



201204130158
Skagit County Auditor

4/13/2012 Page

1 of

4 3:46PM

Return to:

Digby Heights HOA
17146 Britt Rd.
Mount Vernon, WA. 98273
Phone 360-421-5633

Document Title(s) (or Transactions contained herein):

Declaration of Reservations, Restrictive covenants and Easements for Plats of
Digby Heights Phases I, II and III Amendment

Additional Reference Numbers on Page 1 of Document
Auditor file number 200904150064

Grantor(s)

1. Cedar Heights, LLC

LAND TITLE OF SKAGIT COUNTY
M-19517
ACCOMMODATION RECORDING

Grantee(s)

1. Plat of Digby Heights Phases I, II and III

Legal Description:

Lot 2, SP MV-12-94; Ptn NE1/4 of SE ¼, 21-34-3E W.M.
Digby Heights Phase I, II and III lots 1-144

Assessor's Parcel/Tax number:

P-112373

**Plat of Digby Heights Phases I, II AND III
DECLARATION OF RESERVATIONS,
RESTRICTIVE CONENANTS AND EASEMENTS
FIRST AMENDMENT**

This Amendment to the Declaration of Reservations, Restrictive Covenants, and Easements Is made on this 13 day of April 2012, By Cedar Heights LLC, a Washington Limited Liability company, Hereinafter referred to as "Declarant".

RECITALS

1. Declarant is the owner of real estate located in Skagit County Hereinafter referred to as Lots within the Plat of Digby Heights Phase I, II, AND III. As recorded under Skagit County Auditor's File Numbers, 200904150063, 201109190087 & 201109190088
2. The Plats of Digby Heights Phases I, II, and III consists of 144 lots, open space tracts and a Storm pond facility tract.
3. This Amendment to the Declaration of Reservations, Restrictive Covenants and Easements (hereinafter referred to as CC&R'S) will relate to Lots 1 to 144 of the plats of Digby Heights Phase I, II and III
4. Article VI (C) States; Until such time as all of the lots in the Development have been sold Declarant reserves the right to modify or amend this Declaration by recording such modification of amendment with the Skagit County Auditor, and providing copies of said document to all other Owners at the time of said amendment of modification.
5. NOW, THEREFORE, Declarant hereby declares that Lots 1 through 144 within the Plats of Digby Heights Phases I, II and III shall be held, sold and conveyed subject to and together with the following Amendments to the CCR'S recorded on April 15, 2009.
6. All Reservations, Restrictive Covenants, and Easements contained in the Declaration Dated April 1, 2009 and recorded on April 15, 2009 (Auditor recording number 200904150064) Shall remain the



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same unless otherwise amended with this document. In the event of a conflict the language in this Amendment shall be the governing Reservations, Restrictive Covenants, and Easements.

Amendments

1. Section 2.3 Shall be changed to read as follows: The Owners hereby covenant and agree, and bind themselves, their heirs, successors and assigns, automatically upon acceptance of any conveyance of an interest either by deed or contract, of any portion of the Development, to bear and pay the costs of repair, maintenance and upkeep of the common area of the plat of Digby Heights Phase I, II and III, including all landscaping within the Common Areas Easements, all landscape stripes in the public Right of Way, perimeter landscaping, perimeter landscaping along Digby Road and East Division Street, landscaping along the detention pond, forested buffers, the perimeter cedar fence, split rail cedar fence along forested buffers and around critical areas within tracts A and B and the critical areas and associated buffers within tracts A and B, as shown on the plat maps. Each party's share of such cost is to be determined by the Homeowners Association hereinafter provided for and in accordance with the provisions of the plat Maps, subject to this Declaration and any amendments thereto.
2. Section 3.2- ARTICLES AND BYLAWS. Before the Transition Date, Declarant will adopt Articles of Incorporation and Bylaws to supplement this Declaration, to provide for the administration of the Association and the Property and for purposes not inconsistent with this Declaration. Declarant may without the necessity of obtaining the consent of any Owner, amend the Articles and Bylaws from time to time until the Transition Date.
3. Section 3.5- NUMBER OF VOTES. The cumulative voting power of all Owners at the time of recording shall be: Seventy-Eight (78) in Phase I, Twenty-Four (24) in Phase II and Forty-Two (42) in Phase III, for a total of One Hundred Forty-Four (144) upon completion of all phases; Except, failure by a lot owner to pay Association dues or



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assessments and/or if any Association lien is placed against any lot shall suspend the voting rights of such lot owner. In no case shall a lot owner have the right to vote if they are not paying the Home Owner Dues. The total cumulative voting power of the Owners shall be reduced by the number of lots for which Home Owner Dues have not been paid current at the time such vote is taken as required in the Declaration and any Amendments to the original Declaration dated April 1, 2009.

4. Section 9.8. This section is deleted in its entirety.

Dated this 13 day of April, 2012

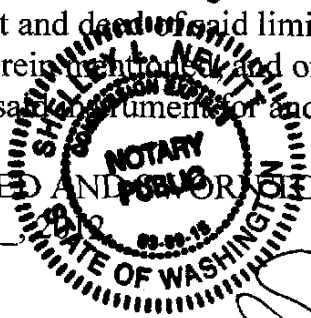
Declarant:
CEDAR HEIGHTS LLC

By: [Signature]
Joe Woodmansee, Authorized Member
17146 Britt Road
Mount Vernon, WA. 98273

STATE OF WASHINGTON)
COUNTY OF SKAGIT)

On this day personally appeared before me Joe Woodmansee, to me known to be the Authorized Representative of CEDAR HEIGHTS LLC, the Washington limited liability company that executed the within and forgoing instrument, and acknowledged to me the said instrument was the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned and on oath stated that he was authorized to execute the said instruments or and on its behalf.

SUBSCRIBED AND FORGONE before me on this 13th day of April



[Signature]
Printed Name: Shelley L. Nevitt
Notary Public in and for the State of Washington
Residing At: Mount Vernon
My Commission Expires: 3-9-2015





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Return to:

Lisser & Associates, PLLC
PO Box 1109
Mount Vernon WA 98273
Phone: (360) 419-7442
Fax: (360) 419-0581

Document Title(s) (or transactions contained herein):

**Declaration of Reservations, Restrictive Covenants and Easements for Plats
of Digby Heights Phases I, II, and III**

() Additional Reference Numbers on page ____ of document

Grantor(s) *(Last name, first name and initials):*

1. **Cedar Heights, LLC**
- 2.
- 3.
- 4.

() Additional names on page ____ of document

Grantee(s) *(Last name, first name and initials):*

1. **Plat of Digby Heights Phases I**
- 2.
- 3.
- 4.

() Additional names on page ____ of document

Legal Description *(Abbreviated: i.e. lot, block, plat or quarter, section, township and range):*

Lot 2, SP MV-12-94; Ptn NE 1/4 of SE 1/4, 21-34-3E W.M.

() Additional legal(s) on page ____ of document

Assessor's Parcel/Tax I.D. Number:

P-112373

() Tax Parcel Number(s) for additional legal(s) on page ____
of document

**PLATS OF DIGBY HEIGHTS PHASES I, II, AND III
DECLARATION OF RESERVATIONS,
RESTRICTIVE COVENANTS AND EASEMENTS**

THIS DECLARATION OF RESERVATIONS, RESTRICTIVE COVENANTS, AND EASEMENTS (THIS "Declaration of Covenants") is made on this 15TH day of APRIL 2009, by Cedar Heights LLC, a Washington limited liability company, hereinafter referred to as "Declarant".

RECITALS

- A. Declarant is the owner of real estate located in Skagit County hereinafter referred to as the **Plat of Digby Heights Phases I**. The **Plat of Digby Heights Phase I** is recorded under Skagit County Auditor's File Number 200904150064 at the Skagit County Recorder's Office, (hereinafter referred to as the Plat Map).
- B. The **Plats of Digby Heights Phases I, II, and III** consist of 144 lots, open space tracts and a storm pond facility tract.
- C. This Declaration of Reservations, Restrictive Covenants and Easements for the **Plats of Digby Heights Phase I, II, and III** (hereinafter referred to as CC&R's) will relate to Lots 1 through 144 of the **Plats of Digby Heights Phases I, II, and III**. To be recorded in three phases.
- D. **NOW, THEREFORE**, Declarant hereby declares that Lots 1 through 144 within the **Plats of Digby Heights Phases I, II, and III** shall be held, sold and conveyed subject to and together with the following easements, restrictions, covenants and conditions together with the restrictions, easements, exceptions, and reservations recorded on the face of the Plat, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property.

**ARTICLE I
GENERAL PROVISIONS**

Section 1.1 – RUN WITH THE LAND. These easements, covenants, restrictions and conditions hereinafter set forth are for the benefit of the above-described real property and for each owner of any portion thereof and shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in said properties or any part thereof, and shall inure to the benefit of and pass with said property and each and every parcel thereof and shall apply to and bind the successors in interest of any owner thereof.

Section 1.2 – AREA COVERED. The area covered by these Covenants is the **Plat of Digby Heights Phase I**, as identified above and further described in Exhibit A.

Section 1.3 – GENERAL FEATURES. The **Plats of Digby Heights Phases I, II, and III**, as of the date of this Declaration of Covenants is located in the City of Mount Vernon, Skagit County.

Section 1.4 – SEVERABILITY. Invalidation, modification or amendment of any one of these Covenants contained herein by judgment or court order shall not, in any way, affect any of the other provisions which shall remain in full force and effect.

Section 1.5 – DEFINITIONS. In 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:



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- 1.5.1 "Association" shall mean Digby Heights Homeowners Association described in Article III of this Declaration, its successors and assigns.
- 1.5.2 "Board" shall mean the Board of Directors of the Association and "Directors" shall mean members of the Board of Directors.
- 1.5.3 "Construction" and "Constructed" shall mean any construction, reconstruction, erection or alteration of a Structure, except, wholly interior alterations to a then existing Structure.
- 1.5.4 "Declarant" shall mean Cedar Heights LLC or such successor or assign as Declarant may designate in writing and in the records of the Auditor of Skagit County.
- 1.5.5 "Declaration" shall mean this Declaration of Reservations, Restrictive Covenants, and Easements for the **Plat of Digby Heights Phase I** as it may from time to time be amended.
- 1.5.6 "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.
- 1.5.7 "Lot" shall mean any legally platted plot of land shown upon the recorded subdivision map of the property.
- 1.5.8 "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.
- 1.5.9 "Mortgagee" shall mean the beneficial owner or the designee of the beneficial owner, of an encumbrance on a Lot created by a mortgage or deed of trust and shall also mean the vendor, or the designee of a vendor, or a real estate contract for the sale of a Lot.
- 1.5.10 "Owner" shall mean the record owner, whether one or more Persons, of fee simple title to a Lot within the Property
- 1.5.11 "Person" shall mean an individual, corporation, partnership, association, trustee or other legal entity.
- 1.5.12 "Plat" shall mean the recorded **Plat of Digby Heights Phase I** and any amendments, corrections or addenda thereto as may hereafter subjected to the terms of the Declaration, and all improvements and structures now or hereafter placed on the land.
- 1.5.13 "Private Drainage and Sewer Easement" shall mean any easement designated as such in and shown on the Plat, and further addressed in Section 2.4 hereof.
- 1.5.14 "Property" shall mean the land described on the Plat map for the **Plat of Digby Heights Phase I** and such additions thereto as may hereafter subjected to the terms of the Declaration, and all improvements and structures now or hereafter placed on the land.
- 1.5.15 "Storm Water Drainage Facilities" shall mean the pipes, catch basins and other appurtenances for the conveyance of surface water runoff that are located within the Private Drainage Easements shown on the face of the Plat
- 1.5.16 "Structure" shall mean any building, fence, wall, driveway, paved walkway, patio, garage, storage shed, carport, mailboxes, basketball hoop, play equipment, climbing apparatus, swimming pool, rockery, dog run or the like.
- 1.5.17 "Transition Date" shall be as defined in Section 7.1.

Section 1.6 – FORM OF WORDS. The singular form of word shall include the plural and the plural shall include the singular. Masculine, feminine, and neuter pronouns shall be used interchangeably.

Section 1.7 – 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 15 years from April 8, 2009, after which time the covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by 67% of the then Owners has been recorded agreeing to terminate the covenants, conditions and restrictions.

Section 1.8 – EFFECTIVE DATE. This Declaration shall be effective upon recording.



**ARTICLE II
EASEMENTS**

Section 2.1 – COMMON AREA EASEMENTS. The common areas are Tract A and Tract B and are reserved as Protected Open Space. The approval of the Digby Heights Development was granted based in part on these tracts remaining as open space perpetually. For the purposes of this Declaration, Owners shall be defined to include the fee titleholder of any of Lots 1 through 144 within the **Plat of Digby Heights Phases I, II, and III** Developments.

Section 2.2 – EASEMENTS APPURTENANT. All of the easements granted above are appurtenant to all portions of the Development, and are for the benefit of all Owners, and together with all restrictions, covenants or designations herein, are hereby declared to be covenants running with the land. Said easements, being appurtenant to and for the benefit of all portions of the Development, shall pass, together with any and all restrictions, reservations, covenants, and/or designations contained in this document or hereafter adopted, whether mentioned or not mentioned in the instrument of conveyance of any portion of the Development.

Section 2.3 – SHARING OF MAINTENANCE AND REPAIR COSTS. The Owners hereby covenant and agree, and bind themselves, their heirs, successors and assigns by their acceptance of any conveyance of an interest either by deed or contract, in any portion of the Development, to bear and pay the costs of repair, maintenance and upkeep of the Common Area of the **Plat of Digby Heights Phase I**, including all landscaping within the Common Areas Easements, all landscape strips in the public right of way, perimeter landscaping, perimeter landscaping along Digby Road and East Division Street, landscaping along the detention pond, forested buffers, the perimeter cedar fence, split rail cedar fence along forested buffers and around critical areas within Tracts A and B, and the critical areas and associated buffers within Tracts A and B, as shown on the plat maps. Each party's share of such cost is to be determined by the Homeowners Association hereinafter provided for and in accordance with the provisions of the Plat Maps, subject to this Declaration and any amendments thereto.

Section 2.4 – PRIVATE DRAINAGE AND SEWER EASEMENTS. Easements for conveying local storm water runoff and sanitary sewer have been granted in favor of all abutting private lot owners in the areas designated as Private Drainage and Sewer Easements on the Plat Map. The maintenance of Private Easements established and granted herein shall be the responsibility of, and the costs thereof shall be borne equally by the Owners of the abutting private lot Owners and shall be considered an assessment of the Association, and subject to all the provisions herein for collection of assessments.

Section 2.5 – EASEMENT FOR UTILITIES AND SIDEWALKS. Through the Plat Map, Declarant has reserved an easement for the City of Mount Vernon establishing various widths within the exterior front boundary lines of lots and tracts as shown on the face of the Plat Map for sidewalk and utility purposes. No structure, planting or other materials shall be placed or permitted to remain in said easement which may damage or interfere with the installation and/or maintenance of such utilities or interfere with pedestrian access to the sidewalk, with the exception of fencing along lot lines but to the rear of the sidewalks installed or as otherwise restricted by the City of Mount Vernon.

**ARTICLE III
DIGBY HEIGHTS HOMEOWNERS ASSOCIATION**

Section 3.1 – FORM OF ASSOCIATION. The Owners shall constitute the Digby Heights Homeowners Association, which will be a nonprofit corporation formed under the laws of the State of Washington, provided, that from and after the formation of such nonprofit corporation, the rights and duties of the Owners and of the corporation shall continue to be governed by the provisions of this Declaration.



Section 3.2 – ARTICLES AND BYLAWS. Before the Transition Date, Declarant will adopt Articles of Incorporation and Bylaws to supplement this Declaration, to provide for the administration of the Association and the Property and for their purposes not inconsistent with this Declaration. Declaration may, without the necessity of obtaining the consent of any Owner, amend the Articles and Bylaws from time to time until the Transition Date.

Section 3.3 – QUALIFICATION FOR MEMBERSHIP. Each Owner (including Declarant) shall be a member of the Association and shall be entitled to one membership for each Lot owned; provided, for purposes of the Association, this Declaration, and the Bylaws, except as otherwise 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 3.4 – 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 the Lot. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association to the new Owner.

Section 3.5 – NUMBER OF VOTES. The total voting power of all Owners at the time of recording shall be; seventy-eight (78) in Phase I, twenty-four (24) in Phase II, and forty-two (42) in Phase III for a total of one hundred forty-four (144) upon completion of all phases.

Section 3.6 – VOTING REPRESENTATIVES. An Owner may, by written notice to the Board, designate a voting representative for the Lot. The designated voting representative need not be an Owner. The designation may be revoked at any time by written notice to the Board from a Person having ownership interest in a Lot, or by actual notice to the Board of the death or judicially declared incompetence of any Person with an ownership interest in the Lot, except in cases in which the Person designated is a Mortgagee of the Lot. This power of designation and revocation may be exercised by the guardian of an Owner, the attorney-in-fact for the Owner under a durable power of attorney, and/or the administrator or executor of an Owner's estate. If no designation has been made, or if a designation has been revoked and no new designation has been made, the voting representative of each Lot shall be the group composed of all its Owners. 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.

3.6.1 Joint Owner Disputes. The vote for a Lot must be cast as a single vote and fractional votes are not allowed. If joint Owners are unable to agree among themselves how their vote shall be cast, before the vote is taken, they shall lose their right to vote on the matter in question.

3.6.1 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 Mortgage on his Lot for ninety (90) consecutive days or more, the Owners, Mortgagee shall automatically be authorized to state in writing at any time thereafter that the Lot Owner has pledged his or her vote to the Mortgagee on all issues arising after such statement 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 3.7 – ANNUAL AND SPECIAL MEETINGS. There shall be an annual meeting of the Owners 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. Special meetings may be called as allowed for in the Bylaws. Unless otherwise expressly provided in this Declaration, a quorum is present throughout any meeting of the Association if the Owners to which ten percent (10%) of the votes of the Association are allocated are present in person or by proxy at the beginning of the meeting.

**ARTICLE IV
AMENDMENT**



After the Transition Date, 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 Owners of 20% or more of the Lots propose an amendment in writing, then regardless 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 must 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 after a meeting with timely notice to all Persons entitled to receive notice of a meeting of Association has been held to consider the amendment. The amendment must be approved with a written instrument signed by not less than seventy percent (70%) of the owners of all recorded lots in the **Plats of Digby Heights Phases I, II, and III** as now or to be recorded. Further, any amendment must be recorded before becoming effective. In no event shall any amendments require more onerous restrictions than those contained herein as to any existing structure unless the same is unanimously approved in writing by all owners. Notwithstanding any other provision herein, these CC&R's may not be amended so long as the Declarant (or its successor) owns one or more Lots or parcels within the development without the Declarant's (or its successor's) prior written consent.

ARTICLE V NOTICES FOR ALL PURPOSES

Section 5.1 – FORM AND DELIVERY OF NOTICE. All notices given under the provision of the Declaration or the Bylaws 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 in writing 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 shall be given to Declarant until the Transition Date and thereafter shall be given to the president or secretary of the association.

Section 5.2 – NOTICES TO MORTGAGEES. Any Mortgagee of a Lot may file with the secretary of the Board a written request that it be given copies of notices. Until the Mortgagee withdraws the request and satisfies the Mortgage of record, the Board shall send to the requesting Mortgagee a copy of (1) all notices of meetings of the Association; (2) all other notices sent to the Owner of the Lot covered by the Mortgagee's Mortgage; and (3) any financial statements. The provisions of this Section 5.2 shall prevail over any inconsistent provisions in the Declaration or in the Articles or Bylaws.

ARTICLE VI RESERVATION OF RIGHTS AND POWER OF ATTORNEY

Section 6.1 – RESERVATION OF RIGHTS. The Declarant hereby reserves unto itself, its heirs, successors and assigns, certain rights in the Development and Common Areas, and the rights reserved are hereby expressly declared to be covenants running with the land, binding on all Owners. The rights reserved are as follows:

- A. The right to form a private, non-profit corporation for the benefit of the Owners of property within the Development ("Homeowners Association") and to incorporate the same under the laws of the State of Washington, with the duties and powers discussed in Article VIII of this declaration, subject to change, expansion, or modification as provided for herein.
- B. The right to execute and record additional easement, covenant or similar documents with regard to the Development consistent with the final Plat as approved by the City of Mount Vernon.



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- C. Until such time as all of the lots in the Development have been sold, Declarant reserves the right to modify or amend this Declaration by recording such modification or amendment with the Skagit County Auditor, and providing copies of said document to all other Owners at the time of said amendment or modification.
- D. Each Owner irrevocably appoints the Declarant or the Declarant's successor and assigns, as his/her true and lawful attorney-in-fact in his name, place and stead, to execute and acknowledge and record any and all instruments necessary or beneficial for carrying out any of the rights reserved above in this Article VI.
- E. Declarant reserves the right to later add additional divisions to the Plat which shall also become subject to this Declaration upon filing an amendment hereto.

IT IS EXPRESSLY UNDERSTOOD AND INTENDED THAT THE FOREGOING POWERS OF ATTORNEY GRANTED IN ARTICLE VI ARE COUPLED WITH AN INTEREST, ARE IRREVOCABLE, AND SHALL SURVIVE CONVEYANCE OF ANY PORTIONS OF THE DEVELOPMENT, WHETHER OR NOT MENTIONED IN ANY CONVEYANCE DOCUMENT.

Section 6.2 – TRANSFER OF DECLARANT'S RIGHTS AND POWERS. All rights of Declarant shall be assignable by Declarant to any person or entity upon the recording of notice with the Skagit County Auditor of such an assignment. In the event of such an assignment, all references to Declarant herein shall mean the assignee of such rights. Also, in such event, the initial Declarant named above shall have no further right, obligations or liabilities hereunder, except, if applicable, as a member with regard to any lots actually retained.

ARTICLE VII ADMINISTRATION OF PROPERTY

Section 7.1 – TRANSITION DATE. The "Transition Date" shall be the date control of the Property passes from Declarant to the Association. The Transition Date will be the earlier of (i) the date designated by Declarant in a written notice to the Owners which date may be at Declarant's election any date after this Declaration has been recorded or (ii) the 180th day after Declarant has transferred title to purchasers of 90% of the Lots in the Plat of Digby Heights Phase I and 90% of the Lots in the Plat of Digby Heights Phase II and Digby Heights Phase III or (iii) five (5) years after Declarant first conveys a Lot to a person other than an assignee of Declarant's rights hereunder. For purposes of the foregoing clauses (ii) and (iii), however, transfer of title to a Lot by Declarant to any person or entity purchasing the Lot for constructing a Structure and selling it to a person intending to reside in the completed structure shall be ignored and title to any Lot owned by such a person or entity shall not be deemed transferred to a purchase who intends to reside on the Lot in a completed structure.

Section 7.2 – DECLARANT'S POWER UNTIL TRANSITION DATE. Until the Transition Date, Declarant shall have the full power of attorney to exercise all of the right, duties and functions of the Board of Directors and the officers of the Association, including but not limited to reviewing and approving building and landscaping plans, the adoption of rules and regulations, contracting for the purchase of goods and services, buying insurance and collecting and expending all assessments and other Association funds. Declarant may at such times as it deems appropriate select and from time to time replace an interim board of three directors, who need not be Lot Owners and who shall have all the powers, duties, and functions of the Board. Declarant shall have the power to contract with an experienced professional managing agent delegate to the managing agent such powers and duties as are desirable or appropriate. Any contract made by Declarant, its managing agent, or the board prior to the Transition Date (including management contracts) that would otherwise extend beyond the Transition Date shall be terminable by the Board after the Transition Date upon thirty (30) days notice.

Section 7.3 – TRANSFER OF ADMINISTRATION. On the Transition Date the authority and responsibility to administer and manage the Association, subject to this Declaration and the Articles and Bylaws shall pass to the Association. A Board of not fewer than three Directors elected from among the Owners shall govern the



Association. The First Board (that is, the first Board elected by the Owners) will have three directors. Declarant, or the Board will call a meeting of the Association to be held before the Transition Date for the purpose of electing the First Board.

**ARTICLE VIII
AUTHORITY OF THE BOARD**

Section 8.1 – BOARD OF DIRECTORS. A board of Directors (the “Board”) shall govern the affairs of the Association. The initial Board shall be as described in the Articles of Incorporation of the **Digby Heights Phase I Homeowners Association** and shall serve until the Transition Date. After the Transition Date, the Board shall consist of such number of members as provided for in the Articles of Incorporation and Bylaws of the Association. In the event of death or resignation of any member or members of the Board, the remaining member(s) 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 as Directors pursuant to this Declaration. Upon the Transition Date and without further action by any person or persons, (i) the term of initial Directors or their successors shall end, and (ii) the initial Directors and their then successors shall be released from any and all liability whatsoever for claims arising out of or in connection with this Declaration, excepting only claims arising prior to the Transition Date.

Section 8.2 – 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 this Declaration and to promote the comfortable use, value and enjoyment of the Property. The rules and regulations of the Association shall be binding upon all Owners and occupants and all other Persons claiming an interest in the Property or any portion of it except a governmental entity.

Section 8.3 – ENFORCEMENT OF DECLARATION, Etc. The Board shall have the power and the duty to enforce the provisions of this Declaration, the Articles, the Bylaws and the rules and regulations of the Association for the benefit of the Association. The failure of any Owner to comply with the provision of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association will give rise to a cause of action in the Association (acting through the Board) and/or any aggrieved Owner for recovery of damages, for injunctive relief, or for both. If a legal action is brought to interpret or enforce compliance with the provisions of the Declaration, the Articles, the Bylaws 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 cost, and attorney’s fees in the amount awarded by the Court.

Section 8.4 – GOODS AND SERVICES. The Board shall acquire and pay for as common expenses of the Association all goods and services reasonably necessary or convenient for the efficient and orderly functioning of the Common Areas and Common Area Facilities other than Lots. The goods and services shall include (by way of illustration and not limitation) policies of insurance and fidelity bonds, legal and accounting services, all maintenance of open space, repair, landscaping, gardening and general upkeep, and all supplies, materials, fixtures, and equipment that are in the Board’s judgment necessary or desirable for the operation of the Property and enjoyment of it by the Owners. The Board may hire such full-time or part-time employees as it considers desirable.

Section 8.5 – 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 Lot Owners, Mortgagees and the agents or attorneys of them, during normal business hours and at any other reasonable time or times.

Section 8.6 – MAINTENANCE OF PLANTING AREAS. The Board shall oversee the maintenance of the planting strips within the Plat, perimeter landscaping along Digby Road and East Division Streets, landscaping along the



detention pond, forested buffers, the perimeter cedar fence, split rail cedar fence along forested buffers around critical areas within Tracts A and B, and the critical areas and associated buffers within Tracts A and B. These areas are located within dedicated right of way easements that have been conveyed to the Homeowners Association, City of Mount Vernon, and other utilities on the Plat Map; however, the homeowners association shall maintain such areas according to the landscape plans for this development that have been approved by the City. The annual budget will include this as an expense to be paid by the assessments collected from the members of the association. This section shall not diminish any responsibility for the installation, maintenance or replacement of trees by the developer to meet the bonding requirements of the City of Mount Vernon.

Section 8.7 – MAINTENANCE OF PRIVATE DRIVEWAYS. Maintenance of private driveways will be the responsibility of each individual lot owner.

Section 8.8 – MAINTENANCE OF FRONT YARDS IN PHASE II. Each Owner shall at all times keep the front yard landscaping well maintained, including weed removal, mowing, fertilizing and watering (subject to governmental restrictions on watering). If an Owner fails to maintain the front yard, and fails to cure the defect within thirty (30) days after written notice from the Board, then the board may, by resolution adopted by seventy-five percent (75%) of the total Board membership, engage a commercial landscape company to do necessary maintenance and may separately assess such maintenance as a charge against the Lot.

ARTICLE IX BUDGET AND ASSESSMENT FOR COMMON EXPENSES

Section 9.1 – FISCAL YEAR, PREPARTION OF BUDGET. The Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year. Within thirty (30) days prior to the beginning of each fiscal year, the Board shall estimate the charges (including non-payment for any reason of any Owner's assessment), the Board may at any time levy a further assessment, which shall be assessed to the Owners in like proportions.

Notwithstanding the provision of this Section 9.1, until Declarant's management authority under Article VI terminates, Declarant may elect to collect neither the full budgeted assessment nor any assessments for reserve funds, and instead may collect and expend only the actual costs of operation.

Section 9.2 – REGULAR ASSESSMENT. Each Owner, by acceptance of a deed to a Lot, whether or not it is stated in the deed, is deemed to covenant and agree to pay to the Association all assessments and charges against the Lot pursuant to the Declaration. The sums required by the Association for common expenses as reflected by the annual budget and any supplemental budgets shall be equally assessed to each Lot and its respective Owner, in the ration that each Lot bears to the number of Lots in the Property

Section 9.3 – SPECIAL ASSESSMENTS. In addition to the regular assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, maintenance, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the written assent of seventy percent (70%) of the Owners of lots in the Property including lots in the **Plats of Digby Heights Phase I, II, and III.**

Section 9.4 – NOTICE OF ASSESSMENT. The Association through the board shall give each Lot Owner not less than 30 days notice of any assessment, before it shall be done.

Section 9.5 – PROCEEDS BELONG TO ASSOCIATION. All assessments and other receipts received by the Association shall belong to the Association.



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Section 9.6 – FAILURE TO ASSESS. Any failure of the Board to make the budget and assessments hereunder before the expiration of any fiscal year for the next fiscal year shall not be deemed a waiver or modification in any respect of the provision of this Declaration, or a release of the Owners from the obligation to pay assessments during that or any subsequent year, and the annual assessment amount established whether for all or a portion of the year.

Section 9.7 – CERTIFICATE OF UNPAID ASSESSMENTS. Upon the request of any Owner of Mortgagee or prospective Mortgagee of a Lot, the Board will furnish a certificate in a recordable form stating the amount, if any, of unpaid assessments charged to the Lot. The certificates shall be conclusive upon the Board and the Association as to the amount of such indebtedness on the date of the certificate in favor of all purchases and Mortgagees of the Lot who rely on the certificate in good faith. The Board may establish a reasonable fee to be charged to reimburse it for the cost of preparing the certificate.

Section 9.8 – BUILDER EXEMPTION. Notwithstanding any other provision herein, Builders of homes and related parties are exempt from any charges or assessments by the Homeowners Association, regardless of whether such charges are monthly, quarterly, or annual or after specific charges.

ARTICLE X LIEN AND COLLECTION OF ASSESSMENTS

Section 10.1 – ASSESSMENTS ARE A LIEN, PRIORITY. All unpaid sums assessed by the Association for the share of the common expenses are chargeable to any Lot, any sums specially assessed to any Lot under the authority of this Declaration or the Bylaws and any charge or expense otherwise imposed pursuant to this Declaration shall constitute a lien on the Lot and all its appurtenances from the date the assessment becomes due and until fully paid. The lien for such unpaid assessments or sums shall be subordinate to tax liens on the Lot in favor of any assessing or special district, and to all sums unpaid on all First Mortgages of record, but, to the extent permitted by applicable law shall have priority over all other liens against the Lot. A First Mortgagee that obtains possession through a Mortgage foreclosure or deed of trust sale, or a purchaser at a foreclosure sale, shall take the Lot free of any claims for the share of common expenses or assessments by the Association chargeable to the Lot which became due before such possession, but will be liable for the common expenses and assessments that accrue after the taking of possession. The Lot's past-due share of common expenses or assessments shall become new common expenses chargeable to all of the Owners, including the Mortgagee or foreclosure sale purchase and their successors and assigns, in proportion to the number of Lots owned by each of them. Notwithstanding any of the foregoing, however, the previous Owner or real estate contract purchaser shall continue to be personally liable for past due assessments as provided in Section 10.3. For purposes of this Section, "Mortgage" does not include a real estate contract and "Mortgagee" does not include the vendor or the assignee or designee of a vendor of a real estate contract.

Section 10.2 – LIEN MAY BE FORECLOSED. The lien for delinquent assessments may be foreclosed by suit by the board in like manner as the foreclosure of a mortgage of real property. The Board, acting on behalf of the Association shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, encumber, and convey the same.

Section 10.3 – ASSESSMENTS ARE PERSONAL OBLIGATIONS. In addition to constituting a lien on the Lot, all sums assessed by the Association chargeable to any Lot, together with interest, late charges, costs and attorney fees in the event of delinquency, shall be the joint and several personal obligations of the Owner and any contract purchaser of the Lot when the assessment is made and their grantees. Suit to recover personal judgment for any delinquent assessments shall be maintainable without foreclosing or waiving the liens securing them.

Section 10.4 – LATE CHARGES AND INTEREST ON DELINQUENT ASSESSMENTS. The Board may from time to time establish late charges and a rate of interest to be charged on assessments that may thereafter become



delinquent. In the absence of another established, nonusurious rate, delinquent assessments shall bear interest at the rate of 12% per annum from the due date. If an annual assessment against a Lot is not paid when due, the managing agent or the Board may elect to declare all assessments against the Lot to be immediately due and payable.

Section 10.5 – RECOVERY OF COLLECTION COSTS. In any action or effort to collect delinquent assessments, whether a lawsuit is initiated or not, and with a single notice of thirty (30) days to the Owner, the Association shall be entitled to recover all costs and expenses reasonably incurred. All such costs shall become an additional assessment against the Lot from which the cost arises. Such costs include without limitation, reasonable attorney fees, certified mailing, filing or recording fees, any court costs, and/or reasonable fees paid to any collection agency in connection with the action, in addition to taxable cost permitted by law.

Section 10.6 – REMEDIES CUMULATIVE. The remedies provided herein are cumulative and the Board may pursue them, and any other remedies that may be available under the law although not expressed herein, either concurrently or in any order.

Section 10.7 – NO AVOIDANCE OF ASSESSMENTS. No Owner may avoid or escape liability for assessment provided for herein by abandoning his Lot.

**ARTICLE XI
FAILURE OF BOARD TO INSIST ON STRICT PERFORMANCE NOT A WAIVER**

The failure of the Board in any instance to insist upon the strict compliance with this Declaration or Bylaws or rules and regulations of the Association, or to exercise any right contained in such documents, or to serve any notice or 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 any 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 by the Board. This Article also extends to the Declarant, Declarant’s managing agent and the interim board of directors exercising the power of the Board before the Transition Date.

**ARTICLE XII
LIMITATION OF LIABILITY**

So long as a Director, or Association member, or Declarant, acting on behalf of the Board or the Association, has acted in good faith, without willful or intentional misconduct, upon the basis of such actual 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 Articles shall not apply to the extent the liability of such person for such act, omission, error, negligence is covered by any insurance actually obtained by the Board.

**ARTICLE XIII
INDEMNIFICATION**

Each Director and Declarant shall be indemnified by the Association against all expenses and liabilities including attorneys’ fees, reasonably incurred by or imposed by or imposed in connection with any proceeding to which such person may be a party to, or in which such person may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not such person hold such position at the time such expenses or liabilities are incurred, except to the extent that such expenses and liabilities are covered by insurance actually



obtained by the Board and except in such cases wherein such Director or Declarant is adjudged guilty of willful misfeasance in the performance of his or her duties.

**ARTICLE XIV
USE RESTRICTIONS**

Section 14.1 – RESIDENTIAL CHARACTER OF PROPERTY AND TYPE OF CONSTRUCTION. No lot shall be used except for residential purposes. Manufactured homes and/or non-site built structures, such as, but not limited to modular homes, shall not be allowed. Further, no building shall be erected, placed, or permitted to remain on any lot other than one detached single-family dwelling with a minimum of a double attached or detached private garage. No storage sheds shall be place on the Lot unless its style and construction conforms to the general style of the residence itself and does not detract from the general appearance. The final decision as to what is permissible shall vest in the Architectural Control Committee. Accessory dwelling units as allowed by the City of Mount Vernon Codes may be allowed if approved by the Architectural Control Committee.

The lots within the **Plat of Digby Heights Phases I, II, and III** may all be subject to the City of Mount Vernon Design Review Standards, which require specific design criteria. Contact the City of Mount Vernon Department of Community and Economic Development.

EXPIRATION: Section 14.1 shall expire twenty-five years following the recording of this Declaration.

Section 14.2 – EXTERIOR MATERIALS. Replacement roofing and siding material shall be the same, as far as possible, in color and style as the original roofing and siding materials on the majority of residences within the development. Utilization of different exterior materials including, without limitation, roofing materials, building siding materials and fencing must be approved by the applicable Architectural Control Committee before installation.

Section 14.3 – COMPLETION OF CONSTRUCTION. Any dwelling or structure erected or placed on any lot in this subdivision shall be completed as to external appearance, including finish painting, within nine months from date of start of construction.

Section 14.4 – LANDSCAPE/FENCES AND HEDGES. All front yard landscaping must be completed prior to issuance of an occupancy permit for a residence constructed on a lot. Lot Owners shall be responsible for street trees and/or yard trees as required by the city of Mount Vernon.

As define in this section, “fencing” shall mean any barrier or wall. All side yard and back yard fences shall not exceed a height of six (6) feet, or the maximum height permitted by applicable regulation, whichever is less. Front yard decorative fences shall not exceed four (4) feet in height. Fences shall be well constructed and shall not detract from the appearance of the development. Fences must be approved by the Architectural Control Committee before construction.

Section 14.5 – MAINTENANCE OF BUILDINGS AND LOTS. Subject to Section 8.7, each Owner shall, at the Owner’s sole expense, keep the interior and exterior of the Structures on the Owner’s Lot, as well as the Lot, in a clean and sanitary condition, free of rodents and pests, and in good order, necessary to maintain the appearance and condition of the Structure and the Lot, and to prevent fire hazards upon the Lot. Each Owner shall at all times keep the front yard landscaping well maintained, including weed removal, mowing, fertilizing and watering (subject to governmental restrictions on watering). If an Owner fails to maintain the front yard, and fails to cure the defect within thirty (30) days after written notice from the Board, then the board may, by resolution adopted by seventy-five percent (75%) of the total Board membership, engage a commercial landscape company to do necessary maintenance and may separately assess such maintenance as a charge against the Lot.



Section 14.6 – TRAILERS/MOTORHOME. PARKING. Parking – Parking on public streets is prohibited in those areas where signed “No Parking”. Additionally, parking within the plat shall be subject to local parking rules for public roads within the plat and the following additional restrictions.

- 14.6.1 Commercial vehicles parked overnight on a lot shall be screened from view from any street. Commercial vehicles shall not be parked overnight on any street within the plat. Passenger vehicles, pickup trucks, and vans or trucks with single rear axles and single rear tires shall not be considered commercial vehicles even if marked with business logos or signage.
- 14.6.2 Boats, campers, trailers and similar vehicles shall not be parked on a lot for a period in excess of twenty-four hours (for loading/unloading) unless the part of the vehicle nearest to the street at the front of the house is even with or behind the front wall of the garage and the vehicle is screened from view from any street.
- 14.6.3 For the purposes of this parking section, screened from view shall mean behind a six-foot tall solid fence.
- 14.6.4 Visitors to an Owner shall not park their recreational vehicles(s) in the street, but may park such vehicles in the driveway of a lot for not more than fourteen consecutive days, nor more than a total of thirty days collectively within any twelve-month period. Only one recreational vehicle owned by a visitor shall be parked in a driveway at any one time.
- 14.6.5 No goods, equipment or vehicle (including buses or trailers of any description) shall be dismantled or repaired outside any building or residential lot in view from any street. In addition, no owner shall permit any vehicle that is in a state of disrepair to remain parked in view from any street or in the street for a period in excess of forty-eight (48) hours. A vehicle will be deemed to be in a state of disrepair when it has not been moved for a period of forty-eight hours and is not operable in its then present condition.
- 14.6.6 Parking on private roads shall be prohibited...”

In the event that there is any violation of this parking restriction then the board may take corrective action, as it deems necessary in accordance with Section 6.2 of the Declaration.

Section 14.7 – ANTENNAS AND SERVICE FACILITIES. All permanent utility services and connections thereto shall be provided by underground services exclusively. No radio or television antennas, clotheslines and other service facilities shall be placed on a lot within the **Plats of Digby Heights Phases I, II, and III**; provided, however, a “mini-dish” may be acceptable if its location on the property is approved in advance by the Architectural Control Committee.

Section 14.8 – BUSINESSES AND COMMERCIAL USE. No visible or audible trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any lot nor shall any good, construction equipment, materials or supplies used in connection with any trades, service or business be placed outside on any lot any time excepting the right of any home builder and the Declarant to construct residences on any lot any time and to store construction equipment on said lots in the normal course of construction. Home occupation use of residences may be allowed if municipal regulation permit such use; provided, however, the home occupation use shall in no way affect the appearance of the residential structure and/or garage, shall be fully enclosed without outside storage and shall not create noise, vibration, smoke, dust, odors, heat, light, or glare beyond which is acceptable in a residential area.



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Section 14.9 – TEMPORARY STRUCTURES. No tent, shack, garage, barn, or other outbuilding of a temporary character shall be installed or placed on any Lot for use as a residence, temporarily or permanently. All temporary structures require Architectural Control Committee Approval.

Section 14.10 – OFFENSIVE ACTIVITIES. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Further, no lot shall be used in a fashion which unreasonable interferes with the other lot owners' right to the use and enjoyment of their respective properties. All Owners are responsible at all times for the conduct of their guests.

Section 14.11 – RUBBISH AND TRASH. No lot shall be used or maintained as a dumping ground for rubbish, debris, salvage, garbage, trash, equipment, cars, vehicles or other waste; such as rocks, roots, dead grass and other materials accumulated as a result of landscaping. Nor shall any such material be dumped on any other lot, common area or streets. The proper removal and disposal of all such materials shall be the sole responsibility of individual lot owners.

Section 14.12 – SIGNAGE. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

Section 14.13 – DRILLING, MINING, ETC. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

Section 14.14 – CLOTHESLINES. No clotheslines, 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 street and roadways adjoining the Lots.

Section 14.15 – NO FIREARMS/MOTORCYCLES. No firearms of any kind shall be used within the property except by appropriate government officials. Muffled, licensed motorcycles shall be permitted on the property and roadways except trails, therein. Muffled trail bikes, snowmobiles and similar vehicles are permitted within the boundaries of the individual lots. Non-muffled motorcycles, motorbikes, trail bikes, snowmobiles or similar vehicles are prohibited on any portion of the property whether licensed or unlicensed.

Section 14.16 – ANIMALS. No livestock, horses, reptiles, pigs, or poultry of any kinds shall be raised, bred, or kept on any Lot, provided, however that dogs and cats may be kept in reasonable numbers, so long as they are not kept, bred or maintained for any commercial purpose. No Lot Owner shall cause, permit or allow any animal in his custody to ram, run or be away from the premises of such Owner. All animal enclosures must be kept in a clean, neat and odor-free condition at all times. Barking dogs or other animals that disturb the quiet of any person or the neighborhood are not allowed. Vicious dogs (those whose temperament or habits create danger of injury to person or other animals or create a reasonable apprehension of injury to persons or other animals) are not allowed. Notwithstanding anything set forth herein all Owners shall comply with all applicable governmental laws, codes, ordinances and relations pertaining to animals.

Section 14.17 – DAMAGE. Any damage to streets, Plat improvements, fences, landscaping, mailboxes, lights or lighting standards, street trees located on the frontage of any lot or any other improvement within the Plat by Lot Owners, their tenants, children, contractors, agents, visitors, friends, relatives, or service personnel shall be repaired and restored to like new condition by such Owner within twelve (2) days from the occurrence of such damage. Each lot Owner shall be responsible for the maintenance of all trees and bushes required by the city of Mount



Vernon and lawn areas that are located within the planter strip between the back of the curb and street side of the sidewalk.

Section 14.18 – NOISE. Noise from within Lots or caused by Owners, their tenants, children, pets and/or guests shall be kept to levels allowed under Mount Vernon Municipal Code.

Section 14.19 – COMPLIANCE WITH APPLICABLE STATUTES, REGULATIONS AND ORDINANCES. Notwithstanding anything stated herein, each lot owner(s) shall be responsible for compliance with all applicable federal, state, country and/or governmental statutes, ordinances and regulations, and any amendments thereto relating in any way to the ownership and/or improvement of the lots within the **Plats of Digby Heights Phases I, II, and III.**

Section 14.20 – ENFORCEMENT. The Declarant shall have no obligation to enforce or seek the enforcement of these covenants. The Declarant shall have no liability for the enforcement or non-enforcement of these covenants. The Homeowners Association, in its absolute discretion, by its Board of Directors, and any Owner, shall have the right to prosecute any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant herein, to prevent such violation and/or to recover damages for such violation.

Section 14.21 – MODIFICATION. The restriction herein may be amended or modified by the Homeowners Association as provided hereinabove in Article IV.

Section 14.22 – INVALIDATION. Invalidation of any one of these use restriction by judgment or court order shall in no way affect any of the other provision, and said other provisions shall remain in full force and effect.

ARTICLE XV ARCHITECTURAL STANDARDS

Section 15.1 – ESTABLISHMENT OF ARCHITECTURAL CONTROL COMMITTEE. An Architectural Control Committee (ACC) is hereby established for the **Plats of Digby Heights Phases I, II, and III** and shall substantially follow the requirements, procedures and performance standards set forth in the Declaration of Covenants, Conditions, Restrictions and Easements.

The lots within the **Plat of Digby Heights Phases I, II, and III** may all be subject to the City of Mount Vernon Design Review Standards, which require specific design criteria. Contact the City of Mount Vernon Department of Community and Economic Development.

The initial ACC for the Plat shall be the Declarant, by and through the Declarant's designee, who shall perform the functions of the ACC as set forth herein. The Declarant shall retain the responsibility for performing the functions of the ACC until 100% of the lots have been sold or until the Declarant surrenders that responsibility prior to that time, in a written document in recordable form. Upon the termination or expiration of the right of the Declarant to act as the ACC, the Homeowner's Association, acting through its Board of Directors, shall designate a minimum of two (2), but not more than five (5) lot owners who shall, by majority action, perform the responsibilities of the ACC. In the event the lot owners are not designated, the Homeowner's Association Board of Directors may temporarily perform the function of the ACC.

Section 15.2 – AUTHORITY OF ACC. No structure shall be erected, placed or altered on any lot within the **Plats of Digby Heights Phases I, II, and III** until the building plans, with respect to the exterior design, materials and specifications and color schemes have been approved in writing by the ACC, as to the quality of materials, color schemes which must exclude primary, bright or harsh colors, harmony of exterior design with existing structures on adjacent lots. The authority of the ACC is to be exercised in a reasonable manner with the goal of insuring



consistent architectural standards for the benefit of the owners of lots in the **Plats of Digby Heights Phases I, II, and III**. Fencing shall be treated as a structure for the purposes of ACC review.

Section 15.3 - SUBMISSION OF DATA TO ACC AND APPROVAL BY ACC. All applications to the ACC for approval shall be in writing and shall be supplemental by such supporting data, as the ACC shall reasonably require. The ACC's approval or disapproval shall be in writing; any disapproval by the ACC shall specify reasons for the disapproval. Submittals by or on behalf of lot owners shall include a plot plan drawn to scale reflecting the location of any and all structures within the Lot and relevant elevations. In addition, the submittal shall depict or describe the design of the structure with sufficient detail that the ACC is able to identify and review that design as well as describe the type and color scheme of all exterior materials.

In the event the ACC fails to approve or disapprove a complete application submitted to it within forty-five (45) days after the receipt of the complete application or supplemental information reasonably requested by the ACC, further approval from the ACC for the structure or improvement identified in the application will not be required and the Lot Owner shall be deemed to have complied with this Covenant unless, prior to the completion of the structure, the Lot Owner or his/her contractor has made material changes from the application submitted to the ACC and/or failed to comply with the plans and specifications submitted to the ACC or local building official.

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

DATED this 1st day of APRIL, 2009

DECLARANT:
CEDAR HEIGHTS LLC

By [Signature]
Joe Woodmansee, Authorized Member
17146 Britt Road
Mount Vernon WA 98273

STATE OF WASHINGTON)
COUNTY OF SKAGIT)

On this day personally appeared before me Joe Woodmansee, to me known to be the Authorized Representative of CEDAR HEIGHTS LLC, the Washington limited liability company that executed the within and foregoing instrument, and acknowledged to me the said instrument was the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument for and on its behalf.

SUBSCRIBED AND SWORN TO before my by Joe Woodmansee on this 1st day of APRIL, 2009.

BRUCE G. LISSER
STATE OF WASHINGTON
NOTARY --- PUBLIC
My Commission Expires 7-14-2012

[Signature]
PRINTED NAME: BRUCE G. LISSER
NOTARY PUBLIC in and for the State of Washington
Residing at Mount Vernon
My commission expires: 7-14-12



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Skagit County Auditor