



AFTER RECORDING MAIL TO:
LIBERTY PARK LLC
5977 Guide Meridian
Bellingham, WA 98226



TITLE OF DOCUMENT	DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS FOR LIBERTY PARK
GRANTOR	LIBERTY PARK LLC
GRANTEE	THE GENERAL PUBLIC
ABBREV. LEGAL DESCRIPTION	LIBERTY PARK PER PLAT AT
Parcel #390228 408070 0000	AT# 2060101894
#390228 367103 0000	
#390228 297103 0000	

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS AND RESERVATIONS
OF
PLAT OF LIBERTY PARK**

THIS DECLARATION of Covenants, Conditions and Restrictions for PLAT OF LIBERTY PARK is made this 23rd day of June, 2005 by Liberty Park LLC, hereinafter referred to as "Developer".

RECITALS:

- A. Developer is the owner of the real property and improvements thereon legally described in Exhibit "A" attached hereto and by this reference made a part hereof as if fully set forth herein.
- B. Developer has identified the real property described in Exhibit "A" attached hereto which is the subject of this Declaration as the Plat of Liberty Park. The name "Liberty Park" throughout this Declaration is intended to mean the Plat of Liberty Park.
- C. Developer desires to declare the Plat of Liberty Park, subject to the covenants, conditions, restrictions, easements, and reservations set forth in this Declaration.

D. This Declaration is limited to the real property legally described in Exhibit "A" attached hereto, and the buildings and other improvements constructed and to be constructed thereon, and the common area, all of which shall be known as the Plat of Liberty Park.

NOW, THEREFORE, to accomplish the foregoing purposes, the Developer hereby publishes and declares that the Plat of Liberty Park shall be held, sold, conveyed, encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions, restrictions, easements, and reservations, all of which are for the purpose of enhancing and protecting the character, attractiveness, and desirability of Liberty Park. These covenants, conditions, restrictions, easements, and reservations shall run with the land and shall be a burden upon and a benefit to the property therein owned by the Developer and any other person, firm, corporation, or entity of any kind whatsoever acquiring or owning an interest in Liberty Park or any part thereof, and their lessees, guests, heirs, executors, personal representatives, successors, and assigns. Acceptance of an interest in any portion of the property comprising Liberty Park shall be deemed acceptance of the terms and provisions of this Declaration.

ARTICLE I
TERMINATION OF DEVELOPMENT PERIOD
RESERVED RIGHTS DURING DEVELOPMENT PERIOD

Section 1.1: Development Period. The Liberty Park development period shall mean that period of time from the date of recording this Declaration until the date when one hundred percent (100%) of all the proposed lots within Liberty Park (54 lots) have been sold. Notwithstanding the foregoing, the Developer, at its option, may elect to terminate the development period at any time.

Section 1.2: Developer's Reservation of Authority During Development Period. The Developer hereby reserves for itself, its successors or assigns, during the development period, all of the rights, powers, and functions of the Association, or the Board itself, which shall be exercised and/or performed by the Developer, including but not limited to the adoption of architectural control standards and rules and regulations and the designation of an architect.

ARTICLE II
LIBERTY PARK OWNERS' ASSOCIATION

Section 2.1: Formation. The Developer shall form the Liberty Park Owners' Association, a non-profit corporation under the laws of the State of Washington, hereinafter referred to as the "Association". There shall be one (1) membership in the Association for each lot located within Liberty Park and one (1) vote for each membership. Each membership shall be appurtenant to and run with each lot, and shall not be assigned, transferred, pledged, hypothecated or conveyed in any way except upon the transfer of each said lot, and then only to

the new owner of the lot. The term "member" shall mean and refer to every record owner of a lot, whether one or more persons or entities, excluding those having an interest in any lot merely as security for the performance of an obligation, and who, as a result of such ownership, holds a membership in the Association.

Section 2.2: Transfer of Control. The Developer shall designate and appoint a Board of Directors of the Association during the development period until such time as one hundred percent (100%) of the lots in Liberty Park are sold or sooner upon the election of the Developer to terminate the development period, at which time control of the Association shall be turned over to its members. Once control is turned over, the Association's members may elect the Board of Directors from their numbers at large, as provided in the Articles of Incorporation and/or Bylaws; and the Developer will, on an ongoing basis, retain one (1) vote for each lot which it continues to own.

Section 2.3: Architectural Control Standards and Regulations. The Association shall adopt from time to time such architectural control standards and necessary rules and regulations that will impose building, landscaping and use controls and restrictions on the lots within Liberty Park. The architectural control standards and rules and regulations will be commonly referred to as the Architectural Control Standards and Regulations (hereinafter referred to as "ACSR") and each lot in Liberty Park will be subject to the ACSR and any changes or amendments thereto as adopted by the Association. In addition, the Association will designate as provided in the ACSR, a coordinating Architect or Licensed Building Designer as its agent to be responsible for assistance in reviewing all plans submitted by lot owners to insure compliance with the ACSR.

Section 2.4: Conveyances. The Developer shall transfer and convey by quit claim deed all common areas, parking areas, parks, paths, walkways, improvements and equipment specified in Liberty Park to the Association subject to the reservation imposed on these properties by this Declaration. This conveyance shall be made after the Association has been formed and all necessary improvements have been completed.

Section 2.5: Purpose. Among the objectives and purposes of the Association shall be the furtherance and promotion of the common welfare of the owners of lots located within Liberty Park; the adoption and enforcement of a set or sets of architectural control standards and rules and regulations the Association deems necessary for the governing of the development and use of each lot within Liberty Park and the ownership, regulation, care, construction, repair, maintenance, use, operation and preservation of all Common Areas, storm drainage retention facilities, walkways, easements, improvements and equipment within Liberty Park.

Section 2.6: Assessments - Authority. The Association shall be empowered to establish and collect dues, assessments and special assessments upon the lots located within Liberty Park for the common benefit of all such lots to cover all of the costs of its activities outlined in Section 2.5 herein. The method and manner of collection of said dues and assessments and remedies for non-payment shall be determined by the Bylaws of the Association.

Section 2.7: Manner of Assessment. Association dues shall be assessed and collected fairly and uniformly among lot owners on a basis established by the Association from time to time. Initially, the method of assessment will be that each lot located within Liberty Park will be equally assessed and only assessed for Association costs related solely to the property. Thereafter, if any additional plats become governed by these covenants, conditions and restrictions, dues will be assessed to the property owners in an equitable manner as established by the Association. No lot owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use and enjoyment of the Commons Areas or by abandonment of his lot.

Section 2.8: Establishment and Assessment of Charges. For the purpose of providing funds for the uses specified herein, the Association shall for each calendar year, commencing on a date to be selected by the Association, fix and assess yearly dues against each recorded lot of record on the final plat of Liberty Park, except that during the development period there shall be no assessments on the Developer's inventory of lots within the plat, and provided that assessments shall be assessed and prorated on an annual basis upon termination of the development period or sooner upon the sale by the Developer of any such lot.

Section 2.9: Annual Statement. As soon as shall be practical in each year, the Association shall send a written statement to each owner providing an accounting of the previous year's expenditures together with a budget and a per lot assessment amount for the ensuing year. The Association will have the power and authority to adopt rules and procedures with respect to the billing and collection of Association dues, which shall be binding on all of the owners.

Section 2.10: Special Assessments. The Association may levy such other special assessments for capital improvements upon the Common Areas, or for such other purposes and in such manner as shall be provided in this Declaration, the Bylaws or other rules and regulations of the Association.

Section 2.11: Default in Payment of Assessment -- Remedies. If any assessment, annual or special, is not paid within thirty (30) days after it is first due and payable, the assessment shall bear interest from the date on which it was due until paid at the highest rate permitted by law or, if no limitation is imposed by law, at the rate of eighteen percent (18%) per annum or such other legal rate of interest as may be determined by the Association from time to time. If any owner fails to pay any assessment within ninety (90) days of its due date, the Association shall have the right to bring an action at law or equity against the person or entity

personally obligated to pay the same and obtain a personal judgment against such person or entity; and/or foreclose the lien of the assessment in the manner provided for materialmen's and mechanics' liens pursuant to Chapter 60.04, RCW, or at the election of the Association, foreclose in the manner provided for non-judicial foreclosure of deeds of trust as provided in Chapter 61.24, RCW. In this event, the designated legal representative of the Association will be deemed the trustee or successor trustee for purposes of foreclosure. The Association may elect at its option either alternative remedy or such other remedy legally available at law. In the event of any such action to collect delinquent assessments, the defaulting lot owner shall be liable for the Association's costs, reasonable attorney's fees, title reports and delinquent interest and all such sums shall be included in any judgment or foreclosure.

In addition to the above remedies, the Association reserves the right to suspend members' voting rights and right to use the Common Areas during any period that the lot owner is in default in payment of dues and assessments; provided that any such suspension shall not waive any right the Association has to collect such dues and assessments.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust now or hereafter placed on any lot.

Section 2.12: Authority to Maintain Surplus. The Association shall not be obligated to spend in any particular time period all of the sums collected by it in such time period or remaining from any previous 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 charge in any year.

ARTICLE III EASEMENTS

Section 3.1: Reservation of Easement. There is reserved to Developer and to the Association, their agents and employees, an easement over each and every lot within Liberty Park for entry and access in a reasonable manner and at reasonable times and places for performance generally of all their rights and duties as provided in this Declaration, ACSR, and Rules and Regulations as may be adopted by the Association.

Section 3.2: General Easements. Easements for drainage, curtain drains, sewers, water pipes and utilities, facilities and service (including but not limited to water supply, electricity, gas, telephone, television) are hereby reserved over, under, upon, and in and through certain portions of lots, tracts or parcels as shown on the final plat map of Liberty Park, in which to install, lay, construct, repair, renew, operate, maintain and inspect underground pipes, sewers, conduits, cables, wires and all necessary facilities and equipment for the purpose of serving said plat, together with the right to enter upon said easement areas, lots, tracts, parcels, roads and walkways for or pertaining to the aforesaid. All utility systems shall be underground exclusively. This reservation of easement is for the benefit of the Developer and its successors in interest, City of Ferndale, Puget Power, Cascade Natural Gas, telephone and cablevision providers and others.

ARTICLE IV DRAINAGE MAINTENANCE

Section 4.1 Maintenance Agreement and Guidelines. It is the responsibility of the Association to assess and maintain the storm water treatment and conveyance system and the wetland mitigation area. All costs of maintaining, repairing, improving or costs otherwise connected with any drainage courses or storm drainage bio-filtration swales within any indicated easements of the Plat of Liberty Park shall be borne by the Association. Association shall use the guidelines recommended in LIBERTY PARK STORMWATER FACILITY MAINTENANCE MANUAL. (Supplement A)

The Association shall annually employ the services of a registered engineer to inspect and certify the adequacy and performance of the storm water treatment and conveyance system (Tract B). Should the annual inspection identify any deficiencies in the system, the engineer shall specify corrective measures. These measures shall be completed at the sole expense of the Association in a timely manner. One copy of the report shall be provided to the City of Ferndale, Public Works Department. *If the Owners Association fails to carry out necessary maintenance and repair of the storm water management system, and if deemed necessary by the Public Works Director, the City of Ferndale may carry out repairs or maintenance, the cost of which shall be borne by the association.*

The Association shall (at least once every three years), employ the services of a biological professional to certify to the satisfaction of the City of Ferndale that the requirements (Sec. 5.3) of the protection of the wetland and the wetland mitigation area, (Tract A) are being carried out. Should the periodic inspection identify any deficiencies in the required protection, the biological professional shall identify corrective measures. These measures shall be completed at the sole expense of the Association in a timely manner. One copy of the final report shall be provided to the City of Ferndale, Public Works Department

ARTICLE V PROPERTY RIGHTS IN THE OPEN SPACE (COMMON AREA)

Section 5.1: Lot Owner's Easement of Enjoyment in and to the Common Areas. Every lot owner shall have non-exclusive right and easement of enjoyment in and to the Common Areas owned by the Association, and such easement shall be appurtenant to and conveyed with the ownership of every lot, even though such easement is not expressly mentioned or described in the conveyance or other instrument, subject to the following restrictions:

(a) The right of the Association to make on behalf of its members any rules and regulations pertaining to the use of the Common Areas and restrictions on the use of the Common Areas.

(b) The right of the Association to the exclusive use and management of said Common Areas for utilities such as pumps, pipes, wire, conduits, and other utility equipment, supplies, and material.

(c) The rights reserved to the Developer in the Declaration.

(d) The right of the Association to suspend the voting rights and right to use of the common area by an owner for any period during which any assessment against his lot remains unpaid.

(e) The right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association. After the termination of the development period, no such dedication or transfer shall be effective unless an instrument agreeing to such declaration or transfer, signed by seventy-five percent (75%) of all members has been recorded.

(f) The other restrictions, limitations, and reservations contained or provided for in this Declaration, the ACSR, the Bylaws and other rules and regulations of the Association.

(f) The Board of Directors of the Association shall have the right to adopt more comprehensive standards from time to time, and to adopt reasonable regulations and restrictions for the maintenance of the Common Areas.

(g) All activity within the common area shall be restricted to that as approved by Department of Ecology only. No unauthorized activity shall be permitted. Any unauthorized activity shall cease immediately and the common area be repaired to its original condition.

Section 5.2: Title to Common Area. After conveyance by Developer, title to the Common Areas shall be held by the Association.

Section 5.3 Protection and Maintenance of the Open Space (Common Area)

The Open Space area (Tract A) is a regulated wetland area and shall be protected and maintained as per DOE guidelines. No activity shall occur within the protected area which will disturb the soils or cause erosion of any type. Vegetation shall be controlled by the use of hand operated equipment or light duty machinery only as not to disturb soils. No construction activity whatsoever shall occur within the protected area. This area shall remain unimproved to protect its usefulness and integrity.

ARTICLE VI USE OF PROPERTY

Section 6.1: Business and Commercial Use of Property Prohibited. All lots within Liberty Park shall be used exclusively for permanent, single-family residences and for no other purposes. No lot within Liberty Park is eligible for the development of a detached accessory dwelling unit nor an accessory apartment. No temporary structures, mobile homes, trailers, tents or shack shall be placed on any lot, except upon written approval of the Coordinating Architect. No trade, craft, business, commercial or manufacturing enterprise or business or commercial activity of any kind shall be conducted or carried on upon any lot or within any unit, nor shall any goods, equipment, vehicles or materials or supplies used in connection with any trade, service, or business or used for private purposes, be kept, parked, stored, dismantled or repaired outside on any lot or any street within Liberty Park, nor shall anything be done on any lot which may be or may become an annoyance or nuisance to any other lot owner. No short-term rental or subletting of any lot or residence thereon shall be permitted (short-term meaning any rental or subletting for a period of less than six month intervals), and no Bed & Breakfast facilities or transient rental of residential structures shall be permitted. The above restrictions will not prohibit physicians, lawyers, writers, artists or other professionals from having their offices or studios in their house, employing not more than two individuals who are not living in the house.

Section 6.2: Nuisance Prohibited. No noxious or offensive activity shall be carried on, in, or upon any lot, nor shall anything be done therein which may be or become an annoyance or nuisance to other owners. No rubbish, debris or unsightly materials of any kind shall be placed or be permitted to accumulate on any portion of a lot, nor shall any odors or loud noises be allowed to emanate from any lot which are offensive or detrimental to any persons occupying any other lots located within Liberty Park. No exterior speakers, horns, whistles, bells or other sound devices except security and fire alarm devices used exclusively for such purposes, and no plant, animal, device or other thing whose normal activity or existence is in any way noxious, dangerous, unsightly or unpleasant or the nature of which might significantly diminish the enjoyment of neighboring residents shall be permitted or maintained on any lot.

Section 6.3: Lot Owners' Responsibilities. Each lot owner covenants and agrees to maintain his respective lot(s) and improvements thereon in the same condition as a reasonably prudent homeowner would maintain his own home so that the entire real property will reflect a high pride of ownership and further, to maintain and prune bushes, shrubs and other landscaping so as to prevent view obstruction. The standards and conditions as to the pruning and the height of the bushes, shrubs and other landscaping shall be provided in the ACSR. If any lot owner shall fail to provide the initial landscaping or to maintain his lot or the building(s) or landscaping located thereon to the standards set forth this Declaration and the ACSR, the Association shall have the right to notify said lot owners, in writing, of the maintenance required. If said notice is delivered to the non-performing lot owner and no action is taken for a period of sixty (60) days, the Association shall have the right, through its agents and employees to enter upon said lot and provide such maintenance, and to levy an assessment against the non-performing lot owner and his lot for the cost of providing said maintenance. Said assessment shall constitute a lien against

the lot owned by the non-performing lot owner, and may be collected in the same manner as provided for delinquent assessments in Section 2 herein.

ARTICLE VII GENERAL PROTECTIVE COVENANTS

Section 7.1: Access to Lots. Access to all lots within Liberty Park shall be by way of Myers Drive, Myers Court, Patriot Lane, Patriot Court, Patriot Place and Shields Road.

Section 7.2: Compliance with Covenants, Conditions and Restrictions. All construction and landscaping work carried out on any lot located within Liberty Park must be in complete conformity with this Declaration and with the ACSR related to such lot as established by the Association from time to time, and must be in strict compliance with the plans which have been approved in accordance with such standards.

Section 7.3: Association's Authority and Agents. The Association has the authority to make all decisions required pursuant to this Declaration and the ACSR, and has appointed a Coordinating Architect as its agent with the authority to make decisions on its behalf concerning certain of these standards. The Association retains the right to change Coordinating Architects or to appoint any other agent, nominee or person from time to time to act on its behalf with regard to decisions to be made pursuant to these covenants, conditions and restrictions, the ACSR or other regulations as may be adopted by the Association. Decisions made by such approved agent(s) will be fully binding as if they had been made directly by the Association.

Section 7.4: Waiver. The failure of the Association or the Developer or of any of their duly authorized agents or any of the owners to insist in any one or more instances upon the strict performance of or compliance with this Declaration, the ACSR, or any of the Bylaws or rules or regulations of the Association, or to exercise any right or option contained therein, or to

serve notice or to institute any action or summary proceedings, shall not be construed as a waiver or relinquishment of such right for the future, and such right to enforce any of the provisions of this Declaration, the ACSR, the Bylaws or rules or regulations of the Association shall continue and remain in full force and effect. No waiver of any provision of this Declaration, the ACSR or the Bylaws, rules or regulations of the Association shall be deemed to have been made, either expressly or implied, unless such waiver shall be in writing and signed pursuant to authority contained in a resolution of the Board. The Association and its agent(s) does, however, reserve the right to vary or waive any of the provisions contained in the ACSR as to a particular lot or lots, and shall in no way be liable to any owner or anyone else for damages or otherwise as a result of their decisions in this regard. Moreover, no owner has any right to override or overturn any waiver by the Association of a condition contained in the ACSR pertaining to any other owner or lot.

Section 7.5: Liability. Nothing contained in this Declaration or the ACSR shall be construed or implied as imposing on the Association or its agents any liability to any party for any action or failure to act in regard to any provisions of this Declaration, the ACSR or any other rules and regulations adopted by the Association, including damages resulting from structural defects in any structure erected on any lot, and any person submitting plans, specifications or details to the Association or its agent(s) expressly waives any claim for damages or compensation arising from breach of contract, negligence or otherwise, unless the Association or its agent(s) have proceeded in bad faith or with malice.

Each owner covenants and agrees for himself and his successors that the Developer, the Association and its agent(s) shall not be liable for damages and injuries caused by windfall from trees, geologic hazards, adjacent steep slopes or deficiencies in the design or construction of the subdivision.

Any owner found to be in breach of any of the provisions of this Declaration or the ACSR will indemnify and save harmless any other owners of lots negatively affected from and against any and all reasonable losses, costs, claims and damages including attorneys' fees actually paid, arising as a result of any such breach or the enforcement of any such provisions.

Section 7.6: Enforcement. If any owner of a lot shall violate or allow the violation of any of the provisions of this Declaration or the ACSR or rules or regulations adopted by the Association, it shall be lawful for the Association, the Association's agent(s), as well as any owner of any other lot or City of Ferndale, where applicable, to prosecute and proceed at law or in equity against such violating owner to correct or enjoin the violation or to recover damages related thereto, notwithstanding the fact that such errant owner may have ceased to hold title to a lot located within Liberty Park.

In the event the Association or its agent(s) takes enforcement action provided above, all reasonable costs including attorneys' fees incurred as a result of such action shall be paid by the errant owner, and such costs shall bear interest as provided for delinquent assessments and shall constitute a lien against the lot.

Section 7.7: Grantee's Acceptance and Amendments. The grantee of any lot located within Liberty Park by acceptance of a deed conveying title thereof, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent owner of such lot, shall accept such deed or contract upon and subject to each and all of the provisions contained in this Declaration, the ACSR and other rules and regulations related to such lot, and the jurisdiction, rights and powers of the Association and its agent(s), and by such acceptance shall for himself/herself, his/her heirs, personal representatives, successors and assigns, consent and agree to and with the Association to keep, observe, comply with and perform all of the provisions of this Declaration, the ACSR and other rules and regulations related to his/her lot and any Amendments thereto. Any of the provisions contained in this Declaration may be amended at any time upon the vote of the owners of at least sixty percent (60%) of the lots located within Liberty Park and the filing of such amendment(s) as legally required.

Section 7.8: Protection of Holder of Mortgage or Deed of Trust. No violation or breach of any provision contained in this Declaration and the ACSR and no action to enforce the same shall defeat, render invalid or impair in any way the lien of any mortgage or deed of trust

held on any lot located within Liberty Park, or the title or interest of the holder thereof, or the title acquired by any purchaser upon foreclosure of any such mortgage or deed of trust. Any such purchaser shall, however, acquire title to any such lot subject to the provisions of this Declaration and the ACSR related to such lot.

Section 7.9: Sales Office/Model Home. The developer reserves the right to maintain a sales office/model home on a lot or lots to be designated within Liberty Park for the purpose of selling and re-selling lots within the plat or within neighboring plats. The Developer reserves the right to place and maintain "for sale" signs on any lot within Liberty Park.

Section 7.10: Damages. Each owner agrees that being in violation of the restrictions herein set forth may constitute an injury or damage to some or all of the other owners, which shall be deemed to be impossible to quantitatively measure. As a result, any or all of the other owners or the Association, in addition to all of the other remedies at law and at equity, will be entitled to a decree or other restraining or legally prohibiting any breach of any of the provisions of this Declaration and the governing ACSR, and any owner in breach of any such provisions hereby agrees that he/she will not plead in defense thereto that there would be an adequate remedy in damages.

Section 7.11: No Waiver of Other Laws: The provisions contained in this Declaration and the ACSR shall not relieve any owner of the requirement to observe the Bylaws, ordinances and other requirements of City of Ferndale, all development agreements between the Developer and the City, and the obligations and liabilities imposed by statute or common law on the owners and occupants of the lots, all of which must be duly observed and complied with.

Section 7.12: Failure to Enforce. Failure to enforce any provision of this Declaration or the ACSR shall not operate as a waiver of any such provision or of any other provisions contained herein.

Section 7.13: Severability. If any provision of this Declaration or the ACSR is determined to be void or unenforceable in whole or in part, it shall not be deemed to affect or impair the validity or enforceability of any other provision contained therein.

Section 7.14: Time of Essence. Time shall be of the essence of this Declaration and the ACSR.

Section 7.15: Liability and Hazard Insurance. The Association shall have authority to and shall obtain insurance as considered appropriate. All such insurance coverage shall be written in the name of the Association.

Section 7.16: Association Control. The Association is hereby authorized and empowered to adopt rules and regulations governing the use of the Plat of Liberty Park and the personal conduct of the members and their guests, and to establish penalties for infraction thereof. All lot owners shall be given written notice of said rules and regulations.

Section 7.17: Remedies. The remedies provided herein and in the Bylaws of the Association for collection of any assessment or other charge or claim against any member, for and on behalf of the Association or Developer, are in addition to, and not in limitation of, any other remedies provided by law.

Section 7.18: Costs and Attorney's Fees. In the event the Association employs an attorney to enforce any provision of the Declaration, the ACSR, the Bylaws of the Association or other rules and regulations adopted by the Association, the prevailing party in such action shall be entitled to an award or reasonable attorney's fees and costs incurred in said action.

