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Request of: PACIFIC SURVEY & ENGINEERING

AFTER RECORDING, RETURN TO:  
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DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND  
RESERVATIONS  
FOR  
THORNTON WOODS P.U.D.

TITLE OF DOCUMENT:

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND RESERVATIONS FOR THORNTON  
WOODS P.U.D.

GRANTOR:

WHATCOM SKAGIT HOUSING

GRANTEE:

THE GENERAL PUBLIC

ABBREV. LEGAL DESCRIPTION:

THORNTON WOODS, P.U.D., PLAT AF# 2091203826

FULL LEGAL:

P. 1

TAX PARCEL NO.:

390124 500529 + 390124 442472

## ARTICLE I

### SUBMISSION OF PROPERTY; PURPOSE

#### 1.1. Submission of Property.

WHATCOM SKAGIT HOUSING, a Washington Nonprofit Corporation, hereinafter referred to as the "Declarant," along with TROY G. CLARK and TINA B. CLARK, husband and wife ["Clark"], collectively being the owners in fee simple of certain land located in Ferndale, Whatcom County, Washington, has submitted said land, together with all improvements, easements, rights and appurtenances thereunto belonging, collectively referred to hereinafter as "the Property", to the provisions of the Planned Residential Development Ordinance of the City of Ferndale ("the Ordinance", i.e., Chapter 18.68 of the City Code), and has created from and within such Property a Planned Unit Development ("P.U.D.") which may be developed in one or more phases at the option of Declarant, which P.U.D. shall be known as "Thornton Woods P.U.D.", and which shall hereinafter be referred to as the "Planned Community".

#### 1.2. Reference to P.U.D. Plat Map.

The Declarant and Clark have concurrently recorded with the Auditor of Whatcom County, Washington a certain P.U.D. Plat Map pursuant to the Ordinance, entitled Plat of Thornton Woods PUD, as per the map thereof recorded at Auditor's File No. **209/203826**, Records of Whatcom County, Washington. This P.U.D. Plat Map shows the location and dimensions of the Lots and Common Areas within the Planned Community, together with other necessary information; this map is hereinafter referred to as the "Plat Map".

#### 1.3. Purpose.

This Declaration of Covenants, together with the Plat Map referred to herein, state covenants, conditions, restrictions and reservations intended by the Declarant to effect a common plan for the development of the Property mutually beneficial to all of the described Lots. The covenants, conditions, restrictions, reservations and plan, are binding upon and run with the entire property and upon each such Lot as a parcel of realty, and upon its Owners or Occupants, and their heirs, personal representatives, successors and assigns, through all successive transfers of all or part of the Property or any security interest therein, without requirement of further specific reference or inclusion in deeds, contracts or security instruments, and regardless of any subsequent forfeiture, foreclosures, or sales of Lots under security instruments, or of any forfeiture, foreclosures, or sales instituted for nonpayment of government tax, levy or assessment of any kind.

## ARTICLE II

### DEFINITIONS

2.1. "Architectural Review Coordinator ('ARC') means the individual or Committee designated by the Declarant or by the Board of Directors under Section 9.2 hereof, to coordinate compliance with the Design Guidelines of the Planned Community.

2.2. "Allocated interest" means the undivided interest in the Common Areas, the Common Expense liability, and votes in the Association allocated to each Lot by the provisions of Sections 5.3, 7.4.2

and 10.6 of this Declaration of Covenants.

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

2.4. "Association" means the nonprofit corporation incorporated at the direction of the Declarant to manage the Common Areas of this Planned Community.

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

2.6. "City" means the City of Ferndale.

2.7. "Common Areas" means all portions of the Planned Community other than the Lots. Such areas are denoted as "Tracts" on the Plat Map and include areas of land, along with specific facilities and improvements. To the extent that Common Areas are depicted within the boundaries of any Lot within this Planned Community, the Common Areas may consist of easements burdening such Lots for the benefit of other Owners and Occupants of the Property within this P.U.D. The term "General Common Areas" is sometimes used herein to describe Common Areas which are not, or have yet to be allocated as Limited Common Areas.

2.8. "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves. Most Common Expenses are "General Common Expenses" which are generally those expenses associated with maintaining, repairing, replacing, managing and insuring those portions of the Common Areas which benefit all the Lots in the Planned Community. See Section 8.3.2 hereof for a more specific list of such expenses. Some Common Expenses are known as "Limited Common Expenses" which are those chargeable against fewer than all the Lots in the Planned Community, as provided in Section 10.8 of this Declaration of Covenants.

2.9. "Common Expense liability" means the liability for Common Expenses allocated to each Lot pursuant to Section 10.6 of this Declaration of Covenants.

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

2.11. "Declarant" means the entity, person or group of persons acting in concert who (a) executes this Declaration of Covenants, or (b) reserves or succeeds to any Special Declarant Right under the Declaration of Covenants.

2.12. "Declarant control" means the right of the Declarant or persons designated by the Declarant to appoint and remove officers and members of the Board of Directors or to veto or approve a proposed action of the Board or Association pursuant to Sections 8.1 and 16.7 of this Declaration of Covenants.

2.13. "Declaration of Covenants" means this document, which facilitates the governance and management of this Planned Community; the term also includes any lawful amendments to this document.

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

2.15. "Development Plan" means any formal plan of development, however termed under the Ordinance, approved by the County or City in which the Planned Community is situated. The term also includes any amendments thereto approved by applicable governmental entities.

2.16. "Development Right" means any right or combination of rights reserved by the Declarant in the Declaration of Covenants to: (a) Add real property or improvements to the Planned Community; (b) create Lots, Common Areas, or Limited Common Areas within real property included in or added to the Planned Community; (c) subdivide Lots or convert Lots into Common Areas; (d) withdraw real property from the Planned Community; or (e) reallocate Limited Common Areas with respect to Lots that have not been conveyed by the Declarant. Development Rights affecting this Planned Community are described in Section 3.3.4 hereof. Development Rights are personal to the Declarant and may be exercised, or not exercised, in Declarant's sole and absolute discretion.

2.17. "Dispose" or "disposition" means a voluntary transfer or conveyance to a purchaser or lessee of any legal or equitable interest in a Lot, but does not include the transfer or release of a security interest.

2.18. "Dwelling" or "Dwelling Unit" means an improved portion of a Lot intended to serve as a residence.

2.19. "Eligible Insurer" means the insurer or guarantor of a mortgage on a Lot that has filed with the secretary of the Association a written request that it be given copies of notices of any action by the Association that requires the consent of mortgagees.

2.20. "Eligible Mortgagee" means the holder of a mortgage on a Lot that has filed with the secretary of the Association a written request that it be given copies of notices of any action by the Association that requires the consent of mortgagees. The term "Eligible Mortgagee" also includes the "servicer" of a mortgage which has been acquired or securitized by secondary mortgage market entities such as the Federal National Mortgage Association ("FNMA" or "Fannie Mae") or the Federal Home Loan Mortgage Corporation ("FHLMC" or "Freddie Mac") or the like.

2.21. "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a mortgage or a deed in lieu thereof.

2.22. "Governing Documents" means this Declaration of Covenants, the Plat Map, the Articles of Incorporation and Bylaws of the Association, along with any Rules and Regulations adopted by the Board of Directors, and any lawfully adopted amendments to any of the above.

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

2.24. "Identifying number" means a symbol or address that represents the designation of each Lot or, in some cases, a Common Area component, appearing on the face of the Plat Map.

2.25. "Limited Common Area" means a portion of the Common Areas allocated by Article V of the Declaration of Covenants for the exclusive use of one or more but fewer than all of the Lots.

2.26. "Lot" means a physical portion of the Planned Community designated for separate ownership, the boundaries of which are depicted on the Plat Map as a separate lot of record. A Lot may be contain or be suitable for development of one or more Dwelling Units, as indicated on the Plat Map.

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

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

2.29. "Occupant" means a person lawfully occupying any Lot; the term includes Lot Owners, family members and tenants of Lot Owners.

2.30. "Ordinance" or "the Ordinance" means the law, statute, ordinance authorizing the creation of this Planned Community in the jurisdiction in which the Property is situated, described with greater particularity in Section 1.1 hereof, along with any administrative regulations implementing same. The term includes any changes, revisions, substitutions and/or deletions in such law or regulations which may exist from time to time.

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

2.32. "Planned Community" means all the Property within the P.U.D., along with all the improvements constructed therein, and all other institutions and things serving the Owners of Lots therein.

2.33. "Property" or "the Property" means the real property designated on the Plat Map and legally described thereon, and includes all real property which may be from time to time acquired by the Association pursuant to Section 8.4.4 hereof, or which may be added to this Planned Community under Development Rights reserved in Section 3.3 hereof.

2.34. "P.U.D." means a Planned Unit Development formed pursuant to the provisions of the Ordinance, under which portions of real property known as "Lots", which are created by the statutory process described in the Ordinance, are susceptible to separate ownership, and any Common Areas depicted on the Plat Map are owned in common by all Lot Owners on an undivided basis as an appurtenance to their interests in those Lots.

2.35. "Purchaser" means any person, other than the Declarant or a dealer, who by means of a disposition acquires a legal or equitable interest in a Lot other than (a) a leasehold interest, including renewal options, of less than twenty years at the time of creation of the Lot, or (b) as security for an obligation.

2.36. "Reserved Common Area" means a portion of the Common Areas which is designed for temporary storage or other purposes by one or more Owners or occupants, upon payment to the Association of such user fees and upon satisfaction of such other conditions as the Board, by resolution, may deem appropriate; the right to use a Reserved Common Area shall be deemed to be a license rather than an interest in the property so reserved.

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

purposes.

2.38. "Special Declarant Rights" means rights reserved for the benefit of the Declarant to: (a) Complete improvements indicated on the Plat Map filed with the Declaration of Covenants; (b) exercise any Development Right described in Section 3.3 hereof; (c) maintain sales offices, management offices, signs advertising the Planned Community, and models; (d) use easements through the Common Areas for the purpose of making improvements within the Planned Community or within real property which may be added to the Planned Community under Development Rights reserved hereinafter; or (e) appoint or remove any officer of the Association or any member of the Board of Directors, or to veto or approve a proposed action of the Board or Association during any period of Declarant Control reserved in this Declaration of Covenants. Special Declarant Rights are described in Section 16.6 hereof.

2.39. "Upkeep" means any care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction that is required to maintain property in a decent, safe and sanitary condition, in keeping with the standards of the Planned Community.

### ARTICLE III

#### DESCRIPTION OF DEVELOPMENT PLAN, GENERAL THEME AND DEVELOPMENT RIGHTS

##### 3.1. Development Plan.

The Planned Community will be developed in accordance with the Development Plan approved by the City of Ferndale for this project. The Association will maintain in perpetuity all the Common Areas of this Planned Community for the common benefit of the Lot Owners.

##### 3.2. General Theme of Planned Community - Amenities.

This Planned Community is located off Thornton Road in Ferndale, not far from its intersection with Church Road. The project is situated on 13.93 acres of land. In general, the Planned Community will be a "single family" project where individual dwelling structures will be constructed within the Lots by the first individual owners thereof, with the assistance of Declarant Whatcom Skagit Housing. Roads in the project are public. The Planned Community will include the following common amenities and facilities: recreational facilities, open space areas designed to serve as stormwater conveyance and treatment facilities, vegetated buffer areas, as well as trails, paths and pocket park areas.

##### 3.3. Scope of Covenants - Lots 42 & 43 Excluded.

These Covenants affect only Lots 1 through 41, inclusive. Lots 42 and 43 are excluded from the binding effect of these Covenants, except as may be provided in Article XVI hereof.

##### 3.4. Development Rights.

The project will be developed in one single legal phase. No more real property may be added to the Planned Community. Individual Lots will be sold and marketed separately, in any order deemed appropriate by the Declarant.

## ARTICLE IV

### LOTS

#### 4.1. Number, Description and Location.

The Planned Community contains forty-three (43) Lots which are depicted on the Plat Map. The location of existing Lots and their dimensions are shown on the Plat Map. Such Lots are situated on public roads depicted on the Plat Map.

#### 4.2. Construction of Dwellings and Other Improvements Within Lots.

##### 4.2.1. Initial Construction by Declarant.

Dwellings and related improvements such as fencing and accessory structures will be constructed within the Lots initially by their first individual owners under the direction of the Declarant, according to a common design scheme established by the Declarant in consultation with the City of Ferndale. Other improvements, such as fences, service sheds and the like, may be constructed within Lots only in accordance with Design Guidelines described in Sections 4.2.2 and 9.2 hereof.

##### 4.2.2. Design Guidelines Approved by City of Ferndale.

The Declarant and the City of Ferndale have jointly approved Design Guidelines [dated ?] which govern the construction of Dwellings and other improvements within the Lots. Such Design Guidelines are binding on all Lot Owners as though fully set forth in this Declaration of Covenants. No construction that is inconsistent with such Design Guidelines may occur in the Planned Community.

##### 4.2.3. No Modification Absent Approval by Board of Directors.

Following the initial construction of the Dwelling and related improvements within the Lots, no person other than the Declarant shall make any addition, alteration or improvement in or to any Lot, other than for normal Upkeep or natural landscaping, which is visible from the exterior of the Lot (excluding areas within a Dwelling's building envelope which are visible from the exterior only because of the transparency of glass doors, walls or windows), without the prior written consent of the Board of Directors. No person other than the Declarant shall paint or otherwise alter the exterior of any improvement, including the doors and windows, if such exterior is visible from another Lot or the Common Areas, without the prior written consent of the Board of Directors. Any addition, alteration or improvement upon any Lot existing in violation of the Governing Documents shall be removed or altered to conform to the Governing Documents within thirty days after notice from the Board of Directors of the violation.

##### 4.2.4. Governmental Permits.

Approval by the Board of Directors shall not relieve an Owner from the obligation to obtain any required governmental permits. The Owner shall deliver all approvals and permits required by law to the Board of Directors, as appropriate, prior to the commencement of any construction requiring such approval or permit. If any application to any governmental authority for a permit to make any such structural addition, alteration or improvement to any Lot or improvement located on any Lot requires execution by the Association, and provided consent has been given by the Board of Directors, then the application shall be

executed on behalf of the Association by an Officer, without incurring any liability on the part of the Board of Directors or the Association to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having a claim for personal injury or property damage arising therefrom.

#### 4.2.5. No Deviation from Plans.

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

#### 4.3. Upkeep of Lots.

##### 4.3.1. Owners' Responsibility - Includes P.U.D. Buffer Areas.

Each Lot Owner shall, at his or her sole expense, have the right and the duty to keep the Dwelling erected within the Lot, and any equipment, appliances, and fixtures contained therein in good order, condition and repair and shall do all interior and exterior redecorating and painting at any time necessary to maintain the good appearance and condition of the Dwelling. Each Owner shall also be responsible for Upkeep of the roof gutters, downspouts, foundation drains and related drainage lines, decks and other exterior portions of the Dwelling, along with individual heating, ventilating or air-conditioning equipment, wherever located, installed for the sole and exclusive use of the Lot, and of any hot tub or other structure, device or equipment lying outside the Dwelling but lying within the Lot. Each Owner shall also be responsible for maintaining the landscaping within the Lot, including any portions of the P.U.D. Buffer Areas located within the Lot. This Section shall not be construed as permitting any interference with or damage to the structural integrity of either the Common Areas or of any other Lot(s), nor shall it be construed to limit the powers or obligations of the Board hereunder. See also Section 8.4 hereof.

##### 4.3.2. Association's Responsibility.

The Association has the right to perform Upkeep to any Lot if the Owner thereof has failed or refused to perform Upkeep as required in Section 4.3.1, and shall have the authority to provide Upkeep to any other portions of the Lots that the Association, by resolution, may hereafter elect to maintain.

#### 4.4. Damaged Improvements.

If a Dwelling or other major improvement located upon a Lot is damaged or destroyed, the Owner thereof shall promptly repair or rebuild such Dwelling or improvements, under the supervision of the Board of Directors as provided in Section 9.2 hereof. Unless the Board of Directors permits a longer time period, such work must be commenced within four months after the casualty and be substantially completed within twelve months after the casualty. The four-month period may be extended for a reasonable period thereafter in the event that repairs or reconstruction have not commenced because of factors beyond the control of the Owner, provided that the Owner has exercised and does thereafter continue to exercise due diligence in an effort to commence required work.



4.5. No Permanent Construction Within Easements.

No permanent building, deck or other structure shall be constructed within the easements on the Lots depicted on the Plat Map; fencing may be permitted in such areas, subject to the approval of the Board.

ARTICLE V

COMMON AREAS

5.1. Common Areas.

Except as otherwise specifically reserved, assigned or limited by the provisions of Article VI hereof, the Common Areas of the Planned Community, which may also be referred to as "General Common Areas," consist of the following:

5.1.1. The landscaped areas abutting Thornton Road at the entrance to the Property, which shall be maintained in a manner consistent with the reasonable wishes of the Owner of Lot 43.

5.1.2. Improvements and facilities for drainage, flood and/or storm water management control depicted on the Plat Map as Tracts A and B, which are described with greater particularity in Article VI hereof.

5.1.3. The open space areas depicted on the Plat Map as Tracts C & D and E.

5.1.4. The recreation facilities installed within Tract D, consisting of park and picnic facilities and children's play area.

5.1.5. The Conservation Easement areas depicted on the Plat Map within Tracts D and E.

5.1.6. The permanently-vegetated P.U.D. Buffer Area lying at the perimeter of the project.

5.1.7. Stormwater easement areas depicted on the Plat Map which burden many of the Lots in the project.

5.2. Partition, Conveyance, or Encumbrance.

5.2.1. Except as permitted by this Declaration of Covenants or the Ordinance, the Common Areas shall remain undivided and shall not be abandoned by act or omission, and no Lot Owner or other person may bring any action for partition or subdivision of the Common Areas:

5.2.2. Any purported conveyance, encumbrance, or other voluntary transfer of Common Areas, unless made pursuant to this Section, is void. A conveyance or encumbrance of Common Areas pursuant to this Section shall not deprive any Lot of its rights of access and support, nor shall it affect the priority or validity of preexisting encumbrances.

5.3. Allocated Interests - Common Areas Declared an Appurtenance.

The Declarant declares that each Lot in the Planned Community has allocated to it an equal undivided interest in the Common Areas of the Planned Community, which interest shall be conclusively presumed to be a perpetual appurtenance to such Lot, and which is known as the Lot's Allocated Interest in the Common Areas. This Allocated Interest shall be deemed included with each Lot in any conveyance of such Lot, irrespective of whether so stated in the conveyance deed. No Allocated Interest in the Common Areas may be severed from, mortgaged or conveyed separately from the Lot. Any purported severance, mortgaging or conveyance shall be void. Each Lot Owner shall thus be a tenant in common with all other Lot Owners with respect to the Common Areas. In the event that the Declarant exercises a Development Right to add additional Lots to the Planned Community in future phases of development, the initial Allocated Interests shall be reallocated so that all Lots in the Planned Community will always have equal Allocated Interests in the Common Areas.

5.4. Upkeep By Association.

The Association is responsible for all necessary maintenance, repair, and replacement of the Common Areas, according to maintenance standards established in Article VI hereof.

5.5. Right of Access.

Each Lot Owner shall afford to the Association and to its employees, agents, and licensed contractors, access through the Owner's Lot as may be reasonably necessary for the purposes of maintenance, repair and replacement of Common Areas. If damage is inflicted on the Common Areas, or on any Lot through which access is taken, the Lot Owner responsible for the damage, or the Association, as appropriate, shall be liable for the repair thereof, as provided in Section 8.4 hereof.

5.6. Use of Common Areas.

The Common Areas shall be used only for the furnishing of such services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the Lots. The improvements located on the Common Areas shall be used only for their intended purposes. Except as otherwise expressly provided in the Governing Documents, no Owner shall make any private, exclusive or proprietary use of any of the Common Areas. No person shall engage or direct any employee of the Association on any private business of the Owner or otherwise direct, supervise or in any manner attempt to assert control over such employee during the hours such employee is employed by the Association.

5.7. Interference with Common Areas.

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

5.8. Rights of the City of Ferndale.

5.8.1. General Rights and Benefits.

These Covenants contain provisions which require the owners of Lots within the Planned Community and the Association to provide ongoing compliance with the conditions of approval of the Plat Map. The obligations of the Lot Owners and of the Association to the City are for the benefit of the City, and shall not operate to create an obligation of the City or by the City to the Owners or to any third party. The rights of the City contained in this Section 5.8 are cumulative, and in addition to all other rights and privileges held by the City, and are not in lieu thereof. The obligations of the Owners to the City shall not be amended or altered without the express written consent of the City.

5.8.2. Specific Rights.

The City shall have the right, for the benefit of the City and of the public health, safety and welfare, to perform or provide Upkeep to any or all of the Common Areas of the Community in the event that the Association or the Owners, or any of them, should fail to perform or provide such Upkeep in a competent and/or timely manner. In the event that the City shall incur any costs or expend any funds, directly or indirectly [including without limitation the cost of the City's own equipment and employees in performing or providing any such Upkeep], the Association shall be liable to the City for all costs and expenses so expended or incurred.

5.9. Limited Common Areas.

There are no Limited Common Areas in this Planned Community

ARTICLE VI

SPECIAL FACILITIES AND AMENITIES

6.1. Description of Principal Common Amenities.

The Open Space Areas in Tracts A, B, C, D and E, along with the vegetated P.U.D. Buffer area and the paths and trails in the Planned Community provide Lot Owners of the Planned Community with various benefits. The Wetland Areas comprise part of the Planned Community's storm-water system. No construction, clearing, grading, filling, landscaping, mowing, burning or chemical maintenance of plants shall occur within this area, other than in a manner consistent with the City's Critical Areas Ordinance; the Board of Directors is charged with responsibility to maintain these areas in a condition suitable for their multiple purposes.

6.2. Responsibility for Operations and Upkeep.

The Association shall be responsible for the operation and Upkeep of the Principal Common Amenities.

6.2.1. Upkeep of Open Space Areas.

All the designated Open Space Tracts [A through E] on the Plat Map ["Open Space Areas"] shall be maintained for recreational use and enjoyment of Occupants of the Planned Community. No

building or construction of any kind other than for construction of approved recreational facilities is allowed within such areas absent the written approval of the City on a case by case basis.

6.2.2. Upkeep of Wetland Areas - Periodic Biologist's Inspection.

The Conservation Easement areas of Tracts D and E on the Plat Map ["Wetland Areas"] shall be protected and left undisturbed in their natural state, for wetland protection. No clearing, grading, filling, logging or removal of woody material, nor any building or construction of any kind, or planting of non-native vegetation is allowed within such areas absent the written approval of the City on a case by case basis. At least once every three years following the dedication of the Plat, a qualified biological professional shall be engaged by the Association to inspect the Wetland Areas to assure that the requirements of the Conservation Easements associated with the protection and enhancement of the wetland areas are being carried out. Any required repair, maintenance, or restoration associated with such areas shall be the responsibility of the Association.

6.2.3. Upkeep of Stormwater Drainage Facilities - Annual Engineer's Inspection.

The Stormwater System for the Planned Community consists of stormwater treatment and conveyance facilities located principally within Tracts A and B. All necessary Upkeep of the components of the Stormwater System shall be conducted by the Association in accordance with the provisions of the Storm Water Maintenance Program that has been prepared by Declarant's engineer in accordance with the DOE Stormwater Management Manual for Western Washington ["DOE Stormwater Manual"], as the same may be updated from time to time. The Association shall consistently engage the services of qualified personnel to perform Upkeep to the Stormwater System, and shall maintain provisions in its Budget to ensure that adequate funding shall always exist for such purposes. At least once annually following the dedication of the Plat, a licensed engineer shall be engaged by the Association to inspect the Stormwater System to assure that it remains functional to perform its intended purposes. Any required repair, maintenance, or restoration associated with such areas shall be the responsibility of the Association.

6.2.4. Upkeep of P.U.D. Buffer Areas.

The P.U.D. Buffer Areas depicted on the Plat Map exist for the protection of trees and other vegetation to preserve and enhance the aesthetic and environmental values of the Planned Community. Appropriate vegetation within the Buffer Areas shall be permanently maintained to preserve such values. No structures or improvements other than fencing approved by the Board are permitted to be constructed in these areas other than as may be identified on the face of the approved Plat Map.

6.2.5. Upkeep of Recreational Facilities.

The park and picnic facilities and recreational equipment in the children's play area in Tract D shall be permanently maintained in reasonable condition suitable for the uses of such equipment.

6.2.6. Prohibition Against Dumping.

The dumping of debris, yard waste or organic matter, solvents, oil, concrete or concrete residue, or water that is heavily laden with sediments, is expressly prohibited anywhere in the Community.

6.3. Use by Lot Owners.

Owners and occupants of the Planned Community may use the Open Space Areas and Wetland Areas for wildlife viewing, picnicking and other low-impact recreational uses which will not disturb wildlife or interfere with the proper functioning of the storm-water system.

6.4. Reserves to Maintain, Repair & Replace Common Facilities and Amenities.

Pursuant to Sections 8.3.2 and 10.1 hereof, a portion of the annual budget for the Association shall be devoted to reserves for required inspection, maintenance, repairs and replacement of the Principal Common Amenities, and all Owners shall be assessed by the Association for their share of such costs and expenses in proportion to the Allocated Interest for common expense liability, as described in Sections 10.4 and 10.6 hereof.

ARTICLE VII

COMMUNITY ASSOCIATION

7.1. Name and Form of Association.

The name of the Association shall be the "Thornton Woods Community Association." The Association has been or will be incorporated by the Declarant prior to the first conveyance of a Lot in the Planned Community as a non-profit corporation under the laws of the State of Washington. The rights and duties of the members and of said corporation shall be governed by the provisions of the Ordinance and of this Declaration of Covenants. The Association shall remain organized as a profit or nonprofit corporation. In case of any conflict between Chapter 24.06 RCW, the Nonprofit Miscellaneous and Mutual Corporations Act, and the Homeowners Association Act, Chapter 64.38 RCW, the Homeowners Association Act shall control.

7.2. Powers and Functions of Association.

The Association shall have, through its Board of Directors, all powers available to homeowners associations under the Homeowners Association Act, and such additional powers as may be prescribed in the Articles of Incorporation or any Bylaws of the Association. The Association has the general responsibility to maintain, repair, replace, manage and insure the Common Areas of the Planned Community, to enforce the Covenants contained herein, and to perform such other and further functions as may be provided in the Governing Documents.

7.3. Membership an Appurtenance - Lots 42 & 43 Excepted.

The Owner of each Lot in the Planned Community, other than Lots 42 and 43, shall be a member of the Association, and such membership shall be an inseparable appurtenance to the Owner's Lot.

7.4. Voting.

7.4.1. Voting Rights.

The manner of voting shall be as prescribed in the Bylaws.

7.4.2. Allocated Interests.

The Declarant has allocated to each Lot in the Planned Community other than Lots 42 & 43 an equal vote in the Association which is known as the Lot's Allocated Interest for voting, or "vote".

7.5. Bylaws of Association.

Bylaws for the administration of the Association for other purposes not inconsistent with the Homeowners Association Act and this Declaration of Covenants have been or will be prepared by the Declarant, subject to the approval of the initial Board of Directors of the Association.

7.6. Perpetual Existence - Rights of City of Ferndale.

The Association shall have perpetual existence; it may not be dissolved or abandoned, nor may the Association's obligations under this Declaration of Covenants with respect to the Common Areas be altered or abandoned absent the advance written approval of the City, following a public hearing before the Planning Commission. Should the corporate charter for the Association be dissolved for any reason in violation of the foregoing, the Lot Owners shall become jointly and severally liable for all obligations imposed upon the Association under these Covenants.

ARTICLE VIII

MANAGEMENT OF THE PLANNED COMMUNITY

8.1. Management by Declarant.

The Declarant has reserved the rights to (a) appoint and remove the Officers and members of the Board of Directors of the Association, and (b) veto or approve a proposed action of the Board or the Association, for a period of time known as the "Declarant Control Period". Limitations on the Declarant Control Period are specified in Section 16.6 hereof.

8.2. Professional Management.

Provisions for professional management of the Association are made in Section 8.2 of the Bylaws.

8.3. Authority of the Board.

8.3.1. General Authority.

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

### 8.3.2. Incurring and Payment of Common Expenses.

The Board shall acquire and shall pay for, as Common Expenses, all goods and services deemed necessary or desirable for the proper functioning of the Association. Without limitation, such Common Expenses may include:

(a) Common water and sewer, common electrical and, if deemed necessary or desirable by the Board of Directors, common garbage and/or trash collection, common gas, and any other necessary utility service as required for the Common Areas. If one or more Lots or the Common Areas are not separately metered, the utility service may be paid as a Common Expense, and the Board may by reasonable formula allocate a portion of such expense to each such Lot involved as a portion of its Common Expense, or reimburse any Lot Owner who pays, in whole or in part for utilities serving the Common Areas.

(b) Policies of insurance or bonds required by Article XI.

(c) The services of persons or firms as required to properly manage the affairs of the Planned Community to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine are necessary or proper for the operation of the Common Areas, whether such personnel are employed directly by the Board or are furnished by a Manager.

(d) The services of attorneys, along with bookkeepers and accountants qualified to maintain Association records in the manner required by Section 8.4 of the Bylaws, and to perform the independent audit required under Section 8.5 of the Bylaws.

(e) Painting, maintenance, repair and replacement of the Common Areas, landscaping and gardening work for the Common Areas, and such furnishings and equipment for the Common Areas as the Board shall determine are necessary and proper.

(f) Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is required to by law to pay or procure or which in its opinion shall be necessary or proper for the operation of the Planned Community, the maintenance, repair or replacement of the Common Areas, or for the enforcement of this Declaration of Covenants.

(g) All Upkeep required of the Association on Lots under the provisions of Section 4.3.2 of this Declaration of Covenants. Further, if maintenance or repair to exterior portions of any such Dwellings or other portions of the Lots for which the Owner is responsible, is reasonably necessary, in the opinion of the Board, to protect the Common Areas or to preserve the appearance and value of the Planned Community, and the Owner of said Lot has failed or refused to perform said maintenance or repair as required by Section 4.3.1 of the Declaration of Covenants, within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board to the Owner. The cost of such maintenance or repair shall constitute a special Assessment against the Lot of such Owner, pursuant to Section 10.8 of the Declaration of Covenants.

### 8.3.3. Acquisition of Property.

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

otherwise dealt with for the benefit of the Association as the Board may direct.

8.3.4. No Business Authority.

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

8.4. Right of Entry.

The Board and its agents or employees may enter any Lot or Limited Common Area when necessary in connection with any maintenance, landscaping or construction for which the Board is responsible, or in the event of emergencies. Except in the case of an emergency, reasonable advance notice shall be given to the Lot Owner and, if applicable, to any lawful tenant or subtenant in any Dwelling on the Lot. Such entry shall be made with as little inconvenience to the occupant(s) as practicable, and any damage caused thereby shall be repaired by the Association out of the Common Expense fund if the entry was due to an emergency (unless the emergency was caused by the Owner or lawful occupant of the Lot entered, in which case the cost shall be specially assessed to the Lot entered) or for the purpose of maintenance, or repairs, to Common or Limited Common Areas where the repairs were undertaken by or under the direction or authority of the Board. If the repairs or maintenance were necessitated by or for the Lot entered or its Owners or lawful occupants, or requested by its Owners, the costs thereof shall be specially assessed to such Lot.

8.5. Board as Attorney in Fact.

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

ARTICLE IX

PERMITTED USES; ARCHITECTURAL CONTROL

9.1. Permitted Uses.

9.1.1. Residential Use.

The Lots in this Planned Community shall be used for residential purposes. The Board may also permit the use of portions of a Dwelling for a professional office or other low impact commercial use, provided that such use is consistent with all applicable laws, ordinances and regulations of any governmental authority, and so long as such use does not generate any appreciable levels of client or customer traffic, noise or other disturbance to other members of the Planned Community. As a condition to consenting to such office use, the Board may require the Lot Owner to provide proof of adequate commercial liability insurance coverage under which the Association shall be named an additional insured.



#### 9.1.2. Vehicle Parking.

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

#### 9.1.3. RV Parking.

Except as hereinafter provided, junk vehicles (as defined in RCW 46.55.010), Recreational Vehicles (including without limitation camper-trailers, mobile homes, motor homes, "fifth-wheels", off-road vehicles, boats, airplanes or etc.), large commercial-style vehicles (including without limitation trucks, tractors, large vans or other types of vehicles or equipment which either require a commercial vehicle operator's license or which exceed 6,000 lbs in gross vehicle weight) or any other type of vehicle or equipment which exceeds 20 feet in length may not be stored, kept or maintained anywhere within the Planned Community. Recreational Vehicles may be parked in driveway areas for up to a maximum of three consecutive nights to facilitate loading and unloading thereof. The Board may require removal of any vehicle or equipment not authorized by this Section; if it is not so removed, the Board may cause its removal at the risk and expense of the owner thereof, under such reasonable procedures as may be consistent with the provisions of RCW 46.55. Failure of an Owner or other occupant to remove such a vehicle or equipment from a Lot or the Common Areas may result in any or all remedies available to the Association under the Governing Documents. The Board may adopt additional rules and regulations regarding parking and storage of Recreational Vehicles.

#### 9.1.4. Signs.

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

#### 9.1.5. Animals.

The maintenance, keeping, boarding and/or raising of animals, livestock, poultry, or reptiles of any kind, regardless of number, shall be and is prohibited within any Lot or upon the Common Areas, except that the keeping of small birds, aquarium fish, well-behaved dogs and/or cats and other well-behaved domestic animals which do not normally leave the Lot is permitted, subject to Rules and Regulations adopted

by the Board of Directors. The owner of any animal maintained on the Property shall exercise appropriate control over the animal, and shall clean up after such animal and shall not permit deposits of fecal matter, urinary residue or foodstuffs from or for such animal to remain anywhere on the Common Areas. Any Lot Owner who keeps or maintains any animal upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association, each Lot Owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such animal within the Planned Community. All animals shall be registered and inoculated as required by law. The Board may at any time require the removal of any animal which it finds is or has become an unreasonable source of annoyance, and may exercise this authority for specific animals even though other animals are permitted to remain.

9.1.6. Noise.

No person shall cause any unreasonably loud noise anywhere on the Property, nor shall any person permit or engage in any activity, practice or behavior for the purpose of causing annoyance, discomfort or disturbance to any person lawfully present on any portion of the Property. Quiet hours shall be observed from 10:00 p.m to 7:00 a.m., during which only minimal noise shall be permitted to emanate from any Lot.

9.1.7. Offensive or Illegal Activity.

No noxious, offensive, smelly, or illegal activity shall be carried on in any Lot or the Common Areas, nor shall anything be done therein which is or may become a nuisance or an unreasonable source of annoyance to other Owners or other lawful Occupants of the Planned Community.

9.1.8. Lighting.

Exterior lighting on the Dwellings shall be maintained in accordance with the common scheme for such lighting in Design Guidelines established during initial construction of the Dwellings in the Community. Exterior lighting should be generally unobtrusive and shielded from direct view, so that it does not shine into windows of other Dwellings.

9.1.9. Trash.

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

9.1.10. Hazardous Substances.

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

and all such substances being known herein as Hazardous Substances.

9.1.11. Television and Radio Antennas, Dishes.

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

9.1.12. Security Systems.

In the event that either the Declarant or the Association shall install a central security system within the Planned Community, no Owner shall install or maintain any alternative security system which shall interfere with the proper operation of the central system, nor shall any Lot's individual security system be connected in any way with any such central system without the advance written approval of the Board of Directors.

9.1.13. Private Yard Areas Within Lots.

In the event that portions of the yard areas of a Lot are not maintained by the Association, each such area shall be maintained by the Owner of the Lot to which it is allocated in a neat and tidy manner, consistent with such reasonable rules and regulations as the Board of Directors may promulgate with respect thereto.

9.1.14. Accessory or Temporary Structures.

No structure of a temporary character, nor any trailer, tent, shack, barn, pen, kennel, run, stable, outdoor clothes line, shed or other accessory buildings shall be erected, used or maintained on any Lot absent the written consent of the Board of Directors, which may promulgate rules and regulations governing such matters. Temporary structures may be erected in connection with construction activities associated with the original construction of Dwellings within the Planned Community, for such periods of time as may be reasonable for such purposes.

9.1.15. Lease Restrictions.

Any lease agreement shall be required and deemed to provide that the terms of the lease shall be subject in all respects to the provisions of the Governing Documents, and that any failure by the Lessee to comply with such provisions shall be a default under the lease, entitling the Association to enforce such provisions as a real party in interest.

9.1.16. Assignment or Subletting.

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

9.1.17. Effect on Insurance.

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

9.2. Architectural Uniformity.

9.2.1. General Authority of Declarant and Board of Directors.

To assure the health, safety and enjoyment of persons lawfully using any portion of this Planned Community, and to promote visual harmony within the project, both the Declarant and the Board of Directors shall have the power to enforce architectural control over the improvements constructed within the Planned Community. The Board of Directors may regulate the external design, signage, appearance, use and maintenance of the Property in accordance with the provisions of the Declaration of Covenants, and with Design Guidelines and procedures adopted by the Declarant and/or the City of Ferndale for this purpose. The Board of Directors shall have the power to impose reasonable application fees to evaluate any additions or changes to a Dwelling proposed by an Owner. Such fees shall be specially assessed against the affected Owner. Following the sale by the Declarant of its last Lot in the Planned Community, or at such earlier time as the Declarant may permit, the Board of Directors may promulgate or modify Design Guidelines for the Planned Community, provided that no Design Guidelines approved by the City of Ferndale may be modified absent the advance written consent of the City. Design Guidelines approved by the Declarant or by the Board of Directors shall be enforceable as if set forth herein in full.

9.2.2. Time for Approval - No Construction Prior to Approval.

The Declarant or the Board shall approve or disapprove plans, specifications and details within twenty-one (21) days of receipt thereof. If the reviewer fails to respond within 21 days, then the plans shall be deemed approved. No construction activity may commence prior to such approval.

9.2.3. Authority to Grant Variances.

The Board of Directors shall have the authority, either by act or omission, to waive enforcement of or grant variances from written Design Guidelines, other than those established by the City, without a specific finding that enforcement of such guidelines would impose an unfair burden on such Owner, but describing the variance and the reasons therefor in a written instrument which shall be part of the records of the Association. Upon such written approval of any specific variance or exception from the requirements of the Design Guidelines, all development conforming to such variance or exception shall be deemed lawful.

9.2.4. Authority to Delegate Review Functions.

The Declarant may designate an individual known as the "Architectural Review Coordinator" ("ARC") to perform the architectural review functions described in Section 9.2.1 hereof. Following the termination of the Declarant Control Period, the Board of Directors of the Association may designate an individual to be the ARC, or establish an Architectural Review Committee (also to be known as the "ARC"), to coordinate compliance with the Design Guidelines of the Planned Community.

9.2.5. No Liability for Architectural Review.

Neither the Declarant nor the Association nor any permitted designee shall be liable to any party for any good faith action or failure to act under the provisions of this Declaration of Covenants.

ARTICLE X

COMMON EXPENSES AND ASSESSMENTS

10.1. Budget for Common Expenses.

Not less than 45 days prior to the Annual meeting of the Association, or at such other time as may be deemed necessary or desirable by the Association's accountant, the Board shall prepare an Annual Budget which shall estimate the Common Expenses, described generally in Sections 2.8 and 8.3.2 of this Declaration of Covenants, to be paid during such year. The Budget shall make provision for creating, funding and maintaining reserves required by Section 10.3 hereof, and shall take into account any expected income and any surplus available from the prior year's operating fund. The Declarant or the initial Board may at any suitable time establish the first such estimate.

10.2. Meeting of Association to Ratify Budget.

Within thirty days after adoption of any proposed regular or special budget for the Association, the Board of Directors shall provide a summary of the budget to all the Lot Owners and shall set a date for a meeting of the Lot Owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the Owners of Lots to which a majority of the votes in the Association are allocated reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board of Directors.

10.3. Reserves for Capital Improvements, Replacements, Major Repairs & Insurance Deductibles.

10.3.1. Establishment of Reserves.

The Board of Directors shall establish and maintain reasonable reserves for capital improvements, replacements, major repairs of the Common Areas, along with the amount(s) of any deductible from insurance policies obtained by the Association pursuant to Article XI hereof, by providing for such reserves in the Annual Budget, segregating such reserves on the books of the Association. The portion of the Lots' Assessments paid into such reserves shall be conclusively deemed to be non-refundable contributions to the capital of the Association by the Lot Owners. Such reserves may be expended only for the purposes for which they were established [i.e., repair and replacement reserves may not be used to construct capital additions or capital improvements]. The Board may also establish and maintain reserve funds for such other purposes as may in its discretion appear advisable.

10.4. Assessments for Common Expenses.

10.4.1. Liability of Lots.

Except as provided in Sections 10.4.2 and 10.8 below, the total amount of the estimated funds required to pay the Common Expenses of the Association set forth in the Annual Budget adopted by the Board of Directors for the fiscal year shall be assessed against the Lots in proportion to their respective Allocated Interests for Common Expense liability described in Sections 10.6 and 10.8 hereof.

10.4.2. No Assessment of Undeveloped Lots.

No Lot shall be subject to assessment liability until the Dwelling(s) on such Lot is substantially completed and sold to a purchaser other than the Declarant.

10.4.3. Timing of Payments / Authority for Installment Payments.

Unless otherwise determined by the Board of Directors, the annual Assessment against each Lot for its proportionate share of the Common Expenses shall be payable on or before February 1<sup>st</sup> of each year; the Association nevertheless shall have the authority to require that assessments be paid in 12 equal, monthly installments; each such installment shall be payable in advance on the first day of the month.

10.5. Assessments to Pay Judgment Against Association.

Assessments to pay a judgment against the Association may be made only against the Lots in the Planned Community at the time the judgment was entered, in proportion to their Allocated Interests for Common Expense Liability at the time the judgment was entered.

10.6. Allocated Interests; Procedure on Reallocation.

10.6.1. Allocated Interests - Base Assessment.

The Declarant has allocated to each Lot in the Planned Community an equal obligation to pay the General Common Expenses of the Association, defined in Section 2.7 hereof, which obligation is known as the Lot's Allocated Interest for Common Expense Liability. This obligation establishes a "base" level of assessment that is subject to add-on under the provisions of Section 10.8 hereof.

10.6.2. Reallocation.

If Common Expense liabilities are reallocated by virtue of an exercise of Development Rights, Common Expense Assessments or any installment thereof not yet due under the prevailing budget shall be recalculated by the Board in accordance with the reallocated Common Expense liabilities, and each Lot shall thereafter be liable for the revised Assessments due upon such recalculation.

10.7. Special Assessments.

The Board of Directors may levy a Special Assessment for the purpose of defraying the cost of any unexpected repair or other nonrecurring contingency, or to meet any other deficiencies in operations or reserves occurring from time to time. The Board of Directors shall give notice to the Lot Owners of any such Special Assessment by a statement in writing giving the amount and reasons therefor, along with a date for a Special Meeting of the Association to be held not less than 14 days following such notice, for approval of

the Special Assessment in the manner described in Section 10.2 hereof. Such Special Assessments shall become due and payable, unless otherwise specified in the notice, with the next monthly Assessment payment which is due more than thirty days after the delivery or mailing of such notice. All Lot Owners shall be obligated to pay the adjusted monthly amount or, if the Special Assessment is not payable in installments, the full amount of such Special Assessment, in proportion to their Allocated Interests for Common Expense Liability.

10.8. Limited Common Assessments.

10.8.1 Any portions of the Common Expenses which vary among the Lots based the usage of special services or facilities shall be assessed differentially among the Lots.

10.8.2 To the extent that any Common Expense is caused by the negligence or misconduct of any Lot Owner, the Association may, subject to the provisions of Section 7.10 of the Bylaws, levy a Limited Common Assessment for that expense against the Owner's Lot. In addition and without limitation, the liability of a Lot Owner to pay for expenses associated with Reserved Common Areas, or any other costs, fees, charges, insurance deductibles or fines imposed or incurred by the Association associated with the Lot, along with any costs and/or attorney's fees recoverable under the Governing Documents, and interest on any delinquent account shall be deemed a Limited Common Assessment. Unless otherwise directed by the Board, such Limited Common Expenses shall be due and payable within thirty (30) days following their imposition.

10.9. Accounts; Commingling Prohibited.

Amounts collected by the Board of Directors as Assessments against the Lots for operating expenses or Reserves shall be kept in accounts in the name of the Association and shall not be commingled with funds of any other association, nor with the funds of any Managing Agent or any other person responsible for the custody of such funds. Any reserve funds shall be kept in one or more insured, segregated accounts and any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two persons who are Officers or Directors of the Association.

10.10. Surplus Funds.

Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of reserves shall, in the discretion of the Board of Directors, either be paid to the Lot Owners in proportion to their Allocated Interest for Common Expense Liability or credited to them to reduce their future Common Expense Assessment liability.

10.11. Liability of Lot Owners for Association Obligations.

The liability of any Lot Owner arising out of any contract made by the Board of Directors, or tort of the Association not fully covered by insurance, or arising out of the indemnification of the Board of Directors, shall be limited to that proportion of the total liability thereunder as the Allocated Interest of his or her Lot bears to the aggregate Allocated Interests of all Lots.

10.12. Owners Personally Liable for Common Expenses.

Each Assessment shall be the joint and several obligation of the Owner or Owners of the Lot to

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

10.13. Liability Following Conveyance of Lot.

A selling Lot Owner shall not be liable for the payment of any part of the Common Expenses assessed against his or her Lot subsequent to a sale, transfer or other conveyance by him of such Lot. The purchaser of a Lot shall be jointly and severally liable with the selling Lot Owner for all unpaid Assessments against the Lot up to the time of the conveyance without prejudice to the purchaser's right to recover from the selling Lot Owner the amounts paid by the purchaser therefore. Except as provided in Section 10.17 hereof, the holder of a mortgage or other purchaser of a Lot who obtains the right of possession of the Lot through foreclosure shall not be liable for Assessments that became due prior to such right of possession. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Lot Owners, including such mortgagee or other purchaser of the Lot. Foreclosure of a mortgage does not relieve the prior Owner of personal liability for Assessments accruing against the Lot prior to the date of such sale as provided above.

10.14. Statement of Unpaid Assessments.

The Association, upon written request, shall furnish to a Lot Owner or a mortgagee a statement signed by an officer or authorized agent of the Association setting forth the amount of unpaid Assessments against that Lot. The statement shall be furnished within fifteen days after receipt of the request and is binding on the Association, the Board of Directors, and every Lot Owner, unless and to the extent known by the recipient to be false.

10.15. Lien for Assessments.

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

10.16. Perfection of Lien.

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

10.17. Priority of Lien.



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

10.17.2. The Association's lien shall also be prior to the mortgages described in subpart (b) of Section 10.17.1 hereof, to the extent of Assessments for Common Expenses, excluding any amounts for capital improvements, based on the annual Budget adopted by the Association which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the Association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.

10.18. Enforcement of Lien.

The lien arising under this Section shall be enforced judicially by the Association or its authorized representative in the manner set forth in Chapter 61.12 RCW. The Association or its authorized representative shall have the power, subject to the provisions of Section 8.3.4 hereof, to purchase the Lot at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. The Association may elect to take a deed in lieu of foreclosure in any such proceeding.

10.19. Limitation of Lien Enforcement.

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

10.20. Rent Subject to Lien for Assessments.

10.20.1. Rent Payable to Association Upon Default of Owner.

If a Lot is rented or leased by its Owner, the Association may collect and the tenant shall pay over to the Association so much of the rent for such Lot as is required to pay any delinquency in assessments that has existed for greater than 30 days, plus interest, attorneys' fees and other costs of collection. The tenant shall not have the right to question payment to the Association, and such payment shall discharge both the tenant's duty to pay rent to the Lot Owner and the Lot Owner's obligation to pay assessments, *pro tanto*. The Association shall not resort to this remedy where a receiver has been appointed and is collecting such rents under Section 10.20.2 hereof.

10.20.2. Association Entitled to Appointment of Receiver.

From the time of commencement of an action by the Association to foreclose a lien for nonpayment of delinquent Assessments against a Lot that is not occupied by the Owner thereof, the Association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the Lot as and when due. If the rental is not paid, the receiver may obtain possession of the Lot, refurbish

it for rental up to a reasonable standard for rental Dwelling Units in this type of project, rent the Lot or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the Lot, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent Assessments. Only a receiver may take possession under this subsection, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Lot.

10.21. Remedies Cumulative.

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

ARTICLE XI

INSURANCE, DESTRUCTION, RESTORATION AND DISTRIBUTION

11.1. Authority, Name of Insured.

The Board of Directors should obtain and maintain casualty and liability insurance under such terms and for such amounts as shall be deemed necessary by the Board of Directors, but unless not reasonably available. The name of the insured under each required policy shall be stated as follows: "Thornton Woods Community Association".

11.2. Insurance Policies and Coverage.

11.2.1 Basic Coverage.

Any insurable common improvements in this Planned Community shall be insured against casualty or physical damage in an amount equal to the maximum insurable replacement value thereof (i.e., 100% of replacement costs based upon the value of replacing all such insurable improvements in the Planned Community exclusive of land, excavations and foundations, utilizing contemporary building materials and technology. Level(s) of coverage shall be determined annually by the Board of Directors with assistance of the agent of the insurance company affording such coverage. Such coverage shall afford protection against:

(a) loss or damage by fire, vandalism, malicious mischief, windstorm, and other hazards covered by the standard "broad form" and/or "special" extended coverage endorsements or their equivalent, and such other perils customarily covered by insurance for similar projects. The policy shall also cover other Common property including fixtures, building service equipment and common personal property and supplies owned by the Association or included in the Common Areas.

(b) liability for death, personal injury and property damage arising from the use, ownership or maintenance of any of the Common Areas. The insurance should also cover any commercial spaces that are owned by the Association, even if they are leased to others. Coverage should be afforded under a commercial general liability policy for the entire project, including all areas under the supervision of the Association. Limits of liability shall in no event be less than \$1,000,000 with respect to any single occurrence; and

(c) medical payments coverage, in such amounts as are customarily provided in such policies.

#### 11.2.2 Directors' and Officers' Insurance.

If reasonably available, the Board shall acquire Directors' and Officers' errors and omissions insurance to satisfy the Association's indemnification responsibilities under the Bylaws of the Association.

#### 11.2.3 Fidelity Insurance.

The Association should also obtain blanket fidelity insurance for any person who either handles (or is responsible for) funds that he or she holds or administers, whether or not that individual receives compensation for services; such a policy should name the Association as the insured and include a provision that calls for ten days' written notice to the Association before the policy can be canceled or substantially modified for any reason. The policy should cover the maximum funds that will be in the custody of the Association or its Manager at any time while the policy is in force. A Manager that handles funds for the Association should be covered by its own fidelity insurance policy, which must provide the same coverage required of the Association.

#### 11.2.4 Additional Insurance.

The Board shall also acquire such additional insurance coverage as it may deem advisable and appropriate, including Workmen's Compensation insurance, where necessary to meet the requirements of law. Further, and notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity insurance meeting the insurance and fidelity bond requirements, if any, for similar projects established by Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Veteran's Administration, or other governmental or quasi-governmental agencies involved in the secondary mortgage market, so long as any such agency is an Eligible Mortgagee or Owner of a Lot within the Planned Community, if such additional coverage is reasonably available.

#### 11.3. Deductible.

Except as otherwise provided herein, the deductible under any policy of insurance purchased by the Board of Directors shall not exceed the lesser of \$10,000 or 1% of the face amount of the policy. Except as provided herein, the amount of the deductible shall be paid by the Association as a Common Expense. Funds to cover the amount of the deductible shall be included in the Association's reserve accounts. The deductible should be established at a level that is sufficiently high to eliminate minor "nuisance" claims which could cause cancellation of the Association's master policy.

#### 11.4. Unavailability, Cancellation or Nonrenewal.

If the insurance described in Section 11.2 hereof is not reasonably available, or is modified, canceled or not renewed, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by first class United States mail to all Lot Owners, and to each Eligible Mortgagee, at their respective last known addresses.

11.5. Owners' Individual Policies Required.

11.5.1 Property and Liability Insurance.

Each Owner shall obtain, at such Owner's expense, a policy or policies of insurance providing coverage against personal liability and against casualty or physical damage to the Dwelling and other insurable improvements on the Lot in an amount equal to the maximum insurable replacement value thereof (i.e., 100% of replacement costs based upon the value of replacing all such improvements exclusive of land, excavations and foundations, utilizing contemporary building materials and technology. Such coverage shall afford protection against:

(a) loss or damage by fire, vandalism, malicious mischief, windstorm, and other hazards covered by the standard "broad form" and/or "special" extended coverage endorsements or their equivalent, and such other perils customarily covered by insurance for Dwellings in similar projects.

(b) liability for death, personal injury and property damage arising from the use, ownership or maintenance of any part of the Lot.; and

11.5.2 Special Limitations.

(a) Each policy must contain a standard mortgage clause. The policy shall also designate the Association as an additional insured under its liability coverage and shall further provide, if available, that no loss may be adjusted to provide a cash payment to the Owner in lieu of rebuilding the insurable improvements on the Owners' Lot absent the consent of the Association. This is essential to the common scheme of development in this P.U.D., and is designed to underwrite the Owner's obligations under Section 4.6 of this Declaration of Covenants.

(b) To support the Association's interest in having damage to a Dwelling promptly repaired with insurance proceeds in the manner described in Section 4.4. hereof, an insurer that has issued an Owner's insurance policy under this Section should issue a certificate or memorandum of insurance to the Association at the inception of coverage, and for each renewal thereof, and shall also provide the Association with a notice of any cancellation or non-renewal thereof.

ARTICLE XII

CONDEMNATION

12.1. Condemnation of Common Areas.

If parts of the Common Areas are acquired by condemnation, the portion of the award attributable to the Common Areas taken shall be paid to the Owners based on their respective Allocated Interests in the Common Areas unless the Association at a special meeting called for such purpose, decides otherwise.

12.2. Association Necessary Party to Proceeding.

The Association, through its Board of Directors, shall be a necessary party to any condemnation proceedings and shall, to the extent feasible, act as a fiduciary on behalf of and in the best interests of any

and all Lot Owners affected by such proceedings. Should the Association not act on the Owners' behalf in a condemnation proceeding, the affected Owners may individually or jointly act on their own behalf.

12.3. Reconstruction and Repair.

Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XI hereof, provided that the Board may retain and apply such portion of each Owner's share of the Condemnation Award as is necessary to discharge said Owner's liability for any special Assessment arising from the operation of said Article XI.

12.4. Notice to Mortgagees.

The Board of Directors shall promptly give written notice to all Eligible Mortgagees of the pendency of any condemnation proceedings affecting any portion of the Planned Community.

12.5. Payment of Award.

When a Lot Owner becomes entitled to receipt of a condemnation award, or of any portion of such an award, or of any payment in lieu of such an award, then any such payment shall be made payable jointly to such Lot Owner and to the holders of any Mortgages encumbering such Owner's Lot, as their interests may appear.

ARTICLE XIII

COMPLIANCE WITH LAW AND COVENANTS

13.1. Compliance by Owners and Occupants.

Each Owner and occupant of a Lot shall comply strictly with the provisions of the Ordinance, and the Governing Documents, as the same may be lawfully amended from time to time.

13.2. Enforcement by Association.

13.2.1. Authority of the Board.

The Board of Directors shall have primary responsibility for maintaining and enforcing compliance with the covenants, conditions and restrictions contained in the Governing Documents. Without limiting the authority and powers conferred upon the Board, the Board shall have the following power and authority:

13.2.2. Abatement of Violations.

The violation of any of the Rules and Regulations adopted by the Board of Directors, the breach of any provision of the Governing Documents or the Ordinance shall give the Board of Directors the right, in addition to any other rights set forth in the Bylaws, to enter the Lot or any Limited Common Area in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Lot Owner, any thing or condition that constitutes such a violation, and the Board of

Directors shall not thereby be deemed guilty in any manner of trespass. PROVIDED, that this remedy is subject to the provisions of Section 8.4 hereof, and the remedy shall not be utilized when a breach of the peace is likely to occur or if any items of construction within the Lot or any of the Common Areas will be altered or demolished.

#### 13.2.3. Legal Proceedings.

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

#### 13.2.4. Costs and Attorney's Fees.

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

#### 13.2.5. Late Charges and Interest.

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

#### 13.2.6. Fines.

The Board may impose and collect reasonable fines against Lot Owners for violations of the Ordinance or the Governing Documents. PROVIDED, however, that no fine may be levied unless (1) the Board has by resolution established a schedule of fines which has been furnished to all Lot Owners prior to the alleged violation, and (2) the allegedly offending Owner has been provided with notice of and an opportunity to be heard at a hearing to be conducted pursuant to provisions of the Bylaws. Until changed by resolution of the Board with advice of counsel, the amount of any fine so assessed shall not exceed one hundred dollars for a single offense or twenty dollars per diem for any offense of a continuing nature, and shall constitute a Special Assessment against such Lot Owner's Lot.

13.2.7. Liability for Conduct Causing Common Expense.

Each Lot Owner shall be liable for the cost of all maintenance, repair or replacement rendered necessary by his or her or her act, neglect or carelessness, or the act, neglect or carelessness of any member of his or her or her family or his or her or her employees, agents, tenants or licensees, but only to the extent that such cost is not covered by the proceeds of insurance carried by the Board of Directors. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of any Lot or its appurtenances. To the extent that any Common Expense is caused by the negligence or misconduct of any Lot Owner, the Association may specially assess that expense against the Owner's Lot, PROVIDED that no such Special Assessment may be levied unless the allegedly offending Owner has been provided with notice of and an opportunity to be heard at a hearing to be conducted pursuant to Section 7.10 of the Bylaws.

13.2.8. No Waiver of Rights.

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

13.2.9. Remedies Cumulative.

All rights, remedies and privileges granted to the Association, the Board of Directors or any Lot Owner pursuant to any term, provision, covenant or condition of the Governing Documents or the Ordinance shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other rights, remedies or privileges as may be granted to such party by the Governing Documents or the Ordinance or at law or in equity.

13.2.10. Alternative Forms of Dispute Resolution Authorized.

In addition to the rights, remedies and procedures described above, the Association may, with the consent of an affected Lot Owner and/or any other interested party, agree to resolve any dispute through mediation, binding or non-binding arbitration, or such other alternative dispute resolution mechanism as may be deemed appropriate, at the discretion of the Board.

13.3. Tenants Subject to Rights and Responsibilities of Owners.

Any tenant of an Owner shall be deemed to be bound by all portions of the Governing Documents that are binding upon the Owner, other than the payment of Common Expense Assessments. All rights, remedies and procedures available to the Association when dealing with Owners under the Governing Documents shall be available to the Association when dealing with any tenant of an Owner. In addition, the Association shall have the right (but not the obligation) to terminate the lease of a tenant who, following a proceeding under Section 7.10 of the Bylaws, has been found to have violated the Governing Documents; the Association shall be deemed a "real party in interest" in any legal proceeding brought to enforce this right. The Association shall not resort to this remedy unless the Owner of the Lot occupied by such tenant has failed and refused to take steps designed to cure the tenant's violation(s) within sixty (60) days following notice from the Association to the Owner of the necessity for such curative action.

## ARTICLE XIV

### LIMITATION OF LIABILITY

#### 14.1. No Liability for Utility Failure, Etc.

Except to the extent covered by insurance obtained by the Board pursuant to Article XI, neither the Association nor the Board nor the Declarant shall be liable for any failure of any utility or other service obtained by the Board; or for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may lead or flow from any of its pipes, drains, conduits, appliances, or equipment, or from any other place, or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance or orders of a governmental authority. No diminution or abatement of liability for Common Expense Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

#### 14.2. Liability of Officers and Directors, Indemnification.

The Directors and Officers shall exercise ordinary and reasonable care in discharging their responsibilities and shall not be liable to the Association or to the Lot Owners for mistakes of judgment or for negligence not amounting to gross negligence, willful misconduct or bad faith. The Lot Owners shall indemnify and hold harmless each of the Directors and Officers from and against all contractual liability to others arising out of contracts made by the Board of Directors or Officers on behalf of the Association or the Lot Owners unless such contract was made in bad faith or contrary to the provisions of the Governing Documents. The Directors and Officers shall not be personally liable for contracts made by them on behalf of the Association. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that (s)he is or was a Director or Officer of the Association, against amounts paid in settlement incurred by him in connection with such action, suit or proceeding if (s)he acted in good faith and in a manner (s)he reasonably believed to be in, or not opposed to, the best interests of the Planned Community or the Association, to the fullest extent authorized by RCW 23B.08.510, 520, 530, and 570, and any amendments thereto, whether or not the Association is incorporated under RCW 23B.

#### 14.3. No Bailment.

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

## ARTICLE XV

### MORTGAGEE PROTECTION

This Article establishes certain standards and covenants which are for the benefit of the holders,



insurers and guarantors of certain mortgages. This Article is supplemental to, and not in substitution for, any other provisions of the Governing Documents, but in the case of conflict, this Article shall control.

15.1. Percentage of Eligible Mortgagees.

Wherever in this Declaration of Covenants the approval or consent of a specified percentage of Mortgagees is required, it shall mean the approval or consent in writing of Eligible Mortgagees holding first lien mortgages on Lots, and the percentage shall be based upon the votes attributable to Lots with respect to which Eligible Mortgagees have an interest.

15.2. Notice of Actions.

The Association shall give prompt written notice to each Eligible Mortgagee and Eligible Insurer of, and each Lot Owner hereby consents to, and authorizes the giving of notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Planned Community or any Lot in which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable;

(b) Any delinquency in the payment of Common Expense Assessments owed by a Lot Owner whose Lot is subject to a first mortgage held, insured, or guaranteed, by such Eligible Mortgagee or Eligible Insurer, as applicable, which remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

15.3. Inspection of Books.

The Association shall maintain current copies of the Governing Documents, and the Association's other books and records and financial statements. The Association shall permit any Eligible Mortgagee, Eligible Insurer or other first mortgagee of a Lot, or the authorized agent of any of the foregoing, to inspect the books and records of the Association during normal business hours.

15.4. Financial Statements.

The Association shall provide any Mortgagee or Eligible Insurer who submits a written request, a copy of its annual financial statement within one hundred twenty (120) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if:

(a) The Association's budget for annual assessments is fifty thousand dollars or more, in which case the cost of the audit shall be a Common Expense; or

(b) The Association's budget for annual assessments is less than fifty thousand dollars and any Eligible Mortgagee or Eligible Insurer requests it, in which case the Eligible Mortgagee or Eligible Insurer shall bear the cost of the audit.

15.5. Enforcement.

The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors, and may be enforced by any of them by any available means, at law, or in equity.

15.6. Attendance at Meetings.

Any representative of an Eligible Mortgagee or Eligible Insurer may attend and address any meeting which a Lot Owner may attend.

15.7. Limitations on Mortgagees' Rights.

No requirement for approval contained in this Article may operate to (1) deny or delegate control over the general administrative affairs of the Association by the Lot Owners or the Board of Directors, or (2) prevent the Association or the Board of Directors from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except as provided in this Declaration of Covenants.

ARTICLE XVI

EASEMENTS AND SPECIAL DECLARANT RIGHTS

16.1. Easements for Lots and Lot Owners and Association Functions.

Each Lot has an easement in and through each other Lot, including Lots 42 and 43, and the Common Areas for utilities and for lateral and/or subjacent support. There is also reserved to the Association, or its duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Association as are set forth in the Governing Documents. See Section 8.4 hereof.

16.2. Conservation Easement.

An easement designed to protect and conserve environmental values has been recorded at Auditor's File No. 2010502958, Records of Whatcom County, Washington. The provisions of this Conservation Easement are incorporated herein by this reference and are declared to be binding upon the Association and upon all Lot Owners, including the Owner of Lots 42 and 43, as though fully set forth herein.

16.3. Easement for Emergency Access and other Municipal Functions.

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

16.4. Easements for Declarant.

The Declarant reserves an easement through the Property as may be reasonably necessary for the purpose of discharging the Declarant's obligations or for exercising Special Declarant Rights. Without limiting the generality of the foregoing, such easements include the following:

16.4.1. General Reservation.

Declarant reserves non-exclusive easements for ingress, egress and utilities over and across all Common Areas within the Planned Community.

16.4.2. Specific Rights.

The easements reserved under this Section shall entitle the Declarant, for the development of real property constituting each successive phase of the Planned Community, to tie into water, sewer, storm sewer, irrigation, electrical, gas, telephone or other utility conduits or lines of all varieties, and to travel over and connect with roadways, driveways, walkways, open areas or utility systems developed and employed in any completed phases of the Planned Community. The Declarant also reserves the right to grant easements to public or private utility companies and to convey to such companies utility lines, pipes, wires, ducts, channels, conduits and/or other facilities in furtherance of such grants. The Declarant further reserves the rights to create or relocate utility lines, pipes, wires, ducts, channels, conduits and/or other facilities at any location within the Property.

16.5. Easements Shown on Plat Map.

16.5.1. General Reservation.

Any easement shown on the Plat Map which benefits one or more Lots in the Planned Community, or which benefits any real property not included within the Planned Community, confer various rights and benefits upon the owner(s) of such real property, and may also impose obligations upon the Association.

16.5.2. Pedestrian Trail Easement.

A nonexclusive easement for use by members of the public as well as Occupants of the Planned Community will be dedicated by the Declarant across Tracts B and E on the Plat Map. Upkeep to the trail will be provided by the City of Ferndale.

16.6. Special Declarant Rights.

16.6.1. General Reservation.

The Declarant has reserved the following Special Declarant Rights for the purpose of furthering and completing the development of the Planned Community: To complete any improvements indicated on the Plat Map filed with the Declaration of Covenants; to maintain sales offices, management offices, signs advertising the Planned Community, and models on the Property, all in such location or locations as the Declarant may unilaterally determine; to use easements through the Common Areas for the purpose of making improvements within the Planned Community; and to control the Association during the Declarant Control Period described in Section 16.6.2 below. The Declarant shall be deemed to hold a proxy from all Lot Owners during the Declarant Control Period for all such purposes.

16.6.2. Declarant Control Period.

The Declarant has reserved the rights to designate a majority of the members of the Board

of Directors of the Association, and to appoint or remove any officer of the Association or any member of its Board of Directors or of any Committee, or to veto or disapprove a proposed action of the Association, its Board of Directors or any Committee, which rights shall persist for a period of time not to exceed seven (7) years, subject to the following limitations:

16.6.3. Not later than sixty days after conveyance of fifty percent of the Lots which may be created to Owners other than the Declarant, at least one member of the Board of Directors must be elected by Owners other than the Declarant.

16.6.4. The Declarant Control Period shall terminate sixty days after conveyance of ninety percent of the Lots which may be created in the Planned Community to Owners other than the Declarant.

16.6.5. Legal Status of Special Declarant Rights.

Each Special Declarant Right reserved by Declarant in this Declaration of Covenants has been, is and shall remain an equitable servitude burdening all lands subject thereto and running with such lands. Each Special Declarant Right shall exist for the benefit of the Declarant and/or any assignee of Declarant and/or any successor declarant. Declarant has and shall retain, with respect to each Special Declarant Right, a power coupled with Declarant's interest in said lands.

ARTICLE XVII

AMENDMENT OF DECLARATION OF COVENANTS

17.1. Procedure for Amendment of Declaration of Covenants.

Amendments to the Declaration of Covenants shall be made by an instrument in writing entitled "Amendment to Declaration of Covenants" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration of Covenants, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Owners. Except in cases of amendments that may be adopted by the Declarant unilaterally pursuant to Section 17.5 hereof, amendments may be adopted only at a meeting of the Owners if at least sixty percent (60%) of the votes in the Association are cast for such amendment, or without any meeting if all Owners have been duly notified and Owners holding at least sixty percent (60%) of the votes in the Association consent in writing to such amendment. In all cases, the amendment when adopted shall bear the acknowledged signature of the President of the Association.

17.2. Recordation Required.

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

17.3. Special Restrictions.

No amendment may restrict, eliminate, or otherwise modify any Special Declarant Right provided in the Declaration of Covenants without the consent of the Declarant and any mortgagee of record with a

security interest in the Special Declarant Right or in any real property subject thereto, excluding mortgagees of Lots owned by persons other than the Declarant.

17.4. Amendments by Declarant.

The Declarant may unilaterally adopt and file amendments to the Declaration of Covenants and to the Plat Map for so long as the Declarant is the Owner of any Lot in the Planned Community or until the expiration of the time limit for the exercise of any Development Rights reserved by the Declarant, in order to:

- (a) conform them to the actual location of any of the constructed improvements and to establish, vacate and relocate utility easements and/or access road easements;
- (b) exercise any Development Right reserved by the Declarant under Section 3.4 of this Declaration of Covenants;
- (c) correct any nonmaterial technical errors contained in the Governing Documents or clarify provisions of same.
- (d) conform them to requirements of the City of Ferndale, *bona fide* title insurance companies, secondary mortgage market entities or loan guarantors.

ARTICLE XVIII

MISCELLANEOUS

18.1. Notices for All Purposes, Delivery.

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

18.1.2 New Lot Owners must supply their names, addresses and telephone numbers to the Secretary of the Association promptly after conveyance.

18.2. Severability.

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

18.3. No Right of First Refusal.

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

18.4. Effective Date.

This Declaration of Covenants shall take effect upon recording.

DATED this 29<sup>th</sup> day of December, 2009

DECLARANT:

WHATCOM SKAGIT HOUSING, a Washington Nonprofit Corporation

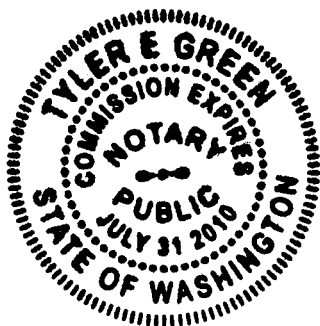
By: \_\_\_\_\_

Nancy Larsen  
Its Executive Director

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

I hereby certify that I know or have satisfactory evidence that Nancy Larsen is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Executive Director of the Declarant WHATCOM SKAGIT HOUSING, a Washington Nonprofit Corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: December 29<sup>th</sup>, 2009.



Tyler E. Green  
NOTARY PUBLIC for the State of Washington. My Commission expires July 31, 2010

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