



**WHEN RECORDED RETURN TO:**

**William B. Foster  
Hutchison & Foster  
P.O. Box 69  
Lynnwood, Washington 98046-0069**

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**Document Title: Declaration of Covenants, Conditions and Restrictions of  
Whiskey Creek**

**Grantor(s): Brown Family Estate, LLC**

**Grantee(s): The Public**

**Legal Description:**

- 1. Abbreviated Legal Description: A portion of the North half of the South half of the Northwest quarter of the Southeast quarter of Section 17, Township 39 North, Range 2 East of W.M., Whatcom County, State of Washington**
  
- 2. The complete legal description of the property is on page twenty-five (25) of this document.**

**Assessor's Property Tax Parcel Account No(s):** 390217 358118 0000

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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF:**

**THE PLAT OF WHISKEY CREEK**

**Whatcom County, Washington**

**Recorded:** September 1<sup>st</sup>, 2007

**Auditor's File No:** 2070900623

Declarant, as the owner in fee of real property legally described in Exhibit A attached to this Declaration (the "Real Property"), hereby covenants, agrees and declares that all of the Properties and Housing Units constructed on the Properties are and will be held, sold and conveyed subject to this Declaration, which is made for the purpose of enhancing and protecting the value of all of the Properties for the benefit of the Properties and their owners. The covenants, restrictions, reservations and conditions contained in this Declaration shall run with the land as easements and equitable servitudes, and shall be binding upon the Properties and each portion thereof and all persons owning, purchasing, leasing, subleasing or occupying any Lot on the Properties, and upon their respective heirs, successors and assigns.

This Declaration and its exhibits, consisting of twenty-eight (28) pages including this title page, is hereby executed by the Declarant on the date set forth adjacent to Declarant's signature.

Dated the 9<sup>th</sup> of July, 2007.

**DECLARANT:**

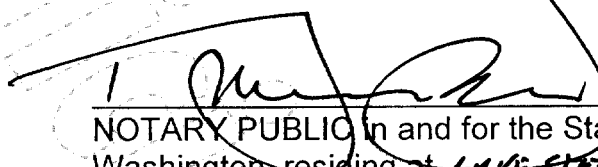
**BROWN FAMILY ESTATE, LLC**  
a Washington limited liability company,

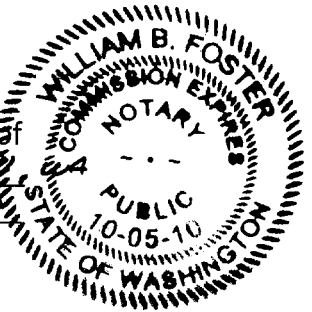
  
\_\_\_\_\_  
George Brown, Member

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SNOHOMISH )

On this 9<sup>th</sup> day of July, 2007, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **GEORGE H. BROWN, JR.**, to me known to be the Managing Member of **BROWN FAMILY ESTATE, LLC**, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument on behalf of said limited liability company.

WITNESS my hand and official seal hereto affixed the day and year first above written.

  
NOTARY PUBLIC in and for the State of  
Washington, residing at ~~LAKE STEVEN~~  
My commission expires: 10-5-2010



RECORDED  
INDEXED  
DOCUMENT

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Unofficial Document

# **DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS**

## **ARTICLE 1 DEFINITIONS**

For purposes of the Declaration, Articles of Incorporation and Bylaws of the Association, certain words and phrases have particular meanings, which are as follows:

1.1 "ACC" shall mean the Architectural Control Committee, as described in Article Nine, Section Four.

1.2 "Adjacent Real Property" shall mean such property owned or later acquired by the Developer which, at the time of the recording of this Declaration, has not been included in the real property subject to the Declaration, but which is either in close proximity to or physically touching the real property subject to this Declaration.

1.3 "Articles" shall mean the Association's Articles of Incorporation and any amendments.

1.4 "Association" shall mean the Homeowner's Association formed as a nonprofit corporation for the purpose of administering the Declaration.

1.5 "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

1.6 "Bylaws" shall mean the Association's Bylaws and any amendments.

1.7 "Common Areas" shall mean the property, both real and personal, in which the Association has granted an ownership interest, easement, lease or other right of control, by written instrument or by delineation on the plat.

1.8 "Declaration" shall mean this Declaration of Protective Covenants, Conditions and Restrictions.

1.9 "Developer" shall mean the Declarant who executed this Declaration or any persons or entities to which it assigns its rights as Developer, or succeeds to its interest.

1.10 "Development Period" shall mean the period of time from the date of recording of this Declaration until 180 days after the date upon which 100% of the lots have been sold by the Developer or any shorter period, as determined by the Developer. A partial delegation of authority by the Developer of any of the management duties described in this Declaration shall not terminate development period.



1.11. "Housing Unit" shall mean any inhabitable building occupying a Lot.

1.12. "Institutional First Mortgagee" or "Mortgagee" shall mean a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company or state or federal agency which holds a first mortgage or deed of trust against a Lot or Housing Unit thereon.

1.13. "Lot" shall initially refer to one of the Lots located in the Real Property described herein. If at any time additional Adjacent Real Property becomes subjected to the Declaration, "Lot" shall include those lots shown on and included in the plat of Adjacent Real Property.

1.14. "Member" shall mean every person or entity that holds a membership in the Association.

1.15. "Mortgage" shall mean a mortgage or deed of trust encumbering a Lot or other portion of the Properties.

1.16. "Owner" shall mean the recorded owner of the Lot, whether one or more persons or entities, but excluding those having such interest merely as security. A real estate contract purchaser shall be deemed the Owner.

1.17. "Person" shall mean a natural person, a corporation, a partnership, trustee or other legal entity.

1.18. "Properties" shall initially mean the Real Property. If additional Adjacent Real Property is subjected to the Declaration, "Properties" shall mean the real property described in this Declaration and the plat or plats of the Adjacent Real Property.

1.19. "Sale" or "Sold" shall mean the date upon which ownership of a Lot is transferred from an Owner to another person or entity by recordation of an instrument of transfer such as a deed or real estate contract.

## **ARTICLE 2 PHASED DEVELOPMENT**

**Section 2.1: Adjacent Real Property.** Initially only the Real Property described herein shall be subjected to the Declaration. The Developer hereby reserves for itself the right to subject additional Adjacent Real Property to the terms and provisions of this Declaration, and grant to the Owners of Lots located on Adjacent Real Property, after it is subjected to the Declaration, all of the rights and benefits to which Members of the Association are entitled. The Owners of Lots located on the Real Property hereby covenant and agree to burden the Real Property and Adjacent Real Property with all of the duties, responsibilities, costs and expenses related to the management, administration, maintenance and improvement of the Common Areas and such additional Common Areas

which are included in the Adjacent Real Property. The Developer hereby reserves for itself the right to develop additional Adjacent Real Property without subjecting it to the terms and provisions of the Declaration.

**Section 2.2: Rights in Adjacent Real Property - Common Areas.** Until Adjacent Real Property shall be subjected to the Declaration, the property shall not be subject to the terms and provisions of this Declaration. This Declaration shall not give the Association or any Lot Owners any rights in Adjacent Real Property until it is subjected to the Declaration. At such time as the Adjacent Real Property shall be subjected to the terms and provisions of this Declaration, the Adjacent Real Property shall become part of the Properties, and Lot owners in the Adjacent Real Property shall automatically become members of the Association and shall be entitled to all of the rights and benefits and subject to all of the obligations of the Members of the Association. All Common Areas in the Adjacent Real Property shall be held in ownership in the same manner as all Common Areas subject to this Declaration, and shall be managed, administered, maintained and improved in the same manner as all Common Areas of the Association, and all members shall be assessed for the costs of such Common Areas in the Adjacent Real Property in the same manner as all other Common Areas of the Real Property.

**Section 2.3: Method of Adding Adjacent Real Property.** Any such additional Adjacent Real Property shall be added by the filing for record of an amendment to this Declaration. An amendment adding Adjacent Real Property may, in the Developer's direction, alter or limit the applicability of a portion of the Declaration to the Adjacent Real Property.

### **ARTICLE 3 MANAGEMENT OF ASSOCIATION AND ENFORCEMENT OF DECLARATION**

**Section 3.1: Development Period.** During the development period, the Association, the ACC, and all Common Areas shall, for all purposes, be under the management and administration of the Developer. During the development period, the Developer shall appoint three directors, and may appoint any persons the Developer chooses as directors. At the Developer's sole discretion, the Developer may appoint members of the Association to such committees or positions in the Association as the Developer deems appropriate, to serve at the Developer's discretion and may assign such responsibilities, privileges and duties to the members as the Developer determines, for such time as the Developer determines. Members appointed by the Developer during the development period may be dismissed at the Developer's discretion.

**Section 3.2: Purpose of Development Period.** The Developer's control of the Association during the development period is established in order to ensure that the Properties and the Association will be adequately administered in the initial phases of development, to ensure an orderly transition of Association operations, and to facilitate the

Developer's completion of construction of Housing Units.

**Section 3.3: Termination of Management by Developer.**

3.3.1 Construction of Housing Units by Developer. Where Developer retains the property and constructs housing units thereon, termination shall occur as follows: Where Developer has transferred a minimum of 100% of its original interest in the property, or any shorter period, as determined by the Developer, it shall execute a relinquishment of its management authority and a resignation of all Directors and/or Officers appointed by Developer. Developer shall immediately thereafter schedule an organizational meeting to be held within the next 60 days, and shall provide notice of same to each owner of record.

3.3.2 Sale of Property to Builder(s). Where Developer sells the Property to one or more other Builders, and housing units will not be constructed by Developer, termination shall occur as follows: Within 30 days after sales of Lots within the Property equals 100% of the total, or sooner as determined by the Developer, Developer shall assign its management authority to the Builder(s) in accordance with their ownership interests, and shall execute a resignation of all Directors and/or Officers appointed by Developer.

3.3.3 Notice to Owners. Not less than ten (10) nor more than thirty (30) days prior to the termination of the Development Period, The Declarant will give written notice of the Termination of the Development Period to the Owner of each Lot. Said notice shall specify the date when the Development Period will terminate and shall further notify the Owners of the date, place and time when a meeting of the Association will be held. The notice shall specify that the purpose of the Association meeting is to elect new officers and directors of the Association and to approve or establish Articles of Incorporation and By Laws. Notwithstanding any provision of the Articles or Bylaws of the Association to the contrary, for the purpose of this meeting, the presence, either in person or by proxy, of the Owners of fourteen (14) Lots shall constitute a quorum. The Board of Directors and officers of the Association may be elected by a majority vote of said quorum. If a quorum shall not be present, the Development period shall nevertheless terminate on the date specified in said notice, and it shall thereafter be the responsibility of the Owners to provide for the operation of the Association".

**Section 3.4: Authority of Association After Development Period.** At the expiration of Developer's management authority the Association shall have the authority and obligation to manage and administer the Common Areas and to enforce this Declaration. Such authority shall include all authority provided for in the Association's Articles, Bylaws, rules and regulations and this Declaration. The Association shall also have the authority and obligation to manage and administer the activities of the ACC in its responsibilities li tics as described in Article 9, Section 9.5.

**Section 3.5: Delegation of Authority.** The Board of Directors or the Developer

may delegate any of its managerial duties, powers, or functions to any person, firm or corporation. The Board and the Developer shall not be liable for any breach of duty, negligence, omission, intentional act or improper exercise by a person who is delegated any duty, power or function by the Board of Directors or the Developer.

**Section 3.6: Maintenance of Common Areas/Developer's Expenses.**

Following the development period the Association shall maintain the common areas, and the improvements thereon, in the manner required by any applicable codes, ordinances, laws or regulations. In the event the Association fails to maintain the common areas as required by this Section, the Developer may 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 all lots subject to this Declaration. In the event the Developer is required as a condition of project approval to obtain any bonds for the maintenance of any common area, and a claim is made upon the bonds for maintenance that is the obligation of the Association pursuant to this section, the Association shall indemnify and hold the Developer harmless from any and all such claims, which indemnity shall include the Developer's attorney's fees and costs.

**ARTICLE 4  
OWNERS' ASSOCIATION**

**Section 4.1: Establishment.** There is hereby created an association to be called "Whiskey Creek Owners Association". (Referred to hereinafter as the "Association").

**Section 4.2: Form of Association.** The Association shall be a nonprofit corporation formed and operated pursuant to Title 24, Revised Code of Washington. In the event of any conflict between this Declaration and the Articles of Incorporation for such nonprofit corporation, the provisions of this Declaration shall prevail.

**Section 4.3: Membership.** Every person or entity who is an Owner of any Lot agrees to be a Member of the Association by acceptance of a deed for such Lot. Membership may not be separated from ownership of any Lot. All Members shall have rights and duties as specified in this Declaration, and in the Articles and Bylaws of the Association.

**Section 4.4: Voting Rights.** Members shall be entitled to one (1) vote for each Lot owned. No more than one vote may be cast with respect to any Lot. The voting rights of any member may be suspended as provided in the Declaration, or the Articles or Bylaws of the Association. In addition to all customary methods, and methods otherwise described in this Declaration or in the Association Bylaws or Articles of Incorporation, members' votes may be solicited and tabulated by mail or facsimile.

**ARTICLE 5  
PROPERTY RIGHTS IN COMMON AREAS**

**Section 5.1: Common Areas Conveyed to Association.** Common Area lots and tracts are hereby granted and conveyed to the homeowners association, and each Lot shall have an equal and undivided interest in the Association upon the recording of the Plat; provided, that (a) such undivided interest in such Common Area shall be appurtenant and inseparable from the ownership of a Lot; (b) such undivided interest shall not be subject to any right of partition; and (c) the provisions of the Declaration and the Plat shall control over any conflicting principles of common law applicable to tenancy in common interests.

**Section 5.2: Common Area Maintenance.** The Association shall have the rights and obligation to maintain improvements, vegetation, signage and utilities in and on the Common Areas, including, but not limited to, Open Space Tracts A and B. The Association shall have the exclusive right to use and manage the Common Areas in a manner consistent with this Declaration, the Articles and the Bylaws of the Association.

**Section 5.3: Dedicated Common Areas.** The Common Areas shall exclude those portions of common areas (and improvements thereto) which have been or may hereafter be, dedicated to and owned by a governmental entity.

**ARTICLE 6  
MAINTENANCE AND COMMON EXPENSES**

**Section 6.1: Standard of Maintenance.** The Association shall maintain the Common Areas in a manner consistent with good building and nursery practices, and in compliance with all applicable codes and regulations.

**Section 6.2: Standard of Maintenance - Lots and Planting Strips.** Each Lot Owner hereby covenants and agrees to maintain his respective Lot (including as a part of said Lot the Planting Strip located between the street and the sidewalk adjacent to the Owner's respective Lot, if any), and the Housing Unit located thereon, in the same condition as a reasonably prudent homeowner would maintain his own home so that the Real Property will reflect a high pride of ownership. Each Lot Owner shall perform the maintenance and upkeep on any drainage swales and/or under ground drain lines and catch basins installed by the Developer on their Lot which are servicing the yard drainage needs on more than one Lot.

**Section 6.3: Remedies for Failure to Maintain.** If any Lot Owner shall fail to conduct maintenance on his Lot or the exterior of the Housing Unit located thereon, or fails to maintain the Lot and the exterior of the Housing Unit in the same condition as a reasonably prudent homeowner, or in a manner which preserves the drainage for other Lots, the Association shall notify the Lot Owner in writing of the maintenance required;

provided, however, if the Association determines in its sole and exclusive discretion that an emergency exists, the Association shall have the right to proceed under this Section without notice to the Lot Owner. If the maintenance is not performed within (30) days of the date notice is delivered, the Association shall have the right, but not the obligation, to provide such maintenance, and to levy an assessment against the nonperforming Lot Owner and its Lot for the cost of providing the maintenance. The assessment shall constitute a lien against the Lot owned by the non-performing Lot Owner and may be collected and foreclosed in the same manner as any other monthly or special assessment. The Association shall have all remedies for collection as provided in Article 8 of this Declaration.

**Section 6.4: Existing Trees.** Removal of existing trees shall be prohibited, except for dead, diseased, or damaged trees, or trees which represent a danger to life or property as determined by the Association. The Association shall require that at least one new tree be planted for each existing tree removed. All new trees shall have a minimum height of 10 feet at time of planting.

**Section 6.5: Common Expenses.** The Association shall perform such work as is necessary to carry out the duties described in this Declaration, and shall delegate the responsibility for management and supervision of such work to the Board, the ACC or to a manager or agent hired by the Board for the purpose of such management and supervision. Expenses for such work shall be paid by the Association for the benefit of all Lot Owners and shall be referred to as Common Expenses. The Common Expenses shall be paid by the Association from funds collected from assessments paid by Lot Owners. The Common Expenses shall include, but shall not be limited to. The following:

6.5.1 The real property taxes, if any levied upon the Association for the Common Areas;

6.5.2 The cost of maintaining all required insurance coverage and fidelity bonds on any Common Areas, and for directors and officers of the Association and the ACC;

6.5.3 The cost of maintaining, repairing and replacing all Common Area entrance improvements, including, but not limited to, signs, lights, fences, walls, plantings and landscaping;

6.5.4 The cost of maintaining landscaped street borders or parking strips in which the Association holds an easement;

6.5.5 Any other expenses which shall be designated as a Common Expense in the Declaration or from time to time by the Association.

## ARTICLE 7 ASSESSMENTS

**Section 7.1: Types of Assessments.** Each Lot shall be subject to periodic assessments or charges and certain special assessments in an amount and manner to be determined by the Association. The initial periodic assessment shall be determined by the Developer during the development period.

**Section 7.2: Determination of Amount.** The Board of Directors of the Association shall determine the amount of assessments necessary to pay Common Expenses. The amount of assessments may be increased or decreased periodically as may be necessary to provide for payment of the Common Expenses. The amount of such assessments shall be equal for all Lots. There shall be no assessment for Lots owned by Developer, without the consent of the Developer. The Association may create and maintain from assessments a reserve fund for replacement of those Common Area improvements which can reasonably be expected to require maintenance or replacement. Written notice of all assessments shall be given to each Owner. If the Board fails to fix an assessment for a fiscal year, the assessment shall be automatically continued at the sum previously set by the Board until such time as the Board acts.

**Section 7.3: Certificate of Payment.** The Association shall, upon written demand, furnish a certificate in writing setting forth whether the assessment on a specified Lot has been paid. A reasonable charge may be made for the issuance of the certificate. Such certificate shall be conclusive evidence of payment of any assessment stated to have been paid.

**Section 7.4: Special Assessments.** In addition to the assessments authorized above, the Association, by its Board of Directors, may levy, in any year, a special assessment applicable to that year only, for the purpose of defraying the cost of any construction or reconstruction, unexpected repair or replacement of facilities in the Common Areas. However, the Developer shall not be obligated to pay any special assessments on Lots owned by the Developer. Assessments may be made based upon the estimated cost of such work, prior to the work's commencement, provided such estimate has been provided by a contractor retained by the Board for the purpose of such estimate. All special assessments for construction of new facilities or acquisition of new equipment, which is not for the upgrade, repair or replacement of existing construction or equipment, shall require approval of two-thirds ( $\frac{2}{3}$ 's) of the Members.

**Section 7.5: Additional Real Property.** At such time as additional Lots are subject to assessment, the assessment may be adjusted to reflect the total Lots obligated to contribute to the Association budget.

**Section 7.6: Fines Treated as Special Assessments.** Any fines levied by the Association pursuant to RCW Chapter 64.38 (or successor statute authorizing the

imposition of fines) shall be treated as a special assessment of the Owner fined, and may be collected by the Association in the manner described in Article 8.

## **ARTICLE 8 COLLECTION OF ASSESSMENTS**

**Section 8.1: Lien - Personal Obligation.** All assessments, together with interest and the cost of collection, shall be a continuing lien upon the Lot against which each such assessment is made. The lien shall have all the incidents of a mortgage on real property. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the assessment was due. No Owner may waive or otherwise avoid liability for assessments by non-use of the Common Areas or abandonment of the Lot.

**Section 8.2: Delinquency.** If any assessment is not paid within in thirty (30) days after its due date, the assessment shall bear interest from said date at twelve percent (12%) or in the event that twelve percent (12%) exceeds the maximum amount of interest that can be charged by law, then the highest permissible rate as provided for by law. A late charge of five percent (5%) of the amount overdue shall be charged for any payment more than fifteen (15) days past due. Each Member hereby expressly grants to the Association, or its agents, the authority to bring all actions against each Member personally for the collection of such assessments as a debt and to enforce lien rights of the Association by all methods for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage of real property, and such Member hereby expressly grants to the Association the power of sale in connection with such liens. The liens provided for in this section shall be in favor of the Association, and shall be for the benefit of the Association. The Association shall have the power to bid at a foreclosure sale and to acquire, hold, lease, mortgage and convey any Lot obtained by the Association.

**Section 8.3: Suspension of Voting Rights.** In the event any Member shall be in arrears in the payment of the assessments due or shall be in default of the performance of any of the terms of the Articles and Bylaws of the Association, the rules or regulations adopted by the Association, or the Declaration for a period of thirty (30) days, the Member's right to vote shall be suspended and shall remain suspended until all payments are brought current and all defaults remedied. In addition, the Association shall have such other remedies against such delinquent Members as may be provided in the Articles, Bylaws or Declaration.

**Section 8.4: Commencement of Assessments.** The assessments may commence as to each Lot (except Lots owned by the Developer) upon the initial conveyance of the Lot. The first assessment on any Lot shall be adjusted according to the number of days remaining in the month. At the time of each initial sale, the Developer may collect from each Purchaser an amount equal to one year's assessment for the



Association, to be placed in the Association's account. Any interest earned by the Association on assessments held by it shall be to the benefit of the Association.

**Section 8.5: Enforcement of Assessments.** The Board may take such action as is necessary, including the institution of legal proceedings, to enforce the provisions of this Article. In the event the Board begins an action to enforce any such rights, the prevailing party shall be entitled to its attorney's fees, costs and expenses incurred in the course or such enforcement action as provided in Article 16, Section 16.5.

## **ARTICLE 9 BUILDING, USE AND ARCHITECTURAL RESTRICTIONS**

**Section 9.1: Development Period.** The Developer hereby reserves the right to exercise any and all powers and control herein given to the Board of Directors, the ACC or its authorized representative in this Article of the Declaration, during the Development Period. This reserved right shall automatically terminate at the end of the Development Period, or when the reserved right is relinquished to the Board of Directors or the ACC of the Association.

**Section 9.2: Authority of ACC After Development.** At the expiration of the Developer's management authority, the ACC shall have the authority and obligation to manage and administer the review of building plans, specifications and plot plan and such other submissions as described in Section 9.5 herein, and to enforce these covenants, conditions and restrictions. Such authority shall include all authority provided for the ACC in the Association's Articles, Bylaws, Rules and Regulations, as initially adopted, or as amended, and all the authority granted to the ACC by this Declaration.

**Section 9.3: Delegation of Authority of ACC.** The ACC or the Developer may delegate any of its duties, powers, or functions described in this Article to any person, firm, or corporation.

**Section 9.4: Appointments of ACC.** The Board shall appoint the members of the ACC. There shall be three members of the ACC, chosen in the manner described in the Articles and Bylaws of the Association. If the Board fails to appoint the members of the ACC, or the members of the ACC resign and no replacements assume the office, the Board shall act as the ACC until members of the ACC are appointed and take office.

**Section 9.5: Approval By ACC Required.** Except as to the construction, alteration, or improvements performed by the Developer, and customary landscaping and maintenance performed by Owners, no construction activity of any type including clearing and grading, cutting or transplanting of significant natural vegetation may begin on a Lot or Common Area and no building, structure, fence or other improvement shall be erected, placed or altered on any Lot or Common Area until, at a minimum, the building plans, specifications, plot plans, and/or landscape plan showing the nature, kind, shape, height,

materials, exterior color and location of such building, structure or other improvements have been submitted to, and approved in writing by the ACC or its authorized representative as to harmony of exterior design and location in relation to and its effect upon surrounding structures and topography. Further, no fences, hedges or walls shall be erected or altered and no significant exterior changes shall be made to any, building including, but not limited to, exterior color changes, additions or alterations until such written approval shall have been obtained.

9.5.1 Time Limits. If the ACC or its authorized representative shall fail to notify the Owner of its action for a period of forty-five (45) days following the date of the submission of the required information to the ACC, or its authorized representative, the Owner may proceed with the proposed work notwithstanding the lack of written approval by the ACC or its authorized representative. The required information shall be considered submitted to the ACC upon personal delivery of a complete set of all required information to the person designated to receive such items by the ACC, or by mail three days after depositing the required information in the U.S. Mail, postage prepaid, certified, return receipt requested, to the ACC in care of the Board of Directors of the Association at the address designated in the most recent notice of assessment issued by the Board, or at such other address as is designated by the Board by written notice to the Members.

9.5.2 Guidelines. The ACC may adopt and amend, subject to approval by the Board, written guidelines to be applied in its review of plans and specifications, in order to further the intent and purpose of this Declaration and any other covenants or restrictions covering Real Property. If such guidelines are adopted, they shall be available to all interested parties upon request.

9.5.3 Meetings. The ACC shall meet as is necessary to review any plans or specifications provided pursuant to this Section, and shall keep and maintain a record of all actions taken at meetings or otherwise.

9.5.4 No Waiver. Approval by the ACC of any plans, drawings or specifications shall not be a waiver of the right to withhold approval of any similar plan, drawing, specification or matter submitted for approval.

9.5.5 Consultation. The ACC may retain and consult persons or entities to assist in the evaluation of plans submitted to the Board for review.

9.5.6 Appeals. After the Development Period, the Board shall serve as an appellate panel to review decisions of the ACC upon request of a party aggrieved by the ACC's decision. The Board shall provide, through rules and regulations, a procedure by which decisions of the ACC may be appealed to the Board. The Board may choose, in its discretion, to limit the scope of such appeals and provide time limitations for appeals to be made to the Board.

9.5.7 Enforcement. The ACC may recommend and request that the

Board initiate legal proceedings to enforce the terms of these covenants or orders of the ACC. Legal proceedings may only be instituted, however, after approval of the Board.

9.5.8 **No Liability.** The ACC, its agents and consultants shall not be liable to the Association, its members, to any Owner or to any other person for any damage, loss or prejudice resulting from any action or failure to act on a matter submitted to the ACC for determination, for failure of the ACC to approve any matter submitted to the ACC. The ACC shall not be liable for any damage, loss or prejudice resulting from any action by a person who is delegated a duty, power or function by the ACC.

9.5.9 **Fees.** The ACC may charge a fee for the review of any matter submitted to it. Any fee schedule adopted by the ACC must be approved by the Board.

**Section 9.6: Temporary Structures Prohibited.** No basement, tent, shack, garage, barn or other outbuilding or buildings or any structure of a temporary or moveable character erected or placed on the Properties shall at any time be used as living quarters except as specifically authorized by the ACC.

**Section 9.7: Nuisances.** No noxious or undesirable thing, activity or use of any Lot in the Properties shall be permitted or maintained. If the ACC shall determine that a thing or use of property is undesirable or noxious, such determination shall be conclusive. The ACC may recommend and the Board may direct that steps be taken as is reasonably necessary, including the institution of legal action or the imposition of fines in the manner authorized by RCW Chapter 64.38, to abate any activity, remove anything or terminate any use of property which is determined by the ACC or described in this Declaration to constitute a nuisance.

**Section 9.8: Limitation on Animals.** No animal, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except dogs, cats or other household pets may be kept if they are not kept, bred or maintained for any commercial purpose, and the shall not be kept in numbers or under conditions reasonably objectionable in a closely built-up residential community. Animals shall not be allowed to roam loose outside the limits of any Lot on which they are kept. Any dogs must be kept so as to minimize excessive noise from barking or otherwise shall be considered a nuisance according to the terms of this Declaration.

**Section 9.9: Limitation on Signs.** No signs of any kind, nor for any uses shall be erected, posted, painted or displayed on any Lot in this subdivision whatsoever, except; (1) public notice by a political division of the state or county or as required by law; (2) any builder or the builder's agent may erect and display signs during the period the builder is building and selling property in the subdivision; (3) any Lot Owner or the Lot Owner's agent wishing to sell or lease that Owner's Lot may place a sign not larger than 900 square inches on the property itself; and (4) during regular political campaigns, any Owner may display political signs not larger than 900 square inches cumulatively for all such signs

displayed on his Lot, provided said signs shall be removed the day following the election for which they are displayed.

**Section 9.10: Completion of Construction Projects.** The work of construction of all building and structures shall be pursued diligently and continuously from commencement of construction until the structures are fully completed and painted. All structures shall be completed as the external appearance, including finish painting, within eight months of the date of commencement of construction, except such construction as is performed by the Developer, which shall be exempt from the limitations contained in this Section. Front yard landscaping must be completed within 90 days of completion of a Housing Unit, and rear yard landscaping must be completed within one year of completion of a Housing Unit. Except with the approval of the ACC, no person shall reside on the premises of any lot until such time as the improvements to be erected thereon in accordance with the plans and specifications approved by the Board have been completed.

**Section 9.11: Limitation on Storage of Vehicles - Temporary Permits for RV's.** Except as hereinafter expressly provided, the Lots, Common Areas and/or streets located on the Properties shall not be used for the storage and/or overnight parking of any vehicle other than private family automobiles, trucks, motorcycles and commercial vehicles operated by a person residing at the Lot (provided that such commercial vehicles contain a single rear axle). Boats, boat trailers, house trailers, campers, trucks, trucks with a camper, or other recreational vehicles or similar object may not be stored and/or parked overnight on any part of the Properties, except as specified herein. No inoperable vehicles of any kind shall be parked, stored, maintained, or constructed on any lot or street unless stored in a garage.

Lot Owners may store a commercial vehicle (that exceeds the size restriction described above), boat, boat trailer, house trailer, camper, truck with camper or other recreational vehicle or similar object on the Lot in the event that it is screened from the view with at a minimum a six foot fence according to standard fence detail. Any screening constructed by a Lot Owner for the purpose of this section must be approved before construction by the ACC in the manner provided in Article 9, Section 9.5.

Notwithstanding the foregoing, Lot Owners who have guests visiting them intending to stay in a camper, trailer, or other form of recreational vehicle, may secure written permission from the ACC for guests to park a vehicle upon the Lot or the public street adjacent to a Lot for a period of up to two (2) weeks. The privilege shall only exist, however, after the written permission has been obtained from the ACC or its authorized representative.

**Section 9.12: Unsightly Conditions.** No unsightly conditions shall be permitted to exist on any Lot. Unsightly conditions shall include, without limitation, laundry hanging or exposed in view for drying, litter, trash, junk or other debris; inappropriate, broken or damaged furniture or plants; non-decorative gear, equipment, cans, bottles ladders, trash

barrels and other such items; and no awnings, air conditioning units, heat pumps or other projections shall be placed on the exterior walls of any Housing Unit unless prior written approval shall have been obtained from the ACC.

**Section 9.13: Antennas, Satellite Reception.** Satellite dishes with a maximum diameter of no more than approximately 24 inches, measured in any direction across the face of the dish, are permitted provided that the location of such satellite dish is approved in writing by the ACC in the manner described in Article 9, Section 9.5. Except as provided above, no radio or television antenna or transmitting tower or satellite dish shall be erected on the exterior of any home without approval of the ACC obtained pursuant to Article 9, Section 9.5, and a showing by the Owner that such installation will be visually shielded from most of the view of the residents traveling upon streets located on the Properties.

**Section 9.14: Residential Use Only, Home Businesses Limited.** Except for Developer's temporary sales offices and model homes, no Lot shall be used for other than one detached single-family dwelling with driveway parking for not more than three cars, or for one duplex type dwelling with driveway parking for not more than four cars. A trade, craft business, commercial or business or commercial activity ("Home Business") may be conducted or carried on within any building located on a Lot, provided that any goods, materials or supplies used in connection with any trade, service or business, wherever the same may be conducted, be kept or stored inside any building on any Lot and that they not be visible from the exterior of the home; nor shall any goods, used for private purposes and not for trade or business be kept or stored outside any building on any Lot. The provisions of this Section shall permit such Home Businesses to the extent permitted by applicable zoning laws and other government laws, regulations, rules and ordinances. Nothing in this Section shall permit (1) the use of a Lot for a purpose which violates law, regulations, rules or applicable zoning codes, or (2) Home Business activities that cause a significant increase in neighborhood traffic, or (3) modification of the exterior of the home. The Association may, from time to time, promulgate rules restricting the activities of Home Businesses located on the Properties pursuant to the authority granted to the Association under these Covenants, the Bylaws, and RCW Chapter 64.38.

**Section 9.15: Underground Utilities Required.** Except for any facilities or equipment provided by the Developer of any utility, all electrical service, telephone lines and other outdoor utility lines shall be placed underground.

**Section 9.16: Additional Restrictions.** Additional Building, use and architectural restrictions, if any, are described in Exhibit B to this Declaration. The provisions of this Article 9 apply to the restrictions described in Exhibit B.

**Section 9.17: Enforcement.** The Association, or the Developer during the Development Period, may, but is not required to, take any action to enforce the provisions of the Declaration available to it under law, including but not limited to imposition of fines as authorized by RCW Chapter 64.38, specific performance, injunctive relief, and

damages. Any Member may also enforce the terms of this Article (although a Member may not impose a fine as authorized by RCW Chapter 64.38), but the Member must first obtain an order from a court of competent jurisdiction entitling the Member to relief. In the event that a Member takes action to enforce the terms of this Article, the Association shall not be in any way obligated to join in such action, or pay any of the attorney's fees, costs and expenses incurred in such action.

## **ARTICLE 10 EASEMENTS**

**Section 10.1: Easement for Encroachments.** Each Lot is, and the Common Areas are, subject to such easement as indicated above, for encroachments created by construction settlement and overhangs as designed or constructed by the Developer, and to a valid easement for encroachments and for maintenance of the same as long as the improvements remain.

**Section 10.2: Easements on Exterior Lot Lines.** In addition to easements reserved on any plat of the Properties or shown by instrument of record, easements for utilities and drainage are reserved for the Developer or its assigns, over a five-foot wide strip along each side of the interior Lot lines, and seven feet over the rear and front of each Lot, and over, under, and on the Common Areas. Within all of the easements, no structure, planting or fill material shall be placed or permitted to remain which may, in the opinion of the Board or ACC, damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through drainage channels and the easements. The easement area of each Lot and all improvements within it shall be maintained continuously by the Owner of such Lot, except those improvements for which a public authority, utility company or the Association is responsible.

**Section 10.3: Association's Easement of Access.** The Association, the ACC, and its agents shall have an easement for access to each Lot and to the exterior of any building located thereon during reasonable hours as may be necessary for the following purposes: (1) cleaning maintenance, or repair of any home or Lot as provided in Article Six, Section 6.3 of this Declaration; (2) repair, replacement or improvement of any Common Area accessible from the Lot; (3) emergency repairs necessary to prevent damage to the Common Areas or to another Lot, or to the improvements thereon; (4) cleaning, maintenance, repair or restoration work which the Owner is required to do but has failed or refused to do; and (5) the maintenance of the landscaping as required by the landscape/buffer plan required as a condition of plat approval; and (6) all acts necessary to enforce these Covenants.

**Section 10.4: Easement for Developer.** Developer shall have an easement across all Common Areas for ingress, egress, storage and placement of equipment and materials, and other actions necessary or related to the development or maintenance of the Real Property.

## ARTICLE 11 MORTGAGE PROTECTION

**Section 11.1: Mortgagees.** Notwithstanding and prevailing over any other provisions of the Declaration, the Association's Articles of Incorporation or Bylaws, or any rules, regulations or management agreements, the following provisions shall apply to and benefit each Institutional First Mortgagee ("Mortgagee") which holds a Mortgage given for the purpose of obtaining funds for the construction or purchase of a Housing Unit on any Lot or the improvement of any Lot.

**Section 11.2: Liability Limited.** The Mortgagee entitled to the protection hereof shall not in any case or manner be personally liable for the payment of any assessment or charge, nor for the observance or performance of any covenant, restriction, regulation, rule, Association Article of Incorporation or Bylaw, or management agreement, except for those matters which are enforceable by injunctive or other equitable relief, not requiring the payment of money, except as hereinafter provided.

**Section 11.3: Mortgagee's Rights During Foreclosure.** During the pendency of any proceeding to foreclose the Mortgage, the Mortgagee or the receiver, if any, may exercise any or all of the rights and privileges of the Owner of the mortgaged Lot, including but not limited to the right to vote as a Member of the Association to the exclusion of the Owner's exercise of such rights and privileges.

**Section 11.4: Acquisition of Lot by Mortgagee.** At such time as the Mortgagee shall become entitled to possession of the Lot, the Mortgagee shall be subject to all of the terms and conditions of the Declaration, and the Articles, Bylaws, rules and regulations of the Association, including but not limited to the obligation to pay for all assessments and charges accruing thereafter in the same manner as any Owner; provided, however, the Mortgagee shall acquire the title to said Lot free and clear of any lien authorized by or arising out of any provisions of the Declaration which secure the payment of any assessment for charges accrued prior to the date the Mortgagee became entitled to possession of the Lot.

**Section 11.5: Reallocation of Unpaid Assessment.** If it is deemed necessary by the Association, any unpaid assessment against a Housing Unit foreclosed against may be treated as a common expense of other Lots. Any such unpaid assessment shall continue to exist as a personal obligation of the defaulting Owner of the respective Lot to the Association.

**Section 11.6: Subordination.** The liens for assessments provided for in this Declaration shall be subordinate to the lien of any Mortgage, or other security interest placed upon a Lot or Housing Unit as a construction loan security interest or as a purchase price security interest, and the Association will, upon demand, execute a written subordination document to confirm the particular superior security interest.

**Section 11.7: Mortgagee's Rights.** Any Mortgagee shall have the right upon request to: (1) inspect the books and records of the Association during normal business hours; (2) receive an annual financial statement of the association within (90) days following the end of any fiscal year; and (3) receive written notice of all meetings of the Association and designate a representative to attend all such meetings.

**Section 11.8: Limitation on Abandonment of Common Areas.** The Association shall not, without the prior written approval of sixty-seven percent (67%) of the mortgagees, seek to abandon the Common Areas for reasons other than substantial destruction or condemnation of the property.

**Section 11.9: Notice.** If such notice has been requested in writing, Mortgagees shall be entitled to timely written notice of: (1) substantial damage or destruction of any Housing Unit or any part of the Common Areas or facilities; (2) any condemnation or eminent domain proceedings involving any Housing Units or any portion of Common Areas or facilities; (3) any default under this Declaration or the Articles, Bylaws or rules and regulations of the Association by an Owner of any Housing Unit on which it holds the mortgage which is not cured within thirty (30) days; (4) any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Housing Unit on which it holds the mortgage; (5) ten (10) days' prior written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, and (6) any proposed action that requires the consent of a specific percentage of Mortgagees.

## **ARTICLE 12 MANAGEMENT CONTRACTS**

Each Member hereby agrees that the Association and the ACC may enter into agreements for the performance of any or all of the functions of the Association and the ACC with such persons or entities as the Association deems appropriate; however, any agreement for professional management of the Properties, or any other contract providing for services by the Developer must provide for termination by either party without cause after reasonable notice.

## **ARTICLE 13 INSURANCE**

**Section 13.1: Coverage.** The Association may purchase as a Common Area Expense and shall have authority to and may obtain insurance for the Common Areas against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement value in the event of damage or destruction. It may also obtain a comprehensive public liability policy covering the Common Areas. The comprehensive public liability coverage shall be in an amount to be determined by the Association. It may also obtain insurance to cover the Board, the ACC, its agents and employees from any



action brought against them arising out of actions taken in furtherance of the Association's duties under this Declaration.

Following the development period, all such insurance coverage shall be written in the name of the Association as trustee for each of the Members of the Association. The Association shall review the adequacy of the Association's insurance coverage at least annually. All policies shall include a standard mortgagee's clause and shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to any and all insured named therein, including Owners and Institutional First Mortgagees that have requested notice.

**Section 13.2: Replacement, Repair After Loss.** In the event of the damage or destruction of the Common Areas covered by insurance written in the name of the Association, the Association may, upon receipt of the insurance proceeds, and to the extent of such proceeds contract to rebuild or repair such damaged or destroyed portions of the Common Areas to as good a condition as they were when the loss occurred; provided, however, that the Association's election not to rebuild the Common Areas shall require the approval of two-thirds (2/3) of the Association. The Association may in its sole discretion contract with any contractor for reconstruction or rebuilding of such destroyed portions of the Common Areas.

## **ARTICLE 14 RULES AND REGULATIONS**

The Association and/or its Board of Directors is hereby authorized and empowered to adopt rules and regulations governing the use of the Properties and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof, in the manner described by RCW Chapter 64.38, the Bylaws and any resolutions passed by the Board. All Lot Owners shall be given written notice of the rules and regulations in the manner required by RCW Chapter 64.38.

## **ARTICLE 15 REMEDIES AND WAIVER**

**Section 15.1: Remedies Not Limited.** The remedies provided herein, including those for collection of any assessment or other charge or claim against any Member, for and on behalf of the Association, the ACC, or Developer, are in addition to, and not in limitation of, any other remedies provided by law.

**Section 15.2: No Waiver.** The failure of the Association, the ACC, the Developer or of any of their duly authorized agents or any of the Owners to insist upon the strict performance of or compliance with the Declaration or any of the Articles, Bylaws or rules or regulations of the Association, or to exercise any right or option contained therein, or to serve any notice or to institute any action or summary proceedings, shall not be construed

as a waiver or relinquishment of such right for the future, but such right to enforce any of the provisions of the Declaration or of the Articles, Bylaws or rules or regulations of the Association shall continue and remain in full force and effect. No waiver of any provision of the Declaration or of the Articles, Bylaws, rules or regulations the Association shall be deemed to have been made, either expressly or implied, unless such waiver shall be in writing and signed by the Board of Directors of the Association pursuant to authority contained in a resolution of the Board of Directors.

**ARTICLE 16**  
**CITY OF FERNDALE PRELIMINARY PLAT APPROVAL REQUIREMENTS**  
**STORMWATER TREATMENT AND CONVEYANCE SYSTEMS, WETLANDS,**  
**LANDSCAPE BUFFER AND RIGHT TO FARM NOTICE**

**Section 16.1: Inspection and Reporting.** 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 by the Association.

**Section 16.2: Repair and Maintenance.** In the event that the above annual inspection report identifies any material deficiencies in the stormwater treatment and conveyance systems the engineer shall include in said report proposed measures to rectify the deficiency. Any such required repair, maintenance or restoration associated within any stormwater treatment and conveyance system owned by the Association shall be the responsibility of the Association in a manner consistent with the Operation and Maintenance Plan attached hereto as Exhibit C.

**Section 16.3: Maintenance of Wetlands.** The Association shall maintain the wetland areas in a manner consistent with the approved Wetland Mitigation Report on file with the City of Ferndale.

**Section 16.4: Maintenance of Landscape Zoning Buffers.** The Association shall maintain the landscape zoning buffer areas in accordance with the approved landscape plan approved by the City of Ferndale. These requirements are fully set forth in the Zoning Buffer Planting Plan submitted pursuant to the provisions of Section 18.74 FMC, and include the following requirements:

16.4.1: High Screen Landscape Standard (L-3). A landscape treatment to create a living visual barrier and insert a psychological separation. A high screen landscape area shall have a minimum width of seven (7) feet unless otherwise specified herein.

16.4.2: Required Plant Materials. High Screen Landscape Standard (L-3) requires the installation and maintenance of all of the following:

16.4.2.1: Evergreen shrubs that are in at least 5-gallon containers at the time of planting to form a continuous screen, at least 6 feet high, within 5 years of planting.

16.4.2.2: One (1) tree per 30 linear feet as measured along interior lot lines. Evergreens or canopy trees may be used as appropriate to provide the desired screening.

16.4.2.3: Living plant materials covering a minimum of 70 percent of the required landscape area within 5 years of planting.

16.4.2.4: The use of turf as ground cover is discouraged. Drought tolerant, low maintenance vegetative ground cover is encouraged.

16.4.2.5: A masonry wall at least 6 feet height shall be permitted as a substitute for the shrubs but the trees and other plant materials are still required. When this landscape standard is applied along street frontage, the screen or wall is to be placed farthest from the street with the required landscaping in between the wall and street. When along a street frontage, vines shall be planted a maximum of 8 feet on center on the streetward side of the wall. When applied along an abutting property the masonry wall may be placed along the interior lot line.

**Section 16.5: Right to Farm.** The real property that is the subject of these covenants may lie in close proximity to a farm. The operation of a farm involves usual and customary agricultural practices, which are protected under RCW 7.48.305, the Washington right to farm act.

## **ARTICLE 17 MITIGATION FEES**

**Section 17.1: Traffic Impact Mitigation Fees.** Each Lot shall be required to pay the traffic mitigation fees as determined by the City of Ferndale.

**Section 17.2: Park Impact Mitigation Fees.** Park Impact fees shall be paid upon recording of the Plat, and are based on the construction of single-family residential units within the Plat. In the event the lots are developed as multi-family units, including the construction of duplexes, additional Park Impact Fees will be assessed at the time of building permit application.

## **ARTICLE 18 OPEN SPACE TRACT**

**Section 18.1: Dedication of Open Space Tracts.** The area shown and designated on the face of the Plat as Open Space Tract and/or as Tract A and Tract B

shall be owned and maintained by the Association.

**Section 18.2: Open Space Tract "A".** The City of Ferndale is granted the right to construct, maintain and grant public use of a pedestrian trail within Tract "A" as depicted on the Plat, and is further granted an easement (including the right to construct, maintain and grant public use thereof) leading to said Tract "A", as noted on the final map of the said Plat.

## **ARTICLE 19 GENERAL PROVISIONS**

**Section 19.1: Singular and Plural.** The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

**Section 19.2: Severability.** The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this Declaration or any part hereof, all of which are inserted conditionally on their being held valid in law and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained herein should be invalid, this Declaration shall be construed as if such invalid phrase, sentence, clause, paragraph, or section had not been inserted.

**Section 19.3: Duration.** These covenants, restrictions, reservations and conditions shall remain in full force and effect for a period of twenty (20) years from the date hereof. Thereafter, they shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked or amended as herein above provided.

**Section 19.4: Perpetuities.** In the event that any provision of this Declaration violates the rule against perpetuities such provision shall be construed as being void and of no effect as of twenty-one (21) years after the death of the last surviving incorporator of the Association, or twenty-one (21) years after the death of the last survivor of all of the said incorporators' children and grandchildren who shall be living at the time this instrument is executed, whichever is later.

**Section 19.5: Attorney's Fees, Costs and Expenses.** In the event the Association or a Member employs an attorney to enforce any provision of the Declaration, the Articles, Bylaws of the Association, or rules and regulations adopted by the Association, the prevailing party in any action for enforcement shall be entitled to the award of reasonable attorney's fees, costs and all expenses incurred in the action, whether determined by judgment, arbitration or settlement.

**Section 19.6: Method of Notice.** Any notice required by the Declaration or the Articles or Bylaws of the Association or the rules and regulations adopted by the Association shall be deemed properly given when personally delivered, deposited in the United States mail, postage prepaid, or when transmitted by facsimile.

**Section 19.7: Enforcement of Declaration.** This Declaration may be enforced by the Association, the Developer or the Owner of any Lot. Such enforcement may include the institution of legal proceedings to enforce compliance with or specific performance of any of the covenants or restrictions contained in this Declaration, rules and regulations adopted by the Association, or the provisions of the Articles or Bylaws of the Association.

**Section 19.8: Successors and Assigns.** This Declaration binds and is for the benefit of the heirs, successors and assigns of Declarant, the Developer, the Members and the Owners.

**Section 19.9: Exhibits.** All exhibits referred to in this Declaration are incorporated within it.

## **ARTICLE 20 AMENDMENT AND REVOCATION**

**Section 20.1: Exclusive Method.** Subject to the restriction of the governing jurisdiction, this instrument may be amended, and partially or completely revoked only as herein provided or otherwise provided by law. Unless approved by the governing jurisdiction, the Association may not be terminated.

**Section 20.2: Amendment by Developer.** During the Development Period, the Developer may amend this instrument to correct errors, modify or add provisions, add Additional Real Property and to comply with the requirements of the Federal National Mortgage Association, Government National Mortgage Association, Veterans Administration or Federal Home Loan Mortgage Corporation by recording an acknowledged document setting forth specifically the provisions amending this instrument.

**Section 20.3: Amendment by Association.** This Declaration may be amended at any annual meeting of the Association, or at a special meeting called for such purpose, if sixty-seven percent (67%) or more of the Owners vote for such amendment, or without such meeting if all Owners are notified in writing of such amendment, and if sixty-seven (67%) or more of the Owners vote for such amendment by written ballot. Notice of any proposed amendment shall be given to all Owners not less than ten (10) days prior to the date of the annual meeting or of any special meeting at which the proposed amendment shall be considered. Notwithstanding any of the foregoing, fifty-one percent (51%) of all Institutional First Mortgagees who have requested notification of amendments must give prior written approval to any material amendment of the Declaration or Bylaws, including any of the following:

- 20.3.1 Voting rights;
- 20.3.2 Assessments, assessment liens and subordination of such liens;
- 20.3.3 Reserves for maintenance, repair and replacement of Common Areas;
- 20.3.4 Insurance or fidelity bonds;
- 20.3.5 Responsibility for maintenance and repair;
- 20.3.6 Contraction of the project or the withdrawal of property from the Properties;
- 20.3.7 The boundaries of any Lot;
- 20.3.8 Leasing of Housing Units other than as set forth herein;
- 20.3.9 Imposition of any restrictions on the right of an Owner to sell or transfer his or her Lot;
- 20.3.10 Any decision by the Association to establish self-management when Mortgagee;
- 20.3.11 Restoration or repair (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration.
- 20.3.12 Any action to terminate the legal status of the Properties after substantial destruction or condemnation occurs; or
- 20.3.13 Any provisions which are for the express benefit of Institutional First Mortgagees.

**Section 20.4: Effective Date.** Amendments shall take effect only upon recording with the Recorder or Auditor of the county in which this Declaration is recorded.

**Section 20.5: Protection of Developer.** For such time as Developer shall own Lots located in the Properties there shall be no amendments to the Declaration, the Articles of incorporation, the Bylaws of the Association, or any Rules and Regulations adopted by the Association which:

20.5.1 Discriminate or tend to discriminate against the Developer's rights. Change Article 1 ("Definitions") in a manner which alters the Developer's right or status.

20.5.2 Alter the character and rights of membership or the rights of the

Developer as set forth in Article 4.

20.5.3 Alter its rights as set forth in Article 9 relating to architectural controls.

20.5.4 Alter the basis for assessments, or the Developer's exemption from assessments.

20.5.5 Alter the number or selection of Directors as established in the Bylaws.

20.5.6 Alter the Developer's rights as they appear under this Article.

## EXHIBIT "A" LEGAL DESCRIPTION

Lot 2, Whiskey Creek L.L.A., according to the plat thereof, recorded April 25, 2005, under Auditor's File No. 2050404305, and the Amendment thereof recorded October 18, 2005, under Auditor's File No. 2051003344, records of Whatcom County, Washington; except that portion described as follows:

That portion of the North half of the South half of the Northwest quarter of the Southeast quarter of Section 17, Township 39 North, Range 2 East of W.M., Whatcom County, Washington, more particularly described as follows:

Commencing at the Northwest corner of said North half of the North half thereof; thence South  $88^{\circ}48'18''$  East along the North line of said North half, 39.19 feet to the Easterly right of way margin of Portal Way; thence South  $01^{\circ}24'04''$  West along said margin, 55.20 feet and the Point of Beginning; thence South  $89^{\circ}08'19''$  East parallel to and 60 feet distant from an existing fence as referenced in Superior Court Case No. 91-2-00900-3, 230.92 feet; thence South  $04^{\circ}37'49''$  East, 6.17 feet to an angle point on the boundary of Whiskey Creek Lot Line Adjustment, City of Ferndale, Whatcom County, Washington, as per the map thereof, recorded under Whatcom County Auditor's File No. 2050404305; thence North  $88^{\circ}48'18''$  West along the boundary of said Whiskey Creek, L.L.A., 231.57 feet to said Easterly margin; thence North  $01^{\circ}24'04''$  East along said margin, 4.8 feet to the Point of Beginning.

And together with that portion of the North half of the Northwest quarter of the Southeast quarter of Section 17, Township 39 North, Range 2 East of W.M., Whatcom County, Washington, abutting said lot 2, described as follows:

Commencing at the Southwest corner of said North half; thence South  $89^{\circ}08'40''$  East along the South line of said North half a distance of 39.19 feet to the East line of Portal Way and the Point of Beginning; thence continuing South  $89^{\circ}08'40''$  East along said South line a distance of 1305.50 feet to the Southeast corner of said North half; thence North  $00^{\circ}54'01''$  East along the East line of said North half a distance of 12.4 feet to an existing fence; thence North  $89^{\circ}28'40''$  West along said existing fence a distance of 1305.51 feet to said East line of Portal Way; thence South  $01^{\circ}03'57''$  West along said East line a distance of 4.8 feet to the Point of Beginning.

Situate in Whatcom County, Washington.