Association.
- (b)** The powers and obligations of a nonprofit organization pursuant to the general nonprofit corporation laws of the state of Washington; and,
- (c)** Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to these Covenants or otherwise promoting the general benefit of the Owners within Lexington Hills.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in these Covenants made in accordance with the provisions herein or by changes in the Articles or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the state of Washington.

## **6.4 LIABILITY**

Neither the Association nor any officer or Member of the Board of Directors shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act by the Association, any of its officers or any Members of its Board of Directors, provided only that the officer or board Member has acted in good faith in accordance with the actual knowledge possessed by him.

## **7.1 DECLARANT'S DUTY TO CONVEY AND ASSOCIATION'S DUTY TO ACCEPT COMMON AREAS.**

The Declarant shall convey to the Association and the Association shall accept all of the Common Areas as soon as the Association is able to operate and maintain the same in a manner appropriate to the needs and desires of the Owners and in accordance with these covenants but the Declarant shall not delay the conveyance of said Common Area for more than two (2) years after the date of the recording of this Declaration.

## **7.2 DECLARANT'S RESERVATIONS OF POWERS, DUTIES, AND OBLIGATIONS PURSUANT TO THESE COVENANTS**

The Declarant hereby reserves to itself all of the powers, duties, and obligations granted by these Covenants to the Association, for the purpose of administering and enforcing any and all provisions hereof, until such time as the Declarant shall delegate the same to the Association in accordance with the provisions of Section 7.3 hereof, including the right to dedicate, transfer, and convey all or part of

the Common Areas and utilities thereon to Pierce County, Pierce County Utilities Department, or to the Pierce Parks and Recreation Department as set forth in Paragraph 4.1.

### **7.3 DELEGATION BY DECLARANT**

Declarant may at any time and from time-to-time delegate, convey or otherwise assign to the Association the powers and obligations of the Declarant pursuant to these Covenants, and such interest, powers and obligations shall thereupon vest in the Association without the necessity of any acceptance thereof by the Association. Such delegations, conveyances or other assignments may grant to the Association authority that is exclusive, or that is concurrent with Declarant, and may be made in general terms or with reference to specific items. If specific delegations, conveyances or other assignments are made, they shall cover only those items which are expressly described therein; provided, however, the correlative powers and obligations shall be treated together. The time and manner of such delegations, conveyances or other assignments shall be solely within the discretion of the Declarant; provided, however, that Declarant shall complete the delegations, conveyances or other assignment of all of its interest in the common obligations under these covenants with respect to Lexington Hills Division I:

**(a)** when eighty (80) Lots within Lexington Hills Division I are Owner occupied, or

**(b)** ten (10) years after the date this Declaration is recorded, whichever is earlier; and with respect to Lexington Hills Division II and/or any other additional property added pursuant to Article II above:

**(a)** when eighty percent (80%) Lots within Lexington Hills Division II and/or any other Property are Owner occupied, or

**(b)** ten (10) years after the date that the plat of Lexington Hills Division II and/or any other additional Property added pursuant to Article II above is recorded with the Pierce County Auditor, whichever is earlier. The responsibility of Declarant under these Covenants with respect to Lexington Hills Division I, Lexington Hills Division II, and/or any other property added pursuant to Article II above, with respect to powers and/or obligations shall cease upon the exclusive conveyance, delegation or other assignment thereof to the Association. Any delegation pursuant to this section shall be in writing, executed by Declarant, and recorded with the Auditor of Pierce County, Washington. The effective date of such delegation shall be the date that it is recorded with the Pierce County Auditor.

### **8.1 MAINTENANCE**

Declarant shall maintain, or provide for the maintenance of, the Common Areas, playground, entrance landscaping irrigation and lighting, street lighting, mailboxes, fencing and signs, and utility easements situated within Lexington Hills Division I (the "Easements"), unless the maintenance thereof is assumed by a public body, public utility, privately or mutually owned utility, other entity authorized to operate as a utility, or any governmental agency. Declarant shall delegate or otherwise assign its obligations of maintenance to the Association within the time set forth above in Section 7.3 hereof.

### **8.2 MAINTENANCE ASSESSMENT**

The Association (or Declarant until so delegated to it) shall assess and collect from every Owner, and every Owner shall pay, an annual maintenance assessment sufficient to pay common expenses, including but not limited to taxes, administrative expenses, reserves, and insurance, but not more than Ten and No/100ths Dollars (\$10.00) per Lot per month, unless such maximum assessment is increased as provided in Section 8.4 hereof. The annual assessment shall be made as of January 1 st each year, with the first such annual assessment commencing January 1st, 1994, unless deferred by Declarant, at the rate of One Hundred Twenty and No/100ths Dollars (\$120.00) per year or Thirty and No/100ths Dollars (\$30.00) per quarter on or before the first day of each quarter; provided, however, that no such maintenance assessment shall be made with respect to Lots as to which Declarant is Owner, or

any Owner whose ownership of one or more Lots is solely for the purpose of constructing homes thereon for resale. The Association (or Declarant until so delegated to it) shall place all amounts received as maintenance assessments hereunder in the Maintenance Fund (as defined below) to be established and used as provided herein.

### **8.3 MAINTENANCE FUND**

The Association (or Declarant until so delegated to it) shall keep all funds received by it as maintenance assessment, together with any other funds received by it pursuant to these Covenants, which are by the terms of such Covenants to be deposited in the Maintenance Fund, separate and apart from its other funds in an account to be known as the

"Maintenance Fund", and shall use such fund only for the following purposes:

- (a)** Payment of the cost of maintaining the Common Areas designed to serve the general benefit of such Owners including, but not limited to, the costs of operation and maintenance of:
  - (i)** Common Area landscaping and irrigation sprinkler systems.
  - (ii)** entrance signs together with associated landscaping, irrigation sprinkler system, and lighting.
  - (iii)** street lighting; and
  - (iv)** mailboxes.
- (b)** Payment of taxes assessed against the Common Areas within the plat of Lexington Hills;
- (c)** Payment of the cost of garbage and trash disposal for Common Areas.
- (d)** Payment of the cost of insurance, including insurance protecting the ACC, Declarant, and the Association against liability arising out of their functions and activities with respect to the administration of these Covenants, which insurance may include casualty, flood and/or liability protection.
- (e)** Payment of the cost of enforcing these Covenants.
- (f)** Payment of the cost of other services which the Declarant deems to be of general benefit to Owners of Property within Lexington Hills Division I, including, but not limited to, legal, accounting, and secretarial services; and
- (g)** In the event any condemnation of a portion of the Common Areas should result in a surplus of the Maintenance Fund not needed for payment of other items described herein, such surplus shall be divided by the number of Lots in Lexington Hills Division I, and such amounts paid equally to the first mortgagee and Owner as their interest may appear with respect to each such Lot.

### **8.4 ADJUSTMENTS**

The Association (or Declarant until so delegated to it) may adjust the amount of the annual maintenance assessment in accordance with increases in maintenance costs and/or real estate taxes with respect to the Common Areas, provided, however, that such increase does not exceed fifteen percent (15%) above the preceding year's assessment with regard to maintenance without requiring a vote thereon by Members. In the event the Association (or Declarant) deems the Maintenance Fund to be inadequate or excessive with respect to maintenance needs and expenses, taking into account the need for reasonable reserves for such purposes, the annual maintenance assessment provided for by Section 8.2 may be increased on a uniform basis and in such amount as is approved in writing or at a

meeting of the Members, by not less than sixty percent (60%) voting together. However, the annual maintenance assessment may be adjusted at any time by the Association (or Declarant until so delegated to it) by whatever amount is necessary in order to collect sufficient monies to pay the current real estate taxes pertaining to the Common Areas without first obtaining approval of the members.

### **9.1 DEFAULT IN PAYMENT OF THE ASSESSMENT AND FINES**

Each assessment or fine levied pursuant to these Covenants shall be a separate, distinct, and personal debt and obligation of the Owner against whom the assessment or fine is levied. Sale or transfer of the Lot by the Owner shall not release him, her or them from the personal liability imposed hereunder. If the Owner fails to pay such fine or assessment or any installment thereof when due, the Owner shall be in default and the amount of the assessment or fine not paid, together with costs and attorney's fees as elsewhere provided for, shall become a lien upon the Lot or Lots against which the assessment or fine was made upon recordation with the Pierce County Auditor's Office by Declarant or the Association of a notice of lien. Such liens shall be subordinate to the lien of any first mortgage or deed of trust upon such Lot or Lots which was made in good faith and for the value and which was recorded prior to recordation of the notice of lien. Declarant or the Association may commence proceedings to foreclose any such lien at any time within ten (10) years following such recordation of the notice of lien.

### **9.2 EXPENSES AND ATTORNEY'S FEES**

In the event the Association (or Declarant until so conveyed to the Association) shall bring any suit or action to enforce these Covenants, to collect any money due to it thereunder, or to foreclose a lien, the prevailing party shall be entitled to recover all costs and expenses incurred by it, him, her or them in connection with such suit or action, including a foreclosure title report and such amount as the court may determine to be reasonable as attorney's fees at trial and/or upon any appeal thereof.

### **9.3 NONEXCLUSIVE AND ACCUMULATION OF REMEDIES**

An election by the Association (or Declarant until so conveyed to the Association) to pursue any remedy provided for herein for violation of these Covenants shall not prevent concurrent or subsequent exercise of another remedy permitted under these Covenants. The remedies provided in these Covenants are not exclusive but shall be in addition to all other remedies available under applicable law, including, but not limited to, actions for damages, suits for injunctions, and specific performance.

## **10.1 TERM**

These Covenants shall run with the land with respect to any Property within Lexington Hills Division I, for a period of not less than twenty (20) years from the date this Declaration is recorded and shall be binding on all parties and all persons subject to the provisions set forth below in Paragraph 10.3. After said twenty (20) year period, these Covenants shall be automatically extended for successive periods of ten (10) years unless this Declaration has been previously amended or repealed in accordance with the provisions set forth below in Paragraph 10.3.

## **10.2 LIMITATION OF LIABILITY BY DECLARANT**

Neither Declarant, nor any officer, director, agent, employee, or partner thereof, shall be liable to any Owner on account of any act or failure to act of Declarant in performing its duties or rights hereunder, provided that Declarant has, in accordance with actual knowledge possessed by it, acted in good faith.



### **10.3 AMENDMENT AND REPEAL**

These Covenants or any provision thereof, as from time to time in effect with respect to all or any part of Lexington Hills Division I, may at any time be amended or repealed by an affirmative vote or the written consent of not less than seventy-five percent (75%) of the Owners. Any such amendment or repeal shall become effective upon the recordation of a certificate executed by two (2) officers entitled to act in the name of the Declarant, setting forth, in full, the amendment, amendments, or repeal having been approved in accordance with the provisions herein.

### **10.4 CONSTRUCTION; SEVERABILITY; NUMBER; CAPTIONS**

These Covenants shall be liberally construed as an entire document to accomplish the broad purpose thereof. Nevertheless, each provision of these Covenants shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

### **10.5 NOTICES AND OTHER DOCUMENTS**

Any notice or other document permitted or required by these Covenants may be delivered either personally or by mail. Delivery by mail shall be deemed made forty-eight (48) hours after having been deposited as regular mail in the United States Mail, with postage prepaid, addressed as follows:

- (1)** if to the Declarant or the ACC, E. J. Rody & Sons, 1624 East 72nd Street, Tacoma, WA98404;
- (2)** if to a non-occupant Owner, at the address given by him or her at the time of his or her purchase of a Lot; or
- (3)** if to an Owner-occupant or a non-Owner occupant, at the address of the Lot so owner or occupied. The address of a party may be changed at any time written notice delivered in the manner provided in this paragraph.

### **10.6 CERTAIN RIGHTS OF DECLARANT**

For such time as Declarant shall own Lots, there shall be no amendments to the Declaration, Articles of Incorporation, the Bylaws of the Association, or any rules and regulations adopted by the Association which:

- (a)** Discriminate or tend to discriminate against the Declarant's rights as an Owner.
- (b)** Change Article I (definitions) in any manner which alters Declarant's rights or status.
- (c)** Alter Declarant's rights under Article II regarding annexation of additional properties.
- (d)** Alter the character and rights of Membership as set forth in Article VI.
- (e)** Alter the character and rights of Declarant as set forth in Article VII.
- (f)** Alter previously recorded or written agreements with public or quasi-public agencies regarding easements and rights of way.
- (g)** Deny the right to convey Common Areas to the Association so long as such common areas lie within the land area represented in the Development Plan.
- (h)** Alter Declarant's rights as set forth in Articles III and V relating to architectural controls.

- (i)** Alter the basis for assessments and/or fines.
- (j)** Alter the provisions of Articles III.
- (k)** Alter the number or selection of directors as established in the Bylaws.
- (1)** Alter the rights of Members as set forth in this Declaration.
- (m)** Alter the Declarant's rights as they appear under this Article.