



WHEN RECORDED RETURN TO:

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Document Title:	Declaration of Covenants, Conditions, Reservations & Restrictions of Plat of Sunset Park	
Declarant:	Kramer Construction, Inc.	HF #2090700 880
Legal Description:	Plat of Sunset Park	
Assessor's Tax Parcel ID#:	390233 382166 0000	

**DECLARATION OF COVENANTS, CONDITIONS,
RESERVATIONS AND RESTRICTIONS OF PLAT OF SUNSET PARK**

A. RECITALS

1. The undersigned Declarant is the Owner in fee simple of the following described real property located in the County of Whatcom, State of Washington:

See attached Exhibit "A"

(hereinafter referred to as the "Subdivision".)

2. Declarant desires to provide the means to enforce the rights, reservations, easements, liens and charges provided in this Declaration, to provide for necessary maintenance and enhancement of the Subdivision and to provide for the formation of a Community Association in the form of a nonprofit corporation which includes as its members those persons who purchase any Lot within the Subdivision.

3. The restrictions on design and development are not intended to prevent or impair innovative or creative design. The restrictions are intended to require uniform quality with flexible design done in a tasteful manner.

B. DECLARATION

The Declarant hereby certifies and declares that the following covenants, conditions, reservations and restrictions shall inure and be binding upon the respective Owners of each Lot or parcel within the Subdivision, and the Declarant further declares that all of the property within the Subdivision described herein is held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, reservations and restrictions for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision and every part thereof. All of the following covenants, conditions, reservations and restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Subdivision or any part thereof.

1. LAND CLASSIFICATION AND DEFINITIONS

The following words and classifications of land shall have the following meanings under this Declaration:

1.1 Lot: Any parcel of real property within the boundaries of the Subdivision identified by Arabic numerals and designated for the location and construction of residential dwelling structures.

1.2 Tract or Parcel: Any parcel of real property within the boundaries of the Subdivision not consisting of a Lot or real property dedicated to the City of Ferndale.

1.3 Person: Any individual, firm, corporation, partnership, association, unincorporated association or other legal entity.

1.4 Owner: Any person holding either fee title or a vendee's interest under a Real Estate Contract as shown by the records of the Auditor of Whatcom County, Washington, in a Lot or in a parcel.

1.5 Declarant: Kramer Construction, Inc., a Washington corporation, together with any successor in interest thereto.

1.6 Common Properties: Real property owned by the Declarant or conveyed by the Declarant to the Association, shown on the plat map for the Subdivision for the common use, benefit and enjoyment by the Owners and the Association. Common properties shall be transferred to the Association pursuant to paragraph 2.2 of this Declaration.

1.7 Improvements: Improvements shall mean and include, without limitation, any buildings, out-buildings, private roads, driveways, parking areas, fencing, retaining walls, swimming pools, screening, walls, ornamentation, signs, stairs, decks, hedges, wind breaks, plantings, planted trees, shrubs, poles, lighting, hot tubs and any other structure or landscaping.

1.8 Resident:

1.8.1 Each person lawfully residing on or in any Lot; and

1.8.2 Members of the immediate family of each such person actually living in the same household with such person.

1.9 Board: The Board of Directors or other governing body designated for the Association.

1.10 Association: The community association of all Owners, as more fully described in paragraph 6 hereof, which is being created concurrent with the execution hereof in the form of a Washington nonprofit corporation.

1.11 Stormwater Facilities: Stormwater Facilities are those facilities used for the conveyance, treatment and detention of storm waters constructed for the Sunset Park Plat. These improvements are identified on the face of the Plat Map for Sunset Park.

1.12 Wetland Areas: Those areas delineated as protected wetlands and identified on the face of Plat Map for Sunset Park.

2. RESERVATIONS

2.1 Reservation of Easements. Easements for drainage, sewers, water pipes and utilities, facilities and services (including, but not limited to, water supply, electricity, gas, telephone and television) are

hereby reserved over, under, upon, in and through all roadways and walkways, and over, under, upon, in and through those certain portions of Lots or parcels as shown on the final plat maps of the Subdivision in which are and/or shall be installed, laid, constructed, repaired, renewed, operated, maintained and inspected underground pipes, sewers, conduits, cables, wires and any and all necessary facilities and equipment for the purpose of serving the Subdivision, together with the right to enter upon said easement areas, Lots, parcels, roads and walkways for or pertaining to the aforesaid. This reservation of easements is for the benefit of the Declarant and its successors in interest, as well as for the benefit of the City of Ferndale, Puget Sound Energy, Cascade Natural Gas Company, Verizon, Comcast Cablevision, and any other purveyors of such services as herein before described, as well as any of their successors in interest.

2.2 Conveyance of Common Properties. The Common Properties, as identified on the face of the Plat of the Subdivision, are hereby conveyed by the Declarant to the Association. The Association, upon conveyance of Common Properties to it, shall be responsible for the maintenance and upkeep of the Common Properties.

2.3 Reservation of Drainage Easement and the Right to Drain. The Declarant hereby reserves the right to drain all roadways, walkways, easement ways and areas over and across any Lot or Parcel within the Subdivision where water might take a natural course after the grading of such Lot or Parcel. These easements shall be conveyed to the Association concurrent with the conveyance as set forth in paragraph 2.2 above, and the Association shall then be responsible for the maintenance and upkeep thereof.

2.4 Sales / Construction Office. The Declarant reserves the right to maintain a sales office on a Lot or parcel to be designated by the Declarant within the Subdivision for the primary purpose of selling and reselling Lots within the Subdivision. Declarant reserves the right to place and maintain "for sale" signs on any Lot within the Subdivision as may be prepared and erected by the Declarant. The Declarant shall have the right to maintain a construction office on a Lot within the Subdivision so long as the Declarant owns Lots within the Subdivision.

2.5 Shared Access Easements. A non-exclusive easement for ingress, egress, and utilities is hereby granted, reserved and conveyed over and across that portion of Lot 9 of the Subdivision, designated as "shared access and utility easement" on the face of the Plat Map for Sunset Park. The dominant estates for this ingress, egress and utilities easement are Lots 8 and 10. Driveway maintenance and repair shall be conducted pursuant to Section 7 of this Declaration.

A non-exclusive easement for ingress and egress is hereby granted, reserved and conveyed over and across that portion of Lots 12 and 13 of the Subdivision, designated as "shared access easement" on the face of the Plat Map for Sunset Park. The dominant estates for this ingress, egress and utilities easement are Lots 12 and 13. Driveway maintenance and repair shall be conducted pursuant to Section 7 of this Declaration.

2.6 Road Dedication. The Declarant reserves the right to dedicate the road right-of-way to the City of Ferndale by dedication on the face of the Plat Map for Sunset Park.

2.7 Wetland Mitigation Easement. The Declarant reserves the right to perform wetland mitigation work within the Wetland Areas. All wetland mitigation work shall be approved by the City of Ferndale and, where appropriate, the U.S. Army Corps of Engineers, and the Washington State Department of Ecology.

3. GENERAL USE RESTRICTIONS AND REQUIREMENTS

3.1 Permanent Residential Purposes. All Lots within the Subdivision shall be used exclusively for permanent residential purposes. All Lots except Lot 15 shall be restricted to use for a single-family residence. Lot 15 may be improved with a multi-family structure consistent with applicable zoning laws.

3.2 Recreational Vehicles. All boats, utility trailers, trucks of more than one-ton rating, campers, recreational vehicles, travel trailers, motor homes and similar items or vehicles maintained or kept upon any

Lot within the Subdivision shall at all times be enclosed within a garage or otherwise neatly stored behind the front wall line of the residence and reasonably screened from view from the street running in front of said Lot, nor shall any such items or vehicles be parked on any street within the Subdivision overnight; provided, that out-of-county resident guests of an Owner may, with such Owner's permission, park a recreational vehicle or travel trailer on an Owner's Lot for up to a maximum of eight weeks within any calendar year without being in violation of this subparagraph.

3.3 Explosives. No firearms or explosives shall be discharged within the boundaries of the Subdivision; provided, this shall not in any way limit the use of explosives as required for construction of the Subdivision.

3.4 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes.

3.5 Signs. No signs or billboards shall be placed on any Lot, except that one identification sign bearing the Owner's name and address may be placed upon the Owner's Lot. Irrespective of the foregoing, the Declarant may display post signs, billboards or other advertising materials on or about any unsold Lot or Lots until all Lots within the Subdivision have been sold by Declarant. In addition thereto, the Declarant, and any Owner or such Owner's agent, may subsequently advertise any Lot for sale, and, furthermore, an Owner may display signs of a political nature, promoting a candidate or a political proposition, during periods of political campaigns.

3.6 Garbage/Refuse. No Owner shall deposit or permit the accumulation of any trash, ashes, garbage or other refuse or debris on or about such Owner's Lot or any other property within the Subdivision, except in appropriate covered trash receptacles. Each Owner shall keep such Owner's Lot neat and orderly in appearance and shall not cause or permit any noxious or odorous conditions to exist, nor maintain any tangible objects which are unsightly in appearance to exist, on any Lot or parcel within the Subdivision.

3.7 Vehicles. All automobiles and all other permitted vehicles, if kept or parked on any Lot or otherwise within the Subdivision, shall be in good order and in working condition. Partially wrecked vehicles, discarded vehicles, unlicensed vehicles or vehicles which are in a state of disrepair shall not be kept on any Lot nor shall they be maintained within the Subdivision, unless enclosed in a garage or otherwise completely screened from view from outside the Lot.

3.8 Antennas. No television or radio antenna of any kind may extend more than ten feet above the roof line of the residence on a Lot.

3.9 Fencing.

3.9.1 No fencing shall be erected in the front yard street side of the building set back line of a Lot or within the flanking side yard of a Lot, except for decorative purposes such as a picket, split rail or decorative screening or background fence approved by the Committee. In no case may fencing be constructed or placed in a manner inconsistent with City of Ferndale requirements.

3.9.2 Fencing or landscaping shall be installed on a Lot to visually screen areas that serve as service yards in which garbage receptacles, fuel tanks, gas and electric meters, mechanical equipment, vehicles, materials, supplies and equipment are stored outside. The screening shall substantially conceal such service yards from view from the road and adjacent properties. Fencing to accomplish this purpose shall be approved by the Committee.

3.10 Wire / Chain Link Fences. All wire and/or chain link fences are prohibited, except in common areas, and except those fences that are entirely colored black or green and are substantially screened by landscaping.

3.11 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 and the Owners thereof.

3.12 Damaged Improvements. No improvement which has been partially or totally destroyed by fire, earthquake or any other cause shall be allowed to remain in a state of disrepair for a period in excess of four months from the date of such partial or total destruction. Corrective construction or reconstruction shall be required to commence within such four month period and shall be completed in accordance with the provisions of paragraph 4.1 hereof; provided, however, that four month period shall be extended for a reasonable period thereafter in the event that corrective construction or reconstruction has not commenced as a result of factors beyond the control of the subject Owner and in the event that the subject Owner has exercised and does thereafter continue to exercise due diligence in an effort to eliminate such factors causing such delay in commencement.

3.13 Child Care Facilities. No Owner or third party shall operate any business involving child care, day care or preschool on any Lot within the Subdivision.

4. CONSTRUCTION

4.1 Time For Completion. Construction of all improvements shall be prosecuted diligently from the date of commencement of work until the exterior is completed and painted or finished and all sanitation and health requirements have been fulfilled. Furthermore, the maximum time limit for the completion of construction of an improvement shall be twelve months from the date construction commences, which is defined as the date building materials are first delivered to the Lot for such purpose. Construction shall not be deemed to be completed until the improvement is finished, the Lot has been cleaned of construction debris and the Lot has been landscaped.

4.2 Height Restrictions. The height of structural improvements erected on Lots shall be restricted as follows or pursuant to the terms of any applicable ordinance of the City of Ferndale in effect at the time of application for a building permit therefor, whichever is more stringent: No structural improvement shall exceed twenty-eight (28) 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 Minimum Building Size. The minimum building size for a rambler shall be 1,000 square foot, excluding garages. The minimum building size for two-story buildings shall be 1,100 square feet, excluding garages.

4.4 Color. Colors for Improvements on Lots shall be limited to whites, grays and earth tones approved by the Design Review Committee. The Design Review Committee may also grant variances from this restriction for trim or accent colors.

4.5 Driveways. Full width, triple car garage driveways on Lots shall be avoided through use of a transition from double car garage width driveways within twenty feet (20') of the garage opening.

4.6 Foundation. Exposed concrete foundation walls on any dwelling on a Lot shall not exceed two (2) feet in height, except as approved by the Committee.

4.7 Landscaping.

4.7.1 The front yard area from the street to the front of building(s) on each Lot shall be covered with lawns, landscaping and solid surfaces within six (6) months of the date of commencement of construction of the dwelling.

4.7.2 Where construction is not commenced within three (3) months after an Owner acquires a Lot, the Owner shall cut weeds on the Lot and shall keep the Lot free of garbage or other debris and shall otherwise maintain the Lot in reasonable condition so not as to detract from the neighboring Lots.

4.7.3 Flanking side yards on a Lot shall be covered with lawns, landscaping or solid surfaces within six (6) months of the date of commencement of construction of the dwelling. Flanking side yards are that portion of a corner Lot that is designated as the side yard between the building set back line and the street. It is the intent of this provision to keep these areas which are typically outside of the fence line consistent with the other landscaping within the Subdivision.

4.8 **Maintenance and Repair.** Landscaping, sidewalk planting strips, curbs and gutters in front of each Lot shall at all times be kept and maintained in good order, repair, condition and free of debris. If an Owner fails to comply with this requirement, then the Association may do such maintenance, repair or cleaning and utilize the authority set forth in paragraph 6.4 to assess the Lot and Owner for the cost of such work. The Owner shall reimburse the Association as is appropriate within fourteen (14) days after receipt of a billing for the above described work.

5. DESIGN REVIEW COMMITTEE

5.1 **General.** Construction of Improvements, except as specifically required in this Declaration, on any Lot within the Subdivision shall be subject to the prior approval of a Design Review Committee (herein "Committee"), which shall be composed of two (2) representatives of, and chosen by, the Declarant. No fees for participation shall be charged by the members of the Committee. No improvements shall be erected, placed or altered on any Lot until the construction plans, specifications and a site plan showing the location of all proposed improvements on the Lot have been approved by the Committee. The approval or disapproval of the Committee as to such construction plans, specifications and site plan shall be based upon the quality of materials to be utilized in construction, the harmony of the external design and color scheme of the proposed improvements with other existing improvements within the Subdivision and the location and bulk of the improvements with respect to topography, finished grade elevation.

5.2 **Approval / Disapproval.** The Committee, or either member, shall approve or disapprove the construction plans, specifications and site plan, including specified color finish, within fifteen (15) days following receipt of a complete duplicate set thereof from the submitting Owner or prospective Owner. Any complete submission of construction plans, specifications and site plan on which no action is taken by the Committee for fifteen (15) days following the date of receipt thereof shall be deemed approved as submitted, unless within such fifteen (15) day period the Committee has sought, in writing, clarifying information concerning the same. Two sets of construction plans, specifications (including exterior color finish detail), site plan and a fifty dollar (\$50.00) processing fee must be submitted to the Committee. One such complete set shall be returned to the submitting Owner or prospective Owner with the approval or disapproval endorsed upon such complete set by the Committee. The other complete set shall be retained by the Committee for its permanent files.

The Committee shall have the right to disapprove any construction plans, specifications and/or site plan in the event the same are not in accordance with the provisions of this Declaration, if the design or exterior color scheme of the proposed Improvements is not in harmony with the general surroundings of the Subdivision or with the adjacent Improvements, if the construction plans, specifications and site plan are incomplete, or if the Committee determines that the construction plans, specifications and site plan, or any portion of them, are contrary to the interest, welfare and/or rights of the Owners of other Lots within the Subdivision. Any such decision reached by the Committee or either member shall be final and non-appealable to any forum, body or court.

The Declarant or LLC members of the Declarant shall not be required to comply with the requirements of this section 5. All Improvements made by the Declarant or entities controlled by the Declarant shall be deemed to comply with all requirements set forth in section 4 of this Declaration.

5.3 Conditional Approval. Any approval given by the Committee may be conditioned upon compliance by the applicant with any reasonable condition which the Committee deems appropriate, including, without limitation, the posting of bonds or other acceptable security in order to ensure performance by the applicant in accordance with the construction plans, specifications and site plan being approved.

5.4 No Liability. Neither the Committee, nor any member thereof nor any successor thereto, shall be liable to any person for any action taken by the Committee or for any failure to act by it under or pursuant to the provisions of this Declaration, so long as the Committee, the members thereof and any successors thereto act in good faith and without malice.

5.5 Expiration. Neither the Committee nor any members appointed to it shall have any responsibility with regard to this Declaration after seven (7) years from the date hereof or upon the sale by the Declarant of the last Lot owned by it, or by its successor in interest, in the Subdivision, whichever event occurs later. Notwithstanding the foregoing, in the event that the Association determines by an affirmative vote of seventy-five (75%) percent of the Owners thereof then or at any time thereafter that the Committee or any successor thereto shall remain in existence following the expiration of the term of the Committee as herein before set forth, then the Association may constitute such Committee or successor organization as it deems necessary in order to continue the function of the Committee as set forth in this section or as then modified.

6. COMMUNITY ASSOCIATION

The Declarant shall form a Community Association, designated herein as the Association, to include as its members all Owners of any Lot within the Subdivision. This organization shall be a nonprofit corporation pursuant to Title 24 of the Revised Code of Washington and shall be known as "Sunset Park Community Association".

6.1 Purpose. The purpose of the Association shall include, without limitation, the furtherance and promotion of the common welfare of the Owners of any Lot or parcel within the Subdivision; the regulation, use, care, construction, operation, repair, maintenance and preservation of the Common Properties within these subdivisions for which there is a private maintenance obligation to be shared in common by the Association members; the regulation, maintenance and repair of facilities thereon and such other facilities, equipment, activities, objects and purposes pertaining to the welfare, enjoyment, social well-being, protection and benefit of the members and of their Lots within the Subdivision, including, but not limited to, the operation, maintenance and use of property held or controlled by the Association; enforcement of this Declaration including Lot maintenance, construction requirements and building restrictions imposed on the Lots; payment of taxes, if imposed, on Common Properties and improvements; and the furnishing of protection and preservation of the interests of the Owners for the common good.

6.2 Creation and Transfer of Control. The Association shall be organized at the instance of the Declarant, and each Owner shall be a member of the Association. The Declarant shall have the exclusive right to designate and appoint a governing Board of the Association until such time as the Declarant has sold all of its Lots within the Subdivision or seven (7) years from the date of this Declaration, whichever is sooner. When all Lots owned by the Declarant have been sold by the Declarant, the control of the Association shall be turned over to the members, and the members shall elect from their number the governing Board of the Association, as determined by the Articles of Incorporation and By-laws of the Association. Irrespective of the foregoing, the Declarant, at its sole and exclusive option, may elect at any time prior to the sale of all Lots within the Subdivision to transfer control of the Association to the members thereof.

6.3 Conveyances. The Declarant shall transfer and convey by deed or by such other applicable instrument all Common Properties and easements as hereinbefore identified to the Association, subject to the reservations impressed upon these Common Properties and easements by this Declaration. At such time as the Declarant conveys the Common Properties and easements to the Association, and at all times subsequent thereto, the Association shall be responsible for the maintenance and upkeep of the Common Properties and

easements at its sole and exclusive expense. Such obligation shall include, without limitation, responsibility for maintenance of all Common Properties, common improvements and easements as identified herein and on the face of the final plat of the Subdivision. Specifically, and also without limiting the foregoing, the Association shall be responsible for the operation and maintenance of, and for potential liability arising from, all Common Properties.

6.4 Assessments and Liens.

6.4.1 Authority. The Association shall be empowered to establish and to collect dues and assessments upon Lots in the Subdivision for the common benefit of such Lots.

6.4.2 Purposes. The purposes for which dues and assessments may be established and collected include, without limitation, making provision for the payment of charges associated with utilities, roadways, drainage, property protection, landscaping, insurance, maintenance, improvements, enforcement of this Declaration, payment of taxes upon Common Properties, the holding of Ownership or a leasehold interest therein or for any other common purposes, all as determined pursuant to the Articles of Incorporation and By-laws of the Association.

6.4.3 Personal Obligation and Lien Foreclosure. Dues and assessments shall constitute a personal obligation of any Owner of record of a Lot on the due date thereof and shall also constitute a lien on the Lot assessed. Such lien may be enforced by the Association in the same form and manner of procedure as foreclosure of real property mortgages under the laws of the State of Washington.

6.4.4 Amounts Included. Each Owner and each party hereinafter owning or claiming an equity interest in a Lot agrees that in the event of such foreclosure action involving such Lot, the Owner or Owners thereof or other party asserting an equity interest therein will pay the Association's expenses of title examination and insurance, the cost of attorney's fees incurred by the Association and court costs, as well as all other costs reasonably and necessarily incurred in such foreclosure action. In any such action, delinquent assessments shall bear interest at the rate of 12% per annum from the date the same became due until the date of the entry of the judgment of foreclosure thereon.

6.4.5 Other Liens and Foreclosure Actions. The method and manner provided for foreclosure of liens set forth in this paragraph shall pertain to all liens referred to in this Declaration.

6.5 Establishment of Assessment of Charges. When the Board deems it appropriate, it shall adopt a regular or special budget for the Association. The Board shall set a date for a meeting of the Owners to consider ratification of the budget. The meeting shall be not less than fourteen (14) days nor more than sixty (60) days after the budget has been mailed to all of the Owners. Unless at the meeting of the Owners a majority of the Owners vote to reject to the budget, the budget shall be ratified, whether or not a quorum is present. If the proposed budget is rejected, or the required notice is not given, the budget last ratified by the Owners shall continue until the Owners ratify a subsequent budget proposed by the Board.

6.6 Annual statement. As soon as shall be practical in each calendar year, the Association shall send a written statement to each Owner setting forth the dollar amount of the assessment for such Lot for such calendar year. The Association may, in its sole discretion, provide for payment of such assessments on a periodic basis during such calendar year, with or without a service charge.

6.7 Penalty on Delinquent Assessments. If an Owner shall fail to pay any installment of an annual assessment within thirty (30) days from the date the same is due, then the entire annual assessment for such Lot shall be delinquent and shall become immediately due and payable, shall bear interest at the rate of 12% per annum thereafter until paid and shall also bear a penalty in such amount as shall be determined by the Board of the Association.

6.8 Delinquency For More Than Ninety Days. If the Owner of any Lot shall be delinquent in the payment of the annual assessment, or any installment thereof, for more than ninety (90) days following the date the same is due, then the Association shall have the right to commence legal action seeking a personal judgment against such Owner and, in addition thereto, shall have the right to foreclose its lien upon such Lot. The total amount due from such Owner shall be such sums as provided in paragraphs 6.5 and 6.4.4, plus any penalty imposed under paragraph 6.7 hereof.

6.9 Rules and Procedures for Billing and Collecting Assessments. The Board of the Association shall have the power and authority to adopt rules and procedures respecting the billing and collecting of annual assessments, which shall be binding upon all Owners.

6.10 Application of Assessment. The Association shall apply all funds received by it pursuant to this Declaration in the following order:

6.10.1 Administrative costs and expenses incurred by the Association in the exercise of its powers under this Declaration;

6.10.2 The promotion of the recreation, health, safety, enjoyment and welfare of the users of the Common Properties, and the enhancement of the values of the Common Properties by means of construction, repair, maintenance, operation and administration of the Common Properties, including, but not limited to, the payment of taxes and insurance premiums on the Common Properties and the payment of utility charges therefor, including, if not otherwise paid by the County of Whatcom, the charge for electricity supplied for street lighting within the Subdivision.

6.10.3 The service, repair, maintenance and/or replacement of any and all common Improvements, including, but not limited to, fences, roads, paths, drainage facilities and lighting belonging to the Association.

6.11 Authority to Maintain surplus. The Association shall not be obligated to spend in any particular time period all of the sums collected or received by it during such time period or any other time period. The Association may carry forward, as surplus, any balances remaining. The Association shall not be obligated to apply any such surplus to the reduction of the amount of the annual assessment in any future year.

6.12 Maintenance of Wetlands and Stormwater Facilities. The Wetland Areas and Stormwater Facilities shall be maintained by the Association.

The Association is responsible for conducting periodic inspections of the Wetland Areas in accordance with the recommendations of the final wetland mitigation plan prepared by Common Ground Environmental Consulting. The inspections shall be conducted by a qualified wetland professional who shall create a report for the Association and the City of Ferndale.

The Association is also responsible for conducting annual inspections of the Stormwater Facilities and providing certification to the City of Ferndale by a registered engineer reporting the adequacy of the stormwater treatment and conveyance systems.

Should any deficiencies be identified in the inspections required above, the wetland professional or engineer shall identify measures required to rectify the deficiency in the report to the Association and the City of Ferndale. Any required repair, maintenance, or restoration shall be the responsibility of the Association.

7. SHARED ACCESS EASEMENT MAINTENANCE

7.1 Application of this Section. The provisions of this section shall apply only to the Shared Access Easements.

7.2 Responsibilities of Owners. The Shared Access Easement and all improvements thereto shall at all times be kept in neat, clean and orderly condition. At no time shall any Owner park vehicles or

otherwise obstruct access over and across the easement. In the event any Owner causes damage to the Shared Access Easement improvements, then such owner shall be solely responsible for the cost and expense of repair.

7.3 Maintenance. Any joint maintenance and repair of the Shared Access Easement improvements shall be done in a prompt and workmanlike manner, and each Owner shall pay a pro rata share (one third for lots 8, 9 and 10; one half for lots 12 and 13) of the cost within thirty (30) days after the repair or maintenance has been completed and billed to each Owner.

7.4 Lien Rights. If any Owner pays for the cost of maintenance or repair and is not reimbursed by the other Owners as provided herein, then the amount due shall become a lien upon the Lot of the Owner failing to make the required payment. Such lien shall be evidenced by an instrument recorded in the Auditor's Office of Whatcom County, Washington, and may be foreclosed like a mortgage pursuant to the laws of the State of Washington. The amount due shall bear interest at the rate of twelve percent (12%) per annum from the date it is due.

7.5 Dispute Resolution. In the event the Owners cannot reach an agreement on any of the matters contained in this Shared Access Easement Maintenance provision, then the matter shall be submitted to arbitration. The arbitration shall be conducted by an arbitrator appointed jointly by the parties. If the Owners cannot agree upon an arbitrator, then the arbitrator shall be appointed by any judge of the Whatcom County Superior Court. The arbitration shall be pursuant to RCW 7.04A. In the event of arbitration or judicial proceeding, the prevailing party shall be entitled to recover their costs and attorney's fees. The arbitrator shall have the power to allocate the arbitration costs in a manner the arbitrator deems fair and equitable.

8. POTENTIAL LAND USE INCOMPATIBILITY

This plat is located adjacent to property that is zoned for commercial and/or industrial use. Such uses exist or are likely to exist in the future based on the adjacent zoning. Noise, odor and activity associated with close proximity to such uses are to be expected.

9. ENFORCEMENT

The Association, the Declarant and any Owner shall have the right to enforce, by any proceedings at law or in equity, all covenants, conditions, restrictions, reservations, liens and charges now or hereafter imposed by this Declaration. The failure of the Association, of the Declarant or of any Owner to enforce any rights hereunder shall not be deemed to constitute a waiver of the right to do so thereafter. The prevailing party in any litigation involving the enforcement of any provision of this Declaration shall be entitled to judgment for the reasonable attorney's fees and costs incurred in such litigation by such prevailing party.

10. GRANTEE'S ACCEPTANCE

The grantee of any Lot subject to this Declaration shall, by the acceptance of a deed conveying title thereto or by the execution of any contract for the purchase thereof, whether from Declarant or any subsequent Owner of such Lot, accept such deed or contract upon, and subject to, each and every provision of this Declaration and the provisions contained herein, including the jurisdiction, rights and powers of Declarant, and by such acceptance shall, for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with Declarant and to and with the grantees and subsequent Owners of each of the Lots within the Subdivision, to keep, observe, comply with and perform all obligations set forth herein.

Each such grantee also agrees, by such acceptance, to assume, as against Declarant, its successors or assigns, all of the risks and hazards of ownership and occupancy attendant to such Lot, including, but not limited to, its proximity to any Common Properties, public roads, power lines, and wetlands.

11. AMENDMENT TO DECLARATION

This Declaration may be amended or terminated by an instrument signed by Owners who own at least seventy-five percent (75%) of lots within the Subdivision. Such amendment shall take effect upon recording with the Whatcom County Auditor.

Amendments to or termination of this Declaration without approval from the City of Ferndale shall in no way affect:

- (a) the ongoing obligation of the Owners, in common to care for and maintain all improvements located in the Common Properties as identified on the face of the Plat of the Subdivision, and all landscaping and all above ground landscaping related improvements located within the public right of way;
- (b) any of the easements described in section 2 herein; and
- (c) the Association's duty to maintain and preserve landscaping, buffering, Stormwater Facilities and wetlands shall not be subject to amendment or termination without the prior written consent of the City of Ferndale.

12. DECLARANT ASSIGNMENT

The Declarant reserves the right to assign the status of Declarant under this Declaration.

13. SEVERABILITY

In the event that any provision hereof is deemed by proper judicial decree to be invalid, then the remaining portion of this Declaration shall in no way be affected.

14. PARAGRAPH HEADINGS

The paragraph headings in this Declaration are for convenience only and shall not be considered in construing this Declaration.

15. NO WAIVER

The failure of any party entitled to enforce any provision hereof to take steps to enforce such provision shall not, in any fashion, operate or be deemed to be a waiver of any such provision or of any other provision hereof.

DATED this 8 day of July 2009.

KRAMER CONSTRUCTION, INC.

By William E Kramer
WILLIAM KRAMER, President

STATE OF WASHINGTON)
)ss.
COUNTY OF WHATCOM)

On this 8 day of July 2009, before me personally appeared WILLIAM KRAMER, to me known to be president of the corporation that executed the within and foregoing instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC
STATE OF WASHINGTON
JEFFERY J. SOLOMON
My Appointment Expires
JUNE 2, 2011

Jeffery J. Solomon
Notary Public in and for the State of Washington,
residing at Bellingham.
My Commission Expires: 6-2-11

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EXHIBIT A

COMMENCING AT A MONUMENT MARKING THE WEST 1/16TH CORNER ON THE NORTH-SOUTH CENTERLINE OF SECTION 33, TOWNSHIP 39 NORTH, RANGE 2 EAST OF THE W.M., WHATCOM COUNTY; THENCE SOUTH 88°25'44" EAST ALONG THE MONUMENTED CENTERLINE OF SUNSET AVE. A DISTANCE OF 1321.97 FEET; THENCE NORTH 01°18'18" EAST A DISTANCE OF 30.00 FEET TO THE NORTHERLY MARGIN OF SUNSET AVENUE AND THE POINT OF BEGINNING; THENCE CONTINUING NORTH 01°18'18" EAST A DISTANCE OF 635.47 FEET; THENCE NORTH 88°15'15" WEST A DISTANCE OF 330.40 FEET; THENCE SOUTH 01°18'52" WEST A DISTANCE OF 302.06 FEET; THENCE SOUTH 88°24'12" EAST A DISTANCE OF 6.24 FEET; THENCE SOUTH 00°41'58" WEST A DISTANCE OF 334.45 FEET TO THE NORTHERLY MARGIN OF SUNSET AVENUE; THENCE SOUTH 88°25'44" EAST ALONG SAID NORTHERLY MARGIN A DISTANCE OF 320.67 FEET TO THE POINT OF BEGINNING.

Whatcom County
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