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BENTON FRANKLIN TITLE CO.

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Document Title(s): Declaration of Covenants, Conditions, Restrictions and Reservations of Sage Crest, a Subdivision
Reference Number(s):
Grantor(s) [Declarant]: Kennewick Acquisition Co. III, LLC
Grantee(s) [Project]: Sage Crest, a subdivision
Legal Description [abbreviated, e.g., lot, block, plat or section, township, range]: T 8 N R 29 E, WM, Section 17, Benton Co. Wa, lying Northerly of the Kennewick Irrigation District Amon Pump Lateral and Southerly of W 36th Avenue. **(Complete description attached as Exhibits A and B)**
Assessor's Property Tax Parcel/Account Number(s): 1-1789-401-0857-005, 1-1789-401-0857-006, 1-1789-400-0001-001, 1-1789-400-0001-002, 1-1789-400-0002-001
The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS OF SAGE CREST, A SUBDIVISION

(Benton County, Washington)

THIS DECLARATION is made as of this 19th day of January, 2010 by the undersigned, hereinafter referred to as "Declarant."

RECITALS

A Declarant owns certain real property located within the State of Washington, which property and improvements are commonly known as "Sage Crest," and is located on land more particularly described in Exhibit A attached hereto and incorporated herein (the "Property"). As is more particularly provided in this Declaration, the Property may be developed in phases. Phase 1 of the Property is more particularly described in Exhibit B attached hereto and incorporated herein ("Phase 1"). Initially, only Phase 1 is are subjected to this Declaration (the "Project"). Additional property, including all or any portion of the remaining Property and other property not described in this Declaration, may be annexed to and made a part of the Project by the recording of an appropriate amendment to this Declaration in accordance with Article 17.

B All Common Areas of the Project are to be described in this Declaration or shown on Plat Maps recorded in conjunction with this Declaration.

C. For the benefit and protection of the Project, to enhance its value and attractiveness, and as an inducement to venders and investors to make and purchase loans secured by Homes and Lots within the Project, Declarant agrees to provide herein for a comprehensive system of land use and building controls within the Project.

NOW, THEREFORE, Declarant, being the sole owner of the Project, hereby makes this Declaration for the purpose of subjecting the Project to this Declaration, and declares that the Project described herein shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, reservations, grants of easement rights, rights of way, liens, charges and equitable servitudes, which are for the purpose of protecting the value and desirability of the Project and shall be binding on all parties having any right, title or interest in the Project or any part thereof, and shall inure to the benefit of each owner thereof. Any conveyance, transfer, sale, assignment, lease or sublease of a Lot or Home in the Project shall and hereby is deemed to incorporate by reference all provisions of this Declaration. The provisions of this Declaration shall be enforceable by Declarant, any Lot Owner, the Association and any first Mortgagee of any Lot.

ARTICLE 1
INTERPRETATION

1.1 Liberal Construction

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation and maintenance of the Project.

1.2 Covenant Running with Land

This Declaration shall be operative as a set of covenants running with the land, or equitable servitudes, binding on Declarant, its successors and assigns, all subsequent owners of the Property or any part thereof, together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

1.3 Declarant is Original Owner

Declarant is the original Owner of all Lots and Property and will continue to be deemed the Owner thereof except as conveyances or documents changing such ownership regarding specifically described Lots are filed of record.

1.4 Captions

Captions given to the various articles and sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof.

1.5 Definitions

1.5.1 "**Architectural Control Committee**" or "**ACC**" means the committee established pursuant to Article 6.

1.5.2 "**Articles**" means the articles of incorporation of the Association, as defined below.

1.5.3 "**Assessments**" means all sums chargeable by the Association (or by Declarant in exercising Special Declarant Rights) against a Lot, including without limitation (a) regular and special assessments for Common Expenses and Home Expenses, (b) deposits and contributions to working capital established pursuant to Section 8.16, (c) special charges against a Lot Owner for work done on the Owner's Lot, (d) fines, (e) interest and late charges on any delinquent account, and (f) costs of collection, including reasonable attorneys' fees incurred in connection with the collection of a delinquent Owner's account.

1.5.4 "**Association**" means Sage Crest Owner's Association, a Washington non-profit corporation, as described more fully in Article 4, and its successors and assigns. The term "Association" shall be deemed to refer to the Declarant when exercising Special Declarant Rights otherwise permitted to the Association.

1.5.5 "**Board**" means the board of directors of the Association, as provided for in Article 5.

1.5.6 "**Bylaws**" means the bylaws of the Association as they may from time to time be amended.

1.5.7 "**Builder**" means a person or entity who acquires title to one or more Lots for the purpose of, in the ordinary course of business, of constructing Homes for resale.

1.5.8 "**Common Area**" or "**Common Areas**" means all real property (including the improvements thereto) within the Project designated as Common Area(s) in Section 2.1 or an amendment to this Declaration or in the Plat Maps for the Project.

1.5.9 "**Common Expenses**" means those expenses incurred by the Association and paid by Assessments levied against Lots. Common Expenses shall not include Home Expenses.

1.5.10 "**Common Expense Percentage**" shall mean the portion of the Common Expenses which each Lot must pay. The Common Expense Percentage for all Lots shall be an equal amount.

1.5.11 "**Declarant**" shall mean Kennewick Acquisition Co. III, LLC, a Washington limited liability company, and its successors and assigns if such successors or assigns should (a) acquire more than one undeveloped Lot from the Declarant for the purpose of development, and (b) be specifically assigned the rights and duties of Declarant by written instrument in recordable form.

1.5.12 "**Declaration**" shall mean this Declaration of Covenants, Conditions, Restrictions and Reservations for Sage Crest, a Subdivision, and any amendments thereto.

1.5.13 "**Home**" shall mean and refer to any structure, or portion of a structure, located on a Lot, which structure is designed and intended for use and occupancy as a residence or which is intended for use in connection with such residence.

1.5.14 "**Home Expenses**" shall mean those expenses incurred by the Association solely relating to or benefiting Homes (and not Common Areas).

1.5.15 "**Lot**" shall mean and refer to any plot of land shown upon any recorded Plat Map of the Project, excluding Common Areas. Ownership of a Lot shall include ownership of the Home and improvements now or hereafter constructed on such Lot. "Lot" shall not include any land now or hereafter owned by the Association or by all of the Lot Owners as tenants-in-common, nor include any land shown on the Plat Map but dedicated to the public or to a governmental entity.

1.5.16 "**Maintenance Agreement**" means the Maintenance Agreement for Brinkley Farms Preliminary Plat, 07-01 between the City of Kennewick ("City") and Declarant, incorporated herein by reference.

1.5.17 "**Member**" means a person entitled to membership in the Association pursuant to Section 4.3.

1.5.18 "**Mortgage**" shall mean a recorded mortgage or deed of trust that creates a lien against a Lot and shall also mean a real estate contract for the sale of a Lot.

1.5.19 "**Mortgagee**" shall mean the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a Lot created by mortgage or deed of trust and shall also mean the vendor, or the designee of a vendor, of a real estate contract for the sale of a Lot.

1.5.20 "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Project and except as may be otherwise expressly provided herein, shall, in the case of a Lot which has been sold pursuant to a real estate contract, include any person of record holding a vendee's interest under such real estate contract, to the exclusion of the vendor thereunder. Any person or entity having such an interest merely as security for the performance of an obligation shall not be considered an owner.

1.5.21 "**Person**" shall include natural persons, partnership corporations, associations and personal representatives.

1.5.22 "**Phase 1**" shall mean that portion of the Project legally described on Exhibit B.

1.5.23 "**Plat Maps**" shall mean the recorded final plat(s) depicting the layout of the Lots in the Project, including any amendments thereto.

1.5.24 "**Project**" shall mean any real property (including any improvements and structures thereon) as are now or hereafter subjected to this Declaration and brought within the jurisdiction of the Association. Initially, the Project is comprised of Phase 1 and the Designated Wet Area. The Project shall also include any additional property, including all or any portion of the Property or other property not described in this Declaration, subsequently annexed to and made a part of the Project from time to time by the recording of appropriate amendment(s) to this Declaration in accordance with Article 17.

1.5.25 "**Property**," shall mean the real estate described in Exhibit A and any additions thereto (together with all improvements and structures thereon).

1.5.26 "**Special Declarant Rights**" shall mean rights and powers reserved by Declarant under Section 5.2.

1.5.27 "**Transition Date**" shall mean the earlier of the following: (i) 60 days after the date on which Declarant no longer owns any of the Property (including the Project and any other Property described in this Declaration for possible annexation to the Project as provided in Article 17), or (ii) the seventh anniversary of the recording of this Declaration, or (iii) the date on which

Declarant elects to permanently relinquish all Special Declarant Rights by written notice to all Owners.

1.6 **Percentage of Mortgagees**

For purposes of determining the percentage of first Mortgagees approving a proposed decision or course of action a Mortgagee shall be deemed a separate Mortgagee for each Lot on which it holds a Mortgage that constitutes a first lien on said Lot.

1.7 **Percentage of Owners**

For purposes of determining the percentage of Owners approving a proposed decision or course of action, an Owner shall be deemed a separate Owner for each Lot owned.

ARTICLE 2
OWNERSHIP OF COMMON AREAS

2.1 **Description of Common Areas**

The Common Areas shall consist of the following plots of land within the Project, together with any additional real property (including the improvements thereto) within the Project designated as Common Area(s) in an amendment to this Declaration or in the Plat Maps for the Project:

2.1.1 **Tracts A and B.** Tracts Aand B, as shown on the Plat Maps for Phase 1, are designated as landscape tracts and they shall be owned by the Association upon recording of this Declaration. Landscaping within Tracts Aand B shall be maintained by the Association. Landscaping in any right of way adjacent to Tracts Aand B shall be governed by Section 5.4.6 and/or Section 7.33 of this Declaration.

2.1.2 **Tract C.** Tract C, as shown on the Plat Maps for Phase 1, is reserved for the stormwater drainage, retention and detention. Tract C shall be owned by the Association upon recording of this Declaration; providing, that the Association (or the Declarant until the Transition Date) may dedicate all or any portion of Tract C, or grant an easement thereon, to the Kennewick Irrigation District or other appropriate governmental entity for such purpose. The Association may use Tract C for any other lawful purpose not inconsistent with the foregoing purpose and other provisions of this Declaration.

2.2 **Common Areas Conveyed to Association**

Declarant, by recording this Declaration and the Plat Maps, conveys and quit claims the Common Areas to the Association. The Common Areas, if any, within any subsequent phase will be deemed to be conveyed and quit claimed to the Association upon the recording of an amendment to this Declaration incorporating such phase within the Protect and will be depicted on the Plat Maps, and/or in the Declaration amendment, recorded in conjunction with such phase.

2.3 Disposition Upon Dissolution of the Association

In the event the Association should be dissolved, maintenance of the Commons Areas shall be governed by the Maintenance Agreement between the City and Declarant or, at the election of the City, the Common Areas shall be dedicated to the City or an appropriate public agency to be used for purposes similar to those for which the Association was created. Such public agency may, in its discretion in accordance with applicable law, establish one or more local improvement districts for the purpose of levying special assessments on the Lots within the Project benefited by such Common Areas, including any improvements therein, in order to pay in whole, or in part, the costs associated with such Common Areas formerly paid by the Association. In the event that such dedication is refused acceptance, the Common Areas shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes. Absent such dedication, grant, conveyance or assignment, each Lot shall be deemed to have an equal and undivided interest in the Common Areas. In such event, (a) such undivided interest in such Common Area shall be appurtenant and inseparable from the ownership of a Lot, (b) such undivided interest shall not be subject to any right of partition, and (c) the provisions of this Declaration and the Plat Map shall control over any conflicting principles of common law applicable to tenancy in common interests.

2.4 Dedicated Common Areas

The Common Areas shall exclude those portions of Common Areas (and improvements thereto) which have been or may hereafter be dedicated to and owned by a governmental entity.

2.5 Control of Common Areas

Subject to Section 5.2 (Special Declarant Rights) and the Maintenance Agreement, the Association (and the Owners who are Members thereof) have the responsibility and obligation to maintain, repair and administer the Common Areas in a clean, attractive, sanitary and safe condition and in full compliance with applicable governmental laws, rules and regulations and the provisions of this Declaration. Any Owner adjacent to the Designated Wet Area, or other common open area, may, at the Owner's cost, remove dead, diseased or dangerous trees or vegetation after receiving authorization from the Board, and, if required by law, from any governmental entity having jurisdiction. Except as otherwise provided herein, maintenance of any sidewalk planter strip shall be the responsibility of the Lot Owner whose Lot directly abuts the planter strip. Where a planting strip abuts on a Common Area, the maintenance responsibility shall be the obligation of the Association.

ARTICLE 3
OWNERS' PROPERTY RIGHTS

3.1 Owners' Easements of Enjoyment

Every Owner shall have a non-exclusive, right and easement, in common with all Owners, of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

3.1.1 The Association may totally bar or restrict use of portions of the Common Areas where ordinary use could be dangerous, unreasonably increase Association costs, or be detrimental to the environment, or is inconsistent with its designation on the Plat.

3.1.2 The Association shall have the right to suspend the voting rights and right to use of Common Areas of an Owner for any period during which any Assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations. Until the Transition Date, the Association shall be required to exercise its right to suspend the voting rights of, and the right to the use of the recreational facilities by, a Member for non-payment of an Assessment, upon the request of the Declarant.

3.1.3 The Association shall have the right to dedicate or transfer all or any part of the Common Area, including easements across said properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members of the Association. No such dedication or transfer shall be effective unless approved by 75% of the Owners and by the Declarant (until the Transition Date) and the provisions of Article 14 hereof have been observed; provided, only a majority of Owners and the Declarant (until the Transition Date) will be necessary to approve dedicating a storm retention pond, irrigation or drainage channel, or similar facility, if any, to a public agency, authority or utility which shall maintain such facility.

3.1.4 The Association, in accordance with this Declaration and its Articles and Bylaws, may borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, but the rights of such mortgagee in, said property shall be subordinate to the rights of the Owners under this Declaration and subject to the provisions of Section 1.1.

3.1.5 Until the Transition Date, the exercise by the Association of its rights and powers under this Section 3.1 shall be subject to Section 5.2 (Special Declarant Rights).

3.2 Delegation of Use

Any Owner may delegate (in accordance with the Bylaws) his right of enjoyment to the Common Area and facilities to the members of his family, tenants or contract purchasers who reside in such Owner's Home, and (subject to regulation by the Association) to his temporary guests.

ARTICLE 4
OWNERS ASSOCIATION

4.1 Establishment

There is hereby created the Association to be called Sage Crest Owner's Association.

4.2 Form of Association

The Association shall be a nonprofit corporation formed and operated pursuant to Chapter 24.03, Revised Code of Washington.

4.3 **Membership**

4.3.1 **Qualification.** The membership of the Association at all times shall consist exclusively of the Owners of all Lots in the Project. Each Owner of a Lot in the Project (including Declarant) shall be a Member of the Association and shall be entitled to one membership for each Lot so owned. Ownership of a Lot shall be the sole qualification for membership in the Association.

4.3.2 **Transfer of Membership.** The Association membership of each Owner (including Declarant) shall be appurtenant to the Lot giving rise to such membership, and shall not be assigned, conveyed, pledged or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to such Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

4.4 **Voting**

4.4.1 **Classes of Voting Membership.** The Association shall have two classes of voting membership.

Class A — Class A Members shall be all Owners (except Declarant shall not be a Class A Member until the Transition Date). Class A Members shall be entitled to one vote for each Lot owned.

Class B — The Class B Member shall be the Declarant, which shall be entitled to three (3) votes for each Lot owned.

(a) **Termination of Class B Membership.** The Class B membership shall cease and be converted to Class A membership on the Transition Date.

4.4.2 **Combining Class A and B Votes**. In determining whether any given proposition shall have been approved by the membership, the total number of Class A and Class B votes shall be combined and the appropriate percentage applied against that combined number.

4.4.3 **Number of Votes**. Except as provided above, the total voting power of all Owners shall equal the number of Lots at any given time and the total number of votes available to Owners of any one Lot shall be one vote.

4.5 **Bylaws of Association**

Bylaws for the administration of the Association and the Project (and to further the intent of this Declaration) shall be adopted or amended by the Owners at a regular or special meeting; provided, that the initial Bylaws shall be adopted by Declarant. The Bylaws shall provide which, if any, of the powers the Board or Association officers may delegate to other persons or to a managing agent.

ARTICLE 5
MANAGEMENT OF THE ASSOCIATION

5.1 Administration of the Project

The Owners covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration and the Articles, Bylaws and rules and regulations, if any, of the Association, which are made a part hereof. In the event of any conflict between this Declaration and any provision of the Articles, Bylaws or rules and regulations of the Association, this Declaration shall prevail. In the event of any conflict between the Articles and any Bylaws, the provisions of the Articles shall prevail.

5.2 Special Declarant Rights

Notwithstanding anything in this Declaration or in the Articles, Bylaws or rules and regulations to the contrary, Declarant reserves unto itself and to its managing agent the right (but not the obligation) to exercise any or all of following rights and powers ("Special Declarant Rights") at any time from time to time until the Transition Date without the assent of the Board or Owners:

(a) any or all of the rights and powers otherwise permitted to the Association (or the Board on behalf of or acting for the Association) under this Declaration;

(b) the right to approve or disapprove the exercise by the Association (or by the Board on behalf of or acting for the Association) of any such right or power;

(c) the right to require the Association, upon request by Declarant, to enter into any contract, lease, agreement or other undertaking proposed by the Declarant prior to the Transition Date (or to accept the assignment and assumption thereof if entered into by Declarant prior to the Transition Date) in the exercise of the Special Declarant Rights reserved under subparagraph (a) or (b) above, on such terms as may determined in good faith by Declarant; provided, however, subparagraph (c) shall not apply to (i) any management or employment contract having a term continuing after the Transition Date, (ii) any contract or lease between the Declarant and an affiliate of a Declarant or any lease of Common Area, except on terms which are commercially reasonable, or (iii) any contract or lease that is not bona fide or was unconscionable to the Owners at the time entered into under the circumstances then prevailing;

(d) any other right expressly reserved to the Declarant (or Declarant's managing agent) hereunder which, by its terms, must be exercised, if at all, by the Transition Date, including but not limited to Declarant's right under Article 17 to annex property to the Project, to convert Lots to Common Area, or (subject to any necessary approval under Section 17.6) to convert Common Area to Lots.

Until the Transition Date, the Board shall provide to the Declarant reasonable notice not less than 30 days before the Association or Board takes or commits to take any action which is subject to Declarant's right of approval or disapproval under subparagraph (b) above. No action disapproved by the Declarant (or by Declarant's managing agent) under this Section will be taken. Any action

taken or committed to be taken by the Association or Board in violation of the provisions of this Section shall, at the option of Declarant, be deemed null and void. Nothing herein shall diminish the responsibility of the Association and the Board to take such action (not disapproved as provided herein) as shall be reasonably required of them in furtherance of the intent and purposes of this Declaration.

Declarant may, from time to time, elect by written notice to all Owners to relinquish any or all Special Declarant Rights. The Transition Date, if it has not already occurred, will occur upon Declarant's election to permanently relinquish all Special Declarant Rights. The relinquishment of Special Declarant Rights by Declarant pursuant to this paragraph shall not affect rights and entitlements of Declarant in its capacity as the Owner of any Lot or Home or otherwise available to Declarant under this Declaration or applicable law.

Declarant, by reserving or exercising Special Declarant Rights or any other rights under this Declaration, does not assume the primary authority of the Board to manage the affairs of the Association. Nor does this Declaration impose any obligation on Declarant to exercise such rights on behalf of the Association or the Board. The reservation of rights by Declarant is an exception to Declarant's grant of rights and power to the Association (and to the Board on behalf of the Association) to administer, manage and control the Project. Neither the exercise of, nor the failure to exercise, any Special Declarant Rights or other rights available to Declarant (or to Declarant's managing agent) shall be construed as a waiver or a relinquishment of such rights for the future. No waiver of any such rights shall be deemed to have been made by Declarant (or Declarant's managing agent) unless expressed in writing and signed by the Declarant.

5.3 Management by Elected Board of Directors

The primary authority to manage the Association is hereby vested in a Board elected from among the Lot Owners. The number of directors shall be specified in the Bylaws and shall be sufficient to adequately handle the affairs of the Association. Except as otherwise provided herein, decisions shall be determined by a majority vote of the directors entitled to vote. The Board may delegate all or any portion of its administrative duties to a managing agent or officer of the Association, in accordance with the provisions of the Bylaws. All Board offices shall be open for election at an organizational meeting. The Board shall elect from among its Members a president who shall preside over meetings of the Board and the meetings of the Association. In determining the qualifications of any officer or director of the Association, the term "Lot Owner" in such context shall be deemed to include any director, officer, partner in, or trustee of any person, who is, either alone or in conjunction with another person or persons, a Lot Owner. Any officer or director of the Association who would not be eligible to serve as such if he or she were not a director, officer, partner in, or trustee of such a person shall be disqualified from continuing in office if he or she ceases to have any such affiliation with that person, or if that person would have been disqualified from continuing in such office as a natural person.

5.4 **Authority and Duties of the Board**

Subject to Section 5.2 (Special Declarant Rights), the Board, on behalf of and acting for the Association, for the benefit of the Project and the Owners, shall have all powers and authority permitted to the Board under this Declaration, including but not limited to the following:

5.4.1 **Assessments.** Establish and collect regular Assessments (and to the extent necessary and permitted hereunder, special Assessments) to defray expenses attributable to carrying out its duties hereunder and maintain an adequate reserve fund for the maintenance, repair and replacement of those portions of the Common Areas or facilities which must be maintained, repaired or replaced on a periodic basis, which reserve shall be funded by the above Assessments.

5.4.2 **Services.** Obtain the services of persons or firms as required to properly manage the affairs of the Project to the extent deemed advisable by the Board, including legal and accounting services, property management services as well as such other personnel as the Board shall determine are necessary or proper for the operation of the Project, whether such personnel are employed directly by the Board or are furnished by the managing agent or management firm.

5.4.3 **Utilities.** Obtain water, sewer, garbage collection, electrical, telephone, gas and any other necessary utility service, including utility easements and street lighting, as required for the Common Area.

5.4.4 **Insurance.** Obtain and pay for policies of insurance or bonds providing

(a) Common Area casualty and liability coverage,

(b) Fidelity of Association officers and other employees.

Insurance under clauses (a) and (b) be in accordance with the requirements set forth herein.

5.4.5 **Common Area Maintenance/Repair.** Pay the costs of painting, maintenance, repair and all landscaping and gardening work for the Common Areas and improvements located thereon so as to keep the Project in a good, clean, attractive, sanitary and safe condition and in full compliance with applicable governmental laws, rules and regulations and the provisions of this Declaration. Replace and repair the furnishings and equipment for the Common Area as the Board shall determine are necessary and proper.

5.4.6 **Maintenance of Rights of Way, etc.** To the extent deemed advisable by the Board and as required by the Maintenance Agreement, pay the costs of maintaining and landscaping rights of way, traffic islands and medians, or other similar areas which are within or adjacent to the Project boundaries, and which are owned by or dedicated to a governmental entity, if said governmental entity fails to do so; provided, the Board at its option may require a Lot Owner at the Owner's expense to maintain and landscape such areas as are adjacent to such Owner's Lot.

5.4.7 **Fences, etc.** To the extent deemed advisable by the Board, pay the cost of maintaining, repairing and replacing perimeter and interior fences, if any, and landscaping and

improvements on easements, if any, which are located on or across Lots, provided, the Board at its option may require a Lot Owner at the Owner's expense to maintain, repair and replace such fences, landscaping and improvements as are adjacent to such Owner's Lot.

5.4.8 **Lot and Lot Improvement Maintenance.** In the event an Owner of any Lot or Home in the Project shall fail to maintain the premises and the improvements situated thereon in accordance with the provisions of this Declaration, the Association, after approval by two-thirds (2/3) vote of the Board, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and any other improvements erected thereon. The cost of such maintenance shall be added to and become part of the Assessment to which such Lot or Home is subject.

5.4.9 **Lien/Encumbrance.** The Board may pay any amount necessary to discharge any lien or encumbrance levied against the Common Areas or any part thereof which is claimed to or may, in the opinion of the Board, constitute a lien against the Common Areas, rather than merely against the interest therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs and expenses (including court costs and attorney fees) incurred by the Board by reason of such lien or liens shall be specially charged against the Owners and the Lots responsible to the extent of their responsibility.

5.4.10 **Enforce Declaration.** Enforce the applicable provisions of this Declaration for the management and control of the Project.

5.4.11 **Materials, Services, etc.** Contract and pay for any materials, supplies, labor or services which the Board should determine are necessary or proper for the enforcement of this Declaration, including legal, accounting, management or other services, provided that if for any reason any materials, supplies, labor or services are provided for particular Lots or their Owners, the cost thereof shall be specially charged to the Owners of such Lots.

5.4.12 **Attorney-in-Fact.** Each Owner, by the mere act of becoming an Owner, irrevocably appoints the Association as his attorney-in-fact, with full power of substitution, to take such action as reasonably necessary to promptly perform the duties of the Association and Board hereunder, including but not limited to the duties to maintain, repair and improve the Project, to deal with the Project upon damage or destruction, and to secure insurance proceeds.

5.4.13 **Borrowing of Funds.** In the discharge of its duties and the exercise of its powers as set forth herein, but subject to the limitations set forth herein, the Board may borrow funds on behalf of the Association.

5.4.14 **Adoption of Rules and Regulation.** When and to the extent deemed advisable by the Board, to adopt reasonable rules and regulations governing the maintenance and use of the Project and other matters of mutual concern to the Lot Owners, which rules and regulations are not inconsistent with this Declaration and the Articles and Bylaws and which treat all Owners fairly and on a non-discriminatory basis.

5.4.15 **Additional Powers of Association.** In addition to the duties and powers of the Association, as specified herein, and elsewhere in this Declaration, but subject to the provisions of this Declaration, the Association, acting through its Board, shall have the power to do all other things which may be deemed reasonably necessary to carry out its duties and the purposes of this Declaration.

ARTICLE 6
ARCHITECTURAL CONTROL

6.1 Construction and Exterior Alteration/Repair

6.1.1 All buildings, structures and other improvements (including, without limitation, concrete or masonry walls, rockeries, fences, sheds, over-the-air reception devices, swimming pools, if any, or other structures and improvements) to be constructed within the Project, and all exterior alterations and repairs (including, but not limited to, re-roofing or re-painting) of any buildings, structures or improvements in the Project and visible from any public street, Common Area or other Lot must be approved by the Architectural Control Committee ("ACC"). The ACC shall be composed of two separate panels: (a) a Builder's panel consisting of three persons appointed by the Declarant that will have authority over all of the construction and improvements by Declarant and/or Builders in the Project, and (b) a homeowners' panel consisting of not less than three nor more than five persons appointed by the Board that will have authority over all of the construction and improvements by other Lot or Home Owners. The Builder's panel shall cease after the Builders have completed all of the Homes that may be constructed within the Project. Complete plans and specifications of all such proposed buildings, structures, and exterior alterations and repairs, together with detailed plans showing the proposed location of the same in the particular buildings site and other data requested by the ACC, shall be submitted to the ACC before construction, alteration or repair is started. Construction, alteration or repair shall not be started until written approval thereof is given by the ACC. Any exterior modifications approved or developed by the Declarant while exercising Special Declarant Rights will be deemed approved exterior modifications.

6.1.2 The ACC will review submittals as to the quality of workmanship and materials planned and for conformity and harmony of the external design with proposed or existing, structures on neighborhood residential Lots or building sites, and as to location of the building with respect to topography, finish grade elevation and building setback restrictions.

6.1.3 In the event the ACC fails to approve or disapprove such design and location within thirty (30) days after said plans, and specifications have been submitted to it, such approval will not be required.

6.1.4 All plans and specifications for approval by the ACC must be submitted in duplicate, at least thirty (30) days prior to the proposed construction or exterior alteration or repair starting date, unless such requirement is waived in writing by the ACC. Neither the waiver of, nor the failure to waive, such requirement shall be construed as a waiver or a relinquishment of such rights for the future. The maximum height of any building shall be established by the ACC as part of the plan approval and shall be given in writing together with the approval.

6.1.5 The ACC may require that, said plans or specifications shall be prepared by an architect or a competent house-designer, approved by the ACC. One complete set said plans and specifications shall in each case be delivered to and permanently left with the ACC. All buildings or structures shall be erected or constructed, and all exterior alterations or repairs made, by a contractor, house Builder or other person or entity approved by the ACC. The ACC shall have the right to refuse to approve any design, plan or color for such improvements, construction, or exterior alteration or repair visible from a public street, Common Area or other Lot which is not suitable or desirable, in the ACC's reasonable opinion, aesthetic or otherwise.

6.1.6 In so passing upon such design, the ACC shall have the right to take into consideration the suitability of the proposed building or other structure, and the material of which it is to be built, and the exterior color scheme, to the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, and the effect or impairment that said structures will have on the view or outlook of surrounding building sites, and any and all factors, which, in the ACC's opinion, shall affect the desirability or suitability of such proposed structure, improvements, or exterior alteration or repair.

6.1.7 The ACC shall have the right to disapprove the design or installation of a swimming pool, hot tub or any other recreational structure or equipment undesirable, in the ACC's reasonable opinion, aesthetic or otherwise. In so passing upon such design or proposed installation, the ACC shall have the right to take into consideration the visual impact of the structure and the noise impact of the related activities upon all of the properties located in close proximity. Any enclosure or cover used in connection with such a recreational structure or equipment, whether temporary, collapsible, seasonal, or whatever, shall be treated as a permanent structure for the purposes of these covenants, and shall be subject to all the conditions, restrictions, and requirements as set forth herein for all buildings and structures.

6.1.8 The ACC shall have the right in conformance with City ordinances and upon issuance of any required permits, to require, at an Owner's expense, the trimming or topping (or, if deemed necessary by the ACC, removal) of any tree, hedges or shrub on a Lot which the ACC determines is unreasonably blocking or interfering with the view or access to sunlight of another Lot or Home.

6.1.9 The ACC shall have the right to specify precisely the size, color and style of mail and newspaper boxes, and of the post or support on which such boxes are affixed, and their location within the Project.

6.1.10 Declarant (including any successor in interest to Declarant's status as Declarant) shall not be subject to the restrictions of this Section 6.1 as to any Lot owned by Declarant, either before or after the Transition Date.

6.1.11 The Board may adopt guidelines, criteria, and procedures for the ACC (ACC guidelines) as Association rules, and prescribe penalties and other methods of enforcement; provided that, until the Transition Date, the Board may not adopt, amend, or repeal ACC guidelines pertaining

to either the homeowners' panel or the Builder's panel without the Declarant's prior written approval.

6.2 **Sales Facilities of Declarant and Builders**

6.2.1 Notwithstanding any provision in this Declaration to the contrary, until the Transition Date, Declarant and any Builder (and their respective agents, employees and contractors) shall be permitted to maintain during the period of sale of Lots and/or Homes upon such portion of the Project (including any recreation building, but excluding Lots sold to customers) as Declarant may choose, such facilities as in their sole opinion may be reasonably required, convenient or incidental to the construction, sale, lease or rental of Lots or Homes, including but not limited to, a business office, storage area, signs, model units, sales office, construction office, and parking areas for all prospective tenants or purchasers of Declarant or Builders.

6.2.2 Until the Transition Date, Declarant and Builders may make temporary alterations to model homes (such as fenced front yards, special entries, and garages) which are not otherwise permitted by this Declaration or the ACC guidelines for marketing purposes. The selling Owner must remove the model home alterations and return the Home to full compliance with the ACC guidelines prior to occupancy by a Home purchaser or tenant. Owners other than Declarant or Builders may not make such alterations to any Lot or Home.

ARTICLE 7
OWNERS USE/MAINTENANCE OBLIGATION

7.1 **Maintenance of Lots**

Except as provided in Article 5, each Owner, at such Owner's sole cost and expense, shall promptly and continuously maintain, repair and restore his or her Lot (including the yard and landscaping) and Home and other improvements located thereon, and also such other areas as may be required pursuant to Article 5, in a good, clean, attractive, safe and sanitary condition and in full compliance with all applicable governmental laws, rules and regulations and the provisions of this Declaration and the rules and regulations of the Association.

7.2 **Residential Use**

Except as provided in Section 7.6, all Lots and improvements located thereon shall be used for:

7.2.1 sleeping, eating, food preparation for on-site consumption by occupants and guests, entertaining by occupants of personal guests and similar activities commonly conducted within a residential dwelling (without regard to whether the Owner or occupant resides in the Home as a primary or secondary personal residence or on an ownership, rental, lease or invitee basis),

7.2.2 such other reasonable ancillary purposes commonly associated with residential dwellings (including without limitation home-offices and home-occupations) which do

not cause unusual traffic, parking, noise or similar problems, or otherwise violate provisions of this Declaration, Association rules and regulations, or applicable law for residential dwellings,

7.2.3 the common social, recreational or other reasonable uses normally incident to such purposes, and

7.2.4 for purposes of operating the Association and managing the Project.

Nothing herein shall be deemed to prevent the Owner from leasing a Home and improvements subject to all of the provisions of this Declaration.

7.3 **Restriction on Further Subdivision**

No Lot or portion of a Lot in the Project shall be divided and sold or resold, or ownership changed or transferred whereby the ownership of any portion of the Project shall be less than the area required for the use district in which located. The foregoing shall not prohibit deeds of correction, deeds to resolve boundary disputes and similar corrective instruments. Lots may be joined and joined Lots may subsequently be subdivided only into the Lots originally joined.

7.4 **Rental Homes**

7.4.1 All leasing or rental agreements shall be in writing and be subject to this Declaration and the Articles and Bylaws (with a default of the tenant in complying with this Declaration and the Articles and Bylaws constituting a default under the lease or rental agreement).

7.4.2 If a Lot is rented by its Owner, the Board may collect, and the tenant or lessee shall pay over to the Board, so much of the rent for such Lot as is required to pay any amounts due the Association hereunder, plus interest and costs, if the same are in default over thirty (30) days. The renter or lessee shall not have the right to question payment over to the Board, and such payment will discharge the lessee's or renter's duty of payment to the Owner for rent to the extent such rent is paid to the Association, but will not discharge the liability of the Owner and the Lot under this Declaration for Assessments and other charges or operate as an approval of the lease. The Board shall not exercise this power where a receiver has been appointed with respect to the Lot or its Owner or in derogation of any rights which a Mortgagee of such Lot may have with respect to such rents.

7.4.3 Other than the provisions of subsections 7.4.1 and 7.4.2, no other restriction or prohibition on the rental or lease of a Lot or Home shall be enforceable unless otherwise agreed by the Owner of the Lot or Home.

7.5 **Governmental Regulations**

Zoning, building, environmental and other similar governmental regulations applicable to the Project shall be observed. In the event of any conflict between any such regulations and the provisions of this Declaration, the more restrictive shall apply.

7.6 Business Use

No business of any kind shall be conducted on any Lot or Home with the exception of (a) the business of creating, improving and selling the Lots and Homes located in the Project, (b) uses otherwise permitted by Section 7.2, and (c) such other non-residential business and commercial uses permitted by zoning and other laws applicable to a particular Lot. The Lot Owners shall comply with all of the requirements of the appropriate local governments. No materials, supplies or equipment used by a business shall be stored on any Lot or Home within the view of another Lot or Home, except for items relating to an improvement which is under construction in conformance with this Declaration. Nothing in this section shall be construed so as to prevent or prohibit an Owner from maintaining his or her professional personal library, keeping his or her personal business or professional records or accounts, handling his or her personal business or professional telephone calls, or conferring with business or professional associates, clients, or customers, in such Owner's Home.

7.7 Building Setback Requirements

All buildings and other Lot improvements shall comply with all applicable governmental requirements, including without limitation minimum setback requirements.

7.8 Oil and Mining Operations

Subject to mineral reservations of record, no oil drilling, oil development operations, oil refining, quarrying mining operations of any-kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

7.9 Lot Size

No residential structure shall be erected or placed on any Lot which has a lot area of less than that required by the government entity having appropriate jurisdiction over the Project.

7.10 Garages

Every Home must have a garage which holds at least one full-size car, truck, boat, recreational vehicle or other motor vehicle ("vehicle"). All vehicles must be stored in garages or in a manner which the Board reasonably determines is not offensive when viewed from the street or from the ground level of adjacent Lots.

7.11 Mobile or Manufactured Housing

Custom designs by licensed architects shall be strongly encouraged and any use of repetitive design shall be strongly discouraged and or prohibited at the discretion of the ACC. The ACC may refuse to approve a plan based on design or repetitive use of a plan, or for failure to meet the approved criteria as set forth. There shall be no mobile or manufactured housing.

7.12 **Driveway Standards**

All driveways shall be constructed of a material approved by the ACC.

7.13 **Parking**

Unless substantially screened from view from the street or from the ground level of adjacent Lots in a manner reasonably approved by the ACC, no disabled vehicles, recreational vehicles, commercial vehicles, construction or like equipment, or trailers (utility, boat, camping, horse or otherwise) shall be allowed to be parked or stored on any rights-of-ways, setback areas or street. If parked on rear or side yards, vehicles must be adequately screened with at least a six foot solid fence and otherwise in compliance with the regulations of the ACC. The Board shall have full authority to determine if any vehicle is obnoxious or undesirable to other Lot Owners and take appropriate steps to correct such a violation of this covenant.

7.14 **Roof**

The exterior of all roofs shall be composed of a material and design approved by the ACC.

7.15 **Exterior Finish**

The exterior of each residence shall be designed, built and maintained in such a manner as to blend in with the existing structures and landscaping of the Project. All exterior materials and all exterior colors must be approved by the ACC in accordance with the provisions of this Article. Exterior trim, fences, doors, railing, decks, eaves, gutters and the exterior finish of garages and other accessory buildings shall be designed, built and maintained to be compatible with the exterior of the structures they adjoin.

7.16 **Utilities**

All utilities shall be installed underground.

7.17 **Exterior Telecommunications Equipment**

Radio and television dishes and antennas and other over-the-air reception devices ("OTARD's") that are subject to the FCC's Over-the-Air Reception Devices Rule shall be positioned as inconspicuously as possible. Any such OTARD shall also be painted as directed by the ACC so as to camouflage the installation if that will not interfere with the desired service. The ACC shall have the right to require landscaping or other materials be installed at the Owner's expense to reasonably screen any such OTARD from view and to enforce reasonable OTARD safety and maintenance requirements. ACC approval shall be required for any OTARD mast installation that would be more than 12 feet in height or any OTARD dish that would be more than three feet in diameter.

7.18 **Fencing**

Fences may only be placed along the rear property line and from the front building line to the rear lot line, cannot exceed 6 feet in height, under no circumstances may obstruct view from any other Lot, and must be constructed of wood or other material approved by the ACC. Hedges or other solid screen planting may be used as lot line barriers, subject to the same height restrictions as fences.

7.19 **Fireplace Chimneys**

Fireplace chimneys must be constructed with material approved by the ACC and otherwise required by this Declaration.

7.20 **Garbage and Refuse**

No garbage, refuse, rubbish, cuttings, or debris of any kind shall be deposited on or left upon any Lot unless placed in an attractive container suitable located and screened from the view of any other Owner. All equipment for the storage or disposal of such materials shall be kept clean and sanitary condition. No building material of any kind shall be placed or stored on any property within the development until the Owner is ready to commence construction, and then such materials shall be placed within the boundary lines of the Lot upon which its use is intended. Garbage cans may only be placed in public view on the day of garbage pickup. All woodpiles and storage areas must be placed so that they do not obstruct or hamper any other Owner's view and must be suitable screened from all other Owner's views.

7.21 **Games and Play Structures**

No platform, dog house, playhouse or structure of a similar kind or nature shall be constructed on any Lot located in front of the rear line of the residence constructed thereon.

7.22 **Significant Recreation Facilities**

The construction of any significant recreational facilities on any Lot including, but not limited to, such items as swimming pool, tennis, badminton, or pickle ball courts shall require the approval of the ACC and shall be subject to the requirements adopted by the ACC.

7.23 **Pets**

No animal, livestock, or poultry of any kind shall be raised, fired, or kept on any Lot, except that cats, dogs, birds, or other household pets may be kept if they are not kept, bred or maintained for any commercial purpose, and that such pets shall not be kept in numbers or under conditions reasonably objectionable in a closely built-up residential community or in violation of the reasonable rules and regulations of the Association. Animals shall not be allowed to roam loose outside the limits of any Lot in which they are kept.

7.24 **Landscaping**

All cleared areas in front of the building line to the street shall be fully landscaped within 30 days, depending on weather conditions, of the time when the house is ready for occupancy. The Owner shall install or cause to be installed within 6 months of occupancy the balance of all landscaping unless a longer time is approved by the ACC.

7.25 **Signs**

No signs of any kind or for any use shall be erected, posted, painted or displayed at any location within this Project whatsoever, except (a) Project entry and identification signs permitted by this Declaration; (b) public notice by political division of the State or County or as required by law, (c) signs of any Builder or the Builder's agent during the period the Builder is building, selling, leasing or renting Lots or Homes in the Project, (d) signs not larger than 900 square inches placed by any Lot Owner or the Lot Owner's agent on such Owner's Lot advertising the Lot for sale, (e) during any election period, political signs not larger than 900 square inches provided that such signs are removed the day following the election for which they are displayed, or (f) signs installed or authorized by Declarant prior to the Transition Date for any Project-related purpose.

7.26 **Temporary Structures**

No trailer, basement, shack, garage, barn or either outbuildings or any structure of a temporary character shall be erected or placed on the Project for a period exceeding six months. No building or structure shall be moved onto the Project from any land outside the Project. Notwithstanding the foregoing, a trailer may be placed and occupied by the designated Project sales agent with the prior written approval of the Builder's panel of the ACC, and a construction shack may be used by an Owner's construction contractor for a reasonable time during the construction period.

7.27 **Completion of Construction**

Any dwelling or structure erected or placed on any Lot shall be completed as to external appearance, including finish painting or stained, and shall be connected to sewers within six months after the date of commencement of construction or such longer period of time as may be approved in writing by the ACC.

7.28 **Easements**

Easements for the installation and maintenance of utilities and drainage, and irrigation facilities, are reserved as shown on the recorded Plat Map. Within these easements no structure, planting or other materials shall be placed or permitted to remain which may damage, or interfere with the installation and/or maintenance of such utilities, or which may change the direction of flow of water through a drainage channel in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easements on any Lot and all improvements in it shall be maintained continuously by the Lot Owner.

7.29 **Use During Construction**

Except with the prior written approval of the ACC, no person shall reside upon the premises of any Lot until such time as the improvements to be erected thereon accordance with the plans and specifications approved by the ACC have been completed. Completion shall be considered receipt of a final inspection of the dwelling unit by the Building Department having jurisdiction.

7.30 **Excavations**

Except with the prior permission of the ACC, or except as may be necessary in connection with the construction of any approved improvement, no excavation shall be made nor shall any dirt be removed from or added to any Lot herein.

7.31 **Nuisances**

No noxious, harmful or offensive thing or use shall be permitted or maintained upon any Lot or upon any other portion of the Project, nor shall anything be done thereon which maybe or may become an annoyance or nuisance to any Owner.

7.32 **Common Drives**

Any common drives, walks and paths shall be used exclusively for normal transit and no obstructions shall be placed thereon or therein except by express written consent of the Board.

7.33 **Governmentally Required Maintenance, etc.**

Any insurance; maintenance, repair, replacement, alteration or other work, or the monitoring of such work, which is required by the Maintenance Agreement, any governmental entity (including without limitation, federal, state or local government, public or private utility provider, local improvement district, or other governmental or quasi governmental, entity or agency), and regardless of whether such requirement is now or hereafter established, and whether imposed in connection with a building permit or other governmental approval or requirement, and whether involving land within public rights of way or subject to ownership or exclusive use of one Owner, shall be the sole and exclusive responsibility of the Association (not the Declarant) and any cost incurred in connection therewith shall be a Common Expense. In furtherance of the generality of the foregoing, and not by way of limitation, such work shall include maintenance of any grass-lined swales and proper disposal of clippings, maintenance of wetland plantings, replacement of wetland and landscape plantings that die during any required maintenance period, maintenance of public and private storm sewer and retention systems. Declarant shall have the right, but not the obligation, to perform any such work if the Association fails to do so. The Association shall promptly upon demand reimburse Declarant for any costs directly or indirectly incurred by Declarant as a result of the Declarant performing, or the Association's failure to perform, such work (including any work necessary to obtain a release, or avoid a forfeiture, of any cash deposit or other bond made by Declarant).

7.34 **Compliance with Law**

All buildings and other improvements shall comply with all applicable governmental requirements, including without limitation, minimum setback, maximum height and maximum lot coverage requirements.

ARTICLE 8
COMMON EXPENSES AND ASSESSMENTS

8.1 **Lien and Personal Obligation for Assessments**

The Declarant, for each Lot and Home owned within the Project, hereby covenants, and each Owner of any Lot and Home by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association any Assessment duly levied by the Association as provided herein. Such Assessments, together with interest, costs, late charges and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment is made. Each such Assessment, together with interest, costs, late charges and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his successors in title unless the lien for such delinquent Assessments had been properly recorded prior to title transfer or unless expressly assumed by them. Notwithstanding the foregoing, in the case of a sale of any Home or Lot which is charged with the payment of an Assessment or Assessments payable in installments, the person or entity who is the Owner immediately prior to the date of any such sale shall be personally liable only for the amount of the installments due prior to said date. The new Owner shall be personally liable for installments which become due on and after said date.

8.2 **Uniform Rate**

8.2.1 **Common Expenses.** Except as otherwise provided in this Declaration, Assessments to pay for Common Expenses shall be based on the Common Expense Percentage.

8.2.2 **Special Changes to Owner.** Assessments levied against an Owner for the purpose of reimbursing the Association for costs incurred in bringing the Owner or his Lot and/or Home into compliance with the provisions of this Declaration shall be paid solely by that Owner.

8.2.3 **Declarant Assessments.** Declarant shall pay any Assessment levied against any Lots owned by it.

8.3 **Limitation on Annual Assessment Amount**

8.3.1 **Board Authority**. Subject to Section 5.2 (Special Declarant Rights), the Board shall have the authority, without obtaining prior approval of the Owners to levy Assessments in a given calendar year totaling not more than the amount first determined by the Declarant (or if the Declarant does not determine the initial annual Assessment, then the amount determined by the first

Board elected by the Owners other than the Declarant and approved by a majority of the Owners). Assessments included in the foregoing calculation shall not include any Assessments which are levied against an Owner for reimbursing the Association for costs incurred in bringing the Owner or his Home and/or Lot into compliance with the provisions of this Declaration.

8.3.2 **Inflationary Increase in Limit**. The amount initially determined under Section 6.3.1 shall be increased proportionately by the increase in the Consumer Price Index for the City of Seattle, Washington, for All Urban Consumers, prepared by the United States Department of Labor for the base period, January 1 of the year in which this Declaration is recorded, to adjust for any deflation in the value of the dollar.

8.3.3 **Owner Approval Required**. Any Assessment to be levied in a given calendar year which would cause the total of all Assessments for the year to exceed the sum per Lot permitted by Section 8.3.1 shall require the calling of a meeting of the Association upon notice sent to all Members not less than 30 nor more than 60 days in advance of the meeting, and the such Assessment shall be deemed approved unless rejected by 51% of the Owners. In the event any such Assessment is rejected, the immediately prior Assessment shall continue in effect. In addition, any borrowing by the Association in any amount shall require the approval of the Members in the manner set forth herein.

8.4 **Manner and Time of Payment**

Assessments shall be payable in such reasonable manner as the Board shall designate. Any Assessment or installment thereof which remains unpaid for at least 15 days after the due date shall bear interest at the rate of 12% per annum. The Board may also assess a late charge in an amount not exceeding 25% of any unpaid Assessment which has been delinquent for more than 15 days.

8.5 **Accounts**

Any Assessments collected by the Association shall be deposited in one or more insured institutional depository accounts in the name of the Association established by the Board. The Board shall have exclusive control of such accounts and shall maintain accurate records thereof. No withdrawal shall be made from said accounts except to pay for charges and expenses authorized by this Declaration. The funds of the Association shall not be commingled with the funds of any other association, nor with the funds of the Declarant, nor with the funds of any managing agent of the Association or any other person responsible for the custody of such funds.

8.6 **Lien**

In the event any Assessment or installment thereof remains delinquent for more than 30 days, the Board may, upon 15 days prior written notice to the Owner of such Lot of the existence of the default, accelerate and demand immediate payment of the entire Assessment. The amount of any Assessment assessed or charged to any Lot, plus interest, costs, late charges and reasonable attorney' fees, shall be lien upon such Lot. A notice of Assessment may be recorded in the office where real estate conveyances are recorded for the county in which this Project is located. Such

notice of Assessment maybe filed at any time at least 15 days following delivery of the notice of default referred to above in this Section 8.6. The lien for payment of such Assessments and charges shall have priority over all other liens and encumbrances, recorded or unrecorded, limited as provided in Section 11.1. Suit to recover a money judgment for unpaid Assessments or charges shall be maintainable without foreclosure or waiver of the lien securing the same.

8.7 **Waiver of Homestead**

Each Owner hereby waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption law in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms hereof.

8.8 **Continuing Liability for Assessments**

No Owner may exempt himself from liability for his Assessments by abandonment of his Home or Lot.

8.9 **Records; Financial Statements**

The Board shall prepare or cause to be prepared, financial and other records sufficiently detailed to enable the Association to fully declare to each Owner the true statement of its financial status. All financial and other records of the Association, including but not limited to checks, bank records, and invoices, in whatever form they are kept, are the property of the Association. Any Association managing agent shall turn over all original books and records to the Association immediately upon termination of the management relationship with the Association, or upon such other demand as is made by the Board. Any Association managing agent is entitled to keep copies of Association records. All records which the managing agent has turned over to the Association shall be made reasonably available for the examination and copying by the managing agent.

At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association. For any calendar year in which the Association levies or collects any Assessments, and shall distribute to all Owners, a balance sheet and an operating (income/ expense) statement for the Association, which shall include a schedule of Assessments received and receivable, identified by the number of the Lot and the name of the Owner so assessed. Financial statements with annual Assessments of $50,000 or more shall be audited at least annually by an independent certified public accountant, but the audit may be waived if 67% of the votes cast by Members, in person or by proxy, at a meeting of the Association at which a quorum is present, vote each year to waive the audit.

All records of the Association, including the names and addresses of Owners and other occupants of the Lots, copies of this Declaration, the Articles and the Bylaws, and any resolutions authorizing expenditures of Association funds shall be available for examination by all Owners, Declarant, holders of Mortgages on the Lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the Association or its managing agent. The Association shall not release the unlisted telephone number of any Owner. The Association may

impose and collect a reasonable charge for copies and any reasonable costs incurred by the Association in providing access to records.

8.10 **Certificate of Assessment**

A certificate executed and acknowledged by the treasurer or the president of the Board, or an authorized agent thereof if neither the president nor treasurer is available, stating the indebtedness for Assessments and charges or lack thereof secured by the Assessment lien upon any Lot shall be conclusive upon the Association as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith. Such a certificate shall be furnished to any Owner or any encumbrancer of a Lot within a reasonable time after request, in recordable form, at a reasonable fee. Unless otherwise prohibited by law, any encumbrancer holding a lien on a Lot may pay any unpaid Assessments or charges with respect to such Lot, and, upon such payment, shall have a lien on such Lot for the amounts paid of the same rank as the lien of his encumbrance.

8.11 **Assessment Lien; Attorneys' Fees and Costs**

Subject to Section 5.2 (Special Declarant Rights), the Board, on behalf of the Association, may initiate action to foreclose the lien of, or collect, any Assessment. In any action to foreclose the lien of, or otherwise collect, delinquent Assessments or charges, any judgment rendered in favor of the Association shall include a reasonable sum for attorneys' fees and all costs and expenses reasonably incurred in preparation for or in the prosecution of said action, in addition to taxable costs permitted by law.

8.12 **Curing of Default**

The Board shall prepare and record a satisfaction and release of the lien for which a notice of Assessment has been filed and recorded in accordance with this Article upon payment or other satisfaction of all delinquent Assessments set forth in the notice, and all other Assessments which have become due and payable following the date of such recordation with respect to the Lot as to which such notice of Assessment was recorded, together with all costs, late charges and interest which have accrued thereon. For the purposes of the preceding sentence, the term "costs" shall include costs and expenses actually incurred or expended by the Association in connection with the cost of preparation and recordation of the notice of Assessment and in efforts to collect the delinquent Assessments secured by the lien and a reasonable sum for attorneys' fees. In addition, a fee of $25.00 covering the cost of preparation and recordation of the satisfaction of lien shall be paid to the Association prior to such action. The satisfaction of the lien created by the notice of Assessment shall be executed by the president or treasurer of the Association or by any authorized representative of the Board.

8.13 **Payment by Owners**

Each Owner shall be obligated to pay its share of Common Expenses and special charges made pursuant to this Article to the treasurer for the Association. Assessments for each Owner shall begin on the date said Owner closes the transaction in which he acquires right, title or interest in the

Lot. Assessments for the initial month shall be prorated if closing occurs on other than the first of the month. Any Assessment or charge which remains unpaid for at least 15 days shall bear interest at the rate of 12% from due date until paid. In addition, the Board may impose a late charge in an amount not exceeding 25% of any unpaid Assessment or charge, which has remained delinquent for more than 15 days.

8.14 **Omission of Assessment**

The omission by the Board or the Association to fix the estimate for Assessments and charges hereunder for the next year before the expiration of any current year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay the Assessments and charges, or any installment thereof for that or any subsequent year. The Assessment and charge fixed for the preceding year shall continue until a new Assessment or charge is fixed.

8.15 **Notice of Creation of Assessment Lien**

The notice of Assessment shall not be filed of record unless and until the same remains unsatisfied at least 15 days after a written notice of default and demand to cure is given to the defaulting Owner by the Board or a person designated by it.

8.16 **Delinquent Assessment Deposit**

8.16.1 **Deposit May Be Required**. An Owner may be required by the Board or by the managing agent, from time to time, to make and maintain a deposit not less than one-twelfth (1/12) nor in excess of one-quarter (1/4) of the total annual Assessments, which may be collected as are other Assessments and charges. Such deposit shall be held in a separate fund, be credited to the Lot owned by such Owner, and be for the purpose of establishing a reserve for delinquent Assessments. The deposit shall not be considered as an advance payment of regular or special Assessments.

8.16.2 **Right to Draw**. Resort to the deposit may be had at any time when the Owner is 10 days or more delinquent in paying his monthly or other Assessments and charges. If the Board draws upon the deposit as a result of an Owner's delinquency in payment of any Assessments, the Owner shall continue to be responsible for the immediate and full payment of said delinquent Assessment (and all penalties and costs thereon) and thus the full restoration of said deposit, and the Board shall continue to have all of the rights and remedies for enforcing such Assessment payment and deposit restoration as provided by this Declaration and by law.

8.16.3 **Disposition Upon Sale**. Upon the sale of a Lot, the seller/Owner thereof shall not be entitled to a refund from the Association of any deposit or reserve account made or maintained with respect to such Lot pursuant to this or any other Section of this Declaration. Rather, any such deposit or reserve account shall continue to be held by the Association for the credit of such Lot, and the Lot purchaser shall succeed to the benefit thereof, and the Lot seller shall be responsible for obtaining from the purchaser appropriate compensation therefor.

8.17 **Exempt Property**

The following property subject to this Declaration shall be exempt from the Assessments created herein:

8.17.1 all properties dedicated to and accepted by a governmental entity, and

8.17.2 all Common Areas.

Notwithstanding the foregoing, the land or improvements referred to in Sections 8.17.1 and 8.17.2 which are devoted to dwelling use shall not be exempt from Assessments.

8.18 **Effect of Legal Proceedings**

In any legal proceeding commenced pursuant to Section 9.1.1, the court having jurisdiction over such proceeding shall also have jurisdiction and power to cause Assessments to be levied and collected on an equal per Lot basis in such amounts as are reasonably necessary to cause the Project to be properly administered in accordance with the provisions of this Declaration and the Articles and Bylaws (and to cause the provisions of this Declaration and the Articles and Bylaws to be properly applied and enforced). Except with respect to legal proceedings to collect Assessments or similar charges owed to the Association by an Owner or to enforce the provisions of this Declaration, neither the Association nor its Board may commence and prosecute litigation (or collect Assessments in connection therewith) until first approved as provided in Section 8.3.3 after the Owners have been provided a written explanation of the nature of such litigation, the reasons therefor, the expected result and the estimated cost thereof.

8.19 **Commencement of Assessments**

The Declarant in the exercise of its reasonable discretion shall determine when the Association (or the Declarant in exercising Special Declarant Rights) shall commence making Assessments. Until an Assessment is made, the Declarant shall pay all Common Expenses. After any Assessment has been made, Assessments must be made against all Lots based on a budget adopted by the Association (or by the Declarant in exercising Special Declarant Rights). Notwithstanding anything in this Declaration, until the Transition Date, the Declarant may elect not to permit the collection of monthly Assessments calculated as provided in Section 8.3 and instead elect to collect and expend monthly Assessments based on the actual costs of Common Expenses and Home Expenses (excluding reserves).

ARTICLE 9
COMPLIANCE WITH DECLARATION

9.1 **Enforcement**

9.1.1 **Compliance of Owner.** Each Owner, Board member and the Association shall comply strictly with the provisions of this Declaration and with the Articles and Bylaws and administrative rules and regulations adopted by the Association (as the same may be lawfully

amended from time to time). Failure to comply shall be grounds for an action to recover sums due for damages, or injunctive relief, or both, maintainable by the Board (acting through its officers on behalf of the Association and the Owners), or by the aggrieved Owner on his own, or by Declarant against the party (including an Owner or the Association) failing to comply.

9.1.2 **Compliance of Lessee.** Each Owner who shall rent or lease his Home shall insure that the lease or rental agreement will be in writing and subject to the terms of this Declaration and the Articles and Bylaws. Said agreement shall further provide that failure of any lessee to comply with the provisions of said documents shall be a default under the lease.

9.1.3 **Attorneys' Fees.** In any action to enforce the provisions of this Declaration, the Articles or the Bylaws, the prevailing party in such legal action shall be entitled to an award for reasonable attorneys' fees and all costs and expenses reasonably incurred in preparation for or prosecution of said action, in addition to taxable costs permitted by law.

9.2 **No Waiver of Strict Performance**

The failure of the Board, or Declarant or Declarant's managing agent, as applicable, in any one or more instances to insist upon or enforce strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or of the Articles or Bylaws or administrative rules or regulations, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. No waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

9.3 **Right of Entry**

Violation of any of the provisions hereof shall give to the Association, or until the Transition Date to the Declarant (or Declarant's managing agent), the right to enter upon the Project as to which such violation exists and to abate, correct and remove, at the expense of the Owner thereof, any erection, thing or condition that may be or exists thereon contrary to the provisions hereof. Such entry shall be made only after three days notice to said Owner. Any person exercising such right of entry shall exercise reasonable efforts to minimize any inconvenience to the Owner, and shall repair any damage caused thereby. Declarant or the Association shall not be deemed guilty of any manner of trespass by such entry, abatement or removal.

9.4 **Remedies Cumulative**

The remedies provided are cumulative, and may be pursued concurrently, as well as any other remedies which may be available under law although not expressed herein.

ARTICLE 10
LIMITATION OF LIABILITY

10.1 No Personal Liability

So long as a Board member, Association committee member, Association officer, or Declarant (or Declarant's managing agent) exercising Special Declarant Rights or other rights reserved to it hereunder, has acted in good faith, without willful or intentional misconduct, upon the basis of such information as may be possessed by such person, no such person shall be personally liable to any Owner, or other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, negligence (except gross negligence), any discretionary decision, or failure to make a discretionary decision by such person in such person's official capacity. This Section shall not apply to the extent the consequences of such act, omission, error or negligence are covered by insurance or bonds obtained by the Board; providing, however, that any such insurance or bonds shall contain a waiver of subrogation rights in favor of any person released hereby (unless insurance or bonds containing such a waiver of subrogation is not available at commercially reasonable rates).

10.2 Indemnification of Board Members

Each Board member or Association committee member, or Association officer, or Declarant (or Declarant's managing agent) exercising Special Declarant Rights, and their respective hers and successors, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which he may be a party; or in which he may become involved, by reason of being or having held such position at the time such expenses or liabilities are incurred; except in such cases wherein such person is adjudged guilty of intentional misconduct, or gross negligence or a knowing violation of law in the performance of his duties, and except in such cases where such person has participated in a transaction from which said person will personally receive a benefit in money, property, or services to which said person is not legally entitled. Notwithstanding the foregoing, in the event of a settlement, such indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interest of the Association. Nothing contained in this Section 10.2 shall, however, be deemed to obligate the Association to indemnify any Member or Owner of a Lot who is or has been a Board member or officer of the Association with respect to any duties or obligations assumed or liabilities incurred by him in his capacity as a Member or Owner of a Lot (as opposed to his capacity as a Board member, Association committee member or Association officer, or Declarant or Declarant's managing agent exercising Special Declarant Rights).

ARTICLE 11
MORTGAGEE PROTECTION

11.1 Priority of Mortgages

Notwithstanding all other provisions hereof, the liens created under this Declaration upon any Lot for Assessments shall be subject to tax liens on the Lot in favor of any assessing unit and/or

special district and be subject to the rights of the secured party in the case of any indebtedness secured by any first lien Mortgage made in good faith and for value upon the Lot. Where the Mortgagee of a Lot, or other purchaser of a Lot, obtains possession of a Lot as a result of such Mortgagee's foreclosure or deed in lieu thereof, such possessor and his successors and assigns shall not be liable for the share of any Assessment chargeable to such Lot which becomes due prior to such possession, but will be liable for any Assessment accruing after such possession. Such unpaid share of Assessments shall be deemed to be Common Expenses collectible from all of the Owners including such possessor, his successor and assigns. For the purpose of this section the terms "Mortgage" and "Mortgagee" shall not mean a real estate contract or the vendor, or the designee of a vendor thereunder, or a mortgage or deed of trust (or mortgagee or beneficiary thereunder) securing a deferred purchase price balance-owed with respect to a sale by an individual Owner other than Declarant.

11.2 Effect of Declaration Amendments

No amendment of this Declaration shall be effective to modify, change, limit or alter the rights expressly conferred upon Mortgagees in this instrument with respect to any unsatisfied Mortgage duly recorded, unless the amendment shall be consented to in writing by the holder of such Mortgage. Any provision of this Article conferring rights upon Mortgagees which is inconsistent with any other provision of this Declaration shall control over such other inconsistent provisions.

11.3 Right of Lien Holder

A breach of any of the provisions, conditions, restrictions, covenants, easements or reservations herein contained shall not affect or impair the lien or charge of any bona fide Mortgage made in good faith and for value on any Lots, provided, however, that any subsequent Owner of the Lot shall be hound by these provisions whether such Owner's title was acquired by foreclosure or trustee's sale or otherwise.

11.4 Maintenance of Common Scheme

The Association shall not without prior written approval by 75% of all institutional first Mortgagees (based upon one vote for each first Mortgage owned) and by Declarant (until the Transition Date), by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of Lots, the exterior maintenance of Lots, maintenance of walkways, fences and driveways, or the upkeep of lawns and plantings in the development, including the provisions of Articles 6 and 7 hereof.

11.5 Copies of Notices

If the first Mortgagee of any Lot has so requested the Association in writing, the Association shall give written notice to such first Mortgagee that an Owner mortgagor of a Lot has for more than sixty (60) days failed to meet any obligation under this Declaration. Any first Mortgagee shall, upon written request, also be entitled to receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

11.6 Furnishing of Documents

The Association shall make available to prospective purchasers, Mortgagees, insurers, and guarantors, at their request, current copies of this Declaration, the Articles and Bylaws and other rules governing the Project, and the most recent balance sheet and income/expense statement for the Association, if any has been prepared.

11.7 Rights Granted By Declarant.

Nothing contained in this Declaration shall impair any right expressly granted by Declarant to any Mortgagee which conditions or otherwise limits the exercise of Declarant's rights hereunder.

ARTICLE 12
EASEMENTS

12.1 Association Functions

There is hereby reserved to Declarant and the Association, or their duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Association as are set forth in this Declaration, or in the Articles, Bylaws and rules and regulations adopted by the Association.

12.2 Easements Over Common Areas

The Board, on behalf of the Association and all Members thereof, shall have authority to grant (in accordance with applicable governmental laws and regulations) utility, road and similar easements, licenses and permits, under, through or over the Common Area, which easements the Board determines are reasonably necessary to the ongoing development and operation of the Project.

12.3 Access to Public Streets

Each Owner and his guests and invitees shall have a perpetual, non-exclusive easement across the Common Areas and across all roadways constructed within the Project, thereby providing access throughout the Project and to public streets.

12.4 Utility Easements

On each Lot, easements are reserved as provided by the Plat Map and applicable laws, ordinances and other governmental rules and regulations for utility installation and maintenance, including but not limited to, underground electric power, telephone, water, sewer, drainage, gas, and accessory equipment, together with the right to enter upon the Lots at all times for said purposes. In furtherance of the foregoing and not by way of limitation, an easement for installation and maintenance of facilities for surface water drainage is established across a 10 foot wide area along the front and rear boundary lines and (except to the extent a structure is legally constructed within such easement area) a 25 foot wide area along the interior boundary lines of each Lot. Within these easements, the construction and maintenance of a structure, fence, planting, or other material or

improvement shall be prohibited only to the extent that such construction or maintenance would (a) damage or materially interfere with the installation and maintenance of utilities or (b) change the direction of flow of drainage channels in the easements, or (c) obstruct or retard the flow of water through drainage channels in the easements, the easement area of each Lot, and all improvements shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

12.5 Project Entry Signs

On Common Areas adjacent to a roadway entrance into the Project, and on such portion of said Common Areas determined by Declarant, the Board (or the Declarant at any time until the Transition Date) may erect, and the Association as a Common Expense may thereafter maintain repair and replace, such Project entry and identification signs (and landscaping, fencing and improvements relating thereto) as the Board (or the Declarant) deems necessary and appropriate.

12.6 Lot Maintenance and Encroachments

Each Lot and all Common Area and Lot improvements are hereby declared to have a non-exclusive perpetual easement over all adjoining Homes, Lots (including setback areas) and Common Areas, for the purpose of accommodating any encroachment due to engineering errors, or errors in original construction, reconstruction, or repair of any portion of Lot, or construction carried out in accordance with applicable permits, or building overhang or projection (including without limitation drains and footings), or any other similar cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owner shall not be altered in any way by said encroachment. In the event a Lot, or Common Area improvement is partially or totally destroyed, and then repaired or rebuilt, minor encroachments over adjoining Lots (including setback areas) and Common Areas shall be permitted, and there shall be valid easements for the maintenance of said encroachments so long as they shall exist. In no event shall a valid easement for encroachment be created in favor of any Owner if said encroachment occurred due to the willful act or acts with full knowledge of said Owner and are not otherwise expressly authorized by the provisions.

The foregoing easements and encroachments shall not be construed to be encumbrances affecting the marketability of title to any Lot.

ARTICLE 13
TERM OF DECLARATION

13.1 Duration of Covenants

The covenants contained herein shall run with and bind the land for a term of 20 years from the date this Declaration is recorded, after which time the covenants shall be automatically extended for successive periods of 10 years each, unless an instrument executed in accordance with Section 13.2 below shall be recorded, abandoning or terminating this Declaration.

13.2 Abandonment of Subdivision Status

The Association shall not, without the prior written approval of the governmental entity having jurisdiction over the Project and without prior written approval of one hundred percent (100%) of all first Mortgagees (based upon one vote for each first Mortgage owned), Declarant (until the Transition Date) and Owners of record, seek by act or omission to abandon or terminate the subdivision status of the Project as approved by the governmental entity having appropriate jurisdiction over the Project.

ARTICLE 14
DECLARATION/PLAT MAP AMENDMENT

14.1 Declaration Amendment

Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Owners. Amendments may be adopted at a meeting of the Owners if 75% of the Owners vote for such amendment, or without any meeting if all Owners have been duly notified and 75% of the Owners consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of the president of the Association and shall be attested by the secretary, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon recording in the appropriate governmental offices. In addition to the amendments set forth in Article 11 and except as otherwise specifically provided herein to the contrary, any amendment to a provision of this Declaration establishing, providing for, governing or regulating the following shall require the consent of 75% of institutional first Mortgagees and the consent of the Declarant (until the Transition Date): Voting, Assessments, Assessment liens or subordination of such liens, reserves for maintenance, repair and replacements of Common Areas, insurance or bonds, use of Common Areas, responsibility for maintenance or repairs, annexation of property to the Project pursuant to Section 17.2, boundaries of Lots, converting of Common Areas into Lots, leasing of Lots, provisions for the benefit of the Declarant, provisions for benefit of first Mortgagees, or holders, insurers or guarantors of first Mortgages, the interests in Common Areas, or imposition of any right of first refusal or similar restrictions on the right of an Owner to sell, transferor otherwise convey a Lot. Any Mortgagee who fails to respond in writing within 30 days of a written request to approve an amendment shall be deemed to have approved the request. It is specifically covenanted and understood that any amendment to this Declaration properly adopted will be completely effective to amend any or all of the covenants, conditions, and restrictions contained herein which may be affected and any or all clauses of this Declaration unless otherwise specifically provided in the section being amended or the amendment itself.

14.2 Plat Map

Except as otherwise provided herein; the Plat Map may be amended by revised versions or revised portions thereof referred to and described as to effect in an amendment to this Declaration

adopted as provided for in Section 14.1. Copies of any such proposed amendment to the Plat Map shall be made available for the examination of every Owner. Such amendment to the Plat Map shall be effective, once properly adopted, upon having received any governmental approval required bylaw and recordation in the appropriate city or county office in conjunction with the Declaration amendment.

14.3 Conform to Construction

Declarant, upon Declarant's sole signature without the assent of the Board, Owners or Mortgagees, and as an attorney-in-fact for the Association and all Owners with an irrevocable power coupled with an interest, may at any time until the Transition Date, file an amendment to this Declaration and to the Plat Map to conform data depicted therein to improvements as actually constructed and to establish, vacate and relocate utility easements and access road easements.

14.4 Conform to Lending Institution Guidelines

Declarant, upon Declarant's sole signature without the assent of the Board or Owners, and as an attorney-in-fact for the Association and all Owners with an irrevocable power coupled with an interest, may at any time until the Transition Date file such amendments to this Declaration and the Plat Map as are necessary to meet the then requirements of Federal National Mortgage Association, Veterans Administration, Federal Home Loan Mortgage Corporation, or other agencies, institutions or lenders financing and/or title insuring the purchase of a Lot from the Declarant.

14.5 Property Not Part of the Project

Declarant has provided in this Declaration a legal description of the Property in order to give record notice to all persons dealing with the Property that Declarant has the right, but not the obligation, pursuant to Article 17 to annex to and make a part of the Project all or any portion of the Property not already part of the Project. Declarant, upon Declarant's sole signature without the assent of the Board, Owners or Mortgagees, and as an attorney-in-fact for the Association and all Owners with an irrevocable power coupled with an interest, may from time to time at any time before or after the Transition Date, file amendments to this Declaration for the purpose of (a) adding to the Property any real property (and improvements thereto) not already described in this Declaration or (b) removing from the Property (including any additions thereto) all or any portion of the Property not then part of the Project.

14.6 Declarant Powers

Declarant, upon Declarant's sole signature without the assent of the Board or Owners, and as an attorney-in-fact for the Association and all Owners with an irrevocable power coupled with an interest, may at any time until the Transition Date, file such amendments to this Declaration and the Plat Map as are necessary or incidental to the exercise of Declarant's powers under Section 5.2, Article 17 or any other provision of this Declaration.

14.7 Amendments Affecting Special Rights

Except as otherwise provided herein, any amendment to this Declaration which would affect a right, power, duty or obligation which is exclusively granted to or imposed upon a specific person or class shall require the consent of the person or 75% of the members of that class. As used herein, the term "person or class" means the Declarant, Owners or institutional first Mortgagees.

ARTICLE 15
INSURANCE

The Board shall have authority in the exercise of its discretion to obtain and maintain at all times as a Common Expense a policy or policies and bonds of liability insurance and property insurance covering the ownership, use and operation of all the Common Areas (and Common Area improvements), if any, including common personal property and supplies belonging to the Association, fidelity coverage, for Board members, Association officers, or employees or agents of the Association or Board, and such other insurance as the Board may deem advisable or as may be required by the Federal National Mortgage Association, Federal Home Loan Mortgage Association, Veterans Administration or similar agencies or lending institutions. Each Owner at the Owner's expense shall be obligated to maintain adequate casualty and liability insurance with respect to the Home, Lot and any improvements thereto or personal property located therein.

ARTICLE 16
DESTRUCTION AND RECONSTRUCTION

16.1 Common Areas

In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction Assessment against all Lot Owners to recover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Lot Owner.

16.2 Homes

In the event of damage or destruction by fire or other casualty to any Home or other improvements to the Lot, the Owner shall, regardless of the amount or availability of insurance proceeds, repair or rebuild such damage or destroyed. Portions of the Lot and improvements in a good, workmanlike manner and to accordance with the provisions of this Declaration.

ARTICLE 17
ANNEXATION AND CONVERSION

17.1 Annexation by Declarant.

At any time from time to time until the Transition Date, Declarant may, in its discretion without the assent of the Board, Owners or Mortgagees, cause any real property not already part of the Project to be annexed to the then existing Project and thereby subjected to this Declaration as part of the Project. Such annexation shall be accomplished by recording an amendment to this Declaration in accordance with the provisions of Section 17.3. Lots within property annexed to the Project pursuant to this Section shall be owned by Declarant.

17.2 Non-Declarant Annexations

Annexation of additional properties (other than Declarant annexations provided for in Section 17.1 hereof) shall require the assent of two-thirds (2/3) of the Members of the Association attending a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 30 days or more than 60 days in advance of the meeting setting forth the purpose of the meeting. At this meeting the presence of Members or of proxies entitled to cast 60% of the votes shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the event two-thirds (2/3) of the Members are not present in person or by proxy, Members not present may give their written consent to the action taken thereat. Until the Transition Date, annexation of additional properties under this Section shall also require the prior written approval of the Declarant. Annexation of additional properties under this Section shall be accomplished by recording an amendment to this Declaration in accordance with the provisions of Section 17.3.

17.3 Declaration Amendment

To make effective any annexation pursuant to this Article 17, the Declarant (or the Association acting pursuant to Section 17.2) shall execute and record an amendment to this Declaration describing the real property to be annexed (the "Annexed Property") and stating that such Annexed Property shall be annexed to and made a part of the Project. Such amendment shall identify Common Areas within the Annexed Property, and may include covenants, conditions and restrictions affecting such Common Areas and the use and maintenance thereof. Such covenants, conditions and restrictions shall be operative as a set of covenants running with the land as provided in Section 1.2. From and after the recording of such amendment, all property (including all Lots, Common Areas, and all Homes and other improvements constructed thereon) within the Annexed Property as well as within the Project existing prior to such amendment shall constitute a single Project pursuant to the provisions of this Declaration.

17.4 **Common Areas Within Annexed Property**

Common Areas within property subsequently annexed to the Project shall be available for the common use of all Owners of Lots within such subsequently Annexed Property as well as within the Project existing prior to such annexation. Likewise, Common Areas within the Project existing prior to such annexation shall be available for the common use of all Owners of Lots within the Project including the property annexed thereto.

17.5 **Conversion of Lots to Common Area**

Declarant reserves the right to amend this Declaration and the Plat Maps, from time to time until the Transition Date, for the purpose of converting to Common Area any Lots or portions thereof which have not yet been improved with Homes. Such amendment shall not require the consent of any person other than the Owner(s) and Mortgagee(s) of the property to be converted.

17.6 **Conversion of Common Area to Lots**

Declarant reserves the right to amend this Declaration and the Plat Maps, from time to time until the Transition Date, for the purpose of converting to Lots any Common Area. Such amendment shall require the prior approval of 75% of the Owners and of institutional first Mortgagees.

17.5 **Adjustment of Voting and Common Expense Percentages**

In the event of the annexation of property to the Project, the conversion of Lots to Common Areas or the conversion of Common Areas to Lots, the voting rights and Common Expense Percentages shall be adjusted accordingly.

ARTICLE 18
MISCELLANEOUS

18.1 **Delivery of Notices and Documents**

Any written notice, or other document as required by this Declaration, may be delivered personally or by mail. If by mail, such notice, unless expressly provided for herein to the contrary with regard to the type of notice being given, shall be deemed to have been delivered and received 48 hours after a copy thereof has been deposited in the United States mail, postage prepaid, addressed as follows.

(a) If to an Owner, other than Declarant, to the address of such Owner filed in writing with the Board pursuant to the requirements of the Bylaws;

(b) If to Declarant, whether in its capacity as an Owner, or in any other capacity, the address which Declarant shall have advised the Board in writing;

(c) Prior to the organizational meeting, notices to the Board shall be addressed to the address set forth in (b) above. Thereafter, notices to the Board shall be addressed either to an

address to be posted by the Board at all times in a conspicuous place, or to the registered office of the Association. In addition, from and after the organizational meeting, notice of the address of the Association shall be given by the Board to each Owner, within a reasonable time after the Board has received actual notice of such Owner's purchase of a Lot.

18.2 **Conveyances; Notice Required**

The right of an Owner to sell, transfer or otherwise convey his Lot shall not be subject to any right of approval, disapproval, first refusal, or similar restriction by the Association or the Board, or anyone acting on their behalf. An Owner intending to sell a Lot shall deliver a written notice to the Board, at least two weeks before closing, specifying the Lot being sold, the name and address of the purchaser, of the closing agent, and of the title insurance company insuring the purchaser's interest, and the estimated closing date. The failure of an Owner to properly give such notice to the Board shall not invalidate the sale. The Board shall have the right to notify the purchaser, the title insurance company, and the closing agent of the amount of unpaid Assessments and charges outstanding against the Lot, whether or not such information is requested.

18.3 **Successor and Assigns**

This Declaration shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns of Declarant, and the heirs, personal representatives, grantees, lessees, sublessees and assignees of the Owners.

18.4 **Joint and Several Liability**

In the case of joint ownership of a Lot, the liability of each of the Owners thereof in connection with the liabilities and obligations of Owners, set forth in or imposed by this Declaration, shall be joint and several.

18.5 **Mortgagee's Acceptance**

18.5.1 **Priority of Mortgage**. This Declaration shall not initially be binding upon any Mortgagee of record at the time of recording of said Declaration but rather shall be subject and subordinate to said Mortgage.

18.5.2 **Acceptance Upon First Conveyance**. Declarant shall not consummate the conveyance of title of any Lot until said Mortgagee shall have accepted the provisions of this Declaration and made appropriate arrangements for partial release of Lots from the lien of said Mortgage. The issuance and recording of the first such partial release by said Mortgagee shall constitute its acceptance of the provisions of this Declaration and the status of the Lots remaining subject to its Mortgage as well as its acknowledgment that such appropriate arrangements for partial release of Lots has been made; provided, that, except as to Lots so released, said Mortgage shall remain in full effect as to the entire property described therein.

18.6 **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.

18.7 **Effective Date**

This Declaration shall take effect upon recording.

18.8 **Governmental Right of Access**

All governmental and quasi-governmental entities (including without limitation public and private providers of utility services) shall have rights of access, maintenance and inspection for the open space area, any drainage facilities or utility systems contained therein, or other matter of their respective jurisdiction.

18.9 **Approval of Lawsuits**

The Board shall not commence a lawsuit or arbitration against any party without first notifying all Owners in writing as to the nature of and reasons for such lawsuit or arbitration, and obtaining the approval of 75% of all Owners to commence such lawsuit or arbitration. This Section shall not apply to the collection of Assessment pursuant to Article 12 or the enforcement of this Declaration pursuant to Article 9.

18.10 **Conflicting Terms/Agreements**

For purposes of resolving any interpretive disputes between the obligations set forth in this Declaration and the Maintenance Agreement, the terms of the Maintenance Agreement shall govern unless waived by the City of Kennewick.

ARTICLE 19
DISPUTE RESOLUTION

19.1 **Policy; Mediation**

The parties hope there wall be no disputes arising out of their relationship. To that end, each commits to cooperate in good faith, and to deal fairly in performing its duties under this Declaration in order to accomplish their mutual objectives and avoid disputes. If a dispute arises, the parties agree to resolve all disputes by the following alternate dispute resolution process (a) the parties will seek a fair and prompt negotiated resolution, but if this is not successful, (b) all disputes shall be resolved by binding arbitration, provided that during this process, (c) at the request of either party made not later than 45 days after the initial arbitration demand, the parties will attempt to resolve any dispute by non-binding mediation (but without delaying the arbitration hearing date). The parties confirm that by agreeing to this alternate dispute resolution process they intend to give up their right to have any dispute decided in court by a judge or jury.

19.2 **Binding Arbitration**

Any claim between or among any party subject to this Declaration (including without limitation, the Declarant, the Association, Board members, Association officers, Lot Owners, or their employees or agents) arising out of or relating to this Declaration, one or more Lots or Homes, the Project or the Association shall be determined by arbitration in the county in which the Project is located commenced in accordance with RCW 7.04.060. The total award by a single arbitrator (as opposed to a majority of the arbitrators) shall not exceed $50,000, including interest, attorneys fees and costs. If any party demands a total award greater than $50,000, there shall be three neutral arbitrators. If the parties cannot agree on the identity of the arbitrator(s) within 10 days of the arbitration demand, the arbitrator(s) shall be selected by the Superior Court of County in which the Project is located. Each arbitrator shall be an attorney with at least 15 years experience in commercial or real estate law and shall reside in the state of Washington. Whether a claim is covered by the Article shall be determined, by the arbitrator(s). All statutes of limitations which would otherwise be applicable shall apply to any arbitration proceeding hereunder.

19.3 **Hearing; Law; Appeal Limited**

The arbitrator(s) shall take such steps as may be necessary to hold a private hearing within 90 days of the initial demand for arbitration and to conclude the hearing within three days, and the arbitrator(s) written decision shall be made not later than 14 calendar days after the hearing. The parties have included these time limits in order to expedite the proceeding, but they are not jurisdictional, and the arbitrator(s) may for good cause afford or permit reasonable extensions or delays, which shall not affect the validity of the award. The written decision shall contain a brief statement of the claim(s) determined and the award made on each claim in making the decision and award, the arbitrator(s) shall apply applicable substantive law. Absent fraud, collusion or willful misconduct by an arbitrator, the award and decision shall be final, and the judgment may be entered in any court having jurisdiction thereof. The arbitrator(s) may award injunctive relief or any other remedy available from a judge, including without limitation joinder of parties or consolidation of this arbitration with any other involving common issues of law or fact or which may promote judicial economy, but shall not have the power to award punitive or exemplary damages, or to award attorneys fees and costs to the prevailing party. The decision and award of the arbitrator(s) need not be unanimous, rather, the decision and award of two arbitrators shall be final.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first hereinabove written.

DECLARANT: Kennewick Acquisition Co. III, L.L.C.

By: _____

Name: MATT SMITH
Title: VICE PRESIDENT, WILLIAM SMITH PROPERTIES, INC
MANAGING MEMBER

STATE OF OREGON)
) ss.
County of Deschutes)

On this 18 day of January 2010 before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared Matt Smith, to me personally known (or proven on the basis of. satisfactory evidence) to be vice-president of William Smith Properties, Inc., which is the Manager of Kennewick Acquisition Co. III, LLC, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument on behalf of said corporation.

WITNESS my hand and seal hereto affixed the day and year in this certificate above written.

OFFICIAL SEAL
CHARLENE J HASHA
NOTARY PUBLIC-OREGON
COMMISSION NO. 443869
MY COMMISSION EXPIRES NOV. 22, 2013

Charlene J. Hasha
NOTARY PUBLIC for the State of Oregon
My Commission Expires: Nov. 22, 2013

SEA/107652/126381/DAO/300531.5

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Exhibit A (page 1 of 3)
Declaration of Covenants, Conditions, Restrictions and Reservations of Sage Crest, a Subdivision

PROPERTY EXHIBIT

KENNEWICK ACQUISITION CO'S III, LLC & WILLIAM SMITH PROPERTIES INC., HOLDINGS

PORTION SE1/2 SECTION 17, T. 8 N., R. 29 E., W.M.
BENTON COUNTY, WASHINGTON

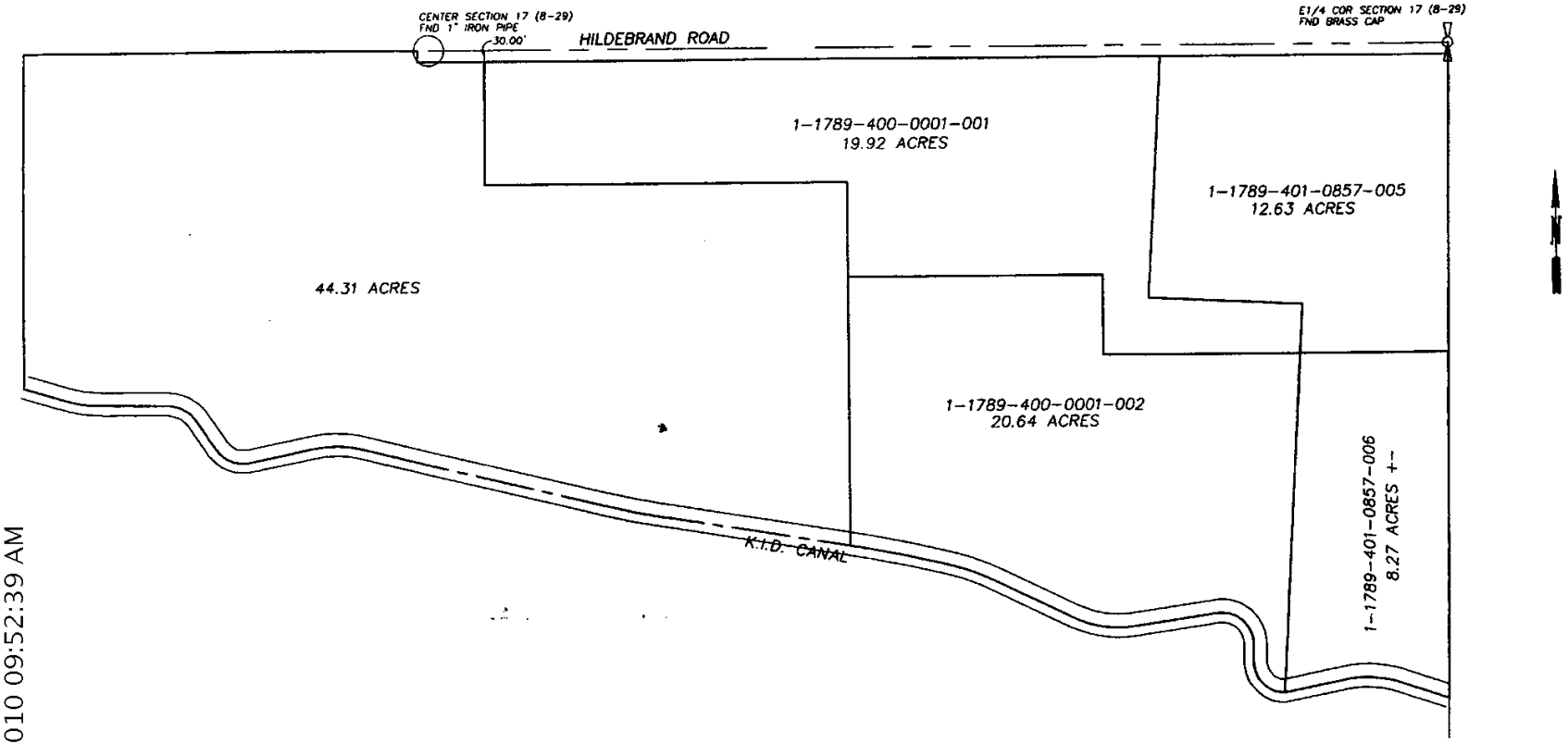

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Exhibit A (page 2 of 3)
Declaration of Covenants, Conditions, Restrictions and Reservations of Sage Crest, a Subdivision

PARCEL 1 - 1-1789-400-001-002

That portion of the Southeast quarter of Section 17, Township 8 North, Range 29 East, W.M., Benton County, Washington, lying Northerly of the Kennewick Irrigation District Amon Pump Lateral and lying Southerly and Easterly of the following described line:

Commencing at the Northeast corner of said Southeast quarter of said Section 17; Thence South 00°26'33" West, along the East line of said Southeast quarter, for 810.00 feet to the true point of beginning of said line; Thence North 90°00'00" West for 910.00 feet; Thence North 00°00'00" West for 210.00 feet; Thence North 90°00'00" West for 665.00 feet; Thence South 00°00'00" East for 708.35 feet to the centerline of the Kennewick Irrigation District canal and the terminus of said line.

Except any portion lying within Short Plat Number 857, according to the survey thereof recorded under Auditor's File Number 802989, records of Benton County, Washington.

Containing 20.64 acres, including canal right of way.

PARCEL 2

The East 72 feet of that portion of the Southwest quarter of Section 17, Township 8 North, Range 29 East, W.M. and that portion of the Southeast quarter of Section 17, Township 8 North, Range 29 East, W.M., Benton County, Washington, lying Northerly of the Kennewick Irrigation District Amon Pump Lateral and Southerly and Westerly of the following described line:

Commencing at the Northeast corner of said Southeast quarter of said Section 17; Thence South 00°26'33" West, along the East line of said Southeast quarter, for 810.00 feet; Thence North 90°00'00" West for 910.00 feet; Thence North 00°00'00" West for 210.00 feet; Thence North 90°00'00" West for 665.00 feet; Thence South 00°00'00" East for 708.35 feet to the centerline of the Kennewick Irrigation District canal and the true point of beginning of said line; Thence North 00°00'00" West for 958.35 feet; Thence North 90°00'00" West for 940.10 feet; Thence North 00°34'15" East for 349.99 feet to the North line of said Southeast quarter and the terminus of said line

Except the North 30 feet along the North line of said Southeast quarter for road right of way.

Containing 24.31 acres, including canal right of way.

Exhibit A (page 3 of 3)
Declaration of Covenants, Conditions, Restrictions and Reservations of Sage Crest, a Subdivision

PORTION TAX PARCEL 1-1789-300-0001-000

The Southwest quarter of Section 17, Township 8 North, Range 29 East, W.M., City of Kennewick, Benton County, Washington, lying North of the Kennewick Irrigation District Amon Pump Lateral; Except the East 72 feet thereof and Except the West 1612.57 feet thereof.

Containing 22.00 acres, more or less

PARCEL A

That portion of the Southeast quarter of Section 17, township 8 North, Range 29 East, W.M., Benton County, Washington, described as follows:

Beginning at the Northeast corner of said Southeast quarter of section 17; thence South 00°26'33" West, along the East line of said Southeast quarter, for 810.00 feet; thence North 90°00'00" West for 910.00 feet; thence North 00°00'00" West for 210.00 feet; thence North 90°00'00" West for 665.00 feet; thence North 00°00'00" West for 250.00 feet; thence North 90°00'00" West for 940.10 feet; thence North 00°34'15" East for 349.99 feet to the North line of said Southeast quarter of Section 17; thence North 90°00'00" East, along said North line, for 2517.87 feet to the Point of Beginning;

EXCEPT any portion lying within Short Plat No. 857, according to the Survey thereof recorded under Auditor's File Number 802989, records of Benton County, Washington; AND EXCEPT the North 30 feet for road.

PARCEL B

All of Lots 1, 2 and 3; and that portion of Lot 4, SHORT PLAT NUMBER 857, according to the Survey thereof recorded under Auditor's File Number 802989, records of Benton County, Washington, described as follows:

Beginning at the Northeast corner of said Lot 4; thence South 00°26'54" West, along the East line of said Lot 4, for 109.33 feet; thence North 90°00'00" West for 388.83 feet to the West line of said Lot 4, thence North 03°12'18" East, along the West line of said Lot 4, for 128.09 feet to the Northwest corner of said Lot 4; thence South 87°13'18" East, along the North line of said Lot 4, for 382.97 feet to the Point of Beginning.

~~THE PARCEL OF~~: PARCEL C

Lot 4, SHORT PLAT NO. 857, according to the Survey thereof recorded under Auditor's File Number 802989, records of Benton County, Washington EXCEPT that portion **described as follows:**

Beginning at the Northeast corner of said Lot 4; thence South 00°26'54" West, along the East line of said Lot 4 for 109.33 feet; thence North 90°00'00" West for 388.83 feet to the West line of Lot 4, thence North 03°12'18" East along the West line of said Lot 4, for 128.09 feet to the Northwest corner of said Lot 4; thence South 87°13'18" East along the North line of said Lot 4, for 382.97 feet to the point of beginning.

EXHIBIT B

Lots 1 through 16, inclusive, and Tracts A, B and C, SAGE CREST PHASE 1, according to the plat thereof recorded in Volume 15 of plats, Page 385, Records of Benton County, Washington.