

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
NELLIS COURT
SNOHOMISH COUNTY, WASHINGTON

THIS DECLARATION is made this 4th day of May, 2001, by the undersigned, hereinafter referred to as "Declarant" and amends and supersedes that certain Declaration of Covenants, Conditions and Restrictions of Nellis Court recorded under Snohomish County Recording Number 200104250346

DESCRIPTION OF THE LAND

A Declarant owns certain real property located within the State of Washington, which property and improvements are commonly known as Nellis Court, located in Snohomish County, Washington, and legally described in attached Exhibit A (the "Project") All Common Areas of the Project are shown on the Plat Maps recorded in conjunction with this Declaration

B For the benefit and protection of the Project, to enhance its value and attractiveness, and as an inducement to lenders and investors to make and purchase loans secured by Lots within the Project, Declarant agrees to provide herein for a method of use and architectural control within the Project

NOW, THEREFORE, Declarant hereby declares that the Lots described herein shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following uniform covenants, conditions, restrictions, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes.

Any conveyance, transfer, sale, assignment, lease or sublease of a Lot in the Project, shall and hereby is deemed to incorporate by reference all provisions of this Declaration. The provisions of this Declaration shall be enforceable by Declarant, any Lot Owner, the Association, and any first mortgagee of any Lot

200105070120

ARTICLE I

INTERPRETATION

1 1 **Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation and maintenance of the Project

1 2 **Covenant Running with Land.** It is intended that this Declaration shall be operative as a set of covenants running with the land, or equitable servitudes, binding on Declarant, its successors and assigns, all subsequent Owners of the Project or any Lots, together with their grantees, successors, heirs, executors, administrators, devisees or assigns

1 3 **Declarant is Original Owner.** Declarant is the original Owner of all Lots and Project and will continue to be deemed the Owner thereof except as conveyances or documents changing such Ownership regarding specifically described Lots or portions of the Project are filed of record

1.4 **Captions.** Captions given to the various articles and sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof

1 5 **Definitions.**

1 5 1 **"ACC"** shall mean the Architectural Control Committee provided for in Article 6

1 5 2 **"Association"** shall mean the Owners' Association provided for in Article 4 and its successors and assigns

1 5 3 **"Board"** shall mean the Board of Directors of the Association provided for in Article 5

1 5 4 **"Bylaws"** shall mean the duly adopted bylaws of the Association

1 5 5 **"Common Area"** shall mean all real property (including the improvements thereto) owned by the Association or by the Owners in common for the common use and enjoyment of the Owners and shall include (unless/until dedicated to a governmental entity) all Common Areas described on the Plat Map, Project entry sign(s) and landscaping, planter islands on roads or cul-de-sacs, and mailbox stands serving more than one Lot

1 5 6 "Declarant" shall mean the undersigned (being the sole Owner of the real property described in Exhibit A hereof) and its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development and by written instrument in recordable form be specifically assigned the rights and duties of Declarant

1 5 7 "Declaration" shall mean this declaration and any amendments thereto

1 5 8 "Home" shall mean and refer to any structure, or portion of a structure, located on a Lot, which structure is designed and intended for use and occupancy as a residence by a single family or which is intended for use in connection with such residence

1 5 9 "Lot" shall mean and refer to any plot of land shown upon any recorded Plat Map of the Project excluding Common Areas, as well as any unplatted plots of land within the Project Lot shall not include any land now or hereafter owned by the Association or by all of the Lot Owners as tenants in common, nor include any land shown on a Plat Map but dedicated to the public or to a governmental entity

1 5 10 "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 5 11 "Mortgagee" shall mean the beneficial Owner, or the designee of the beneficial Owner, of an encumbrance on a Lot created by mortgage or 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 5 12 "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Project, and, except as may be otherwise expressly provided herein, shall, in the case of a Lot which has been sold pursuant to a real estate contract, include any person of record holding a vendee's interest under such real estate contract, to the exclusion of the vendor thereunder Any person or entity having such an interest merely as security for the performance of an obligation shall not be considered an Owner

1 5 13 "Person" shall include natural persons, partnerships, limited liability companies, corporations, associations and personal representatives

1 5 14 "Project" shall mean the real estate described in Exhibit A and all improvements and structures thereon, including such additions thereto as may hereafter be brought within the jurisdiction of the Association

1 5 15 "Plat Map" shall mean the Plat Map(s) approved by the appropriate governmental entity and recorded in conjunction with or subsequent to this Declaration, which Plat Maps depict the layout of the Lots on the Project

1 6 **Percentage of Mortgagees.** For purposes of determining the percentage of first mortgagees approving a proposed decision or course of action, a mortgagee shall be deemed a separate mortgagee for each Lot on which it holds a mortgage that constitutes a first lien on said Lot

1 7 **Percentage of Owners.** For purposes of determining the percentage of Owners approving a proposed decision or course of action, an Owner shall be deemed a separate Owner for each Lot owned

ARTICLE 2

OWNERSHIP OF COMMON AREA

2 1 **Ownership of Common Area.** All Common Areas shall be owned by the Owners of all the Lots as tenants in common. The Common Area shall exclude those portions of common areas (and improvements thereto) which have been or may hereafter be, dedicated to and owned by the public or a governmental entity. The Common Area shall for all purposes be under the control, management and administration of the Declarant until all Class B membership (as defined in Article 4) terminates, and under the control, management and administration of the Association on behalf of the Owners thereafter. The Association (and the Owners who are members thereof) have the responsibility and obligation to maintain, repair and administer the Common Area in a clean, attractive, sanitary and safe condition and in full compliance with applicable, governmental laws, rules and regulations and the provisions of this Declaration

ARTICLE 3

OWNER'S PROPERTY RIGHTS

3 1 **Owner's Rights of Enjoyment.** Every Owner shall have a non-exclusive right, in common with all Owners, of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions

3 1 1 The right of the Association to limit access to those portions of the Common Areas, which in the opinion of the Board are dangerous.

3 1 2 The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon any Common Area

3 1 3 The right of the Association to suspend the voting rights and right to use of the Common Areas by an Owner for any period during which any assessment against such Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations Until all Class B membership terminates, the Association shall be required to exercise its right to suspend the voting rights of, and the right to the use of the recreational facilities by, a member for non-payment of an assessment, upon the request of the Declarant

3 1 4 The right of the Association to limit the number of guests of members

3 1 5 The right of the Association, in accordance with this Declaration and its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, but the rights of such mortgagee in said property shall be subordinate to the rights of the Owners hereunder and subject to the provisions of Section 11 5.

3 1 6 The right of the Association to take such steps as are reasonably necessary to protect any property mortgaged in accordance with Section 3 1 5 against foreclosure, including, but not limited to, the right to charge admission and other fees as a condition to continued enjoyment by the Owners and, if necessary, to open the enjoyment of such properties to the public

3 1 7 Until all Class B membership terminates, the exercise of all of the rights and powers set forth in subsections 3 1 2, 3 1 3, 3 1 4, 3 1 5 and 3 1 6 shall require the prior written approval of Declarant

3 2 **Delegation of Use.** Any Owner may delegate (in accordance with the Bylaws), his/her right of enjoyment to the Common Area and facilities to the members of his/her family, or his/her tenants or contract purchasers who reside on the Owner's Lot and (subject to regulation by the Association) to his/her temporary guests

ARTICLE 4

OWNERS' ASSOCIATION

4 1 **Establishment.** There is hereby created an association to be called NELLIS COURT HOMEOWNERS' ASSOCIATION (referred to hereinafter as the "Association")

4 2 **Form of Association.** The Association shall be a nonprofit corporation formed and operated pursuant to Title 24 and Chapter 64 38, Revised Code of Washington In the event of any conflict between this Declaration and the Articles of Incorporation or Bylaws for such nonprofit corporation, the provisions of this Declaration shall prevail

4 3 **Membership.**

4 3 1 **Qualification.** Each Owner of a Lot in the Project (including Declarant) shall be a member of the Association and shall be entitled to one membership for each Lot so owned. Ownership of a Lot shall be the sole qualification for membership in the Association.

4 3 2 **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, conveyed, pledged or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to such Lot. Any attempt to make a prohibited transfer of membership shall be void. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

4 4 **Voting.**

4 4 1 **Classes of Voting Membership.** The Association shall have two classes of voting membership: (a) Class A members shall be all Owners except the Declarant. Class A members shall be entitled to one vote for each Lot owned, (b) The Class B members shall be the Declarant, which shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of the first of the following events: (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or (b) the date when Declarant's management powers terminate, as provided in Section 5.2. In determining whether any given proposition shall have been approved by the membership, the total number of Class A and Class B votes shall be combined and the appropriate percentage applied against that combined number.

4 4 2 **Number of Votes.** Except as provided in Section 4.4.1 above, the total voting power of all Owners shall equal the number of Lots at any given time and the total number of votes available to Owners of any one Lot shall be one (1) vote.

4 5 **Bylaws of Association.** Bylaws for the administration of the Association and the Project and to further the intent of this Declaration, may be adopted or amended by the Owners at a regular or special meeting, provided, that the initial Bylaws shall be adopted by Declarant. In the event of any conflict between this Declaration and any Bylaws, the provisions of this Declaration shall prevail.

ARTICLE 5

MANAGEMENT OF THE ASSOCIATION

5 1 **Administration of the Development.** The Owners covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration and the Bylaws of the Association

5 2 **Management by Declarant.** The Project shall be managed on behalf of the Association by the Declarant until the earlier of (a) one hundred twenty (120) days after all Class B membership terminates, or (b) the date on which Declarant elects to permanently relinquish all of its authority under this Section 5 2 by written notice to all Owners. So long as Declarant is managing the Project, Declarant or a managing agent selected by Declarant shall have the exclusive power and authority to exercise all the rights, duties and functions of the Board and the Association set forth or necessarily implied in this Declaration, provided, however, that the Association may not be bound directly or indirectly to any contracts or leases without the right of termination exercisable without cause and without penalty at any time after transfer of control to the Board elected pursuant to Section 5 3, upon not more than ninety (90) day's notice to the other party to the contract

5 3 **Management by Elected Board of Directors.** At the expiration of Declarant's management authority under Section 5 2, power and authority shall vest in the Board of Directors elected from among the Lot Owners. The number of directors shall be specified in the Bylaws and shall be sufficient to adequately handle the affairs of the Association. The Board may delegate all or any portion of its management duties to a managing agent or officer of the Association as provided for in the Bylaws. All Board offices shall be open for election at an organizational meeting. The Board shall elect from among its members a president who shall preside over meetings of the Board and the meetings of the Association

5 4 **Authority and Duties of the Board.** On behalf of and acting for the Association, the Board (or the Declarant or Declarant's managing agent as provided in Section 5 2 hereof), for the benefit of the Project and the Owners, shall have all powers and authority permitted to the Board under this Declaration and any applicable law, including but not limited to the following

5 4 1 **Assessments.** Establish and collect regular assessments (and to the extent necessary and permitted hereunder, special assessments) to defray expenses attributable to carrying out its duties hereunder and maintain an adequate reserve fund for the maintenance, repair, improvement and replacement of those portions of the Common Area or facilities which must be maintained, repaired or replaced on a periodic basis, which reserve

shall be funded by the above assessments. The Association may impose and collect charges for late payments of assessments.

5 4 2 **Service.** Obtain the services of persons or firms as required to properly manage the affairs of the Project to the extent deemed advisable by the Board including legal and accounting services, property management services as well as such other personnel as the Board shall determine are necessary or proper for the operation of the Common Area, whether such personnel are employed directly by the Board or are furnished by the manager or management firm or agent.

5 4 3 **Utilities.** Obtain water, sewer, garbage collection, electrical, telephone, gas and any other necessary utility service, including utility easements and street lighting, as required for the Common Area.

5 4 4 **Insurance.** Obtain and pay for policies of insurance or bonds providing Common Area casualty and liability coverage, and for fidelity of Association officers and other employees, the requirements of which are more fully set forth in Article 15.

5 4 5 **Maintenance and Repair of Common Areas.** Pay for the costs of painting, maintenance, repair and all landscaping and gardening work for all Common Area, and improvements located thereon, so as to keep the Project in a good, clean, attractive, sanitary and safe condition and in full compliance with applicable governmental laws, rules and regulations and the provisions of this Declaration. The foregoing shall include the cost of maintaining storm retention ponds or similar facilities, if any, the cost of maintaining, repairing and replacing mailbox stands that serve more than one (1) Lot, and such replacing and repairing of furnishings and equipment, if any, for the Common Area as the Board shall determine are necessary and proper.

5 4 6 **Maintenance of Rights of Way, etc.** To the extent deemed advisable by the Board, pay for the costs of maintaining and landscaping rights of way, traffic islands and medians, or other similar areas which are within or adjacent to the Project boundaries, and which are owned by or dedicated to a governmental entity, if said governmental entity fails to do so, provided, the Lot Owner at the Owner's expense (rather than the Association) shall maintain and landscape such areas as are adjacent to such Owner's Lot.

5 4 7 **Fences, Landscaping, etc.** To the extent deemed advisable by the Board, pay for the cost of constructing, maintaining, repairing and replacing: perimeter and interior fences, if any, and landscaping and improvements on Common Area easements, if any, which are located on or across Lots, provided, the Board at its option may require a Lot Owner at the Owner's expense to maintain, repair and replace such fences, landscaping and improvements as are adjacent to such Owner's Lot. All such perimeter and interior fences shall be constructed, maintained, repaired and replaced in accordance with the Common Fence Design Standards contained in attached Exhibit B.

5 4 8 **Enforce Declaration.** Enforce the applicable provisions of the Declaration for the management and control of the Project

5 4 9 **Contracting and Payment for Materials, Services, etc.** Contract and pay for any materials, supplies, labor or services which the Board should determine are necessary or proper for the enforcement of this Declaration, including legal, accounting, management or other services, provided that if for any reason any materials, supplies, labor or services are provided for particular Lots or their Owners, the cost thereof shall be specially charged to the Owners of such Lots

5 4 10 **Attorney-in-Fact.** Each Owner, by the mere act of becoming an Owner, shall irrevocably appoint the Association as his/her attorney-in-fact, with full power of substitution, to take such action as reasonably necessary to promptly perform the duties of the Association and Board hereunder, including but not limited to the duties to maintain, repair and improve the Project, to deal with the Project upon damage or destruction, to grant easements and licenses over Common Areas, and to secure insurance proceeds

5 4 11 **Borrowing of Funds.** In the discharge of its duties and the exercise of its powers as set forth herein, but subject to the limitations set forth herein, the Board may borrow funds on behalf of the Association

5 4 12 **Adoption of Rules and Regulations; Fines.** When and to the extent deemed advisable by the Board, to adopt reasonable rules and regulations governing the maintenance and use of the Project and other matters of mutual concern to the Lot Owners, which rules and regulations are not inconsistent with this Declaration and the Bylaws and which treat all Owners fairly and on a non-discriminatory basis. The Board may impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the Board or by a representative designated by the Board in accordance with procedures as provided in the Bylaws or rules and regulations adopted by the Board, levy reasonable fines in accordance with a previously established schedule adopted by the Board and furnished to the Owners for violation of the Bylaws, rules and regulations of the Association

5 4 13 **Additional Powers of Association.** In addition to the duties and powers of the Association as specified in this Declaration, but subject to the provisions of this Declaration, the Association, acting through its Board, shall have the power to do all other things that it may deem reasonably necessary to carry out its duties and the purposes of this Declaration

ARTICLE 6

ARCHITECTURAL CONTROL

