

DECLARATION  
AND  
COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS  
AND RESERVATIONS  
FOR  
DISCOVERY POINT

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-(Abbreviated TOC)

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THIS DECLARATION AND COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RESERVATION FOR DISCOVERY POINT (the “Declaration”) is made by David Soleim, President of Capstone Homes, Inc., (“Declarant”) as of this 28th day of May, 1996.

## RECITALS

Declarant is the owner of certain real property (the “Property”) in Pierce County, Washington, legally described on Exhibit 1 hereto.

The property is described as all lots within DISCOVERY POINT records of Pierce County, Washington.

Declarant wishes to subject the Property to this Declaration

NOW, THEREFORE, Declarant declares that the Property subject to all restrictions and easements of said plat, shall be held, transferred, sold, conveyed, leased, used and occupied subject to the covenants, conditions, restrictions, easements, assessments, and liens hereinafter set forth which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the Property and which shall be binding on all parties having any right, title, or interest in the Property or any portion thereof, and their respective heirs, successors and assigns, and shall insure to the benefit of each owner thereof.

## ARTICLE 1. DEFINITIONS

Section 1.1 Words Defined. For the purpose of this Declaration and any amendments hereto, the following terms shall have the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

1.1.1 “Association” shall mean Discovery Point Homeowners’ Association described in Article 4 of this Declaration, its successor and assigns.

1.1.2 “Board” shall mean the Board of Directors of the Association.

1.1.3 “Common Area” and “Common Area Improvements” shall each have the meaning set forth in Section 2.1.

1.1.4 “Construction” and “Constructed” shall mean any construction, reconstruction, erection or alteration of an Improvement, except wholly interior alterations to a then existing Structure.

1.1.5 “Declarant” shall mean David Soleim.

1.1.6 “Declaration” shall mean this Declaration of Covenants, Conditions, Restrictions, and Reservations for Discovery Point, as it may from time to time be amended.

1.1.7 “First Mortgage” and “First Mortgagee” shall mean, respectively, (a) a recorded Mortgage on a Lot that has legal priority over all other Mortgages thereon, and (b) the holder of a first Mortgage. For purposes of determining the percentage of First Mortgagees approving a proposed decision or course of action in cases where a Mortgagee holds First Mortgages on more than one Lot, such Mortgagee shall be deemed separate Mortgagee for each such First Mortgage so held.

1.1.8 “Lot” shall mean any one of the 47 lots in DISCOVERY POINT together with the Structures and improvements, if any, thereon.

1.1.9 “Mortgage” shall mean a recorded Mortgage or Deed of Trust that creates a lien against a Lot and shall also mean a real estate contract for the sale of a Lot.

1.1.10 “Mortgagee” shall mean the beneficial owner or the designee of the beneficial owner, of an encumbrance on a Lot created by mortgage of deed of trust and shall also mean the vendor, or the designee of a vendor, of a real estate contract for the sale of a Lot.

1.1.11 “Owner” shall mean the record owner, whether one or more Persons, of fee simple title to a Lot within the Property, including a contract seller except those having such interest merely for the performance of an obligation.

1.1.12 “Participating Builder” shall mean a Person who acquires from Declarant two or more Lots for the purpose of improving the same for resale to future Owners.

1.1.13 “Person” shall mean an individual, corporation, partnership, association, trustee, or other legal entity.

1.1.14 “Plat” shall mean the recorded plat of DISCOVERY POINT and any amendments, corrections or addenda thereto subsequently recorded.,

1.1.15 “Property” shall mean the land described on Exhibit 1 and such additions thereto as may hereafter be subjected to the terms of the Declaration, and all improvements and structures now or hereafter placed on the land.

1.1.16 “structure” shall mean any building, fence, wall, driveway, walkway, patio, deck, swimming pool, or the like.

1.1.17 “Transition Date” is defined in Section 4.10.

Section 1.2 Form of Words. The singular form of words shall include the plural and the plural shall include the singular. Masculine, feminine and neuter pronouns shall be used interchangeably.

## ARTICLE 2. COMMON AREAS AND EASEMENTS

\*\*\*\* Section 2.1 Common Areas. “Common Areas” and “Common Area Improvements” shall include any and all easements, improvements, and facilities reserved, set forth, described, or depicted in a Plat of any portion of the Property, including without limitation, roadway easements, storm water retention and detention systems and easements, drainage channels and easements, sanitary sewer easements, and landscape easements. In addition, Common Areas include the land described as Tracts “A” and “B” plat of Discovery Point.

\*\*\*\* Section 2.2 Association to Maintain Common Areas. The Association shall have the right and the obligation to maintain Tract A and Tract B, which are the private park, open space and storm water detention pond tracts; together with all areas shown as storm drainage easements within this plat.

Section 2.3 Alteration of Common Areas. Nothing shall be altered or constructed upon or removed from the Common Areas except upon the prior written consent of the Board.

Section 2.4 Association to Maintain Private Roadways and Storm Drain Facilities. The Association shall have the right and obligation to maintain the private roadways , roadway surfacing, road signs, entry security gate, and entire storm drain facilities to and including the outfall. Each individual tax parcel (lot) shall be obligated to a pro rata share based upon the total number of separate tax parcels created, which shall include those within the roadway maintenance agreement files under Pierce County Auditor’s file no.

Section 2.5 Easements for Utilities and Drainage . Declarant does hereby establish, create, and reserve for the benefit of itself, the Association and all Owners, and their respective heirs and assigns, the following easements:

(i) An easement to all public and private utilities serving this plat, their successors and assigns, under and upon all areas noted as utility easement within this plat, in which to install and maintain all necessary utilities, together with the right to enter upon the Lots at all times for the purposes stated; and,

(ii) An easement 2.5 feet in width, parallel with and adjacent to all interior lot lines, and 5 feet in width, parallel with and adjacent to all rear lot lines for the purpose of utilities and private drainage (hereinafter, the “Utilities and Drainage Easements”). No Lot Owner shall allow or permit and structure, fill or landscaping to be located, installed or grow upon the area subject to the Utilities and Drainage Easements which might in any way damage or interfere with the installation and operation of such utilities and systems. In particular, no lines or wires for the transmission of electric current or for telephone use, cable T.V., fire or police signals, or for other purposes, shall be placed upon any Lot outside Structures thereon unless the same shall be underground or in conduit attached to a Structure. Each person utilizing the Utilities and Drainage Easements areas located on another’s lot shall promptly restore such area to a condition as close to its original condition as reasonably practical after making such use. Each Lot Owner shall maintain the area of his Lot subject to the Utilities and Drainage Easements in a condition which will not interfere with the operation and maintenance of said utilities and systems.

### ARTICLE 3. CONSTRUCTION ON LOTS AND USE OF LOTS

Section 3.1 Uniformity of Use and Appearance. One of the purposes of this Declaration is to assure within the property: (1) a uniformity of use and quality of workmanship, materials, design, maintenance and location of Structures with respect to topography and finish grade elevation. It is in the best interests of each Owner that such uniformity of use be maintained as hereinafter provided. No building (except for Accessory Structures) shall be erected, altered, placed or permitted •to remain on any Lot other than one single family dwelling. Accessory Structures including storage buildings are permitted only as allowed by the requirements of the Article 3.6.20. Notwithstanding anything herein set forth, the Construction of any Structure shall comply with the more restrictive of either (i) the terms and conditions of this Declaration or (ii) the laws, codes, ordinances and regulations of any governmental entity having jurisdiction.

Section 3.15 Building Materials. All homes constructed on each Lot shall be built of new materials, with the exception of ‘decor’ items such as used brick, weathered planking, and similar items. The Board will determine whether a used material is a “decor” item. In making this determination, the Board will consider whether the material harmonizes with the aesthetic character of DISCOVERY POINT development and whether the material would add to the attractive development of the subdivision. All roofs are to be cedar shake, pine shake, WoodRuf roofing or an equivalent approved by the Board. Siding and trim are to be resawn wood, lap or vertical siding or an

equivalent to be approved by the Board. No T-111 product shall be allowed on the front elevation or side elevation facing streets of the structure. Resawn cedar plywood will be allowed for soffits and accent panels.

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 DISCOVERY POINT. Exterior colors must be approved by the Board. 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 the structure they adjoin. Generally, colors shall be muted earth tones, grays, beiges and similar shades.

Section 3.2 Submission of Plans. At least ten (10) days before commencing Construction of any Structure on any Lot, the Owner shall submit to the Board two (2) complete sets of detailed building plans and a site plan showing the location of all proposed Structures (the plans, specifications and site plans are individually and collectively referred to herein as the "Plans"). The Plans shall be submitted in a form satisfactory to the Board, which may withhold its approval by reason of its reasonable dissatisfaction with the location of the Structure on the Lot; color scheme; finish; architecture; height; impact on view from another Lot or Lots; appropriateness of the proposed Structure; materials used therein; or because of by reasonable judgment of the Board, would render the proposed Structure inharmonious with the general plan of development of the Property or other Structures nearby. The Board's approval or disapproval of Plans shall be in writing and approval shall be evidenced by written endorsement on such Plans, one copy of which shall be delivered to the Owner of the Lot upon which the Structure is to be constructed. In any judicial action to enforce the Board's decision the losing party shall pay the prevailing party's attorney's fees and costs including those incurred in connection with any appeal. BUILDING PLANS AND PLOT PLANS SUBMITTED BY CAPSTONE HOMES HAVE BEEN PRIOR APPROVED BY THE BOARD.

Section 3.3 Construction. No structure shall be Constructed or caused to be Constructed on any Lot unless the Plans for the Structure have been approved in writing by the Board (this includes storage sheds). The Board's review and approval or disapproval of Plans on the basis of cost, aesthetic design, harmony with previously approved Structures on or about other Lots in the Property, location, or consistency with this Declaration shall be absolute and enforceable in any court of competent jurisdiction. The Board's approval of any Plans, however, shall not constitute any warranty or representation whatsoever by the Board or any of its members that such Plans were examined or approved for engineering or structural integrity or sufficiency or compliance with applicable governmental laws, codes,

ordinances, regulations, and setbacks and each Owner hereby releases any and all claims or possible claims against the Board or any of them, and their heirs, successors and assigns, or of any nature whatsoever, based upon engineering or structural integrity or sufficiency of compliance with applicable governmental laws, codes, ordinances, regulations, and setbacks.

If, after the expiration of three (3) years from the closing of any sale or other conveyance of a Lot to Owner, Owner shall not have in good faith commenced the construction of an acceptable Structure thereon, Declarant may, at its option rescind such sale or conveyance, refund all or such portion of the purchase price as has been paid, if any, without interest thereon, and enter into possession of such Lot.

### Section 3.4 Minimum Size

3.4.1 Floor Area. The floor area of the main house structure, exclusive of open porches and garages shall be not less than: (i) 1100 square feet for a dwelling containing a single level; and (ii) 1400 square feet for a dwelling containing two levels or more. All structures shall contain a minimum of two (2) car garages.

3.4.2 Lot Size. No lot or portion of a lot in this plat shall be divided and sold or resold, or ownership change or transferred whereby the ownership of any portion of this plat shall be less than one area required for the use district in which the lot is located.

Section 3.5 Maximum Height. All buildings or Structures shall be Constructed in accordance with Pierce County and other applicable Codes.

### Section 3.6 USE RESTRICTIONS

3.6.1 Residential Use. The dwellings within the Structures are intended for and restricted to use as single family residences only, on an ownership, rental, or lease basis, and for social, recreational, or other reasonable activities normally incident to such use. In addition to the foregoing, Declarant and any Participating Builder may use dwellings it owns as temporary sales offices and models for sales of other lots and homes.

3.6.2 Maintenance of Buildings and Lots. Each Owner shall, at the Owner's sole expense, keep the interior and exterior of the Structure on the Owner's Lot, as well as the Lot itself, in a clean and sanitary condition, free of rodents and pests, and in good order, condition and repair and shall do all redecorating, painting, landscaping, and maintenance at any time necessary to maintain the appearance and condition of the Structure and the Lot.

3.6.3 Completion of Construction. Any Structure erected or placed on any Lot shall be completed as to external appearance within six (6) months from the date Construction is started, however, with good cause shown, the Board may extend this term. All front yard landscaping must be completed within six (6) months from the date of completion of the Structure, however, with good cause shown, the Board may extend this term. All lots shall be maintained in a neat and orderly condition during construction.

3.6.4 Parking. Other than operable passenger automobiles in regular use, all trucks, campers, trailers, boats, motorcycles, vehicles under repair or other vehicles, or portions thereof will be prohibited from parking or remaining on any Lots; unless the same is placed in a garage, or fenced side or rear yard which places the vehicle(s) totally out of public view. Overnight vehicle parking will be prohibited on streets adjoining any Lot or tract, except occasional guest parking shall be permitted for a maximum of twenty-four (24) hours.

3.6.5 Signs. No sign of any kind, except for political signs and then only for a period of 30 days prior to said election, shall be displayed to the public view on or from any Lot without the prior written consent of the Board, except for "For Rent" or "For Sale" signs not to exceed three (3) square feet in a form not prohibited by any rules and regulations of the Board. In any case, any displayed sign shall be constructed professionally, designed and displayed in a tasteful manner acceptable to the Board.

3.6.6 Animals. Animals, including horses, livestock, poultry, reptiles or pigs shall not be kept on any lot. Household pets cannot exceed three (3) in number; provided that unweaned puppies or kittens may be kept. All animal enclosures must be kept in a clean, neat and odor free condition at all times. All household pets are to be licensed. All animals must be kept at a distance of not less than 50 feet from abutting Structures and erosion control Structures if directed by the Board. The Board may at any time require the removal of any pet which it finds disturbing other Owners or tenants unreasonably, in the Board's determination, and may exercise this authority for specific pets even though other pets are permitted to remain. Notwithstanding anything set forth herein all Owners shall comply with all applicable governmental laws, codes, ordinances, regulations and licensing requirements pertaining to animals.

3.6.7 Temporary Structures. No Structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuilding shall be installed, placed or used on any Lot as a residence, either temporarily or permanently. Jobsite trailers and the like may be kept on site during construction of residence, so long as their appearance is kept up.

3.6.8 Clothes Lines. No washing, rugs, clothing, apparel or any other article shall be hung from the exterior of any Structure or on a Lot so as to be visible from the streets and roadways adjoining the Lots.

3.6.9 Radio and Television Aerials. No television or radio aerial shall be erected or placed on any Lot which is more than six (6) feet in height above the highest point (exclusive of chimneys) on the Structure upon which it is erected. No rotary beams, separate towers or other similar devices shall be constructed on any Lot without the written approval of the Board. No large satellite receiving dishes or other such electronic receiving devices shall be located on any Lot. All aerial dishes less than 24” in size must receive prior written approval from the Board.

3.6.10 Trash Containers and Debris. All trash shall be placed in sanitary containers either buried or screened so as not to be visible from adjoining Structures or streets or roadways. No Lot or any portion thereof shall be used as a dumping ground for trash or rubbish of any kind. Yard rakings, dirt and debris resulting from landscaping work or Construction shall not be dumped onto adjoining Lots or streets or roadways. Compost piles may be kept upon the Lots provided they are kept in a clean, neat, sanitary condition.

3.6.11 Offensive Activity. With the exception of mineral recovery operations, operating pursuant to valid rights and operating permits, no noxious or offensive trade, craft, business, profession, commercial or manufacturing enterprise or commercial activity of any kind, shall be conducted or permitted on any Lot, nor shall goods, equipment, vehicles or materials used in connection therewith, be kept, parked, stored, dismantled or repaired outside of any Lot or any street within the Property. Limited child day care, so long as no more than four (4) children are in attendance at any one residence is permitted. Any such day care must be strictly limited in scope of operation. Business activities such as home offices, bookkeeping, data processing, etc. are not considered to be offensive and are permitted. No noxious or offensive activity, including but not limited to the creation of excess levels of noise, shall be carried on in any Lot, nor shall anything be done therein which may be or become an annoyance or nuisance to other Owners or tenants.

3.6.12 Setbacks. Set backs will be per Pierce County requirements. For purposes of this Section, eaves, steps and open porches shall not be considered as part of the Structure; provided that this Section shall not be construed to permit any portion of a Structure on any Lot to encroach upon any other Lot. All Structures shall also comply with all applicable governmental laws, codes, ordinances and regulations pertaining to setbacks.

3.6.13 Fences. No fence shall be constructed on any Lot without prior written approval of the Board, which approval may be granted or denied in the Board's sole discretion. All fences shall be constructed in a good and workman-like manner of suitable fencing materials and shall be artistic in design and shall not detract from the appearance of any adjacent Structures. No fence higher than three feet shall be constructed in areas from the front of Structure to Street. See Addendum #A for pre-approved fence detail.

3.6.14 Underground Utilities. All utility lines or wires located outside a dwelling unit shall be in utility conduits attached to such units or underground.

3.6.15 Drainage. All building downspouts, footing drains, and drains from all impervious surfaces, shall be connected to the approved permanent storm drain. Individual lot filtration systems, where permitted, shall be constructed at the time of the building permit and shall comply with said plans on file with Pierce County unless otherwise approved by Pierce County. Any and all drainage from a Lot, which in the reasonable opinion of the Board causes erosion problems, shall be piped at the Lot Owner's expense to the nearest underground public storm sewer line. All roof drains that are allowed shall be connected to public storm water system. Absolutely no dumping of any pollutants into any storm water systems shall be permitted.

3.6.16 Damage. Any damage to streets, plat improvements, entry structure, fences, landscaping, mailboxes, lights and lighting standards by Lot Owners, their children, contractors, agents, visitors, friends, relatives or service personnel shall be repaired by such Owner to its original condition and approval of the Board within twelve (12) days from the occurrence of such damage.

3.6.17 Driveways. All driveways shall be paved with Portland cement concrete from the edge of the paved street to the garage. If the drive exceed 40' then blacktop is acceptable, but in any event the remaining 20' to the Structure shall be cement.

3.6.18 Tract Maintenance. Tract B shall be maintained in accordance with the Development Regulations for the plat of Discovery Point. No clearing, grading, fill, or construction of any kind will be allowed within Tract B except for the removal of diseased or dangerous trees and the placement of supplemental landscaping. A diseased tree shall be defined as one that has a strong likelihood of infecting other trees or brush in the area or becoming dangerous as a result of the disease, as determined by an expert approved by Pierce County. A dangerous tree shall be any tree which, in the opinion of an expert approved by Pierce County (such as, but not limited to, an experienced landscaper), has a strong likelihood of falling in the event of a 60 mph wind.

Disposal or placement of any and all materials, onto Tract B, including but not limited to yard waste (including lawn clippings), household waste, vehicles or parts thereof or any other item will be prohibited. Tract B will be maintained in compliance with notes 3, 10, 12 and 19 under Condition of Approval as appear on sheet 2 of 6, plat of DISCOVERY POINT.

3.6.19 View Control Plan. The Board shall have the authority to promulgate, alter, amend and enforce a view control plan for the purpose of providing a uniform and equitable system for the maintenance of views from Lots within the Property. Such plan may obligate Owners to prune, trim or remove trees, shrubs or other vegetation as necessary to protect and maximize views. The expense of any such required pruning, trimming or removal shall be borne as agreed between affected parties or as determined by the Board.

3.6.20 Accessory Structures. No storage structures, outbuildings, carports, garages, sheds, or other structures not deemed to be residential dwelling units, except for the originally constructed garage, shall be allowed on any lot without written approval of the Architectural Control Committee. Further, any approved structure must be located within the side and/or rear yard and must be screened from view from all other lots.

3.6.21 Mailboxes. All mailboxes must be of a standard accepted by the U.S. Postal Authorities and must be located in those areas so designed by the U.S. Postal Department. Structures containing mailboxes must be approved by the Board, and must be grouped.

3.6.22 Compliance with Laws. Notwithstanding anything to the contrary set forth herein, each Owner and the Association shall comply with the more restrictive of either (i) terms and conditions of this Declaration, or (ii) the laws, codes, ordinances, and regulations of any governmental entity having jurisdiction.

Section 3.7 Solar Panels. Solar panels on any structure shall be prohibited.

Section 3.8 Maintenance of Lots During the Construction Period. Each Lot Owner, exclusive of the Declarant shall have a responsibility to generally maintain the Lot in either a natural forested condition prior to any clearing, or in a neat and clean appearance after construction commences for a Residence on said Lot. After clearing of vegetation for construction, the debris from the clearing operation shall be promptly removed from the Lot and disposed of off site in an approved location or burned on site. In no case shall any vegetation cleared from one Lot be deposited on an adjacent Lot, with the exception of joint clearing on adjacent lots.

During construction of each Residence, periodic efforts shall be made by the Owner, or the Owner's construction representative, to pick up scrap materials and other construction debris and to periodically dispose of said materials. No dumping of any such debris or refuse shall be allowed on adjoining Lots or on any Common Area or Common Maintenance Areas within the Plat of DISCOVERY POINT. Upon completion of the construction on any Lot and prior to the occupancy of the structure, the Lot Owner shall be responsible for keeping the landscaping improvements and the structure itself in a clean and neat appearance. This shall include the responsibility for regular landscape maintenance, watering, trimming, and upkeep to present a finished, manicured appearance of said premises from the adjacent right-of-way. In the event that the Lot Owner, or Owner's construction representative(s), fails to meet standards set forth in this Section, the Board shall have the right to complete such clean-up activity in accordance with the provisions as set forth in Article 6 and 7.

#### ARTICLE 4.            HOME/LOT OWNERS' ASSOCIATION

Section 4.1 Form of Association. The Owners of Lots within the Property shall constitute the members of the DISCOVERY POINT Homeowners' Association, a Washington nonprofit corporation, duly formed on May 30, 1996. The rights and duties of the members and the Association shall continue to be governed by the provisions of this Declaration, and the Association's Articles of Incorporation and Bylaws.

Section 4.2 Board of Directors. The affairs of the Association shall be governed by a Board of Directors (the "Board") which shall be composed of one or more members, to be determined in the reasonable discretion of the Board. The initial Board shall be as described in the Articles of Incorporation of DISCOVERY POINT Homeowners' Association. Subject to any specific requirements hereof, the Board shall have authority to establish operating rules and procedures. In the event of death or resignation of any member or members of the Board, the remaining member or members, if any, shall have full authority to appoint a successor member or members. Members of the Board shall not be entitled to any compensation for services performed pursuant to this Declaration. Upon the Transition Date and without further action by any person or persons, (i) the term of the initial Board members and their then successors shall end, and (ii) the initial Board members and their then successors shall be released from any and all liability whatsoever for claims arising out of or in connection with this Declaration, exempting only claims arising prior to the Transition Date.

Section 4.3 Qualification for Membership. Each fee owner of a Lot (including Declarant) on the Property shall be a member of the Association and shall be entitled to one membership vote and one vote for each Lot Owned; provided, that if a Lot has been sold on contract,

the contract purchaser shall exercise the rights of an Owner for purposes of the Association, and this Declaration except as hereinafter limited, and shall be the voting representative unless otherwise specified. Ownership of a Lot shall be the sole qualification for membership in the Association.

Section 4.4 Transfer of Membership. The Association membership of each Owner (including Declarant) shall be appurtenant to the Lot giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except upon the transfer of title to the Lot and then only to the transferee of title to the Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association to the new Owner.

Section 4.5 Number of Votes. The total voting power of the Association at any given time shall equal the number of Lots included within the Property at that time. The Owner or Owners of each Lot within the Property shall be entitled to one vote. If a person (including Declarant) owns more than one Lot, he or she shall have the votes appertaining to each Lot owned.

Section 4.6 Voting. If a Lot is owned by husband and wife and only one of them is at a meeting, the one who is present will represent the marital community. The vote for a Lot must be cast as a single vote, and fractional votes shall not be allowed. If joint Owners are unable to agree among themselves how their vote shall be cast, they shall lose their right to vote on the matter in question.

Section 4.7 Pledged Votes. An Owner may, but shall not be obligated to, pledge his vote on all issues or on certain specific issues to a Mortgagee; provided, however, that if an Owner is in default under a Real Estate Contract on his Lot for 90 consecutive days or more, the Owner's Mortgagee shall automatically be authorized to declare at any time thereafter that the Lot Owner has pledged his vote to the Mortgagee on all issues arising after such declaration and during the continuance of the default. If the Board has been notified of any such pledge to a Mortgagee, only the vote of the Mortgagee will be recognized on the issues that are subject to the pledge.

Section 4.8 Annual and Special Meetings. Within the period commencing thirty (30) days before the Transition Date and ending thirty (30) days after the Transition Date, there shall be a meeting of the members of the Association and thereafter there shall be an annual meeting of the members of the Association in the first quarter of each fiscal year at such reasonable place and time as may be designated by written notice from the Board delivered to the Owners no less than thirty (30) days before the meeting. At the first such meeting, and at each annual meeting thereafter, the Owners shall elect

by majority vote individuals to serve as Board members until a successor is elected at the next annual meeting. Each Lot shall be entitled to one vote for each director and the voting for directors shall be non-cumulative. The financial statement for the preceding fiscal year (if any) and the budget the Board has adopted for the pending fiscal year shall be presented at the annual meeting for the information of the members. Special meetings of the members of the Association may be called at any time upon not less than fourteen (14) days prior written consent to all Owners, for the purpose of considering matters which require the approval of all or some of the Owners, or for any other reasonable purpose. Any First Mortgagee of a Lot may attend or designate a representative to attend the meetings of the Association.

Section 4.9 Books and Records. The Board shall cause to be kept complete, detailed, and accurate books and records of the receipts and expenditures (if any) of the Association, in a form that complies with generally accepted accounting principles. The books and records, authorizations for payment of expenditures, and all contracts, documents, papers, and other records of the Association shall be available for examination by the Lot Owners, Mortgagees, and the agents or attorneys of either of them, during normal business hours and at any other reasonable time or times.

Section 4.10 Transition Date. The “Transition Date” shall be the date control of the Board passes from the initial Board to the Association. The Transition Date will be either (i) the date designated by Declarant in a written notice to the Owners, which date may be Declarant’s election any date after this Declaration has been recorded; or (ii) the later of (a) three years after the recording of this Declaration; or (b) the 120th day after Declarant has transferred title to the purchasers of Lots representing 97% of the total voting power of all Lot Owners in the Association. For purposes of the foregoing clause (ii) however, transfer of title to a Lot by Declarant to any Participating Builder shall be disregarded and title to any Lot owned by Participating Builder shall not be deemed transferred for purposes of determining the Transition Date until the Lot is further transferred by Participating Builder to a purchaser who is not either a Participating Builder or Declarant. From and after the Transition Date, the then Owners of 60% of the Lots in the Property shall have the power through written instrument recorded in the real property Records of Pierce County, Washington to restrict or eliminate all or any of the approval powers and duties of the Board set forth in this Declaration, excluding the duty to maintain the Common Areas.

## ARTICLE 5. NOTICES FOR ALL PURPOSES

All notices given under the provisions of this Declaration or rules or regulations of the Association shall be in writing and may be

delivered either, personally or by mail. If delivery is made by mail, the notice shall be deemed to have been delivered on the third day of regular mail delivery after a copy has been deposited in the United States mail, first class, postage prepaid, addressed to the Person entitled to such notice at the most recent address known to the Board. Mailing addresses may be changed by notice in writing to the Board. Notices to the Board may be given to any Board member or mailed to the following address: P.O. Box 139, Maple Valley, WA 98038.

The Board's address may be changed from time to time by the execution and recording of an instrument in the real property Records of Pierce County, Washington which (i) refers to this Declaration and this Article 5 and (ii) sets forth the Board's new address.

## ARTICLE 6. AUTHORITY OF THE BOARD

Section 6. Adoption of Rules and Regulations. The Board is empowered to adopt, amend, and revoke on behalf of the Association detailed administrative rules and regulations necessary or convenient from time to time to insure compliance with the general guidelines of this Declaration to promote the comfortable use and enjoyment of the Property and to govern the operation and procedures of the Association. The rules and resolutions may, without limitation, authorize voting by proxy or mail, or both, on Association matters. The rules and regulations of the Association shall be binding upon all Owners and occupants and all other Persons claiming any interest in the Property.

Section 6.2 Enforcement of Declaration, Etc. The Board shall have the power to enforce the provisions of this Declaration, and the rules and regulations of the Association for the benefit of the Association. The failure of any Owner to comply with the provisions of this Declaration, or the rules and regulations of the Association (acting through the Board) and any aggrieved Lot Owner for recovery of damages, or inductive relief, or both. If a legal action is brought to interpret or enforce compliance with the provisions of this Declaration, or the rules and regulations of the Association, the prevailing party shall be entitled to judgment against the other party for its reasonable expenses, court costs, and attorneys' fees in the amount awarded by the Court.

Section 6.3 Goods and Services. The Board shall acquire and pay for as common expenses of the Association 4 goods and services reasonably necessary or convenient for the efficient and orderly construction and maintenance of all portions of the Common Areas not maintained by public utility companies or a governmental entity. The goods and services shall include (by way of illustration and not

limitation) utility services for the Common Areas; policies of insurance; and maintenance, repair, landscaping, entrance, gardening, street lighting and general upkeep of the Common Areas. The Board may hire such employees as it considers necessary.

Section 6.4 Protection of Common Area. The Board may spend such funds and take such action as it may from time to time deem necessary to preserve the Common Areas, settle claims, or otherwise act in what it considers to be the best interest of the Association.

## ARTICLE 7. ASSOCIATION BUDGET, ASSESSMENTS, AND LIENS

Section 7.1 Owner's Covenant to Pay Assessments. By acceptance of a deed to a Lot or Living Unit, execution of a contract therefore, or any other means of acquisition of an ownership interest, whether or not it shall be so expressed in any such deed or other instrument, 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 special assessments levied as provided herein. Capstone Homes, Inc., the builder and developer, is not subject to paying the general or special assessment

Section 7.2 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 in no way limited to all management and administration costs, operating and maintenance expenses of the Common Area, planting, strips, entry signs, maintenance of storm drain facilities and services furnished to or in connection with the Common Areas, including the amount of all taxes and assessments levied against, 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, including, when appropriate, a general operating reserve and a reserve for replacements. The funds required to meet the Association's annual expenses shall be raised from a general assessment against each Owner and Living Unit as provided hereafter. The Association may revise the operating budget after its preparation at any time and from time to time, as it deems necessary or advisable in order to take into account and defray additional costs and expenses of the Association.

Section 7.3 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 lev in advance on every Owner a general assessment. The amount of each Owner's general assessment shall be the Association's operating budget divided by the

sum of the number of Lots. The Association shall make reasonable efforts to determine the amount of the general assessment payable by each Owner for any assessment period at least 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 kept in the office of the Association and 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 these Articles 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 the Owners and give notice of the same in the same manner as the initial levy of a general assessment for an assessment period.

Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum assessment shall be twenty dollars (\$20) per month.

A. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year by not more than fifteen percent (15%) of the maximum assessment for the previous year without a vote of the membership.

B. The authority of the Board of Directors of the Association as described to fix the annual assessments shall be limited to the authority to fix annual assessments at an amount not in excess of the maximum, without prior owner approval as specified above.

Section 7.4 Payment of General Assessment. Upon Association action, installments of general assessment 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 premium or penalty. 4

Section 7.5 Non-Discriminatory 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 to which such oversight

responsibility has been delegated, in the event that, after notice from the Association of failing to maintain their Lot or Living Unit in a condition comparable to the other Lots or Living Units in DISCOVERY POINT has been given to the Owner thereof, the Association elects to expend funds to bring such Owner's Lot or Living Unit up to such comparable standard.

Section 7.6 Commencement of Assessments. The general assessments provided for herein shall commence on each lot upon the date when the Declarant transfers title of a new home to a purchaser. The due dates of any special assessment payments shall be fixed by the Association action authorizing such special assessment.

Section 7.7 Certificate of Assessment Payment. Upon request, the Board shall furnish written certificates certifying the extent to which assessment payments on a specified Lot or Living Unit are paid and current to the date stated therein. Issuance of such certificates shall be conclusive evidence of payment of any assessments therein declared to have been paid. A reasonable charge may be made by the Association for the issuance of such certificate.

Section 7.8 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 described capital improvement located upon or forming a part of the Common Areas, including necessary fixtures and personal property, related thereto, or for such other purpose as the Association may consider appropriate; provided, however, that any such assessment must have the prior favorable vote of Owners representing two-thirds of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. The amount of each Owner's special assessment for any year shall be the total special assessment for such year, divided by the sum of the number of Lots.

Section 7.9 Effects of Non-Payment of Assessment. If any assessment payment is not made in full within thirty (30) days after it was first due and payable, there shall be assessed a late payment penalty of ten (10) percent of the assessment, the unpaid amounts shall constitute a lien against the Lot assessed and shall bear interest from such due date at the rate of twelve percent (12%) per annum until paid. By acceptance of a deed to a Lot or Living Unit, execution of a contract therefore, or any other means of acquisition of an ownership interest, and whether or n 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, 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 in this Declaration for the benefit of the Association as a corporate entity, and the Association shall have the power to bid in at any lien foreclosure sale and to acquire, hold, lease, mortgage, and convey the Lot or Living Unit foreclosed against.

Section 7.10 Lien to Secure Payment of Assessments. Declarant hereby creates in the Association perpetually the power to create a lien in favor of the Association against each Lot and Living Unit, to secure to the Association the payment to it of all assessments, interest, costs, and attorneys fees; and Declarant hereby subjects all Lots and Living Units perpetually to such power of the Association. Such lien shall arise in accordance with the terms of this Declaration without the necessity of any further action by the Association, and any such lien when created, shall be a security interest in the nature of a mortgage in favor of the Association. Such lien shall become continuing lien in the amount stated in the assessment from the time of the assessment, but expiring prorata as the assessment payments are made, and shall also be the personal obligation of the person or entity who is the Owner of the Lot or Living Unit at the time of the assessment. The personal obligation to pay a prior assessment shall not pass to successors in interest unless expressly assumed by them; provided, however, that in the case of a sale or contract for the sale of any Lot or Living Unit which is charged with the payment of an assessment, the person or entity who is the Owner immediately prior to the date of such sale shall be personally liable for the amounts of the monthly installments due prior to said date, and the new Owner shall be personally liable for monthly installments becoming due on or after such date. The foregoing limitation on the duration of the personal obligation of an Owner to pay assessments shall not, however, affect the validity or duration of the continuing lien for unpaid assessments against the respective Lot or Living Units.

Section 7.11 Suspension for Non-Payment 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 thirty (30) days, said Owner's voting rights shall without the necessity of further action by the Association, 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 non-use of the Common Areas or by abandonment of a Lot or Living Unit.

Section 7.12 Reserves for Replacement. As a common expense the Association shall establish and maintain a reserve fund for resurfacing of the private streets, and any improvements thereon, or on planter strips and entry signs, by the allocation and payment monthly to such reserve fund of an amount to be designated from time

to time by the Association. Such fund shall either be deposited with a banking institution, the accounts of which are insured by any agency of the United States of America or, in the discretion of the Association, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve fund shall be expended only for the purpose of affecting the replacement of the Common Areas and any improvements thereon, developed as a part of Discovery Point, and for start-up expenses and operating contingencies of a non-recurring nature. The Association may establish such other reserves for such other purposes as it may from time to time consider to be necessary or appropriate. The proportional interest of any Owner in any such reserves shall be considered an appurtenance of his Lot or Living Unit and shall not be separately withdrawn, assigned, or transferred or otherwise separated from the Lot or Living Unit to which it appertains and shall be deemed to be transferred with such Lot or Living Unit.

## ARTICLE 8. SUBORDINATION OF LIENS

Section 8.1 Intent of Provisions. The provisions of this Article 8 apply for the benefit of each Mortgagee who lends money for the purposes of construction or to secure the payment of the purchase price of a Lot or Living Unit.

Section 8.2 Mortgagee's Non-Liability. The holder of a Mortgage shall not, by reason of the security interest only, be liable for the payment of any assessment or charge, not 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 8.3 Mortgagee's Rights During Foreclosure. During the pending of any proceeding to foreclose a Mortgage, including any period of redemption, the holder of the Mortgage, or the receiver, if any, may exercise any or all of the rights and privileges of the Owner of the encumbered Lot or Living Unit, 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 8.4 Mortgagee as Owner. At such time as a Mortgagee shall become the record Owner of the Lot or Living Unit previously encumbered by the Mortgage, the Mortgagee shall be subject to all of the terms and conditions of this t including the obligation to pay for all assessments and charges in the same manner as any Owner.

Section 8.5 Mortgagee's Title Free and Clear of Liens. A Mortgagee or other secured party acquiring title to a Lot or Living Unit through foreclosure, suit, deed or trust sale, deed in lieu of foreclosure, or equivalent method, shall acquire title to the

encumbered Lot or Living Unit free and clear of any lien authorized by or arising out of the provision of this Declaration, insofar as such lien secures the payment of any assessment or charge installment 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 or Living Unit foreclosed against as a common expense, in which case it shall prorate such unpaid assessments among the remaining Lots and Living Units, and each such remaining Lot and Living Unit shall be liable for its prorated share of such expense in the same manner as for any other assessment.

Section 8.6 Survival of Assessment Obligation. After the foreclosure of a security interest in a Lot or Living Unit, 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 8.7 Subordination of Assessment Liens. The liens for assessments provided for in this Declaration shall be subordinate to the lien of any Mortgage or other security interest placed upon a Lot or Living Unit as a construction loan security interest or as a purchase price security interest, and the Association will, upon demand, execute a written subordination document to confirm the particular superior security interest. The sale or transfer of any Lot or Living Unit or any interest therein shall not affect the liens provided for in this Declaration except as otherwise specifically provided for herein and in the case of a transfer of a Lot or Living Unit for purposes of realizing a security interest, lien shall arise against the Lot or Living Unit for any assessment payments coming due after the date of completion of foreclosure (including the expiration date of any period of redemption).

#### ARTICLE 9. FAILURE OF BOARD TO INSIST ON STRICT PERFORMANCE NO WAIVER

The failure of the Board in any instance to insist upon the strict compliance with this Declaration or rules and regulations of the Association, or to exercise any right contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of any term, covenant, condition, or restriction. The receipt by the Board of payment of any assessment from an Owner, with knowledge of any breach by the Owner, shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless expressed in writing and signed for the Board.

ARTICLE 10. LIMITATION OF LIABILITY

So long as a Board member, or Association member, or Declarant has acted in good faith, without willful or intentional misconduct, upon the basis of such information as is then possessed by such Person, then no such Person shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of such Person; provided, that this Article shall not apply where the consequences of such act, omission, error, or negligence are covered by any insurance actually obtained by the Board.

ARTICLE 11. INDEMNIFICATION

Each Board member, and Declarant shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not he holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered insurance and except in such cases wherein such Board member or Declarant is adjudged as guilty of willful misfeasance in the performance of his or her duties; provided, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association.

ARTICLE 12. INSURANCE

At such times as the Board deems appropriate, the Board shall cause the Association to purchase and maintain as a common expense a policy or policies which the Board deems necessary or desirable to provide casualty insurance; comprehensive liability insurance; with such deductible provisions as the Board deems advisable; insurance, if available, for the protection of the Association's directors, and representatives from personal liability in the management of the Association's affairs; and such other insurance as the Board deems advisable. The Board shall review the adequacy of the Association's insurance coverage at least annually.

ARTICLE 13. DAMAGE AND REPAIR OF DAMAGE TO PROPERTY

In the event of any casualty, loss or other damage to the Common Area for which the then current assessments by the Board are insufficient to repair, or restore or for which there are not insurance proceeds or insufficient insurance proceeds available to the Board for such restoration or repair, the Board may make a special

assessment against each Lot within the Property for its pro rata share of the cost and expenses to repair and/or restore the Common Areas. The special assessment shall be payable, at the determination of the Board, in either monthly or quarterly installments or in a single lump sum amount. The Board shall notify each Lot Owner of any special assessment not less than twenty (20) days prior to the date such special assessment of the first installment thereon is due and payable, which notice shall be accompanied by a reasonably detailed statement of the Board's estimated costs and expenses of repairing and/or restoring the Common Areas.

ARTICLE 14. AMENDMENTS OF DECLARATION

Any Lot Owner may propose amendments to this Declaration to the Board. A majority of the members of the Board may cause a proposed amendment to be submitted to the members of the Association for their consideration. If an amendment is proposed by Owners of 20% or more of the Lots, then, irrespective of whether the Board concurs in the proposed amendment, it shall be submitted to the members of the Association for their consideration at their next regular or special meeting for which timely notice may be given. Notice of a meeting at which an amendment is to be considered shall include the text of the proposed amendment. Amendments may be adopted at a meeting of the Association or by written consent of the requisite number of Persons entitled to vote, after notice has been given to all Persons entitled to receive notice of a meeting of the Association. The unanimous consent of all Owners shall be required for adoption of either; (i) an amendment changing the voting power or portion of assessments appurtenant to each Lot; or (ii) an amendment of Section 3.6 or of this Article 14. All other amendments shall be adopted if approved by 60% of the Lot Owners. Once an amendment has been adopted by the Association, the amendment will become effective when a certificate of the amendment, executed by a member of the Board, has been recorded in the real property Records of Pierce County, Washington.

ARTICLE 15. ANNEXATION AND SUBDIVISION

Residential property other than Common Areas may be annexed or added to the Property only with the consent of two-thirds of the Association. No Lot shall be subdivided or combined without the approval of 95% of all Lot Owners. Notwithstanding the foregoing, no Lot or portion of any Lot shall be divided and sold or resold or ownership transferred whereby ownership of any Lot shall be less than the area required by Pierce County. Lots may be combined into larger lots with the approval of 2/3 of the Association.

ARTICLE 16. 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 unless an instrument signed by a majority of the then Owners has been recorded agreeing to terminate the covenants, conditions and restrictions.

ARTICLE 17 RESERVATION OF DECLARANT'S RIGHT TO AMEND TO COMPLY WITH FNMA, FHLMC OR FHA REQUIREMENTS

Section 17.1. Amendment by Declarant. Declarant reserves the right to amend the Declaration as may be necessary to comply with Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA") or Federal Housing Administration ("FHA") regulations or requirements as necessary to enable the holders of first mortgages or deeds of trust to sell first mortgages or deeds of trust to FHLMC or FNMA or if such amendment is necessary to secure funds or financing provided by, through or in conjunction with FHLMC or FNMA or FHA.

Section 17.2 Authorization to Amend. If Declarant, at its option, determines that it is necessary so to amend the Declaration, then Declarant, on behalf of all Lot Owners in the Association, is hereby authorized to execute and to have recorded (or filed, in the case of the Articles) said required amendment or amendments. All Lot Owners hereby grant to Declarant a full and complete power of attorney to take any and all actions necessary to effectuate and record said amendment or amendments and agree that said amendment or amendments shall be binding upon their respective Lots and upon them and their heirs, personal representatives, successors and assigns to the same extent as if they had personally executed said amendment or amendments. All Lot Owners hereby acknowledge and agree that the power of attorney granted herein shall be deemed coupled with an interest and shall be irrevocable.

Section 17.3 Duration. Declarant's rights under this Article shall exist only until the Transition Date.

ARTICLE 18. SEVERABILITY

The provisions of this Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision, if the remainder affects the common plan.

ARTICLE 19.           EFFECTIVE DATE

This Declaration shall be effective upon recording.

ARTICLE 20.           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.

DATED as of the date first written above.

DECLARANT:

Signed:

STATE OF WASHINGTON

COUNTY OF \_\_\_\_\_