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Whatcom County, WA

Request of: PACIFIC SURVEY ENGINEERING

AFTER RECORDING, RETURN TO:  
BARRON SMITH DAUGERT, PLLC  
P.O. BOX 5008  
BELLINGHAM, WA 98227-5008

DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS  
FOR  
HERON CREST

TITLE OF DOCUMENT:

DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND  
RESERVATIONS FOR HERON CREST

GRANTOR:

KINGMA BROS. DEVELOPMENT, INC.

GRANTEE:

THE GENERAL PUBLIC

ABBREV. LEGAL DESCRIPTION:

LOTS 1 TO 30 AND OPEN SPACE TRACTS  
A AND B AS PER THE PLAT THEREOF, AF  
# 2080302394

TAX PARCEL NO.:

SEE EXHIBIT A HEREOF FOR LIST OF  
PARCEL NUMBERS

390124453371 & 390124476334

## ARTICLE I

### IDENTIFICATION OF DECLARANT AND PROPERTY; PURPOSE

#### 1.1. Identification of Declarant and Property.

Kingma Brothers Development, Inc., a Washington corporation hereinafter referred to as the "Declarant," is the owner in fee simple of that certain real property located in the City of Ferndale and more particularly described on the attached Exhibit A, together with all improvements, easements, rights and appurtenances thereunto belonging, (all collectively referred to hereinafter as "the Property"), and which has been subdivided as shown in the Plat of Heron Crest Planned Unit Development recorded in Volume      of Plats, pages           , records of Whatcom County, Washington under Auditor's File No. 2080302394 (the "Plat").

#### 1.2. Purpose.

This Declaration, together with the Plat referred to herein, state covenants, conditions, restrictions and reservations intended by the Declarant to effect a common plan for the development of the Property mutually beneficial to all of the described Lots. These covenants, conditions, restrictions, reservations and plans are intended to become, and by the recordation of this instrument shall be conclusively deemed to be legal and equitable servitudes which shall run with the land of the Property and shall be binding upon the entire Property and upon each such Lot therein as a parcel of realty, and upon its Owners, their family members, their heirs, personal representatives, successors and assigns, and their tenants, licensees and other lawful occupants, through all successive transfers of all or part of the Property or any security interest therein, without requirement of further specific reference or inclusion in deeds, contracts or security instruments, and regardless of any subsequent forfeiture, foreclosures, or sales of Lots under security instruments, or of any forfeiture, foreclosures, or sales instituted for nonpayment of government tax, levy or assessment of any kind.

## ARTICLE II

### DEFINITIONS

2.1. "Architectural Review Coordinator ('ARC')" means the individual designated by the Board of Directors, to coordinate compliance with the Design Guidelines of the Community.

2.2. "Assessment" means all sums chargeable by the Association against a Lot including, without limitation: (a) Regular and Special Assessments for Common Expenses, charges, and fines imposed by the Association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the Association in connection with the collection of a delinquent Owner's account.

2.3. "Association" or "Owners Association" means the nonprofit corporation incorporated at the direction of the Declarant to manage the Common Areas of this Community and enforce the provisions of the Governing Documents.

2.4. "Board" or "Board of Directors" means the body with primary authority to manage the affairs of the Association.

2.5. "Common Areas" means those portions of the property within the Community so designated on the Plat, along with any other real property owned by the Association or for which the Association has maintenance responsibilities under this Declaration of Covenants. Common Areas are further defined and described in Article V hereof.

2.6. "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves; without limitation, such expenses include those necessary or desirable for maintaining, repairing, replacing, insuring or managing the Common Areas, along with taxes, other insurance, professional services and all other goods and services provided by the Association to its members.

2.7. "Common Expense liability" means the liability for Common Expenses allocated to each Lot pursuant to Section 10.1 of this Declaration of Covenants.

2.8. "Community" means all the Property within the Community, along with all the improvements constructed therein, the Association, and all other institutions and things serving the Owners of Lots therein.

2.9. "Conveyance" means any transfer of the ownership of a Lot, including a transfer by deed or by real estate contract, but shall not include a transfer solely for security.

2.10. "Declarant" means the entity, person or group of persons acting in concert who (a) executed the original Declaration of Covenants, or (b) reserves or succeeds to any Special Declarant Rights under the Declaration of Covenants.

2.11. "Declarant control" means the right of the Declarant or persons designated by the Declarant to appoint and remove officers and members of the Board of Directors or to veto or approve a proposed action of the Board or Association pursuant to Sections 8.1 and 16.6 of this Declaration of Covenants.

2.12. "Declaration of Covenants" means this document, which facilitates the creation of this Community; the term also includes any lawful amendments to this document.

2.13. "Design Guidelines" means the standards developed by the Board of Directors pursuant to Article IX hereof, and any standards established by the Declarant.

2.14. "Governing Documents" means the Declaration of Covenants, the Plat, the Bylaws of the Association along with any Rules and Regulations adopted by the Board of Directors.

2.15. "Limited Common Expenses" are portions of the Common Expenses for which one or more, but fewer than all Lot Owners may become liable under the terms of the Governing Documents.

2.16. "Lot" means a physical portion of the Community designated for separate ownership, the boundaries of which are depicted on the Plat.

2.17. "Lot Owner" means the Declarant or any other person who owns a Lot, but does not include a person who has an interest in a Lot solely as security for an obligation. "Lot Owner" means the vendee, not the vendor, of a Lot under a real estate contract.

2.18. "Mortgage" means a mortgage, deed of trust or real estate contract.

2.19. "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental agency, or other legal entity.

2.20. "Plat" means the Plat of Heron Crest Planned Unit Development recorded at Auditor's File No. 2080302394, records of Whatcom County, Washington.

2.21. "Property" or "the Property" means all the real property described as being contained within the Plat and, where appropriate, includes all real property which may be from time to time either added to the Community by the Declarant or acquired by the Association pursuant to Section 8.2.3 hereof.

2.22. "Residential purposes" means use for dwelling and human habitation, whether on an ownership, rental or lease basis and for reasonable social, recreational or other uses normally incident to such purposes.

2.23. "Upkeep" means any care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction that is required to maintain property in a decent, safe and sanitary condition, in keeping with the standards of the Community and with all applicable legal, administrative or regulatory requirements.

### ARTICLE III

#### DESCRIPTION OF LAND

##### 3.1. Land.

The land on which the Lots, Common Areas and other improvements of this Community are located is legally described on the Plat.

## ARTICLE IV

### LOTS

#### 4.1. Number and Location.

The Community contains thirty (30) Lots which are depicted on the Plat. The location of those Lots and their dimensions are shown on the Plat.

#### 4.2. Construction on Lots.

##### 4.2.1. Site-Built Single Family Homes.

Only single family, site-built Dwellings may be constructed on the Lots in this Community. No multifamily buildings or mobile homes may be erected or placed on any Lot.

##### 4.2.2. Design Guidelines.

Dwellings constructed on any Lot shall have not less than 1,800 square feet of living space, exclusive of porches, patios and garages. Exterior wall materials shall be restricted to brick, stone, wood siding, hardiplank or equivalent or other siding approved by the ARC. 20% of the surface facing the street shall be stone, shingle or other surface material approved by the ARC. Foundations shall not be exposed more than twelve inches (12") above grade. The Board of Directors shall have the authority to adopt more specific Design Guidelines and procedures to implement the basic theme contained herein, pursuant to Section 9.2 hereof.

Any proposed two-car garages shall be designed such that the interior dimensions (free and clear) accommodate two standard parking spaces, i.e. 18 feet in width and 19 feet in depth.

##### 4.2.3. Roofing.

Roofs shall have no less than a minimum of 6:12 slope and no more than a maximum of 10:12 slope, and only 25% of the plan area of a roof may be flat. Roof surface material on all sloped roofs shall be natural wood shingles, wood shakes, architectural grade composition material, or other materials approved by the Board. All roofing materials shall have a minimum 30-year rating. Unless required by City of Ferndale ordinance, no rooftop mechanical equipment shall be allowed except flues and vent stacks less than four (4) inches in diameter and solar collectors and skylights (not to exceed 20% of the total roof area) mounted in the roof surface plane. All eaves shall have finished soffets.

##### 4.2.4. Accessory Structures.

In addition to approved Dwellings, detached garages, sheds and other accessory structures previously approved by the Board of Directors may also be

constructed, from such materials and with such painting, trim features and other characteristics as to maintain architectural compatibility with the Dwelling on the lot.

#### 4.2.5. Service Yards, Driveways.

Each site shall provide visually screened areas to serve as service yards in which garbage and/or recycling receptacles, antennae, mechanical equipment, doghouses/kennels, compost bins, woodpiles, vehicles and other materials which are stored outside, must be contained in order to conceal them from view from the roads and adjacent properties. Any such visual barrier shall be at least six feet high and may consist of fencing or landscaping and planting approved by the Board of Directors or ARC. Driveways shall be constructed of concrete or paving stones.

#### 4.2.6. Fences.

Fences are subject to the Design Guidelines of the Community. No cyclone fences are permitted.

#### 4.2.7. Design Review.

To preserve a harmonious architectural and aesthetic appearance of the lands and improvements within the Plat, no new construction or improvements of any nature whatsoever shall be constructed or placed on any Lot until detailed plans depicting all such improvements have been reviewed and approved by the Board of Directors or its Architectural Review Coordinator ("ARC").

#### 4.2.8. Time for Approval - No Construction Prior to Approval.

The Board of Directors shall approve or disapprove plans, specifications and details within thirty (30) days of receipt thereof. If the Board fails to respond within thirty (30) days, then the plans shall be deemed approved. No construction activity may commence prior to such approval.

#### 4.2.9. Governmental Permits.

Approval by the Board of Directors shall not relieve an Owner from the obligation to obtain any required governmental permits. The Owner shall deliver all approvals and permits required by law to the Board of Directors, as appropriate, prior to the commencement of any construction requiring such approval or permit. If any application to any governmental authority for a permit it to make any such structural addition, alteration or improvement to any Lot or improvement located on any Lot requires execution by the Association, and provided consent has been given by the Board of Directors, then the application shall be executed on behalf of the Association by an Officer, without incurring any liability on the part of the Board of Directors or the Association to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having a claim for personal injury or property damage arising therefrom.

#### 4.2.10. Timing of Construction.

Any person obtaining approval of the Board of Directors as required by Section 9.2 hereof shall commence construction or alteration in accordance with plans and specifications approved within six months after the date of approval and shall substantially complete any construction or alteration within nine (9) months after the date of approval, or within such other period as specified in the approval. Construction shall not be deemed to be completed until the improvement is finished, the Lot has been cleaned of construction debris, a certificate of occupancy has been obtained and all exterior decks, porches, patios, walkways and driveways are complete. Notwithstanding the foregoing, the Board of Director's approval may provide for a different period during which to commence or complete construction. If any such person does not commence work within six months after approval, or such other time period determined by the ARC, then approval shall lapse.

#### 4.2.11. No Deviation from Plans.

Any person obtaining approval of the Board of Directors shall not deviate materially from the approved plans and specifications without the prior written consent of the ARC. Such person shall notify the ARC when the alterations or improvements are complete. Approval of any particular plans and specifications or design does not waive the right of the ARC to disapprove such plans and specifications, or any elements or features thereof, if such plans and specifications are subsequently submitted for use in any other instance or by any other person.

#### 4.2.12. Certificate of Compliance.

Upon the completion of any construction or alterations in accordance with plans and specifications approved by the Board of Directors, the Board of Directors shall, at the request of the Owner thereof, issue a certificate of compliance which shall be prima facie evidence that the construction or alteration referenced in such certificate has been approved by the ARC and has been constructed or installed in compliance with the provisions of this Article. The certificate shall not be used and may not be relied upon for any other purpose, and shall not constitute a representation either as to the accuracy or sufficiency of the plans and specifications reviewed by the ARC or the quality or soundness of the construction, alterations or improvements. The ARC may impose a reasonable charge to cover the costs of preparation and inspection.

### 4.3. Height Restrictions, Building Setbacks.

#### 4.3.1. Height Restrictions.

The height of structural improvements erected on Lots shall be restricted to the lower limit of that required under applicable City of Ferndale ordinances, any applicable building code or other ordinance in effect at the time of application for a building permit therefore, or the following: No structural improvement shall exceed thirty-five (35) feet in height measured by the vertical distance from the average

finished grade of the lot on which the structural improvement is constructed to the average height of the highest gable of a pitch or hip roof.

#### 4.3.2. View Covenants.

In addition to the height requirements specified in Subsection 4.3.1 above, the Board of Directors, or the ARC, may condition the approval of construction within a Lot such that any permitted improvements shall not unreasonably compromise any scenic view visible from Dwellings constructed on surrounding lots.

#### 4.3.3. Setbacks.

Front yard minimum depth of 20 feet. Side Yard minimums width 5 feet. The total of the two side yards shall be 20 feet, a minimum of one 10 foot side yard shall be provided per lot to facilitate access to the rear yard by reasonable sized vehicles. Side of building means the outer face of any part of the building roof eaves. Rear yard- minimum depth of 30 feet.

#### 4.4. Landscaping Installation.

Each Lot Owner is responsible for landscaping his/her Lot, to standards determined by the ARC. Landscaping shall be completed within six (6) months after the certificate of occupancy is obtained.

#### 4.5. Upkeep of Lots.

Subject to the provisions of Section 5.3, each Lot Owner shall, at his or her sole expense, have the right and the duty to keep the Lot and its any improvements in good order, condition and repair and shall do all decorating, landscaping and painting at any time necessary to maintain its good appearance and condition. Each Owner shall perform this Upkeep responsibility in such manner as shall not unreasonably disturb or interfere with the other Owners.

#### 4.6. Damaged Improvements.

If a building or other major improvement located upon a Lot is damaged or destroyed, the Owner thereof shall restore the site either (i) by repairing or reconstructing such building or improvement or (ii) by clearing away the debris and restoring the site to an acceptable condition compatible with the remainder of the Property. Unless the Board of Directors permits a longer time period, such work must be commenced within four months after the casualty and be substantially completed within twelve months after the casualty. The four-month period may be extended for a reasonable period thereafter in the event that repairs or reconstruction have not commenced because of factors beyond the control of the Owner, provided that the Owner has exercised and does thereafter continue to exercise due diligence in an effort to commence required work.



ARTICLE V  
COMMON AREAS

5.1. Common Areas.

The Common Areas consist of those portions of the Property depicted on the Plat, areas on each Lot burdened by an easement for common use, areas designed as open space, including with limitation the areas shown and designated on the face of the Plat as Open Space Tract and/or as Tract A and Tract B, landscape buffer areas (including landscape buffer areas on each Lot), streets for ingress and egress, and the sidewalks designated on the Plat.

5.2. No Interference with Common Areas.

No Lot Owner shall obstruct any of the Common Areas nor shall any Lot Owner place or cause or permit anything to be placed on or in any of the Common Areas without the approval of the Board. Nothing shall be altered or constructed in or removed from the Common Areas except with the prior written consent of the Board of Directors.

5.3. Maintenance, Repair and Replacement.

5.3.1. Association's Responsibility.

The Association, through its Board of Directors, is and shall remain perpetually responsible for all necessary Upkeep of the Common Areas. Maintenance of the landscaping within the Common Areas shall be pursuant to the landscape plan approved by the City of Ferndale pursuant to FMC 18.68.080 and on file with the City of Ferndale.

5.3.2. Rights of City of Ferndale.

In the event that the Association fails to properly maintain the Common Areas as required by this Section, the City of Ferndale may perform, but shall in no event have the obligation to perform, the required maintenance, and charge the cost of such maintenance to the Association, which charge shall be a lien upon the property of the Association, and also shall be a lien upon the Lots. The City of Ferndale shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent amounts due and owing for maintenance performed pursuant to this Section, whether or not such collection activities result in suit being commenced or prosecuted to judgment.

5.4. Right of Access.

Each Lot Owner shall afford to the Association, the City of Ferndale and to their respective agents or employees, access through the Owner's Lot as may be reasonably necessary for the purposes of maintenance, repair and replacement of the Common Areas. If damage is inflicted on the Lot or its any improvements or appurtenances as a result of such activities, the Association shall be liable for the repair thereof.

ARTICLE VI  
SCHEDULE OF REGULAR MAINTENANCE, INSPECTION AND REPORTING

6.1 Regular Maintenance. The Board of Directors shall develop a schedule of routine maintenance for all components of the Common Areas and for those portions of the Lots described in Section 4.5.1 hereof which require Upkeep, establishing appropriate times during each year when such maintenance should occur. Maintenance of stormwater treatment and conveyance systems shall be maintained pursuant to the Stormwater Maintenance Manual attached hereto as Exhibit B.

6.2 Reserve Fund. The Board of Directors should also periodically undertake an analysis of the adequacy of the Association's reserve fund; such analysis should (i) ascertain the probable remaining useful life of each component of the Common Areas which will require replacement or major repairs, (ii) estimate the probable cost of such replacement or repair for each such component, (iii) establish an annual reserve budget which would, when funded, minimize the necessity for the imposition of a special assessment upon the Owners within the foreseeable future.

6.3 Inspection and Reporting.

6.3.1 Storm Water Treatment.

The Association shall provide to the City of Ferndale, on an annual basis, a report on the adequacy of the stormwater treatment and conveyance systems following an inspection by a professional engineer licensed in the State of Washington. Said report shall be prepared by the professional engineer and submitted to the City of Ferndale by the Association.

6.3.2 Wetlands Protection.

The Association shall provide to the City of Ferndale, by December 31<sup>st</sup> of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 7<sup>th</sup> and 10<sup>th</sup> years following the Effective Date, a report on the compliance by the Association with the City of Ferndale's requirements for protection and enhancement of the wetlands, which are set forth in the wetlands mitigation plan as approved and on file with the City of Ferndale. Such reporting shall continue every three years after the 10<sup>th</sup> year, in perpetuity. Said report is to be completed by a qualified biological professional and submitted to the City of Ferndale by the Association.

ARTICLE VII  
OWNERS ASSOCIATION

7.1. Name and Form of Association.

The name of the Association shall be "Heron Crest Community Association." The Association will be incorporated by the Association as a non-profit corporation under the laws of the State of Washington. The rights and duties of the members and of said corporation shall be governed by the provisions of the Homeowners Association Act and of this Declaration of Covenants. The Association shall remain organized as a nonprofit corporation. In case of any conflict between Chapter 24.06 RCW, the Nonprofit Miscellaneous and Mutual Corporations Act, and the Homeowners Association Act, Chapter 64.38 RCW, the Homeowners Association Act shall control.

7.2. Powers of Association.

The Association shall, through its Board of Directors, have all powers available to homeowners associations under the Homeowners Association Act, and such additional powers as may be prescribed in the Articles of Incorporation or any Bylaws of the Association.

7.3. Membership and Voting Rights.

The Owner of each Lot shall be a member of the Association, and such membership shall be an inseparable appurtenance to the Owner's Lot. Membership and voting rights are further specified in the Articles of Incorporation and Bylaws of the Association. Each Lot is entitled to one vote in the Association.

7.4. Bylaws of Association.

Bylaws for the administration of the Association and for other purposes not inconsistent with the Homeowners Association Act and this Declaration of Covenants may be adopted by Board of Directors of the Association.

ARTICLE VIII

MANAGEMENT OF ASSOCIATION

8.1. Management by Declarant.

The Declarant has reserved the rights to (a) appoint and remove the Officers and members of the Board of Directors of the Association, and (b) veto or approve a proposed action of the Board or the Association, for a period of time known as the "Declarant Control Period". The Declarant Control period shall terminate at such time as (i) 75% of all of the Lots within the Property have been sold . When the Declarant elects to turn over control of the Association to the Owners, the Declarant shall provide notice to each record owner within the Property, which notice shall provide thirty (30) days prior written notice of a meeting of the Association for the purpose of electing new directors and officers all as provided in the Articles of Incorporation and Bylaws.

8.2. Professional Management.

Provisions for professional management of the Association are made in the Bylaws.

8.3. Supervision by Architectural Review Coordinator.

Architectural review during the period of construction of dwellings on the Lots in the Community shall be performed by an Architectural Review Coordinator designated by the Board of Directors of the Association.

8.4. Authority of the Board.

8.4.1. General Authority.

The Board, for the benefit of the Community and the Owners, shall enforce the provisions of the Governing Documents and shall have an powers and authority granted to the Board or the Association under the Homeowners Association Act and this Declaration of Covenants which are not expressly subject to the approval of the Owners.

8.4.2. Incurring and Payment of Common Expenses.

The Board shall acquire and shall pay for, as Common Expenses, all goods and services deemed necessary or desirable for the proper functioning of the Association.

8.4.3. Acquisition of Property.

The Board may acquire and hold in the name of the Association for the benefit of the Owners, tangible and intangible personal property and real property and interests therein, and may dispose of the same by sale or otherwise. Such property shall thereafter be held, sold, leased, rented, mortgaged or otherwise dealt with for the benefit of the Association as the Board may direct.

8.4.4. No Business Authority.

Nothing herein contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all of the Owners or any of them.

8.4.5. Board as Attorney in Fact.

Each Owner, by the act of becoming an Owner of a Lot, shall be deemed to have irrevocably appointed the Board of Directors as his or her attorney-in-fact, with full power of substitution, to take such actions as are reasonably necessary to perform the duties of the Association and Board hereunder, including, but not limited to, the duties to maintain, repair and improve the Property, to grant licenses and easements, and to secure and distribute condemnation awards and/or insurance proceeds affecting the Common Areas.

## ARTICLE IX

### PERMITTED USES; ARCHITECTURAL UNIFORMITY

#### 9.1. Permitted Uses.

##### 9.1.1. Residential Use.

The Lots in this Community shall be used for residential purposes only, whether on an ownership or rental basis, and for common social, recreational or other reasonable uses normally incident to such purposes, consistent with the requirements of Section 9.1.2 below. The Board may also permit the use of part of a dwelling for a home office or professional office or other light commercial use, so long as such use is consistent with all applicable laws, ordinances and regulations of any governmental authority, and so long as such use does not generate any appreciable levels of client or customer traffic, noise or other disturbance to other members of the Community. As a condition to consenting to such office use, the Board of Directors may require the Owner to pay any increase in the rate of insurance for the Association which may result from such office use, and to provide proof of adequate personal/business liability insurance coverage.

##### 9.1.2. Use of Common Areas.

The Common Areas shall be used only for the furnishing of such services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the Lots. The improvements located on the Common Areas shall be used only for their intended purposes. Except as otherwise expressly provided in the Governing Documents or Rules and Regulations adopted by the Board of Directors, no Owner shall make any private, exclusive or proprietary use of any of the Common Areas.

##### 9.1.3. Trees and Vegetation.

Following the construction of a dwelling structure on a Lot, its Owner(s) shall endeavor to preserve mature trees on the Lot and properly maintain any landscaping vegetation on the Lot, so as to enhance the appearance and value of the Lots in the Community and to prevent the spread of noxious weeds.

##### 9.1.4. Surface Water Run-Off.

No Lot shall be improved in such a way as to cause excess surface water run-off that may damage or inconvenience other Lots or contiguous properties or the owners thereof.

#### 9.1.5. Offensive or Illegal Activity.

No noxious, offensive, smelly, overly noisy or illegal activity shall be carried on in any Lot or Common Areas, nor shall anything be done therein which may be or become an unreasonable source of annoyance or nuisance to other Owners.

#### 9.1.6. Vehicle Parking.

Parking of up to two vehicles in driveways shall be permitted. Driveway parking spaces are restricted to use for parking of operable, properly registered automobiles, light trucks and family vans; other items and equipment may be parked or kept therein only if expressly permitted by Rules and Regulations and only in such parking areas, if any, as may be designated for such purpose by the Board of Directors. Garage parking spaces are restricted to use for parking of automobiles, motorcycles, light trucks, family vans and other similar vehicles, and for storage of such other items that pose no unreasonable health, safety or fire risks to persons or property. Vehicle repairs other than ordinary light maintenance are not permitted on the Property. The Board may require removal of any inoperative or unregistered vehicle, and any other equipment or item improperly stored in parking spaces. If the same is not removed, the Board may cause removal at the risk and expense of the owner thereof. under such reasonable procedures as may be provided by Rules and Regulations adopted by the Association.

#### 9.1.7. RV Parking.

Except has hereinafter provided ,junk vehicles (as defined in RCW 46.55.010), Recreational Vehicles (including without limitation camper-trailers, mobile homes, motor homes, "fifth-wheels", off-road vehicles, boats, airplanes or etc.), large commercial-style vehicles (including without limitation trucks, tractors, large vans or other types of vehicles or equipment which either require a commercial vehicle operator's license or which exceed 6,000 lbs in gross vehicle weight) or any other type of vehicle or equipment which exceeds 22 feet in length may not be stored, kept or maintained anywhere within the Community. A Recreational Vehicle may be maintained within a Lot, if it is fully enclosed within a garage or an approved accessory structure, or if it is otherwise substantially screened from view by vegetation or such other lawful means as may have been previously approved by the Board. The Board may require removal of any vehicle or equipment not authorized by this Section; if it is not so removed, the Board may cause its removal at the risk and expense of the owner thereof, under such reasonable procedures as may be consistent with the provisions of RCW 46.55. Failure of an Owner or other occupant to remove such a vehicle or equipment from a Lot or the Common Areas may result in any or all remedies available to the Association under the Governing Documents.

#### 9.1.8. Underground Utilities.

All utilities are required to be located underground.

#### 9.1.9. Interference with Association Personnel.

No person shall engage or direct any employee of the Association on any private business of the Owner or otherwise direct, supervise or in any manner attempt to assert control over such employee during the hours such employee is employed by the Association.

#### 9.1.10. Effect on Insurance.

Nothing shall be done or maintained in any Lot or in the Common Areas which will increase the rate of insurance on the Common Areas or Lots without the prior written consent of the Board. No Owner shall permit anything to be done or maintained in his or her Lot or in the Common Areas which will result in the cancellation of insurance on any Lot or any part of the Common Areas.

#### 9.1.11. Signs.

Initially, no sign of any kind shall be displayed to the public view on or from any Lot or the Common Areas without the prior consent of the Board; provided that this section shall not apply to Declarant or Declarant's agents, nor shall it be deemed to prohibit the Owner of a Lot from displaying a sign for a period of time in which the Lot is for sale or rent. The Board may by resolution establish further policies regarding signs, to reflect the sentiments of the Community while giving due regard to traditional democratic rights of free speech, religion and expression of Persons owning or occupying Lots in the Community. The Board's judgment in such matters shall be conclusive.

#### 9.1.12 Animals.

The ownership and keeping of well-behaved dogs, cats and other limited types of species of animals which do not normally leave a Lot is permitted, subject to Rules and Regulations which may be adopted by the Board of Directors. The owner of any animal maintained within the Community shall keep such animal properly attended and under such owner's control, and shall clean up after such animal and shall not permit deposits of fecal matter, urinary residue or foodstuffs from or for such animal to accumulate anywhere on the Common Areas. Any person who keeps or maintains any animal upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association, each Lot Owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such animal within the Subdivision. The Board may at any time require the removal of any animal which it finds is or has become an unreasonable source of annoyance, and may exercise this authority for specific animals even though other animals are permitted to remain.

#### 9.1.13. Compliance with Environmental Laws.

Use of the Lots and Common Areas may be subject to various federal, state and local laws, regulations and guidelines now in effect and/or hereafter enacted, relating to or affecting the Property, concerning the impact on the environment of construction, land use, and the maintenance and operation of structures located thereon. No Lot Owner shall cause, or permit to be caused, any act or practice by negligence, or omission, or otherwise, that would adversely affect the environment or do anything or permit anything to be done that would violate any of the said laws, regulations or guidelines. The foregoing shall cover all requirements whether or not foreseeable at the present time and regardless of their expense.

#### 9.1.14. Hazardous Substances.

A person shall maintain or store on or in the Property only such property and materials which may be legally possessed by such person. No person shall improperly store within or release from a Lot or into the Common Areas any petroleum distillates, liquid or aromatic hydrocarbons, medical wastes or infectious biological agents, acids, caustics, carcinogens, mutagens, heavy metals, or any other inflammable, toxic, explosive, radioactive, or other type of substance which may be hazardous to either the Community or to the public health or safety, or the health or safety of any lawful occupants of the Community, any and all such substances being known herein as Hazardous Substances.

#### 9.1.15. Trash.

Except in connection with construction activities, no burning of any trash and no accumulation or storage of litter, refuse, bulk materials, building materials or trash of any other kind shall be permitted on any Lot. Any such burning shall be conducted only in accordance with the terms of any governmental regulations or required permit. Trash containers shall be subject to regulation by the Board of Directors. No incinerator shall be kept or maintained upon any Lot.

#### 9.1.16. Lighting.

No exterior lighting shall be directed outside the boundaries of a Lot.

#### 9.1.17. Television and Radio Antennas, Dishes.

Satellite TV antennas/dishes 1 meter or less (approximately 36") in diameter may be installed within a Lot. Larger satellite dishes and other types of reception or transmission antennas may be installed within a Lot only if reasonably screened from view from other Lots and the Common Areas. Ham radio and "citizens band" antennas may be used for transmission purposes only so long as they do not cause interference with electronic equipment of neighboring property owners. No reception or transmission devices may be located within the Common Areas unless expressly permitted by the Board of Directors.

#### 9.1.18. Construction Activities.



This Section shall not be construed as forbidding any work involved in the construction or Upkeep of any portion of the Property so long as such work is undertaken and carried out (i) with the minimum practical disturbance to persons occupying other portions of the Property; (ii) in such a way as does not violate the rights of any person under other provisions of this Declaration; and (iii) in accordance with all applicable restrictions in the Rules and Regulations, the resolutions of the Board of Directors and the other provisions of this Declaration. The Board of Directors may approve temporary structures for construction purposes which may otherwise be in violation of the Governing Documents or the Rules and Regulations.

9.1.19. Lease Restrictions.

With the exception of an institutional lender in possession of a Lot following a default under a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Lot Owner shall be permitted to lease all or any portion of a Lot for periods of less than thirty days. Any lease agreement shall be required and deemed to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Bylaws and Rules and Regulations, and that any failure by the Lessee to comply with such provisions shall be a default under the lease, entitling the Association to enforce such provisions as a real party in interest. All leases shall be in writing. A lease, as defined herein, shall include month-to-month rentals. Any tenant, subtenant or licensee of an Owner shall be deemed to be bound by all portions of the Governing Documents that are binding upon the Owner, with the exception of the obligation to pay the dues, assessments and other charges owing by the Owner to the Association.

9.1.20. Assignment or Subletting.

The assignment or subleasing of a Lot shall be subject to the same limitations as are applicable to the leasing or renting thereof. An Owner or tenant may not exempt himself or herself from any liability under this Declaration or the Bylaws or Rules and Regulations by assigning or subleasing the occupancy rights to his or her Lot.

9.1.21. Uses by Declarant.

Nothing in the Governing Documents shall be construed to prohibit the Declarant or its designees from using any Lot owned by the Declarant (or any other Lot with the permission of the Owner thereof) or any portion of the Common Areas for promotional, marketing, display or customer service purposes (such as a visitors' center) or for the closing of sales of Lots. Further, the Declarant specifically reserves the right to operate a construction office or a rental, brokerage and management office at any time on Lots owned or leased by the Declarant (or any other Lot with the permission of the Owner thereof) and on any portion of the Common Areas, to the extent permitted by law. The Declarant may assign its rights under this subsection to or share such rights with one or more other persons,

exclusively, simultaneously or consecutively with respect to the Common Areas and Lots owned or leased by the Declarant or such persons.

## 9.2. Architectural Control.

### 9.2.1. General Authority of Board of Directors.

To assure the health, safety and enjoyment of persons lawfully using any portion of the Property, and to promote visual harmony within the Community, the Association, through its Board of Directors or the ARC, shall have the power and the duty to enforce architectural control over the improvements constructed within the Community, in the manner hereafter provided. The Board of Directors shall regulate the external design, signage, appearance, use and maintenance of the Property in accordance with the provisions of the Declaration of Covenants. No construction within the Property may occur absent the approval of the Board of Directors. The Board of Directors may from time to time establish requirements regarding the form and content of plans and specifications to be submitted for approval. The Board of Directors shall have the power to impose reasonable application fees and charges for the costs of reports, analyses or changes proposed by an Owner. Such fees shall be specially assessed against the Owner. The Board of Directors may adopt Design Guidelines in addition to those set forth in this Declaration of Covenants to provide guidance to Owners and their contractors and design professionals in tailoring construction of improvements to the overall appearance of the Community. Design Guidelines approved by the Board of Directors shall be enforceable as if set forth herein in full.

In the event of a conflict between the design guidelines set forth in this Declaration of Covenants or any future adopted Design Guidelines and the Ferndale Municipal Code, the Ferndale Municipal Code shall control.

### 9.2.2. Time for Response: Variances.

The Board of Directors shall act on all matters properly before it within thirty (30) days after submission of a complete application, in such form as may be prescribed by the Board of Directors, in accordance with Section 4.2.9 hereof. The Board of Directors shall have the authority, either by act or omission, to waive enforcement of or grant variances from any written Design Guidelines without a specific finding that enforcement of such guidelines would impose an unfair burden on such Owner, but describing the variance and the reasons therefore in a written instrument which shall be part of the records of the Association. Upon such written approval of any specific variance or exception from the requirements of the Design Guidelines, all development conforming to such variance or exception shall be deemed to comply.

No variance from set-back requirements may be granted absent the approval of the City of Ferndale.

### 9.2.3. No Liability for Architectural Review.

Neither the Board of Directors nor its ARC shall be liable to any party for any good faith action or failure to act under the provisions of this Declaration.

ARTICLE X  
ASSESSMENTS AND LIENS FOR COMMON EXPENSES

10.1. Assessments for Common Expenses.

10.1.1. Liability of Lots for Proportionate Share of Budgeted Expenses.

The total amount of the estimated funds required to pay the Common Expenses of the Association set forth in the Annual Budget adopted by the Board of Directors for the fiscal year shall be assessed equally against the Lots. The Budget shall be adopted in the manner described in the Bylaws. The Association may, by resolution supported by greater than 50% of the votes in the Association, require that any Common Expense or portion thereof benefiting fewer than all of the Lots shall be assessed exclusively against the Lots benefited; such an assessment may be termed a "Limited Common Expense".

10.1.2. Timing of Payments.

Until changed by resolution of the Board of Directors, the annual Assessment against each Lot for its share of the Common Expenses shall be due and payable on the first day of the month of February of each year. The Board may adopt further payment policies which permit payment in installments under conditions to be determined by the Board.

10.1.3. Owners Personally Liable for Common Expenses.

Each Assessment shall be the joint and several obligation of the Owner(s) of the Lot so assessed as of the time the Assessment is due. Suit to recover a personal judgment for any delinquent Assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums. No Owner may exempt himself or herself from liability with respect to any portion of the Common Expenses for any reason, including without limitation a waiver of the enjoyment of the right to use any of the Common Elements or by leasing, rental or abandonment of his or her Lot or otherwise. The failure or delay of the Board of Directors to adopt the Annual Budget for any year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his or her allocable share of the Common Expenses as herein provided, and in the absence of an Annual Budget or adjusted Annual Budget each Owner shall continue to pay (with or without notice) a periodic Assessment at the rate established for the preceding fiscal year until an Assessment is made under a current Annual Budget or adjusted Annual Budget and notice thereof has been sent to the owner.

10.2. Liability Following: Conveyance of Lot.

A selling Lot Owner shall not be liable for the payment of any part of the Common Expenses assessed against his or her Lot subsequent to a sale, transfer or other conveyance by him of such Lot. The purchaser of a Lot shall be jointly and severally liable with the selling Lot Owner for all unpaid Assessments against the Lot up to the time of the conveyance without prejudice to the purchaser's right to recover from the selling Lot Owner the amounts paid by the purchaser therefore. The holder of a mortgage or other purchaser of a Lot who obtains the right of possession of the Lot through foreclosure shall not be liable for Assessments that became due prior to such right of possession. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Lot Owners, including such mortgagee or other purchaser of the Lot. Foreclosure of a mortgage does not relieve the prior Owner of personal liability for Assessments accruing against the Lot prior to the date of such sale as provided above.

#### 10.3. Statement of Unpaid Assessments.

The Association, upon written request, shall furnish to a Lot Owner or a mortgagee a statement signed by an officer or authorized agent of the Association setting forth the amount of unpaid Assessments against that Lot.

#### 10.4. Lien for Assessments.

The Association shall have a lien on a Lot for any unpaid Assessments levied against a Lot from the time the Assessment is due. If an Assessment is payable in installments, the Association has a lien for the full amount of the Assessment from the time the first installment thereof is due.

#### 10.5. Perfection of Lien.

Recording of this Declaration of Covenants constitutes record notice and perfection of the lien for Assessments. While no further recording of any claim of lien for Assessments shall be required to perfect the Association's lien, the Association may record a notice of claim of lien for Assessments under this section in the real property records of the county in which the Community is located.

#### 10.6. Priority of Lien.

A lien under this Section shall be prior to all other liens and encumbrances on a Lot except: (a) Liens and encumbrances recorded before the recording of the Declaration of Covenants; (b) a mortgage on the Lot recorded before the date on which the Assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the Lot.

10.7. Enforcement of Lien.

The lien arising under this section shall be enforced judicially by the Association or its authorized representative in the manner set forth in chapter 61.12 RCW. The Association or its authorized representative shall have the power to purchase the Lot at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. The Association may elect to take a deed in lieu of foreclosure in any such proceeding.

10.8. Limitation of Lien Enforcement.

A lien for unpaid Assessments and the personal liability for payment thereof is extinguished unless proceedings to enforce the lien are instituted within six years after the amount of the Assessments sought to be recovered becomes due.

10.9. Rent Subject to Lien for Assessments.

From the time of commencement of an action by the Association to foreclose a lien for nonpayment of delinquent Assessments against a Lot that is not occupied by the Owner thereof, the Association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the Lots as and when due. If the rental is not paid, the receiver may obtain possession of the Lot, refurbish it for rental up to a reasonable standard for rental Lots in this type of project, rent the Lot or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the Lot, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent Assessments. Only a receiver may take possession and collect rents under this subsection, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Lot.

10.10. Remedies Cumulative.

The remedies provided are cumulative and the Board may pursue them concurrently, along with any other remedies which may be available under the law although not expressed herein.

ARTICLE XI

INSURANCE MATTERS

11.1. Authority, Name of Insured.

The Board of Directors may obtain and maintain casualty and liability insurance under such terms and for such amounts as shall be deemed necessary by the Board of Directors.

11.2. Deductible.

The deductible, if any, on any policy of insurance purchased by the Board of Directors, shall be paid by the Association as a Common Expense. Funds to cover the deductible should be included in the Association's operating reserve account.

ARTICLE XII

CONDEMNATION

In the event that Common Areas of the Community are become subject to eminent domain proceedings, the Association shall be a necessary party to such proceedings.

ARTICLE XIII

COMPLIANCE WITH LAW AND COVENANTS

13.1. Compliance by Owners and Occupants.

Each Owner and occupant of a Lot shall comply strictly with the provisions of the Governing Documents. All remedies provided the Association in this Article may be enforced against any tenant or other occupant of a Lot.

13.2. Enforcement by Association.

The Board of Directors shall have primary responsibility for maintaining and enforcing compliance with the covenants, conditions and restrictions contained in the Governing Documents.

13.3. Legal Proceedings.

Failure to comply with any of the terms of the Governing Documents shall be grounds for legal relief, including without limitation, actions to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of Assessments, or any combination thereof and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Association or, if appropriate, by any aggrieved Owner, and shall not constitute an election of remedies.

13.4. Costs and Attorney's Fees.

The Association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent Assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the Association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment. In any other proceeding arising out of an alleged default by an Owner, the prevailing party shall be entitled to recover the costs of the proceeding, and such reasonable attorney's fees as may be determined by the court. In the event that the prevailing party is the Association, the costs

and attorney's fees so awarded shall constitute a Limited Common Assessment against the Owner's Lot.

13.5. Late Charges and Interest.

The Board may impose and collect reasonable late charges to encourage prompt payment of Assessments. Until changed by resolution of the Board with advice of counsel, the Board may collect a late charge: (a) when any Assessment or installment thereof is received by the Association more than ten (10) days beyond the due date of such Assessment or installment; (b) in an amount not to exceed the greater of \$25.00 or ten percent (10%) of the amount of said Assessment or installment. Delinquent Assessments shall bear interest from the date of delinquency at the rate of 12% per annum, or the maximum rate permitted under RCW 19.52.020 on the date on which the Assessments became delinquent.

13.6. No Waiver of Rights.

The failure of the Association, the Board of Directors or of an Owner to enforce any right, provision, covenant or condition which may be granted by the Governing Documents or the Act, shall not constitute a waiver of the right of the Association, the Board or the Owner to enforce such right, provision, covenant or condition in the future.

13.7. Remedies Cumulative.

A suit to recover a money judgment for unpaid Assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment. All rights, remedies and privileges granted to the Association, the Board of Directors or any Owner pursuant to any term, provision, covenant or condition of the Governing Documents or the Act shall be deemed to cumulative and the exercise of anyone or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Governing Documents or the Act or at law or in equity.

ARTICLE XIV

LIMITATION OF LIABILITY

14.1. No Liability for Equipment Failure, Etc.

Except to the extent covered by insurance obtained by the Board pursuant to Article XI, neither the Association nor the Board nor the Declarant shall be liable for any failure of any equipment or services obtained by the Board, or for injury or damage to person or property caused by the elements, or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance or orders of a governmental authority. No diminution or abatement of liability for Common Expense Assessments shall be claimed or allowed for any such injury or damage, or for such inconvenience or discomfort.

#### 14.2. No Bailment.

Neither the Board of Directors, the Association, any Owner nor the Declarant shall be considered a bailee of any personal property stored or placed on the Common Areas (including property located in vehicles parked on the Common Areas), whether or not exclusive possession of the particular area is given to an Owner for parking or otherwise, nor shall they be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

### ARTICLE XV

#### MORTGAGEE PROTECTION

Any representative of a Mortgagee or the institutional insurer of any mortgage may attend and address any meeting which a Lot Owner may attend.

### ARTICLE XVI

#### EASEMENTS AND RELATED RIGHTS

##### 16.1. Easements for Lots and Lot Owners.

###### 16.1.1. In General.

Each Lot has an easement in and through each other Lot and the Common Areas for lateral and/or subjacent support.

###### 16.1.2. Specific Easement Shown on Plat.

Easements shown on the Plat hereby dedicated, declared and established. Any easement shown on the Plat which benefits one or more Lots or which benefits any third parties or any real property not included within the Association, confers various rights and benefits upon such third parties or owner(s) of any such real property, and may also impose obligations upon the Association. Without limitation, each Lot is burdened with an easement for common open space and utilities, including a storm water drainage and maintenance.

##### 16.2. Easement for Association Functions.

There is hereby granted and reserved to the Association, or its duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Association as are set forth in the Governing Documents.



16.3. Easement for Utilities.

A non-exclusive perpetual blanket easement is hereby granted over and through the Property for ingress, egress, installation and Upkeep of any utility lines, pipes, wires, ducts, conduits and/or other facilities and equipment for providing to any portion of the Property utilities of any type, whether public or private; such easement is hereby granted to any person installing or providing Upkeep for such utilities. Any pipes, conduits, lines, wires, transformers or any other apparatus necessary for the provision or metering of any utility may be installed, maintained or relocated where permitted by the Declarant or where approved by resolution of the Board of Directors. See the Plat for further details.

16.4. Easement for Emergency Access.

A non-exclusive perpetual easement is hereby granted on, over, under and across the Common Areas to all police, fire, ambulance and other rescue personnel for the lawful performance of their functions during emergencies.

16.5. Easements for Declarant and the Association .

The Declarant reserves to itself and its lawful successors an easement through the Common Areas for any and all activities necessary or desirable to complete the development of the property for exercising Special Declarant Rights. The Association and/or their respective agents shall have the right, without any liability to any Owner, of ingress/egress through any Lot (other than any portion thereof upon which a structure has been erected) for the purpose of maintaining any and all Common Areas and utility easement corridors, including, but not limited, to easements for utilities, storm sewer, power, water, telephone service, cable television and gas, owned by the Association, and for the purpose of enforcing any restrictions contained in this Declaration.

16.6. Special Declarant Rights.

The Declarant has reserved the following Special Declarant Rights for the purpose of furthering and completing the development of the property: To complete any improvements indicated on the Plat or described earlier in the Declaration; to use easements through the Common Areas for the purpose of making improvements within the property; and to appoint or remove any officer of the Association or any member of the Board of Directors, or to veto or approve a proposed action of the Board or Association during the Declarant Control Period described in Section 8.1 hereof; the Declarant shall be deemed to hold a proxy from all Lot Owners during the Declarant Control Period for such purposes.

ARTICLE XVII

AMENDMENT OF DECLARATION OF COVENANTS

17.1. Procedure for Amendment of Declaration of Covenants.

Amendments to the Declaration of Covenants shall be made by an instrument in writing entitled "Amendment to Declaration of Covenants" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration of Covenants, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Owners. Except as provided in Section 17.3 hereof, amendments may be adopted only at a meeting of the Owners if at least 67% percent of the votes in the Association are cast for such amendment, or without any meeting if all Owners have been duly notified and Owners holding at least 67% of the votes in the Association consent in writing to such amendment. In all cases, the amendment when adopted shall bear the acknowledged signature of the President of the Association, who shall certify that the amendment was properly adopted.

#### 17.2. Recordation Required.

Every amendment to the Declaration of Covenants must be recorded with the County Auditor and is effective only upon recording. An amendment shall be indexed in the name of the Community and shall contain a cross-reference by recording number to the Declaration of Covenants and each previously recorded amendment thereto.

#### 17.3. Special Amendments.

The Declarant may unilaterally adopt and file amendments to the Declaration and to the Plat for so long as the Declarant is the Owner of any Unit or until the expiration of the time limit for the exercise of any Development Rights or Special Declarant Rights reserved by the Declarant, in order to conform them to the actual location of any of the constructed improvements and to establish, vacate and relocate utility easements, access road easements and parking areas, to satisfy the requirements of any title insurance company or institutional lender, or to correct any nonmaterial technical errors contained in the Instruments or clarify provisions of same.

### ARTICLE XVIII

#### MISCELLANEOUS

#### 18.1. Notices for All Purposes, Delivery.

18.1.1. Any notice permitted or required to be delivered under the provisions of the Declaration of Covenants or the Bylaws may be delivered either personally or by mail, addressed to the person entitled to such notice at the most recent address given by such person to the Board in writing, or to the most recent address known to the Board. Notice to the Owner of any Lot shall be sufficient if mailed to his or her Lot if no other mailing address has been given to the Board. Mailing addresses may be changed from time to time by notice in writing to the Board. Notice to be given to the Association may be given to Declarant until the initial Board has been constituted and thereafter shall be given to the President or Secretary of the Association. or to its Registered Agent.

18.1.2. New Lot Owners must supply their names and addresses, along with the names and addresses of their respective Mortgagees, to the Secretary of the Association promptly after conveyance.

18.2. Severability.

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of anyone provision or portion thereof shall not affect the validity or enforceability of any other provision hereof, if the remainder complies with the Act and furthers the common plan of this Community

18.3. No Right of First Refusal. There is no right of first refusal in the Association limiting or restricting the right of any Lot Owner to sell, transfer or convey his or her Lot.

18.3. Effective Date.

This Declaration shall take effect upon recording.

DATED this 19 day of OCTOBER, 2007.

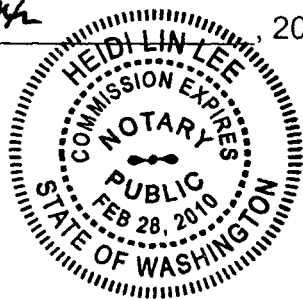
DECLARANT:  
KINGMA BROS. DEVELOPMENT INC.

By: [Signature]  
Its: PRESIDENT

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

I hereby certify that I know or have satisfactory evidence that is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the PRESIDENT of the Declarant, KING BROS. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: OCTOBER 19th, 2007.



[Signature]  
NOTARY PUBLIC for the State of Washington. My Commission expires 02-28-2010

**EXHIBIT 'A'**

LEGAL DESCRIPTION OF SUBJECT PROPERTY:

PLAT OF HERON CREST, A PLANNED UNIT DEVELOPMENT, ACCORDING TO THE MAP THEREOF,  
RECORDED UNDER WHATCOM COUNTY AUDITOR'S FILE NUMBER 2080302394.

SITUATE IN THE CITY OF FERNDALE, WHATCOM COUNTY, WASHINGTON.

*SAID HERON CREST PLANNED UNIT DEVELOPMENT HAVING BEEN PREVIOUSLY DESCRIBED AS FOLLOWS:*

*PARCEL A:*

THE LAND REFERRED TO IS SITUATED IN THE STATE OF WASHINGTON, COUNTY OF WHATCOM AND IS DESCRIBED AS FOLLOWS:

A TRACT OF LAND IN THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 39 NORTH, RANGE 1 EAST OF W.M., WHATCOM COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SAID SECTION 24; THENCE SOUTH ALONG THE EAST LINE OF SECTION 24 A DISTANCE OF 1800 FEET TO THE TRUE POINT OF BEGINNING; THENCE WEST, 1322 FEET; THENCE SOUTH 340 FEET; THENCE EAST, 1322 FEET TO THE EAST LINE OF SECTION 24; THENCE NORTH ALONG THE EAST LINE OF SECTION 24, 340 FEET TO THE TRUE POINT OF BEGINNING. LESS THE RIGHT OF WAY FOR CHURCH ROAD.

EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SAID SECTION 24; THENCE SOUTH, ALONG THE EAST LINE OF SECTION 24, A DISTANCE OF 2140 FEET; THENCE WEST TO THE WESTERLY LINE OF CHURCH ROAD AND THE TRUE POINT OF BEGINNING; THENCE CONTINUE WEST 225 FEET; THENCE NORTH PARALLEL TO CHURCH ROAD 200 FEET; THENCE EAST TO WEST LINE OF CHURCH ROAD 225 FEET, THENCE SOUTH TO POINT OF BEGINNING.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

*PARCEL B:*

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 39 NORTH, RANGE 1 EAST OF W.M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 24; THENCE SOUTH  $00^{\circ}25'58''$  EAST ALONG THE EAST LINE OF SAID SECTION AND THE CENTER LINE OF CHURCH ROAD (COUNTY ROAD NO. 372), 1800 FEET; THENCE SOUTH  $89^{\circ}34'02''$  WEST AT RIGHT ANGLES, 550.5 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH  $89^{\circ}34'02''$  WEST, 774.98 FEET TO THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER THENCE NORTH  $00^{\circ}23'44''$  WEST ALONG SAID WEST LINE, 222.5 FEET; THENCE NORTH  $89^{\circ}34'02''$  EAST, 774.83 FEET; THENCE SOUTH  $00^{\circ}25'58''$  EAST, 222.5 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH A NONEXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND UTILITY PURPOSES OVER THE FOLLOWING DESCRIBED TRACT:

COMMENCING AT A POINT 1477.5 FEET SOUTH OF THE NORTHEAST CORNER OF SAID SECTION; THENCE WEST 1324 FEET; THENCE SOUTH 100 FEET; THENCE EAST TO A POINT ON A LINE EXTENDED NORTHERLY FROM THE WEST LINE OF A TRACT CONVEYED TO ERWIN ENGLER AND BETTY J. ENGLER, HIS WIFE, BY DEED RECORDED MAY 9, 1969, UNDER AUDITOR'S FILE NO. 1060018; THENCE NORTH AT RIGHT ANGLES ALONG SAID EXTENSION A DISTANCE OF 40 FEET; THENCE EAST TO THE EAST LINE OF SAID SECTION 24; THENCE NORTH ALONG SAID EAST LINE TO THE TRUE POINT OF BEGINNING.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

**EXHIBIT B**  
**STORMWATER MAINTENANCE MANUAL**

**HERON CREST P.U.D.**  
FERNDAL, WASHINGTON

**OPERATION & MAINTENANCE PLAN**

**FOR**

**STORMWATER FACILITIES  
MAINTAINED AND OWNED  
BY HOMEOWNERS ASSOCIATION**

**Prepared by:**

**Pacific Surveying and Engineering Services, Inc.  
1812 Cornwall Avenue  
Bellingham, Washington 98225  
(360) 671-7387**

**October, 2007**

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## **SECTION 1.0 DESCRIPTION OF PROGRAM**

This document is an Operations and Maintenance Program for all privately owned stormwater facilities within the Heron Crest P.U.D. that are to be maintained by the P.U.D. Homeowners Association.

Specifically, this program has been prepared for use by the operation and maintenance staff of the Heron Crest P.U.D. homeowners association, per the City of Ferndale's request.

The facilities in question include all stormwater conveyance pipelines, catch basins, ponds, and ditches that lie outside of the public street rights-of-way and that serve or traverse more than a single lot of the P.U.D. Those small systems that lie entirely within the boundaries of a single lot and that connect directly to the publicly-maintained conveyance system at the storm drain service stubs built as a part of the public system are considered to be the property of the lot owner. Maintenance responsibilities for these single lot drainage systems lie with the lot owner.

The Homeowner Association owned, common stormwater facilities within the Heron Crest P.U.D. include:

- 1) All drains, storm sewers, and catch basins located outside of the public right-of-way. These systems include the storm drainage system located on the north, east, and south plat boundaries and conveyance systems contributing to the detention pond. These systems are noted on the attached exhibit.
- 2) The stormwater detention ponds located at the southwest corner and east side of the Plat. This stormwater facilities includes the fencing around the pond, access gates, gravel access road, emergency overflow spillway, control structure manhole, vegetated slopes, and storm sewers located outside of the publicly owned right-of-way flowing to and from the pond.

This program is based on guidelines presented in the Department of Ecology Stormwater Management Manual for Western Washington (February 2005).

It is assumed that:



- 1) The Heron Crest P.U.D. Homeowners Association will train designated personnel on appropriate inspection, record-keeping, and maintenance procedures;
- 2) The Heron Crest P.U.D. Homeowners Association will prepare, regularly update, and implement an Operation and Maintenance Record for private Stormwater Management Facilities. The Record will include all operations and maintenance documentation of the practices recommended herein;
- 3) The designated operators will inspect stormwater facilities bi-annually to ensure proper operation. Inspections will also be made during and immediately after a large storm event of greater than 1 inch of rainfall in 24 hours.

The facility-specific maintenance standards presented are intended to be conditions for determining if maintenance actions are required as identified through inspection. They are not intended to be measures of the facility's required condition at all times between inspections. In other words, the exceeding of these conditions at any time between inspections and / or maintenance does not automatically constitute a violation of these standards. However, based upon inspection observations, the inspection and maintenance schedules shall be adjusted to minimize the length of time that a facility is in a condition that requires a maintenance action.

## **SECTION 2.0 MAINTENANCE & OPERATION PROGRAM**

The components of the subject stormwater conveyance system are designed to operate with a minimum of maintenance: however, some maintenance will be required. This document describes each of these components, how they are supposed to operate, and what maintenance activities should be followed. Appendix "A" includes a checklist to be copied and used throughout routine inspections. Appendix "B" includes a site exhibit.

Stormwater generated over the project area is collected for all impervious surfaces and improved pervious surfaces. Runoff from most lots is collected and conveyed directly to a storm drain stub connection to the publicly maintained storm drain conveyance system. At least one such stub is extended to each lot. Where the lot drainage stub must be connected to the publicly-maintained drainage conveyance system in the public streets by storm drain line that crosses privately held land beyond the lot limits, the Homeowners Association will assume the responsibilities of ownership, operation and maintenance for those non-publicly-maintained conveyance facilities. These

specific instances of Homeowners Association responsibility are itemized in the previous section.

The stormwater conveyance system is designed to operate trouble-free for many years. There are no operational needs for the system other than the maintenance functions listed in Appendix A.

**APPENDIX "A"**

**MAINTENANCE CHECKLIST**

Table 3.3 Specific Maintenance Requirements for Detention Ponds			
Maintenance Component	Defect	Conditions When Maintenance Is Needed	Results Expected When Maintenance Is Performed
<b>General</b>	Trash & Debris	<p>Any trash and debris which exceed 5 cubic feet per 1,000 square feet (this is about equal to the amount of trash it would take to fill up one standard size garbage can). In general, there should be no visual evidence of dumping.</p> <p>If less than threshold all trash and debris will be removed as part of next scheduled maintenance.</p>	Trash and debris cleared from site.
	Poisonous Vegetation and noxious weeds	<p>Any poisonous or nuisance vegetation which may constitute a hazard to maintenance personnel or the public.</p> <p>Any evidence of noxious weeds as defined by State or local regulations.</p> <p>(Apply requirements of adopted Integrated Pest Management (IPM) policies for the use of herbicides).</p>	<p>No danger of poisonous vegetation where maintenance personnel or the public might normally be. (Coordinate with local health department)</p> <p>Complete eradication of noxious weeds may not be possible. Compliance with State or local eradication policies required</p>
	Contaminants and Pollution	<p>Any evidence of oil, gasoline, contaminants or other pollutants</p> <p>(Coordinate removal/cleanup with local water quality response agency).</p>	No contaminants or pollutants present.
	Rodent Holes	<p>Any evidence of rodent holes if facility is acting as a dam or berm, or any evidence of water piping through dam or berm via rodent holes.</p>	<p>Rodents destroyed and dam or berm repaired.</p> <p>(Coordinate with local health department and Ecology Dam Safety Office if pone exceeds 10 acre feet)</p>

**Table 3.3  
Specific Maintenance Requirements for Detention Ponds**

Maintenance Component	Defect	Conditions When Maintenance Is Needed	Results Expected When Maintenance Is Performed
	Beaver Dams	Dam results in change or function of the facility.	<p>Facility is returned to design function.</p> <p>(Coordinate trapping of beavers and removal of dams with appropriate permitting agencies)</p>
	Insects	When insects such as wasps and hornets interfere with maintenance activities.	<p>Insects destroyed or removed from site.</p> <p>Apply insecticides in compliance with adopted IPM policies</p>
	Tree Growth and Hazard Trees	<p>Tree growth does not allow maintenance access or interferes with maintenance activity (i.e., slope mowing, silt removal, vactoring, or equipment movements). If trees are not interfering with access or maintenance, do not remove</p> <p>If dead, diseased, or dying trees are identified</p> <p>(Use a certified Arborist to determine health of tree or removal requirements)</p>	<p>Trees do not hinder maintenance activities. Harvested trees should be recycled into mulch or other beneficial uses (e.g., alders for firewood).</p> <p>Remove hazard trees</p>
<b>Side Slopes of Pond</b>	Erosion	<p>Eroded damage over 2 inches deep where cause of damage is still present or where there is potential for continued erosion.</p> <p>Any erosion observed on a compacted berm embankment.</p>	<p>Slopes should be stabilized using appropriate erosion control measure(s); e.g., rock reinforcement, planting of grass, compaction.</p> <p>If erosion is occurring on compacted berms a licensed civil engineer should be consulted to resolve source of erosion.</p>

Table 3.3 Specific Maintenance Requirements for Detention Ponds			
Maintenance Component	Defect	Conditions When Maintenance Is Needed	Results Expected When Maintenance Is Performed
Storage Area	Sediment	Accumulated sediment that exceeds 10% of the designed pond depth unless otherwise specified or affects inletting or outletting condition of the facility.	Sediment cleaned out to designed pond shape and depth; pond reseeded if necessary to control erosion.
	Liner (If Applicable)	Liner is visible and has more than three 1/4-inch holes in it.	Liner repaired or replaced. Liner is fully covered.
Pond Berms (Dikes)	Settlements	Any part of berm which has settled 4 inches lower than the design elevation.  If settlement is apparent measure berm to determine amount of settlement.  Settling can be an indication of more severe problems with the berm or outlet works. A licensed civil engineer should be consulted to determine the source of the settlement.	Dike is built back to the design elevation.
	Piping	Discernable water flow through pond berm. Ongoing erosion with potential for erosion to continue.  (Recommend a Goethechnical engineer be called in to inspect and evaluate condition and recommend repair of condition.	Piping eliminated. Erosion potential resolved.
Emergency Overflow/S pillway and Berms over 4 feet in height.	Tree Growth	Tree growth on emergency spillways create blockage problems and may cause failure of the berm due to uncontrolled overtopping.  Tree growth on berms over 4 feet in height may lead to piping through the berm which could lead to failure of the berm.	Trees should be removed. If root system is small (base less than 4 inches) the root system may be left in place. Otherwise the roots should be removed and the berm restored. A licensed civil engineer should be consulted for proper berm/spillway restoration.
	Piping	Discernable water flow through pond berm. Ongoing erosion with potential for erosion to continue.  (Recommend a Goethechnical engineer be called in to inspect and evaluate condition and recommend repair of condition.	Piping eliminated. Erosion potential resolved.

Table 3.3 Specific Maintenance Requirements for Detention Ponds			
Maintenance Component	Defect	Conditions When Maintenance Is Needed	Results Expected When Maintenance Is Performed
Emergency Overflow/Spillway	Emergency Overflow/Spillway	Only one layer of rock exists above native soil in area five square feet or larger, or any exposure of native soil at the top of out flow path of spillway.  (Rip-rap on inside slopes need not be replaced.)	Rocks and pad depth are restored to design standards.
	Erosion	See "Side slopes of Pond"	

Table 3.5 Maintenance of Control Structures and Catchbasins			
Maintenance Component	Defect	Condition When Maintenance is Needed	Results Expected When Maintenance is Performed
General	Trash and Debris (Includes Sediment)	Material exceeds 25% of sump depth or 1 foot below orifice plate.	Control structure orifice is not blocked. All trash and debris removed.
	Structural Damage	Structure is not securely attached to manhole wall.	Structure securely attached to wall and outlet pipe.
		Structure is not in upright position (allow up to 10% from plumb).	Structure in correct position.
		Connections to outlet pipe are not watertight and show signs of rust.	Connections to outlet pipe are water tight; structure repaired or replaced and works as designed.
	Any holes--other than designed holes--in the structure.	Structure has no holes other than designed holes.	
Cleanout Gate	Damaged or Missing	Cleanout gate is not watertight or is missing.	Gate is watertight and works as designed.
		Gate cannot be moved up and down by one maintenance person.	Gate moves up and down easily and is watertight.
		Chain/rod leading to gate is missing or damaged.	Chain is in place and works as designed.
		Gate is rusted over 50% of its surface area.	Gate is repaired or replaced to meet design standards.
Orifice Plate	Damaged or Missing	Control device is not working properly due to missing, out of place, or bent orifice plate.	Plate is in place and works as designed.
	Obstructions	Any trash, debris, sediment, or vegetation blocking the plate.	Plate is free of all obstructions and works as designed.
Overflow Pipe	Obstructions	Any trash or debris blocking (or having the potential of blocking) the overflow pipe.	Pipe is free of all obstructions and works as designed.

**Table 3.5  
Maintenance of Control Structures and Catchbasins**

Maintenance Component	Defect	Condition When Maintenance is Needed	Results Expected When Maintenance is Performed
Manhole	See Table 3.4	See Table 3.4	See Table 3.4
<b>CATCH BASINS</b>			
<b>General</b>	<b>Trash &amp; Debris</b>	Trash or debris which is located immediately in front of the catch basin opening or is blocking inletting capacity of the basin by more than 10%.	No Trash or debris located immediately in front of catch basin or on grate opening.
		Trash or debris (in the basin) that exceeds 60 percent of the sump depth as measured from the bottom of basin to invert of the lowest pipe into or out of the basin, but in no case less than a minimum of six inches clearance from the debris surface to the invert of the lowest pipe.	No trash or debris in the catch basin.
		Trash or debris in any inlet or outlet pipe blocking more than 1/3 of its height.	Inlet and outlet pipes free of trash or debris.
		Dead animals or vegetation that could generate odors that could cause complaints or dangerous gases (e.g., methane).	No dead animals or vegetation present within the catch basin.
	<b>Sediment</b>	Sediment (in the basin) that exceeds 60 percent of the sump depth as measured from the bottom of basin to invert of the lowest pipe into or out of the basin, but in no case less than a minimum of 6 inches clearance from the sediment surface to the invert of the lowest pipe.  Measured from the bottom of basin to invert of the lowest pipe into or out of the basin.	No sediment in the catch basin
	<b>Structure Damage to Frame and/or Top Slab</b>	Top slab has holes larger than 2 square inches or cracks wider than 1/4 inch  (Intent is to make sure no material is running into basin).	Top slab is free of holes and cracks.
		Frame not sitting flush on top slab, i.e., separation of more than 3/4 inch of the frame from the top slab. Frame not securely attached	Frame is sitting flush on the riser rings or top slab and firmly attached.
	<b>Fractures or Cracks in Basin Walls/ Bottom</b>	Maintenance person judges that structure is unsound	Basin replaced or repaired to design standards
		Grout fillet has separated or cracked wider than 1/2 inch and longer than 1 foot at the joint of any inlet/outlet pipe or any evidence of soil particles entering catch basin through cracks.	Pipe is regouted and secure at basin wall.
	<b>Settlement/ Misalignment</b>	If failure of basin has created a safety, function, or design problem.	Basin replaced or repaired to design standards.
	<b>Vegetation</b>	Vegetation growing across and blocking more than 10% of the basin opening	No vegetation blocking opening to basin.
Vegetation growing in inlet/outlet pipe joints that is more than six inches tall and less than six inches apart.		No vegetation or root growth present.	

**Table 3.5  
Maintenance of Control Structures and Catchbasins**

<b>Maintenance Component</b>	<b>Defect</b>	<b>Condition When Maintenance is Needed</b>	<b>Results Expected When Maintenance is Performed</b>
	Contamination and Pollution	See "Detention Ponds"	No pollution present.
<b>Catch Basin Cover</b>	Cover Not in Place	Cover is missing or only partially in place. Any open catch basin requires maintenance.	Catch basin cover is closed
	Locking Mechanism Not Working	Mechanism cannot be opened by one maintenance person with proper tools. Bolts into frame have less than 1/2 inch of thread.	Mechanism opens with proper tools.
	Cover Difficult to Remove	One maintenance person cannot remove lid after applying normal lifting pressure.  (Intent is keep cover from sealing off access to maintenance.)	Cover can be removed by one maintenance person.
<b>Ladder</b>	Ladder Rungs Unsafe	Ladder is unsafe due to missing rungs, not securely attached to basin wall, misalignment, rust, cracks, or sharp edges.	Ladder meets design standards and allows maintenance person safe access.
<b>Metal Grates (If Applicable)</b>	Grate opening Unsafe	Grate with opening wider than 7/8 inch.	Grate opening meets design standards.
	Trash and Debris	Trash and debris that is blocking more than 20% of grate surface inletting capacity.	Grate free of trash and debris.
	Damaged or Missing.	Grate missing or broken member(s) of the grate.	Grate is in place and meets design standards.



## No. 11 – Wetponds

Maintenance Component	Defect	Condition When Maintenance is Needed	Results Expected When Maintenance is Performed
General	Water level	First cell is empty, doesn't hold water.	Line the first cell to maintain at least 4 feet of water. Although the second cell may drain, the first cell must remain full to control turbulence of the incoming flow and reduce sediment resuspension.
	Trash and Debris	Accumulation that exceeds 1 CF per 1000-SF of pond area.	Trash and debris removed from pond.
	Inlet/Outlet Pipe	Inlet/Outlet pipe clogged with sediment and/or debris material.	No clogging or blockage in the inlet and outlet piping.
	Sediment Accumulation in Pond Bottom	Sediment accumulations in pond bottom that exceeds the depth of sediment zone plus 6-inches, usually in the first cell.	Sediment removed from pond bottom.
	Oil Sheen on Water	Prevalent and visible oil sheen.	Oil removed from water using oil-absorbent pads or vactor truck. Source of oil located and corrected. If chronic low levels of oil persist, plant wetland plants such as <i>Juncus effusus</i> (soft rush) which can uptake small concentrations of oil.
	Erosion	Erosion of the pond's side slopes and/or scouring of the pond bottom, that exceeds 6-inches, or where continued erosion is prevalent.	Slopes stabilized using proper erosion control measures and repair methods.
	Settlement of Pond Dike/Berm	Any part of these components that has settled 4-inches or lower than the design elevation, or inspector determines dike/berm is unsound.	Dike/berm is repaired to specifications.
	Internal Berm	Berm dividing cells should be level.	Berm surface is leveled so that water flows evenly over entire length of berm.
Overflow Spillway	Rock is missing and soil is exposed at top of spillway or outside slope.	Rocks replaced to specifications.	

**APPENDIX "B"      SITE DRAWING**

# SITE EXHIBIT

