

AFTER RECORDING MAIL TO:  
MGP 46, LLC  
1938 Fairview Ave. East, Ste 300  
Seattle, WA 98102  
Attn: Doug Spear

mailed 1/30

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## JOINT USE AND MAINTENANCE AGREEMENT

Grantor: MG Rosemount LLC  
Grantee: MGP 46, LLC and Rosemount Place Owners' Association  
Legal Description (abbreviated): A portion of the South ½ of the Southeast Quarter of Section 3, Township 20 North, Range 2 East W.M.  
Additional legal(s) on pages: Exhibit A  
Assessor's Tax Parcel ID#: 0220034004  
Reference Nos. of Documents Released or Assigned:

THIS JOINT USE AND MAINTENANCE AGREEMENT ("Agreement") is made and entered into this 30<sup>th</sup> day of December, 2011, by and between MG ROSEMOUNT LLC ("MG Rosemount") and MGP 46, LLC ("MGP 46") as successor to MERRILL GARDENS AT TACOMA L.L.C. and ROSEMOUNT PLACE OWNERS' ASSOCIATION ("Association"). This Agreement supplants and replaces the Joint Use and Maintenance Agreement that was originally contemplated between Anatara Capital, LLC and Merrill Gardens at Tacoma L.L.C., dated August 24, 2006, but was never executed or recorded, but under which the parties have been operating.

1 Property.

a. MG Rosemount and MGP 46 own or are responsible for contiguous parcels of land at the intersection of South 19<sup>th</sup> and Meyer Streets in Tacoma, Pierce County, Washington, legally described in the attached EXHIBIT A. The parcel identified as the "Rosemount Parcel" is owned by MG Rosemount, as to Lots 2,3,11,12,15-18,20-24,28,31-37,40-49 of Rosemount Place, as per plat recorded August 25, 2006 under Recording No. 200608255003, and other members of the Association owning the remaining Lots in Rosemount Place, other than Lot 1, which is the parcel identified as the "MGP 46 Parcel" and owned by MGP 46.

b. MG Rosemount intends to complete a 48-lot single family residential subdivision on the Rosemount Parcel; provided that Lots 2 and 3 may be used to construct a building to serve as an extended care facility serving up to twelve (12) seniors with dementia in a residential setting and further provided that Lots 48 and 49 shall be allowed to create a common amenity park. In connection with the development of the subdivision, MG Rosemount's predecessor caused to be recorded covenants, conditions and restrictions (the "CC&Rs"), which have been amended and are consistent with this Agreement and established the Association as a homeowner's association. Pursuant to the CC&Rs, lots 2,3,48, and 49 shall not be obligated to pay assessment to the Association in connection with those lots. MGP 46 owns a 120-unit senior congregate community on the MGP 46 Parcel.

c. There are common amenities (the "*Common Amenities*") which benefit the MGP 46 Parcel, the Rosemount Parcel, and the Association. This Joint Use and Maintenance Agreement is being entered into by the parties to govern the shared costs and expenses related to the Common Amenities.

2. Common Amenities.

The Common Amenities are:

- (a) The entry area, entry landscaping, entry gate (and related appurtenances), including any computer system used or useful in operating such entry gate;
- (b) The Private Road (Rosemount Circle) depicted on the plat of Rosemount Place, and any stormwater facilities located on or under that road;
- (c) The storm water drainage facility, storm water detention pond and biofiltration device(s) (together with related appurtenances) situated on Tract A in the Plat of Rosemount Place.
- (d) Any landscaping and any related irrigation systems installed within any Common Amenities;
- (e) Any utility systems (including service or monthly use charges for such systems) serving any Common Amenities; and
- (f) Lighting associated with any Common Amenities.

MG Rosemount or its predecessor paid for all costs related to the original design and construction of the Common Amenities, which were constructed on the Rosemount Parcel.

3. Maintenance Costs.

a. The Association, MGP 46, and MG Rosemount shall share in the costs and expenses associated with the operation and maintenance of the Common Amenities. Going forward, the parties shall be obligated to pay costs as follows:

- i. The Merrill Gardens entities will be obligated to pay 54% of such operation and maintenance costs related to the Common Amenities allocated as follows:
      - a. MGP 46 and its successors in interest will be obligated to pay 50% of such operation and maintenance costs;
      - b. MG Rosemount and its successors in interest as owners of lots 2, 3, 48, and 49 will be obligated to pay 4% total of such operations and maintenance costs (with each such lot obligated to pay 1%); and
    - ii. the Association shall be obligated to pay 46% of such operation and maintenance costs related to the Common Amenities.
  - b. Until all construction activities have been completed on the Rosemount Parcel and the MGP 46 Parcel, MG Rosemount shall manage and supervise the maintenance and repair of the Common Amenities.
  - c. Operation and maintenance expenses shall not include any cost or expense arising from (i) the defective construction of the Common Amenities covered by any express or implied warranty; or (ii) any cost of repair or replacement arising from any insured casualty loss. The proceeds of any insurance policy payable as the result of any damage or destruction to the Common Amenities shall be applied toward the cost of replacement and repair of the Common Amenities. Rosemount Place Owners' Association shall be responsible for obtaining and maintaining a policy of property damage insurance, with special form causes of loss (or similar coverage), insuring against loss or damage to the Common Amenities. The cost of the insurance policy shall be a cost of operating and maintaining the Common Amenities, and paid 46/54 by the Association and MGP 46.
4. Annual Budgets. MGP 46, will prepare an annual budget for the maintenance and repair of the Common Amenities, which shall be delivered no later than November 30th of the year preceding the calendar year for which the budget is applicable. The Association, MGP 46, and MG Rosemount and each parties' successor in interest as applicable shall approve the budget within ten (10) days following its preparation and delivery to the other party. If the Association objects to any costs in the budget it shall do so in writing within ten (10) days following receipt of the budget. The objecting party, within such ten (10) day period, shall provide an estimate for the maintenance and repair work, which shall then be subject to the approval of the other party. In the event the parties cannot agree on a budget, disputes shall be arbitrated with JAMS (or, if JAMS is no longer in existence, which any similar alternative dispute resolution organization with offices in Pierce or King County, Washington). The prevailing party in such arbitration shall be entitled to an award of its costs and reasonable attorneys fees incurred in connection therewith.
5. Contractors. All services and repairs to the Common Amenities shall be made by qualified maintenance and repair persons, licensed and bonded to do the work. All contractors, maintenance and repair persons performing work on the Common Amenities shall be required to

maintain a policy of commercial general liability insurance, with combined single limits of not less than One Million Dollars (\$1,000,000).

6. Authority for Work. While it is anticipated that consultation and concurrence will occur between the parties prior to any repair or maintenance (provided that any repair or maintenance covered in an approved budget shall not require further consultation or concurrence); in the event of an emergency and it is not reasonable to have a prior consultation and concurrence, it is agreed that MGP 46 will be authorized to contract for such repairs with the cost to be shared and paid jointly as set forth herein.

7. Association. The Association shall cause all rights of the Association, including without limitation any consultation, objection, dispute and approval rights, at all times to be exercised only through a single duly elected president of the Association or his/her duly appointed representative. The Association shall cause the Association to waive on behalf of itself and all of its members any claim or cause of action arising from or associated with MGP 46's operation and maintenance of the Common Amenities, except those arising under this Agreement. The Association shall have the sole right to assert any claim or right with respect to the Common Amenities, and no individual member of the Association shall have any right to enforce any provision of this Agreement. MGP 46 shall have no responsibility, obligation or liability to any individual member of the Rosemount place homeowner's Association. The provisions of this Section 7 shall be incorporated into the CC&Rs.

8. Enforcement Rights. In the event that any party fails to timely pay its respective share of any assessment hereunder, then such assessment shall constitute a lien against that parties' property; provided that the Association shall assess any assessment hereunder to the individual members of the Association for their prorata share of each assessment and the Association shall have full responsibility to collect such share from the individual members. Any such assessment shall constitute a lien against the individual member's property, and the Association shall, if requested by MGP 46 at its sole election, assign such lien to MGP 46 for enforcement. The prevailing party in any such enforcement action shall be entitled to an award of its costs and reasonable attorneys fees incurred in any such enforcement action. The provisions of this Section 8 shall be incorporated into the CC&Rs.

9. Miscellaneous.

a. All rights and obligations under this Agreement shall be binding on the parties and their respective successors and assigns and shall benefit and burden the respective parcels and shall run with the land. The Association shall succeed to all rights and obligations of MG Rosemount under this Agreement, including, but not limited to, the obligation to pay forty-six percent (46%) of the operating and maintenance costs of the Common Amenities and the obligation to maintain a policy of property damage insurance.

b. Nothing in this Agreement is intended to create any partnership or joint venture relationship between MG Rosemount, MGP 46 and the Rosemount Place Owners' Association. This Agreement is not intended to confer any rights or benefits to any third party.

c. This Agreement may be amended only by written agreement between MG Rosemount, MGP 46, and the Association.

d. This Agreement shall be construed in all respect under the laws of the State of Washington.

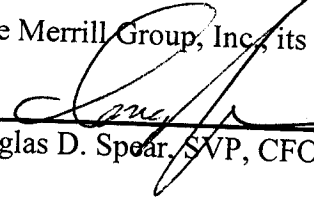
EXECUTED as of the day and year first above-written.

MG ROSEMOUNT LLC

By: Merrill Gardens L.L.C, its Manager

By: Merrill Associated Limited Partnership, its  
Managing Member

By: The Merrill Group, Inc, its General Partner

By   
Douglas D. Spear, SVP, CFO

MGP 46, LLC

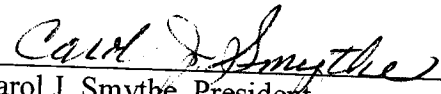
By MG Landlord, LLC, its Manager

By   
Douglas D. Spear, Secretary

ROSEMOUNT  
ASSOCIATION

PLACE

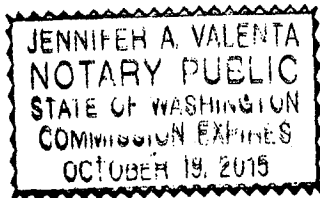
OWNERS'

By   
Carol J. Smythe, President

STATE OF WASHINGTON )  
 ) ss  
COUNTY of KING )

I certify that I know or have satisfactory evidence that Douglas D. Spear signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the SVP / CFO of The Merrill Group, Inc, the General Partner of , Merrill Associates Limited Partnership, the Managing Member of Merrill Gardens L.L.C., the Manager of MG ROSEMOUNT LLC, to be the free and voluntary at of such party for the uses and purposes mentioned in the instrument.

DATED: 1/10/12

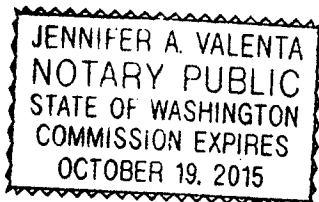


Jennifer A. Valenta  
NOTARY PUBLIC in and for the State  
of Washington, residing at Seattle, WA  
Printed Name: Jennifer A. Valenta  
My commission Expires: 10/19/15

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Douglas D. Spear signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the Secretary of MG Landlord, LLC, which is the Manager of MGP 46, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument

DATED: 1/10/12

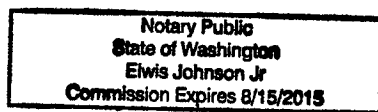


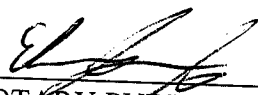
Jennifer A. Valenta  
NOTARY PUBLIC in and for the State  
of Washington, residing at Seattle, WA  
Printed Name: Jennifer A. Valenta  
My commission Expires: 10/19/15

STATE OF WASHINGTON )  
COUNTY OF Pierce ) ss  
~~KING~~ )

I certify that I know or have satisfactory evidence that Carol J. Smythe signed this instrument, on oath stated that she is authorized to execute the instrument and acknowledged it as the President of the Rosemount Place Owners' Association, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 1/25/2012



  
NOTARY PUBLIC in and for the State  
of Washington, residing at Pierce County  
Printed Name: Elwis Johnson Jr.  
My commission Expires: 8/15/2015

**EXHIBIT A**  
**ROSEMOUNT PARCEL LEGAL DESCRIPTION**

THAT PORTION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 20 NORTH, RANGE 2 EAST, OF W.M. MORE SPECIFICALLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE QUARTER CORNER OF ON TRH SOUTH LINE OF SAID SECTION 3; THENCE EAST ALONG SAID SOUTH LINE 660 FEET, MORE OR LESS, TO THE POINT OF INTERSECTION WITH A LINE WHICH IS PARALLEL TO AND 610 FEET DISTANT EASTERLY FROM THE EAST LINE OF THE JACKSON ALEXANDER COUNTY ROAD, WHEN MEASURED PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION; THENCE NORTH ALONG SAID PARALLEL LINE 30 FEET, MORE OR LESS, TO A POINT ON THE NORTH LINE OF 19<sup>TH</sup> STREET, SAID POINT BEING THE TRUE POINT OF BEGINNING AND BEING 30 FEET DISTANT NORTHERLY FROM, WHEN MEASURED AT RIGHT ANGLES TO THE SOUTH LINE OF SAID SECTION 3;

THENCE NORTH CONTINUING ALONG SAID PARALLEL LINE WHICH IS THE EAST LINE OF HOLLYWOOD ACRES, UNRECORDED, TO A POINT WHICH IS 2,010 FEET SOUTH OF THE NORTH LINE OF SAID SOUTHEAST QUARTER, SAID POINT BEING THE SOUTHEAST CORNER OF LOT 35, HOLLYWOOD ACRES, UNRECORDED;

THENCE EAST PARALLEL TO THE SOUTH LINE OF SAID SECTION TO THE POINT OF INTERSECTION WITH A LINE WHICH IS PARALLEL TO AND 1,220 FEET DISTANT WESTERLY FROM, WHEN MEASURED AT RIGHT ANGLES TO, THE EAST LINE OF SAID SECTION; THENCE SOUTH ALONG SAID PARALLEL LINE TO A POINT ON THE NORTH LINE OF 19<sup>TH</sup> STREET;

THENCE WEST ALONG SAID NORTH LINE TO THE TRUE POINT OF BEGINNING,

EXCEPTING THEREFROM THE WEST 30 FEET THEREOF WHICH WAS CONVEYED BY WEYERHAEUSER COMPANY TO THE CITY OF TACOMA BY DEED DATED MARCH 21, 1960, RECORDED JUNE 8, 1960 IN VOLUME 1223 OF DEEDS, PAGE 523, RECORDS OF PIERCE COUNTY, WASHINGTON.

AND EXCEPTING THEREFROM LOT 1 IN THE PLAT OF ROSEMOUNT PLACE AS FILED IN THE RECORDS OF THE PIERCE COUNTY AUDITOR

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.



**MGP 46 PARCEL LEGAL DESCRIPTION**

LOT 1 IN THE PLAT OF ROSEMOUNT PLACE AS FILED IN THE RECORDS OF THE  
PIERCE COUNTY AUDITOR.