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Request of: CHRISTIE & CHRISTIE LAND SURVE
Whatcom County, WA

WHEN RECORDED RETURN TO:

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Document Title:	DECLARATION OF COVENANTS, CONDITIONS, RESERVATIONS AND RESTRICTIONS
Reference:	PACIFIC HIGHLANDS PLAT PHASE III AF# <u>2041103506</u>
Grantor/borrower:	PACIFIC HIGHLANDS NORTHWEST, L.L.C.
Legal Description:	LOT C, AMENDMENT TO PACIFIC HIGHLANDS PHASE I, LLA, A PLAT, CITY OF FERNDALE, WHATCOM COUNTY, WASHINGTON
Assessor's Tax Parcel ID#:	390113 359174 0000

**DECLARATION OF COVENANTS,
CONDITIONS, RESERVATIONS AND RESTRICTIONS
OF
PACIFIC HIGHLANDS PLAT
PHASE III**

A. RECITALS

This Declaration is made with reference to the following facts and conditions:

1. The undersigned are the owners in fee simple of the following described real property located in the City of Ferndale, Whatcom County, Washington:

SEE EXHIBIT "A" ATTACHED

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

3. Declarant owns and/or is purchasing all of the property described in Exhibit "B". The Declarant received preliminary plat approval for PACIFIC HIGHLANDS PLAT. The Declarant desires to have all lots created from the property described in Recital 1 be subject to this Declaration. The property subject to these covenants, including all Subsequent Phases and Prior Phases, is commonly known as "PACIFIC HIGHLANDS PLAT" and shall be referred to herein by that name and/or as the "Subdivision".

B. DECLARATION

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

1. LAND CLASSIFICATION AND DEFINITIONS

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

1.1 **Lot**. Any parcel of real property within the boundaries of the Subdivision identified by Arabic numerals and designated for the location and construction of a single-family residence.

1.2 **Parcel**. Any parcel of real property within the boundaries of the Subdivision except lots and real property dedicated to the City of Ferndale.

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

1.4 **Owner**. Any person holding either fee title or a vendees interest under a Real Estate Contract as shown by the records of the Auditor of Whatcom County, Washington, in a lot.

1.5 **Declarant**. Declarant, PACIFIC HIGHLANDS NORTHWEST LLC, a Washington limited liability company, or its assignee and/or CROWN POINT HOLDINGS INC. a Washington corporation.

1.6 **Common Properties**. Common properties (and/or Common Areas) are the following:

(a) Open Space Area A (Tract A), a 105,918 square foot area created and designated on the face of the plat of the Subdivision.

(b) Open Space Area B (Tract B), a 7,632 square foot area created and designated on the face of the plat of the Subdivision.

(c) Open Space Area C (Tract C), a 4,729 square foot area created and designated on the face of the plat of the Subdivision.

(d) Open Space Area D (Tract D), a 16,753 square foot area created and designated on the face of the plat of the Subdivision.

(e) Easements for the benefit of the Association created herein or on the Plat for the Subdivision.

(f) Open Space Buffer strip across the rear twenty feet of lots on the exterior of the Plat and as shown on the face of the Plat, but subject to the following limitations:

i. No structures shall be constructed within the Open Space Buffer;
ii. The Association and its members shall have no right to access those portions of the Open Space Buffer at the rear of a Lot, *except* that the HO shall have the right to access the Open Space Buffer at the rear of a Lot to undertake any and all maintenance of the landscaping therein.

(g) All common properties established in Prior and Subsequent Phases.

1.7 **Plat.** PACIFIC HIGHLANDS PLAT PHASE III, filed under Whatcom County Auditor's File No. 2041103500 and all Prior Phases and Subsequent Phases when recorded. The word plat shall also refer to plat maps, when recorded, for the Subdivision.

1.8 **Assessable Property.** Each individual lot.

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

1.10 **Resident.**

(a) Each person lawfully residing on or in any part of any lot; and

(b) Members of the immediate family of each such person actually living in the same household with such person.

1.11 **Board.** The Board of Directors of the Association.

1.12 **Association.** The community association of all lot owners, as more fully described in Paragraph 6 hereof, which is being created concurrent with the execution hereof in the form of a Washington nonprofit corporation.

1.13 **Subsequent Phases.** The real property legally described in Exhibit "B", which is attached hereto is or will be owned by the Declarant and will be developed by the Declarant into a residential subdivision as a phase or phases of the plat of PACIFIC HIGHLANDS. These phases shall be referred to herein as "Subsequent Phases". Upon acceptance by the City of Ferndale and recording of the final plat, each Subsequent Phase shall be bound by the terms and conditions of this Declaration. The applicability of this Declaration to Subsequent Phases shall be evidenced by the recording of a Declaration of Covenants, Reservations, and Restrictions incorporating the terms of this Declaration on each Subsequent Phase.

1.14 **Subdivision.** The word Subdivision shall refer to the real property described in the Recitals of this Declaration and shall also refer to all Prior Phases and Subsequent Phases upon acceptance and recording of the final plat for such Subsequent Phases.

1.15 **Declaration.** This Declaration of Covenants, Conditions, Reservations, and Restrictions for the PACIFIC HIGHLANDS.

1.16 **ARC.** The ARC is the Architectural Review Coordinator as fully defined in section 5 below.

1.17 **Prior Phases.** As used herein, Prior Phases shall refer to PACIFIC HIGHLANDS PLAT PHASE I, recorded in the records of Whatcom County under AF# 2040701633 and to PACIFIC HIGHLANDS PLAT PHASE II, recorded in the records of Whatcom County under AF# 2041103504

2. **RESERVATIONS AND EASEMENTS**

2.1 **Reservation of Easements.** Easements for drainage, sewers, storm water treatment and/or detention facilities, storm water drainage pipes, water pipes and utilities, facilities and services (including, but not limited to, sewer supply, storm water system, water supply, electricity, gas, telephone and television) are hereby reserved over, under, upon, in and through all roadways and walkways, and over, under, upon, in and through those certain portions of lots which are necessary for existing facilities and equipment serving the Subdivision, together with the right to enter upon such easements for their installation and repair. This reservation of easements is for the benefit of the Declarant and its assignee, as well as for the benefit of the City of Ferndale, Puget Sound Energy, Cascade Natural Gas Company, U.S. West Communications, AT&T Broadband, Verizon, Comcast and any other purveyors of such services as herein before described, as well as any of their successors in interest. The City of Ferndale assumes no responsibility to repair or maintain any portion of the storm water drainage/treatment system, but is granted the right to repair and maintain the same if the Declarant and/or the Association fails to repair and/or maintain the same (upon not less than 30 days prior notice to the Declarant and/or the Association). The Association shall reimburse the City of Ferndale for any and all costs and expenses (including but not limited to attorneys fees and costs incurred to enforce its rights herein) incurred in repairing and/or maintaining the storm water drainage/treatment system. Jurisdiction and venue for any legal action brought by the City of Ferndale to enforce its rights herein shall be in Whatcom County Superior Court.

2.2 **Conveyance of Common Properties.** The Common Properties shall be conveyed by the Declarant to the Association at such time as determined in the sole discretion of the Declarant, but in any event no later than the date upon which Declarant achieves the sale to owners of at least eighty percent (80%) of the lots within all phases of the entire PACIFIC HIGHLANDS PLAT

2.3 **Reservation of Drainage Easement and The Right to Drain.** The Declarant hereby reserves the right to drain all roadways, walkways, easement ways, and areas over and across any lot or parcel within the Subdivision as noted on the face of the plat and/or where water might take a natural course after the grading of such lot or parcel. The Association shall be responsible for the maintenance and upkeep thereof, including regular cleaning to remove sediments, the replanting of grass and the replacement of rock as necessary to insure the effective operation thereof.

2.4 **Easement Restoration.** Any work done on any easement created by this Declaration or by the plat shall be done in a prompt and workmanlike manner and the property shall be restored as nearly as is reasonably practical to its condition prior to work within the easement.

2.5 **Sales Office.** The Declarant and/or its assigns reserves the right to maintain a sales office on a lot within the Subdivision for the purpose of selling and reselling lots within the Subdivision;

provided, however, that the sales activity conducted in such office shall be limited to the sale or resale of lots within the Subdivision.

3. GENERAL USE RESTRICTIONS AND REQUIREMENTS

3.1 Permanent Residential Purposes. All lots within the Subdivision shall be used exclusively for permanent residential purposes. No business or commercial activity (including but not limited to home care facilities, domestic shelters, day care and/or pre-schools) shall be maintained, occur or be allowed on any lot or common area within the Subdivision. This restriction shall not include, nor prohibit, the Declarant or its agent, from maintaining a sales office and/or a model home for the purposes of selling and/or reselling lots/homes within the Subdivision.

3.2 Recreational Vehicles. All boats, utility trailers, trucks of more than one-ton rating, campers, recreational vehicles, travel trailers, motor homes and similar items or vehicles maintained or kept upon any lot within the Subdivision shall at all times be enclosed within a garage or otherwise neatly stored behind the front wall line of the residence and reasonably screened from view from the street, nor shall any such items or vehicles be parked on any street within the Subdivision overnight. Out-of-county guests of an owner, with such owner's permission, may park a recreational vehicle or travel trailer on lots for up to a maximum of six (6) weeks within any calendar year without being in violation of this Paragraph.

3.3 Explosives. No firearms or explosives shall be discharged within the boundaries of the Subdivision.

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

3.5 Signs. No signs or billboards shall be placed on any lot, except one identification sign bearing the owner's name and address may be placed upon the owner's lot. In addition thereto, the Declarant, and any owner or such owner's agent, may subsequently advertise any lot for sale, and, furthermore, an owner may display signs of a political nature, promoting a candidate or a political proposition, during periods of political campaigns.

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

3.7 Vehicles. All automobiles and all other permitted vehicles, if kept or parked on any lot or otherwise within the Subdivision, shall be in good order and in working condition. Partially wrecked vehicles, discarded vehicles, unlicensed vehicles or vehicles which are in a state of disrepair shall not be kept on any lot or street in the Subdivision, unless enclosed in a garage or otherwise completely screened from view from outside the lot. Non-muffled motorcycles, motorbikes, trail bikes, snowmobiles and similar vehicles shall not be operated on any portion of the Subdivision (and the roads therein) whether licensed or not.

3.8 Antennas. No television, radio or satellite antenna, receivers, dishes or other telecommunication devices shall be installed on any portion of any lot unless contained entirely within the interior of a building or in the backyard, reasonably screened from the view of all neighbors.

3.9 Fences. Wire and chain link fencing is prohibited. Other types of fencing are generally permitted only in the rear yards. The determination as to what constitutes the rear yard of any house, and the type, design and location of any fence shall be determined based on standards created by the ARC.

3.10 Retaining Walls. Retaining walls shall not exceed a height of four (4) feet unless they are designed and installed consistent with plans produced by a licensed civil engineer. Retaining walls shall be constructed only of the following materials: stone, heavy timber, concrete with brick, stone or wood facing or concrete with high quality exposed aggregate finish.

3.11 Roof Materials. Roof materials are limited to natural cedar shakes or shingles, concrete or clay tiles, slate or textured forty-year plus mineral surfaced composition shingles.

3.12 Chimney Design. Exposed metal chimneys are not permitted.

3.13 Driveways and Walkways. Driveways and walkways shall not exceed twenty-two (22) feet and five and one-half feet (5½) respectively in width, except in the case of a house with a three (3)-car garage, where the driveway as it approaches the house can widen to a maximum of thirty-two (32) feet.

3.14 Clothesline Restrictions. Clotheslines are only permitted in the backyard of a lot.

3.15 Surface Water Run-Off. No lot shall be improved in such a way as to cause excess surface water run-off that may damage or inconvenience other lots or contiguous properties and the owners thereof.

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

3.17 Landscaping. All lots within twelve (12) months after commencement construction of other improvements thereon shall be fully landscaped. All landscaping shall be subject to approval from the ARC. If the owner of the lot fails to properly maintain landscaping, then the Association may perform the work described in the approved landscaping plan and charge the owner of the lot for the cost of such work. The Association may collect this charge pursuant to the authority granted in Paragraph 6.7 of this Declaration.

3.18 Setbacks. All set backs shall be consistent with setbacks required by the conditions of the approved PUD for the Plat, including but not limited to a 20 foot setback for the front yard, a 10 foot

set back for the rear yard, a 5 foot set back of the side yards, and a 5 foot utility easement around the perimeter of each lot; provided, the ARC may impose more restrictive setbacks as required.

3.19 House Size. Each and every house in the Subdivision shall be at least 1500 square feet in size, not including the garage, *unless* specific approval to the contrary is granted in writing by the ARC pursuant to paragraph 5.4 below.

3.20 Garage. All houses shall have a minimum two (2) car garage. Each such 2 car garage shall be designed such that the interior dimensions (free and clear) accommodate two standard parking spaces (i.e. 18' in width and 19' in depth).

4. CONSTRUCTION

4.1 Time For Completion. Construction of all improvements shall be prosecuted diligently from the date of commencement of work until the exterior is completed and painted or finished and all sanitation and health requirements have been fulfilled. Furthermore, the maximum time limit for the completion of construction of an improvement shall be six (6) months from the date construction commences, which is defined as the date building materials are first delivered to the lot for such purpose. Construction shall not be deemed to be completed until all improvements are finished, the lot has been cleaned of construction debris and the lot has been landscaped consistent with approved plans.

4.2 Notice of Fill upon Lots. During the construction of the infrastructure for the Plat, fill was placed on some of the Lots in this phase. All of the fill was monitored by Merit Engineering and reports regarding the same are available from the Declarant and/or the City of Ferndale.

4.3 No Excavated Materials in Open Space. No Owner or the Association, their contractors, agents and assigns, shall place any material excavated from a Lot in any Open Space.

4.4 Required Construction Access. A construction entrance for each lot shall be installed prior to commencement of any construction activity on each lot. The entrance shall be constructed of import gravel at a depth that will prevent tracking of any debris into public rights-of-way, as determined by the city

5. ARCHITECTURAL REVIEW COORDINATOR

5.1 General. Construction of improvements on any lot within the Subdivision shall be subject to the prior approval of an Architectural Review Coordinator ("ARC"). The ARC shall be comprised of Ken Tiderington Sr., Ken Tiderington Jr. and James Hemptz. The Declarant may, at any time, remove, add or alter the composition of the ARC. No improvements shall be erected, placed or altered on any lots until the construction plan, specification, site plan and landscaping plan, showing the location of all proposed improvements on the lot in a form established by the ARC, have been approved. The approval or disapproval of the ARC as to such construction plan, specifications, site plan and landscaping plan, shall be based upon the quality of materials utilized in the construction, the harmony of the external design and color scheme of the proposed improvements with other existing improvements within the Subdivision, bulk and location of improvements with respect to typography and finish grade, view protection and compliance with the Declaration and the standards to be developed and made available to owners by the ARC.

5.2 ARC Fee. In addition to the construction plan, specifications, site plan and landscaping plan, the owner shall give to the ARC **Two Hundred Dollars (\$200.00)** for each approval requested. The ARC Fee for initial construction plans may be charged and collected at the time the Declarant sells each lot to the initial purchaser. A significant change to plans shall be deemed to be a new set of plans and shall require an additional **One Hundred Dollar (\$100.00)** fee. The ARC is not obligated to commence review until the above specified fees have been paid.

5.3 Approval/Disapproval. The ARC shall approve or disapprove the construction plans, specifications and site plan, including specified color finish, within fifteen (15) days following receipt of a complete duplicate set thereof from the submitting lot owner or prospective lot owner. Any complete submission of construction plan, specifications, site plan and landscaping plan on which no action is taken by the ARC for twenty (20) days following the date of receipt thereof shall be deemed approved as submitted, unless within such twenty (20) day period the ARC has sought, in writing, clarifying information concerning the same. Two sets of construction plans, specifications (including exterior color finish detail), site plan and landscaping plan must be submitted to the ARC. One such complete set shall be returned to the submitting lot owner or prospective lot owner with the approval or disapproval endorsed upon such complete set by the ARC. The other complete set shall be retained by the ARC for its permanent files.

The ARC shall have the right to disapprove any construction plans, specifications and/or site plan in the event the same are not in accordance with the provisions of this Declaration, if the design or exterior color scheme of the proposed improvements is not in harmony with the general surroundings of the Subdivision or with the adjacent improvements, if the proposed improvements interfere with views from other lots in the Subdivision, if the construction plan, specification, site plan and landscaping plan are incomplete, or if the ARC determines that the construction plans, specifications and site plan, or any portion of them, are contrary to the interest, welfare and/or rights of the owners of other lots within the Subdivision.

5.4 Variance. In order to preserve the character of the Subdivision, and/or to resolve problems relating to unique and difficult topographical problems or in other extraordinary circumstances, the ARC shall have the right to grant a variance from the standards created by the ARC and from those restrictions relating to improvements set forth in Paragraph 3 of this Declaration. Any variance from the restrictions contained in this Declaration shall be made in recordable form and shall be placed of record on the lot by the ARC.

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

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

5.7 Expiration. The Declarant may remove and replace the ARC at the Declarant's sole discretion. This right to appoint and remove the ARC shall not expire until the Declarant no longer owns any lots in the Subdivision. The Association by an affirmative vote of seventy-five percent (75%) of the owners may elect to appoint a Design Review Committee ("DRC") that shall have all of the powers of the ARC except the power to grant variances in the restrictions contained in Paragraph 3 of this Declaration. The DRC shall consist of three (3) members appointed by the Board. All decisions of the DRC shall be made by a majority vote.

6. COMMUNITY ASSOCIATION

The Declarant shall form a Community Association, designated herein as the Association, to include as its members all owners of any lot within the Subdivision. This organization shall be a nonprofit corporation pursuant to Title 24 of the Revised Code of Washington and shall be known as "Pacific Highlands Homeowner's Association" and shall be authorized to enforce the terms and conditions herein. Upon the acceptance and recording of Subsequent Phases, or any portion thereof, the membership of the Association shall be expanded to include the owners of each lot within such Subsequent Phases.

6.1 Purpose. The purpose of the Association shall include, without limitation, the furtherance and promotion of the common welfare of the owners of any lot or parcel within the Subdivision and within Subsequent Phases; the regulation, use, care, construction, operation, repair, maintenance and preservation of the common properties within the subdivision for which there is a private maintenance obligation to be shared in common by the Association members; the maintenance and preservation of landscaping and irrigation systems located in the Subdivision; the maintenance and repair of light standards for the street lighting within the Subdivision to the extent that the standards deviate from city standards that were in effect at the time of their installation; the regulation, maintenance and repair of facilities thereon and such other facilities, equipment, activities, objects and purposes pertaining to the welfare, enjoyment, social well-being, protection and benefit of the members and of their lots within the Subdivision and Subsequent Phases, including, but not limited to, the operation, maintenance and use of property held or controlled by the Association; payment of taxes, if imposed, on Common Properties and improvements; and the protection and preservation of the interests of the lot owners for the common good.

6.2 Meetings. All meetings shall be conducted as required by RCW 64.38.035.

6.3 Creation and Transfer of Control. The Association shall be organized at the instance of the Declarant, and each lot owner shall be a member of the Association. Upon the acceptance and recording of the plats of Subsequent Phases, each owner of a lot thereof shall also become a member of the Association. The Declarant shall designate and appoint a governing Board of the Association until such time as the Declarant has sold eighty (80%) percent of its lots within all Prior Phases, Subsequent Phases and this phase of the entire Pacific Highlands Plat. When eighty (80%) percent of such lots owned by the Declarant have been sold by the Declarant, the control of the Association shall be turned over to the members, and the members shall elect from their number the governing Board of the Association, as determined by the Articles of Incorporation and By-laws of the Association. Irrespective of the foregoing, the Declarant, at its sole and exclusive option, may elect at any time prior to the sale of eighty (80%) percent of all Lots in all phases of the entire Pacific Highlands Plat to transfer control of the Association to the members thereof.

6.4 Required Maintenance. Pursuant to Final Plat approval for Phase I of the Pacific Highlands PUD granted by the City of Ferndale and recorded under Whatcom Co. AF# 2040701633, the

Association is responsible for maintenance of certain easements and common areas. The Association shall comply with the terms of the above described Final Plat (for this Final Plat and all Prior and Subsequent Phases), including but not limited to the following (collectively referred to as Required Maintenance):

(a) The Association is responsible for maintenance, repair, or restoration of all common areas including all wetland areas, water detention and treatment facilities, drainage infrastructure, and other common infrastructure or open space and recreation elements of the Plat.

(b) The Association shall annually inspect and certify to the City of Ferndale (by and through a registered Professional Engineer) as to the adequacy of the storm water treatment and conveyance system

(c) The Association shall, not less than once every three (3) years, retain an qualified wetland professional to inspect the wetland areas identified in the plat and confirm and certify to the City of Ferndale (by and through the report of the qualified wetland professional) that the requirements associated with the protection and enhancement of the wetland areas are being fulfilled.

(d) The Association is responsible for all of the maintenance, repair and/or restoration of the drainage structures, berms and landscaping within the Tract A and Tract B (in Pacific Highlands Phase I) according to the Storm Drainage Facilities Operations and Maintenance Plan, Pacific Highlands, Phase I (dated June 22, 2004), a copy of which is in the possession of the Declarant and the City of Ferndale, Public Works Dept.

(e) If the Association fails to undertake any of the foregoing Required Maintenance obligations, the City of Ferndale shall have the right (but not the obligation) to, upon 30 days prior written notice to the Association, complete all or part of the foregoing Required Maintenance. The Association shall reimburse the City of Ferndale for any and all costs and expenses (including but not limited to attorneys fees and costs incurred to enforce its rights herein) incurred completing the foregoing Required Maintenance. Jurisdiction and venue for any legal action brought by the City of Ferndale to enforce its rights herein shall be in Whatcom County Superior Court.

6.5 Assessments and Liens.

(a) **Authority.** The Association during the period of Declarant control and at all times thereafter shall be empowered to establish and to collect dues and assessments upon lots in the Subdivision for the common benefit of such lots, which authority shall extend to the lots within Subsequent Phases upon final plat approval thereof, whether in whole or on a phased basis.

(b) **Purposes.** The purposes for which dues and assessments may be established and collected include, without limitation, making provision for the payment of charges associated with utilities, Frontage Road maintenance, drainage, property protection, landscaping, insurance, maintenance, improvements, payment of taxes upon Common Properties, the holding of ownership or a leasehold interest therein, for any other common purposes or for collecting fines or recovering money expended on the landscaping of a lot pursuant to Paragraph 3.18 of this Declaration, all as determined pursuant to the Articles of Incorporation and By-laws of the Association.

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

(d) **Amounts Included.** Each owner and each party hereinafter owning or claiming an equity interest in a lot agrees that in the event of such foreclosure action involving such lot, the owner or owners thereof or other party asserting an equity interest therein will pay the Association's expenses of title examination and insurance, the cost of attorney's fees incurred by the Association and court costs, as well as all other costs reasonably and necessarily incurred in such foreclosure action, and/or the collection of any pasted due assessment (whether or not litigation or foreclosure is instituted to collect such amounts). In any such action, delinquent assessments shall bear interest at the rate of 12% per annum from the date the same became due until the date of the entry of the judgment of foreclosure thereon.

(e) **Other Liens and Foreclosure Actions.** The method and manner provided for foreclosure of liens set forth in this Paragraph shall pertain to all liens referred to in this Declaration. First mortgage liens placed upon any of the lots created shall be superior to any and all charges, assessments, and liens thereafter asserted pursuant to this Declaration.

6.6 **Establishment and Assessment of Charges.** For the purpose of providing funds for uses specified herein the Board of the Association shall, for each year, charge yearly dues against all lots. The Declarant shall determine the first year's dues shall be paid. Until dues are assessed, the Declarant shall be responsible for payment of expenses of the Association. Each lot shall be assessed an equal amount for each calendar year for all expenses common to all lots. Assessments shall be adopted pursuant to the requirements set forth in RCW 64.38.025.

6.7 **Special Assessment.** The Association may make special assessments against any lot and lot owner for violating the terms of this Declaration, or if such owners responsible for damage to the common properties.

6.8 **Annual Statement.** As soon as shall be practical in each calendar year, the Association shall send a written statement to each owner setting forth the dollar amount of the assessment for such lot for such calendar year. The Association may, in its sole discretion, provide for payment of such assessments on a periodic basis during such calendar year, with or without a service charge. This requirement shall not apply until the Declarant has elected to assess lots in the Subdivision.

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

6.10 **Delinquency For More Than Ninety Days.** If the owner of any assessable lot shall be delinquent in the payment of the annual assessment, or any installment thereof, for more than ninety (90) days following the date the same is due, then the Association shall have the right to commence legal action seeking a personal judgment against such owner and, in addition thereto, shall have the right to foreclose its lien upon such lot. The total amount due from such owner shall be such sums as provided in Paragraphs 6.5 and 6.4(d), plus any penalty imposed under Paragraph 6.7 hereof.

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

64.38.025. **6.12 Increase in Assessments.** Increase and assessments shall be made pursuant to RCW

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

(a) Administrative costs and expenses incurred by the Association in the exercise of its powers, authority and duties described in its Articles of Incorporation and By-Laws;

(b) The promotion of the recreation, health, safety, enjoyment and welfare of the users of the Common Properties, and the enhancement of the values of the Common Properties by means of construction, repair, maintenance, operation and administration of the Common Properties, including, but not limited to, the payment of taxes and insurance premiums on the Common Properties.

(c) The service, repair, maintenance and/or replacement of any and all improvements, including, but not limited to landscaping, fences, roads, paths, drainage facilities and lighting belonging to the Association, including but not limited to those maintenance obligations set forth in paragraph 6.4.

(d) As to monies received on special assessments, to fulfill the purpose of the special assessment.

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

6.15 Required Liability Insurance. The Association shall, at all times, obtain and keep in force a policy of Combined Single Limit Bodily Injury and Property Damage insurance insuring the Association against any liability arising out of the ownership, use, occupancy or maintenance of the Common Areas. Such insurance shall be in an amount not less than \$1,000,000.00 per occurrence.

7. PROTECTION OF MORTGAGE OR DEED OF TRUST HOLDER

No violation or breach of any covenant, condition, reservation or restriction contained in this Declaration, or in any supplement hereto, and no action to enforce the same, shall defeat, render invalid or impair the lien of any mortgage or deed of trust taken in good faith and for value against any title or interest in any lot which is the subject of an action arising from such violation or breach. A purchaser of any such lot at a trustee's sale, Sheriff's sale or Tax Foreclosure sale shall take title to such lot free and clear of any violations or breaches which have occurred on such lot, or by the previous owner thereof, prior to such foreclosure, but such purchaser shall nevertheless take subject to this Declaration and to any supplements hereto.

8. TENANTS AND INVITEES

Tenants and Invitees of the owners or residents of the Subdivision shall be bound by the terms and conditions of this Declaration.

9. ENFORCEMENT

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

10. GRANTEE'S ACCEPTANCE

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

Each such grantee also agrees, by such acceptance, to assume, as against Declarant, its successors or assigns, all of the risks and hazards of ownership and occupancy attendant to such lot, including, but not limited to, its proximity to any Common Properties, public paths, streams or other water courses.

11. RIGHT TO FARM DISCLOSURE

The subject property is within or near designated agriculture lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. You may be subject to inconveniences or discomforts arising from such operations, including but not limited to noise, odors, flies, fumes, dust, smoke, the operation of machinery of any kind during any 24-hour period (including aircraft), the storage and application of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. Whatcom County has determined that the use of real property for agricultural operations is a high priority and favored use and will not consider to be a nuisance those inconveniences or discomforts arising from farm operations, if such operations are consistent with commonly accepted good management practices and otherwise comply with local, state, and federal laws.

12. AMENDMENT TO DECLARATION

Each and every provision of this Declaration shall run with and bind the land and shall inure to the benefit of, and be enforced by, the Association, the Declarant, the owners of any lots subject hereto, their respective legal representatives, heirs, successors and assigns, for a period of ten (10) years from the date that this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument terminating or amending this Declaration is signed by not less than seventy-five (75%) percent of the owners of all lots, which instrument shall then be filed of record with the Whatcom County Auditor. During the first ten (10) year term hereof, this covenant may be amended by an instrument adopted by the Board and signed by not less than seventy-five (75%) percent of the owners of all lots within the Subdivision. Any such amendment shall take effect upon being recorded with the Whatcom County Auditor.

No Amendment or termination of this Declaration shall affect, change, or terminate any of the easements described in Paragraphs 2.1 and 2.3 of this Declaration.

The maintenance requirements imposed on the Association in Paragraph 6.4 of this Declaration shall not be amended without the prior written consent of the City of Ferndale.

13. SEVERABILITY

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

14. PARAGRAPH HEADINGS

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

15. NO WAIVER

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

DATED this 18 day of November, 2004

PACIFIC HIGHLANDS NORTHWEST LLC,
a Washington Limited Liability Company

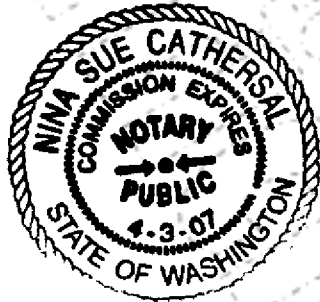
KENNETH M. TIDERTON, SR.
Manager

State of Washington)
) ss.
County of Whatcom)

I certify that I know of have satisfactory evidence that KENNETH M. TIDERINGTON, SR. is the person who appeared before me, and said person acknowledged that he signed this instrument as the Manager of Pacific Highlands Northwest LLC and acknowledged it to be the free and voluntary act of said party for the uses and purposes mentioned in the instrument.

SUBSCRIBED to before me this 18 day of November 2004.

Nina Sue Catheral
NOTARY PUBLIC for the State of Washington,
residing at Bham, WA
My Commission Expires: 07.03.07



PACIFIC HIGHLANDS PLAT - PHASE III

EXHIBIT A

LOT C, AS DELINEATED ON THE AMENDMENT TO PACIFIC HIGHLANDS PHASE I, LLA, ACCORDING TO THE PLAT THEREOF, RECORDED ON JANUARY 15, 2004, UNDER AUDITOR'S NUMBER 2040102286, RECORDS OF WHATCOM COUNTY, WASHINGTON.

PACIFIC HIGHLANDS PLAT

EXHIBIT B

LOTS A, B, C, AND D, AS DELINEATED ON THE AMENDMENT TO PACIFIC HIGHLANDS PHASE I, LLA, ACCORDING TO THE PLAT THEREOF, RECORDED ON JANUARY 15, 2004, UNDER AUDITOR'S NUMBER 2040102286, RECORDS OF WHATCOM COUNTY, WASHINGTON.