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**FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDI-
TIONS, RESTRICTIONS, EASEMENTS
AND RESERVATIONS**

FOR

WHISPERING WINDS HOMEOWNERS ASSOCIATION

Grantor: Painted Hills, L.L.C.
Grantee: Whispering Winds Homeowners Association
Tax Parcel No.: 44033.1938 and 44033.9039

Legal Description (abbreviated): ALL THAT CERTAIN REAL PROPERTY LYING EN-
TIRELY IN SOUTHWEST 1/4, SECTION 3, TOWNSHIP
24 NORTH, RANGE 44 EAST, WILLAMETTE MERID-
IAN, COUNTY OF SPOKANE, STATE OF WASHING-
TON

Full Legal Description: Set forth in attached Exhibit "A"

Related Documents: ~~None~~ 5458562



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FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RESERVATIONS

FOR

WHISPERING WINDS

THIS FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RESERVATIONS FOR WHISPERING WINDS HOMEOWNERS ASSOCIATION (the "Declaration") is made by Painted Hills, L.L.C., a Washington limited liability company, ("Declarant") as of this 27th day of DECEMBER, 2006.

KNOW THAT Painted Hills, L.L.C., the Declarant described in the certain Declaration of Covenants, Conditions, Restrictions, Easements and Reservations for Whispering Winds recorded under Instrument No. 5458562 (the "Original Declaration"), pursuant to the authority granted to the Declarant described in the Original Declaration, has caused such Original Declaration to be amended and restated in its entirety, as set forth in this First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Reservations for Whispering Winds.

RECITALS

A. Real Property Description. Declarant is the owner of certain real property (the "Property") in Spokane County, Washington, legally described in Exhibit A attached hereto and incorporated herein.

B. Development. Declarant intends to develop the Real Property made subject to this Declaration, generally in accordance with the maps and plans approved under the zoning and subdivision ordinances and regulations of the County of Spokane and the State of Washington.

Upon recording this Declaration, Declarant desires to submit and subject the Real Property described on Exhibit "A" attached hereto, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto (all of which constitute a part of the "Property" as hereinafter defined), to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained herein. Declarant further desires to establish and authorize a plan of development to be implemented by Declarant pursuant to, and under the authority of, the Declaration.

Declarant deems it desirable to establish covenants, conditions and restrictions upon the Property and each and every portion thereof, and certain mutually beneficial restrictions and obligations with respect to the proper use, occupancy and enjoyment thereof, all for the purpose of enhancing the quality of life within the Property.



Declarant also deems it desirable for the efficient management of the Property to create a homeowners association to which will be delegated and assigned the powers of owning, managing, maintaining and administering the interior roads and Common Areas within the Property; administering and enforcing these covenants, conditions, restrictions and easements; collecting and disbursing funds pursuant to the Assessments and charges hereinafter created; and the performance of such other acts as are herein provided or which generally benefit its members, the Property, and the owners of any interests therein.

Whispering Winds Homeowners Association, a nonprofit corporation, has been incorporated under the laws of the State of Washington for the purpose of exercising the powers and functions of an Association for the Property.

Declarant desires and intends that the owners, mortgagees, beneficiaries, and trustees under trust deeds, occupants and all other Persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights set forth herein and in the Declaration, all of which are declared to be in furtherance of a plan to promote and protect the Property.

C. Conditions. Any development plans for any of the real property now or hereafter covered by this Declaration, in existence prior to or following the effective date of this Declaration, are subject to change at any time by Declarant, in Declarant's sole discretion, and impose no obligations on Declarant as to how said real property is to be developed or improved. Any purchaser of a Lot within the Property acknowledges that said Lot is subject to the above-referenced zoning and subdivision ordinances and regulations and such other governmental ordinances and regulations, and approvals hereunder as may be in effect or as may from time to time be imposed. Said purchasers acknowledge familiarity with the same, constructively or otherwise.

D. Purpose. The purpose of this Declaration is to set forth the basic restrictions, covenants, limitations, easements, conditions and equitable servitudes (collectively "Restrictions") that apply to the real property now or hereafter covered by this Declaration. The Restrictions are designed to preserve the value, desirability, and attractiveness of said real property, to ensure a well-integrated, high-quality development, and to guarantee adequate maintenance of any common area and improvements in a cost effective and administratively efficient manner.

NOW, THEREFORE, Declarant declares that the Property, subject to all restrictions and easements of the Plat, shall be held, transferred, sold, conveyed, leased, used and occupied subject to the covenants, conditions, restrictions, easements, assessments, and liens hereinafter set forth which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the Property and which shall be binding on all parties having any right, title, or interest in the Property or any portion thereof, and their respective heirs, successors and assigns, and shall inure to the benefit of each successor and assign, and shall inure to the benefit of each owner thereof.



ARTICLE I. DEFINITIONS

1.1 Words Defined. In this Declaration and any amendments hereto, the following terms shall have the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

1.1.1 "Association" shall mean Whispering Winds Homeowners Association described in Article 4 of this Declaration, its successor and assigns.

1.1.2 "Board" shall mean the Board of Directors of the Association, and "Directors" shall mean members of the Board of Directors.

1.1.3 "Common Areas" shall mean the real property (including the improvements and facilities thereon) described as all areas of the Property outside the Lots, including, but not limited to, roadways, walkways, parking areas, parks, open space buffers and wetland areas, if any, shown on the Plat which will be conveyed by Declarant to the Association and held for the common use and enjoyment of the members of the Association, including for purposes of managing stormwater drainage, but shall not include any streets or other areas now or hereafter dedicated for public use. Common Areas specifically shall include Tract "A" as shown on the face of the Plat. Common Areas shall also include the Easement Area more specifically defined in Section 2.10 below, subject to the rights and restrictions contained in the Spokane County Storm Drainage Easement.

1.1.4 "Construction" and "Constructed" shall mean any construction, reconstruction, erection or alteration of a Structure, except wholly interior alterations to a then-existing Structure.

1.1.5 "Declarant" shall mean Painted Hills, L.L.C., a Washington limited liability company, or such successor or assign (including a Participating Builder) as Declarant may designate by a writing recorded in the records of the Auditor of Spokane County.

1.1.6 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, and Reservations for Whispering Winds Homeowners Association as it may from time to time be amended.

1.1.7 "First Mortgage" and "First Mortgagee" shall mean, respectively, (a) a recorded mortgage on a Lot that has legal priority over all other Mortgages thereon, and (b) the holder of a First Mortgage.

1.1.8 "Landscape" and "Landscaping" shall mean or refer to the adorning or improving of a Lot by contouring and by planting sod, grass seed, flowers, shrubs, or trees and placing bark, decorative rocks or other such similar materials on exposed ground.



1.1.9 "Lot" shall mean any legally platted plot of land shown upon any recorded subdivision map of the Property, with the exception of the Common Areas.

1.1.10 "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.

1.1.11 "Mortgagee" shall mean the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a Lot created by a 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.

1.1.12 "Owner" shall mean the record owner, whether one or more Persons, of fee simple title to a lot within the Property, including a contract purchaser entitled to beneficial possession.

1.1.13 "Participating Builder" shall mean a Person who acquires from Declarant one or more Lots for the purpose of improving the same for resale to future Owners.

1.1.14 "Person" shall mean an individual, corporation, partnership, association, trustee, or other legal entity.

1.1.15 "Plans" shall mean the detailed construction plans, site plan, specifications and diagrams prepared for the construction of a Structure or Landscaping.

1.1.16 "Plat" shall mean the recorded final plat of Whispering Winds and any amendments, corrections or addenda thereto subsequently recorded.

1.1.17 "Property" shall mean the land described on Exhibit A and such additions thereto as may hereafter be subjected to the terms of the Declaration, and all improvements and structures now or hereafter placed on the land.

1.1.18 "Structure" shall mean any building, fence, wall, driveway, walkway, patio, garage, storage shed, carport, mailboxes, swimming pool, rockery, dog run or the like.

1.1.19 "Transition Date" shall be as defined in Section 4.10.

1.2 Form of Words. The singular form of words shall include the plural and the plural shall include the singular. Masculine, feminine, and neuter pronouns shall be used interchangeably.

1.3 Exhibits. The following are exhibits to this Declaration, and are incorporated herein by this reference:



Exhibit A Legal Description of the Property

ARTICLE 2. COMMON AREAS AND EASEMENTS

2.1 Conveyance to Association. Declarant hereby covenants to convey the Common Areas to the Association upon both recording of the Plat and filing of the Articles of Incorporation of the Association, subject to existing easements and encumbrances of record.

2.2 Use. Each Owner shall have the right to use the Common Areas in common with all other Owners. The right to use the Common Areas shall be appurtenant to and pass with the ownership of each Lot and shall extend not only to each Owner, but also to his agents, tenants, members of his household, invitees, and licensees. The right to use the Common Areas shall be governed by the provisions of this Declaration, the Bylaws, and the rules and regulations of the Association.

2.3 Abandonment of Common Areas. The Common Areas may not be abandoned, partitioned, subdivided, encumbered, sold, or transferred by the Association, any Owner or any third party, provided that, with the approval of at least sixty-seven percent (67%) of the Owners and compliance with any restrictions on the face of the Plat, the Common Areas may be transferred to or encumbered for the benefit of a public agency, authority, or utility. The granting of easements for utilities or for other purposes consistent with the intended use of the common Areas by the Owners shall not be deemed a partition or division.

2.4 Alteration of Common Areas. Nothing shall be altered or constructed in or removed from any Common Areas except upon the prior written consent of the Board.

2.5 Easements for Utilities. Declarant hereby creates and reserves sanitary sewer, drainage, utility and sight distance easements as shown on the Plat, as such Plat exists now, or as it may be amended in the future, for the benefit of any power company, Spokane County, any telephone company, any water or sewer district, the locally franchised cable television company and such other similar private utility and drainage users as may be authorized by the Board, all for installation, repair, replacement, maintenance and operation of the utility services provided by such entities, together with the right to enter upon the easements and the private driveways and private roads within the Plat for the purposes stated, which shall include the right to trim and/or remove brush and trees which may interfere with the construction, maintenance and operation of such utilities. The Board, with the consent of at least fifty-one percent (51%) of the voting power of the Association, shall be entitled to designate those additional private utilities that shall be entitled to utilize the easement area reserved in this Section 2.5

2.6 Conditions for Grant of Easements. The easements granted in Sections 2.5 and 2.6 are subject to the agreement of the grantee to compensate grantor (or grantor's successors and assigns) for any damage to the affected property caused by the exercise of grantee's easement rights; to use reasonable care in carrying out any construction or repair in the easement areas and to restore such areas, to the extent reasonably practicable, to the condition they were immediately prior to such work; and to indemnify and hold harmless grantor (and grantor's suc-



cessors and assigns) from any and all claims for injuries and/or damages suffered by any person caused by grantee's exercise of the rights therein granted.

2.7 Driveway; Streetlights. The streets serving Lots within the Plat are defined as "private driveways" and "private roads" by Spokane County, most of which are situated on ingress and egress easements. The Association shall have the responsibility to maintain, repair and replace these driveways and roads whether located in a common tract or on a private easement (specifically located on Lots 2-4, Block 1; Lots 7-8, Block 1; Lots 11-15, Block 1; and Lot 9, Block 1), collectively the "Private Drives". Additionally, the Declarant has caused streetlights to be installed within the private road along Lochsa Lane. The Association shall have the responsibility to cause these streetlights to be maintained, repaired and replaced, if necessary. The costs of such maintenance, repair and replacement shall constitute chargeable assessments as more particularly provided in Article 7 of this Declaration. Spokane County shall have no responsibility to build, survey, improve, construct, alter, repair, maintain, remove snow or otherwise service the private driveways and roads (including any drainage facilities, street lights or other appurtenances thereto) within or providing service to the Plat.

2.8 Private Storm Drainage System. Tract "A" shall be owned by the Association and shall be used in part for the location of a portion of the private storm drainage system that serves the Plat. For tax purposes, the Association shall be deemed the legal owner of this Tract. The private storm drainage facilities located in this Tract includes, without limitation, drainage pipes and lines, ponds and drainage ditches, together with trees and other landscaping. All elements of the private storm drainage system located within the Common Area shall hereinafter be referred to collectively as the "Private Storm Drainage System." The Private Storm Drainage System shall be owned and maintained by the Association in accordance with the stormwater drainage plan approved by Spokane County. The costs of maintaining the Private Storm Drainage System shall be chargeable assessments as more particularly provided in Article 7 of this Declaration. Each Owner shall pay all service charges, if any, levied by Spokane County upon the Association as part of the assessments provided in Article 7 for the construction and maintenance of the Private Storm Drainage System. No access shall be allowed to Tract "A" from any adjoining Lot.

2.9 Storm Drainage and Sight Distance Easements. Declarant hereby grants, creates and reserves storm drainage easements as indicated on the Plat for the benefit of the Association and Spokane County, for the purposes of installing, operating and maintaining drainage facilities to dispose of runoff, and all of which shall constitute part of the private storm drainage system referenced in Section 2.8. Declarant further grants, creates and reserves sight distance easements as indicated on the Plat for the benefit of the Association and Spokane County, for the purposes of maintaining clear sight distances.

2.10 Spokane County. Declarant hereby grants to Spokane County the right of ingress and egress to all Common Areas, including without limitation Tract "A" and other drainage easements.

2.11 Limitation on Access. No direct vehicular access shall be allowed from any Lot or Common Area to Tract "A", except as such access is allowed in Section 2.5 hereinabove.

2.12 Entry Monument, Landscaping, Fencing and Lighting. An entry monument and associated landscaping, including appurtenant facilities such as an irrigation system and lighting may be located within the easements bordering as well as facing Lochsa Drive and Lochsa Lane, and shall be owned and maintained by the Association, together with all other landscaping and appurtenant facilities, including without limitation street and other lighting, located within the Common Area. The costs of maintaining the entry monument, fencing, landscaping and appurtenant facilities and lighting shall be chargeable assessments as more particularly provided in Article 7 of this Declaration.

ARTICLE 3 CONSTRUCTION ON LOTS AND USE OF LOTS

3.1 Uniformity of Use and Appearance. One of the purposes of this Declaration is to assure within the Property a uniformity of use and quality of workmanship, materials, design, maintenance and location of Structures with respect to topography and finish grade elevation. It is in the best interests of each Owner that such uniformity of use be maintained as hereinafter provided. Notwithstanding anything herein set forth, the Construction of any Structure shall comply with the more restrictive of either (i) the terms and conditions of this Declaration or (ii) the laws, codes, ordinances and regulations of any governmental entity having jurisdiction.

3.2 Submission and Approval of Plans.

3.2.1 Construction. No Structure shall be Constructed or caused to be Constructed on any Lot unless the Plans for the Structure have been approved in writing by the Architectural Control Committee (the "ACC"). From and after the date hereof, until the Transition Date, the Board shall appoint all members of the ACC. The ACC's approval of any Plans shall not constitute any warranty or representation whatsoever by the ACC or any of its members that such Plans were examined or approved for engineering or structural integrity or sufficiency or compliance with applicable governmental laws, codes, ordinances and regulations, and each Owner hereby releases any and all claims or possible claims against the ACC or any of them and their heirs, successors and assigns, or of any nature whatsoever, based upon engineering or structural integrity or sufficiency or compliance with applicable governmental laws, codes, ordinances and regulations.

3.2.2 Submission; Plan Review Fee. At least twenty (20) days before commencing Construction of any Structure on any Lot, the Owner and/or Participating Builder shall submit to the ACC two complete sets of detailed building, construction, and specifications, color palettes and a site plan showing the location of all proposed Structures (the plans, specifications and site plans are individually and collectively referred to herein as the "Plans"). In addition, the Owner and/or Participating Builder shall submit a detailed Landscaping plan to the ACC within twenty (20) days before commencing landscaping work on a particular Lot that identifies conceptually how the Lot shall be landscaped and shall include identification of those areas where lawn, planting beds and other



landscaping features shall be located, as well as the type of plants that shall be installed on the Lot.

3.2.3 Approval. The ACC may withhold its approval by reason of its reasonable dissatisfaction with the location of the Structure on the Lot, color scheme, finish, architecture, height, and impact on view from another Lot or Lots, appropriateness of the proposed Structure or materials used therein. The ACC's approval or disapproval of Plans shall be made within twenty (20) days of submission of a complete set of plans, shall be in writing, and approval shall be evidenced by written endorsement on such Plans, one copy of which shall be delivered to the owner of the Lot upon which the Structure is to be Constructed. Except for violation of those restrictions set forth in Section 3.3 through 3.5, if the Board has not provided a Lot Owner with written notice of objections to any construction within six (6) months after its completion, Board approval shall not be required and the related Covenants shall be deemed to have been fully complied with. After delivering its notice of objections to a Lot Owner, the Board shall be entitled to take whatever action the Board deems reasonably appropriate to enforce the provisions of the Declaration, including, without limitation, commencing an action against the Lot Owner.

3.2.4 Dispute Resolution. Prior to the Transition Date, all decisions of the ACC shall be unanimous. After the Transition Date, the ACC shall consist of members of the Board of Directors, and all decisions of the ACC shall be as determined by the Board, in its discretion.

3.3 Size and Height: Compliance with Codes.

3.3.1 Floor Area. The finished floor area of the main house Structure, exclusive of open porches, basements and garages shall be not less than: (i) one thousand, three hundred (1,500) square feet for a dwelling containing a single level; and (ii) one thousand, seven hundred fifty (2,000) square feet for a dwelling containing two or more levels.

3.3.2 Lot Size. No Lot or portion of a Lot in this Plat, including Lot 16 as described in Exhibit "A", shall be divided and sold or resold, or ownership changed to transferred whereby the ownership of any portion of this Plat shall be less than the area required for the use district in which the lot is located.

3.3.3 Local Codes. All buildings or Structures shall be constructed in accordance with the Spokane County and other applicable codes, as such codes may be amended or adopted from time to time. In the event of a conflict between any applicable codes and this Declaration, the codes shall govern.

3.4 Appearance. Unless otherwise approved by the Board, the following minimum design and construction requirements shall apply. These design and construction standards are not the exclusive requirements which the ACC applies in evaluating



Plans. The satisfaction of the minimum standards contained in this Section 3.4 does not warrant or guarantee approval of Plans for the Construction of a Structure on a Lot by the ACC.

3.4.1 Roofing. The roof on a Structure shall be either a raised composition roof with a minimum twenty-five (25) year life or a tile roof in a color acceptable to the Board.

3.4.2 Siding. Front, side and rear elevations of all Structures shall be of double-wall construction. All siding materials shall be of masonry (including stucco, Dryvit[®], cultured stone, brick, stone, or similar material) and/or wood or wood-type siding material. At a minimum, front elevations are required to contain masonry (either brick, rock or cultured stone) or Dryvit[®] or such other similar exterior finish in an amount acceptable to the ACC, unless such front elevations are covered in their entirety with Dryvit[®], stucco or similar exterior finish insulating system, in which such case masonry shall not be required. Wood or wood-type siding materials shall be of double-wall construction on all front elevations of all Structures. Paints or natural finishes shall be those colors commonly known as earth tones and shades of white. Vinyl siding on Structures shall not be allowed or permitted. All exterior windows shall be wrapped with full trim.

3.4.3 Entry Walks, Porches and Decks. All front entry walks (connecting the driveway to the front porch or landing) shall be constructed of exposed aggregate or stamped concrete. All front porches shall be constructed of either exposed aggregate or stamped concrete, cedar or other similar pressure-treated wood materials or composite wood materials. All rear decks shall be constructed of either exposed aggregate, broom finished or stamped concrete or cedar or other similar pressure-treated wood materials or composite wood materials. All exposed aggregate or stamped concrete entry walks, porches and decks shall have a concrete sealant applied at the time of construction or, if weather conditions are not acceptable for the application of such sealant, as soon thereafter as is practical.

3.4.4 Driveways, Sidewalks and Porches. All driveways shall be constructed of broom finished, stamped or exposed aggregate concrete paving. All driveway concrete surfaces shall have a concrete sealant applied at the time of construction or, if weather conditions are not acceptable for the application of such sealant, as soon thereafter as is practical.

3.5 Use Restrictions.

3.5.1 Residential Use. The Lots shall be used only for single-family residential purposes, and only one single-family residence (and such accessory structures as are approved pursuant to this Article 3) shall be constructed on each Lot. Temporary "model



homes” and real estate sales offices established for the purpose of marketing the Plat shall be considered a residential use until houses have been built and sold on all Lots.

3.5.2 Exterior Maintenance; Owner’s Obligations. No Structure shall be permitted to fall into disrepair, and each Structure shall at all times be kept in good conditions and repair. In the event that any Owner shall permit any Structure or Landscaping on a Lot, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create dangerous, unsafe, unsightly or unattractive conditions, or so as to damage adjoining property or facilities, the Board, upon fifteen (15) days prior written notice to the Owner of such property, shall have the right to correct such condition, and to enter upon such Owner’s Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall create a lien enforceable in the same manner as other Assessments set forth in Article 8 of this Declaration. The Owner of the offending property shall be personally liable, and such Owner’s property shall be subject to a lien for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due, including reasonable attorney’s fees and costs. The Board may also impose Corrective Assessments (as described in Section 8.5), in its discretion, against an Owner in addition to the costs and expenses described in this Section 3.5.2. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefore, or the amounts may, at the option of the Board, be added to the amounts payable by such Owner as Assessments.

3.5.3 Completion of Construction. Any Structure erected or placed on any Lot shall be completed as to external appearance within eight (8) months from the date Construction is started, however, with good cause shown, the Board may extend this term at the Board’s sole discretion. All front landscaping must be completed within one (1) month from the date of issuance of the certificate of occupancy, all side and rear landscaping must be completed within six (6) months of issuance of certificate of occupancy, however, with good cause shown, the Board may extend this term at the Board’s sole discretion. All Lots shall be maintained in a neat and orderly condition during Construction.

3.5.4 Drainage. There shall be no interference with the established drainage pattern over any portion of the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the ACC and Spokane County. For the purposes hereof, “established” drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Property is completed by Declarant, or that drainage which is currently shown on the accepted plans on file for this project at Spokane County, which may include drainage from any Common Area over any Lot in the Plat. Each Owner acknowledges that underground water on a Lot may exist and such underground water, if it exists, may require mitigation measures prior to commencing Construction of a Structure.

3.5.5 Grading. The Owner of any Lot within the Property in which grading or other work has been performed pursuant to an approved grading plan shall maintain and repair all graded surfaces and erosion prevention devices, retaining walls, drainage struc-



tures, means or devices which are not the responsibility of the Association, or a public agency, and plantings and ground cover installed or completed thereon. Such requirements shall be subject to all Assessments described in this Declaration, as may be applicable. An "approved grading plan" means such plans as may have been approved by the applicable government agency and/or the Association, if applicable.

3.5.6 Parking. No commercial-type trucks, campers, trailers, motorhomes, boats or motorcycles shall be parked or permitted to remain on any Lot, unless the same is stored or placed in a garage. No such vehicles shall be parked overnight on any street adjoining any Lot; provided that such vehicles belonging to guests may occasionally be so parked. No motor vehicles, inoperative for reasons of mechanical failure, shall be parked and/or stored on any Lot or in the street right-of-way for more than seventy-two (72) hours.

3.5.7 Signs and Flagpoles. No sign of any kind shall be displayed to the public view on or from any Lot without the prior written consent of the Board, except for "For Rent" or For Sale" signs in a form not prohibited by any rules and regulations of the Board. This Section shall not apply to the Declarant or any Participating Builder. No free-standing flagpole shall be erected upon a Lot. The display of a flag is permitted, however, if it is hung from a pole bracket mounted on the outside of a Structure or suspended from a roof overhang.

3.5.8 Animals. No horses, livestock, poultry, reptiles, pigs or other non-domestic animals shall be kept on any Lot. Each Owner of a Lot may keep up to two (2) domesticated dogs and up to three (3) domesticated cats. All animal enclosures must be kept in a clean, neat and odor-free condition at all times and shall be screened so as not to be visible from adjoining Structures or streets or roadways. Notwithstanding anything set forth herein all Owners shall comply with all applicable governmental laws, codes, ordinances, and relations pertaining to animals.

3.5.9 Temporary Structures. No Structure of a temporary character, trailer, tent, shack, garage, barn, or other out building shall be installed, placed or used on any Lot as a residence, either temporary or permanently.

3.5.10 Clothes Lines. No washing, rugs, clothing, apparel or any other article shall be hung from the exterior of any Structure or on a Lot so as to be visible from the streets and roadways adjoining the Lots.

3.5.11 Radio and Television Aerials and Satellite Dishes. No television or radio aerial shall be erected or placed on any Lot. No rotary beams, separate towers or other similar devices shall be constructed on any Lot without the written approval of the Board. No satellite receiving dishes or other such electronic receiving devices shall be located on any Lot in a location that is visible from the adjoining homes, streets, and roadways, except for satellite dishes that are twenty (20) inches or less in diameter. All aerial and sat-



ellite installations must receive prior written approval from the Board, except for satellite dishes that are twenty (20) inches or less in diameter.

3.5.12 Trash Containers and Debris. All trash shall be placed in sanitary containers either buried or screened so as not to be visible from adjoining Structures or streets or roadways. No Lot or any portion thereof shall be used as a dumping ground for trash or rubbish of any kind. Yard rakings, dirt and debris resulting from landscaping work or Construction shall not be dumped onto adjoining lots or streets or roadways. Compost piles may be kept upon the Lots provided they are kept in a clean, neat, odorless and sanitary condition and are screened so as not to be visible from adjoining Structures or streets or roadways.

3.5.13 Offensive Activity. No trade, craft, business, profession, commercial or manufacturing enterprise or business or commercial activity of any kind, including day schools, nurseries or church schools (except in-home day care for not more than two (2) children, provided that there shall be no external indication of such activity), shall be conducted or permitted on any Lot, nor shall goods, equipment, vehicles or materials used in connection therewith, be kept, parked, stored, dismantled or repaired outside of any Lot or any street within the Property. No noxious activity, including but not limited to the creation of excess levels of noise, shall be carried on in any Lot, nor shall anything be done therein which may be or become an annoyance or nuisance to other Owners or tenants.

3.5.14 Underground Utilities. No outdoor overhead wire or service drop for the distribution of electric energy or for telecommunications purposes nor any pole, tower or other structure supporting said outdoor overhead wires shall be erected, placed or maintained within the property. All Owners shall use underground service wires to connect any Structure to electric or telephone utility facilities.

3.5.15 Water Supply/Sewage Disposal. No individual water supply system (including private wells) or individual sewage systems shall be permitted on any Lot.

3.5.16 Outside Energy Devices. No energy production devise, including but not limited to generators of any kind and solar energy devices, shall be constructed or maintained on any Lot without the written approval of the ACC, except for heat pumps that are necessary for heating and cooling of a Structure.

3.5.17 Damage. Any damage to streets, Plat improvements, entry structure, fences, landscaping, mailboxes, lights and lighting standards by Lot Owners, their children, contractors, agents, visitors, friends, relatives or service personnel shall be repaired and restored to like new condition by such Owner within twelve (12) days from the occurrence of such damage.

3.5.18 Window Coverings. Curtains, drapes, blinds or valances shall be installed on all windows within thirty (30) days of the issuance of a certificate of occupancy. No



newspapers, bed sheets or other makeshift window coverings shall be visible from the exterior of a Structure at any time.

3.5.19 Wood Piles. No wood piles shall be located within the front yard setback or otherwise in a location visible from the street.

3.5.20 Fences. All fences, with the exception of the fencing installed by Declarant in the Common Area shall conform to the fence design and material detail approved by the Board. Unless otherwise authorized by the Board, no fence, wall hedge or mass planting over three feet in height, other than foundation planting, shall be permitted to extend nearer to any street than the minimum setback line; however, nothing shall prevent erection of a necessary retaining wall, the top of which does not extend more than two feet above the finished grade at the back of said retaining wall.

3.5.21 Setbacks. If for any reason side or rear building setbacks for any Lot are not shown on the final Plat, such setbacks shall be determined by Spokane County at the time and in conjunction with the issuance of any building permit for such Lot.

ARTICLE 4. WHISPERING WINDS HOMEOWNERS ASSOCIATION

4.1. Form of Association. The Owners of Lots within the Property shall constitute the members of Whispering Winds Homeowners Association, a Washington nonprofit corporation formed by Declarant. The rights and duties of the members and of the Association shall continue to be governed by the provisions of this Declaration, and the Association's Articles of Incorporation and Bylaws.

4.2 Board of Directors. The affairs of the Association shall be governed by a Board of Directors (the "Board"). The initial Board shall be as described in the Articles of Incorporation of Whispering Winds Homeowners Association and shall serve until the Transition Date. So long as Declarant owns any Lot within the Plat, the initial Board shall function in addition to its prescribed duties as the Architectural Control Committee, as more particularly described in Article 3. At such time as a Structure completed on the last Lot owned by Declarant is sold to a retail purchaser, then the duties of the Board set forth in Article 3, in its capacity as the Architectural Control Committee, shall be assumed by the Board elected to serve after the Transition Date. After the Transition Date, the Board shall consist of such numbers of members as provided for in the Articles of Incorporation and Bylaws of the Association. Subject to any specific requirements hereof and as provided in the Articles and Bylaws, the Board shall have authority to establish operating rules and procedures. In the event of death or resignation of any member or members of the Board, the remaining member or members, if any, shall fill such vacancies as provided in the Bylaws. Members of the Board shall not be entitled to any compensation for services performed as Directors pursuant to this Declaration; however, Directors may be entitled to reimbursement for actual expenses as provided in the Bylaws. Upon the Transition Date and without further action by any person or persons, (i) the term of the initial Directors or their successors shall end, and (ii) the initial Directors and their then successors shall be released from any and all liability whatsoever for claims arising out of or in connection with this Declaration, excepting



only claims arising prior to the Transition Date. Following the Transition Date, the members of the Association shall elect new Directors as provided for in the Bylaws.

4.3 Qualification for Membership. Each Owner of all or a portion of the fee interest in a Lot (including Declarant) shall be a member of the Association. The persons constituting any Owner shall be entitled to one vote for each Lot owned; provided, that if a Lot has been sold on contract, the contract purchaser shall exercise the rights of an Owner for purposes of the Association and this Declaration except as hereinafter limited, and shall be the voting representative unless otherwise specified. Ownership of a Lot shall be the sole qualification for membership in the Association.

4.4 Transfer of Membership. The Association membership of each person constituting an Owner (including Declarant) shall be appurtenant to the Lot giving rise to such membership, and, except as specifically permitted herein, shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except upon the transfer of title to the Lot and then only to the transferee of title to the 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 to the persons constituting the new Owner.

4.5 Number of Votes. The total voting power of the Association at any given time shall equal the number of Lots included within the Property at that time. Each Owner of a Lot or Lots (including Declarant) shall be entitled to one vote for each Lot owned.

4.6 Voting. If a Lot is owned by more than one person and only one of them is present or represented at a meeting, the one who is present or represented will represent the Owner. The vote for a Lot must be cast as a single vote, and fractional votes shall not be allowed. If joint owners are unable to agree among themselves how their vote shall be cast, they shall lose their right to vote on the matter in question. An Owner may, by written notice to the Board, designate a voting representative for the Lot. The designated voting representative need not be an Owner. The designation may be revoked at any time by written notice to the Board from a Person having an ownership interest in a Lot, or by actual notice to the Board of the death or judicially declared incompetence of any person with an ownership interest in the Lot, except in cases in which the Person designated is a Mortgagee of the Lot. This power of designation and revocation may be exercised by the guardian of an Owner, the attorney-in-fact for the owner under a durable power of attorney, and the administrator or executor of an Owner's estate. If no designation has been made, or if a designation has been revoked and no new designation has been made, the voting representative of each Lot shall be the group composed of all of its Owners. The quorum requirement necessary for a meeting of the Members or their proxies is provided in the Bylaws.

4.7 Pledged Votes. An Owner may, but shall not be obligated to, pledge his vote on all issues or on certain specific issues to a Mortgagee; provided, however, that if an Owner is in default under a Mortgage on his Lot for ninety (90) consecutive days or more, the Owner's Mortgagee shall automatically be authorized to declare at any time thereafter that the Owner has pledged his vote to the Mortgagee on all issues arising after such declaration and during the con-



tinuance of the default. If the Board has been notified of any such pledge to a Mortgagee, only the vote of the Mortgagee will be recognized on the issues that are subject to the pledge.

4.8 Annual and Special Meetings. Annual and Special Meetings of the Members shall be held in accordance with the Bylaws of Whispering Winds Homeowners Association, as such Bylaws exist now or as they may be amended in the future.

4.9 Books and Records. The Board shall cause to be kept complete, detailed, and accurate books and records of the receipts and expenditures (if any) of the Association, in a form that complies with generally accepted accounting principles. The books and records, authorizations for payment of expenditures, and all contracts, documents, papers, and other records of the Association shall be available for examination by the Lot Owners, Mortgagees, and the agents or attorneys of either of them, during normal business hours and at any other reasonable time or times. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association. If the annual assessments are twenty thousand dollars (\$20,000) or more, the financial statements of the Association shall be audited at least annually by an independent certified public accountant, but the audit may be waived if sixty-seven percent (67%) of the votes cast by owners, in person or by proxy, at a meeting of the Association at which a quorum is present, vote each year to waive the audit.

4.10 Transition Date. The "Transition Date" shall be the date that control of the Board passes from the initial Board (as established in the Articles of Incorporation) to the Association. Prior to the Transition Date, Declarant shall be entitled to exercise all rights and powers of the Board and the Association. At Declarant's option, the Transition Date will be either: (i) the date designated by Declarant in a written notice to the Owners, which date may be by Declarant's election any date after this Declaration has been recorded; or (ii) the 120th day after Declarant has transferred to retail purchasers title to all Lots in the property. For purposes of the foregoing clause (ii) transfer of title to a Lot by Declarant to any Participating Builder shall be disregarded and title to any Lot owned by Participating Builder shall not be deemed transferred for purposes of determining the Transition Date until the Lot is further transferred by Participating Builder to a purchaser who is not either a Participating Builder or Declarant.

ARTICLE 5. NOTICES FOR ALL PURPOSES

All notices given under the provisions of this Declaration or rules or regulations of the Association shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, the notice shall be deemed to have been delivered on the third day of regular mail delivery after a copy has been deposited in the United States mail, first class, postage prepaid, addressed to the Person entitled to such notice at the most recent address known to the Board. Mailing addresses may be changed by notice in writing to the Board. Notices to the Board may be given to any Director or mailed to the following address:

Board of Directors
c/o Brett T. Sullivan
Whispering Winds Homeowners Association



16114 E Indiana Avenue, Suite 115
Spokane Valley, WA 99216

The Board's address may be changed from time to time by the execution and recording of an instrument in the real property Records of Spokane County, Washington which (i) refers to this Declaration and this Article 5 and (ii) sets forth the Board's new address.

ARTICLE 6. AUTHORITY OF THE BOARD

6.1 Adoption of Rules and Regulations. The Board is empowered to adopt, amend, and revoke on behalf of the Association detailed administrative rules and regulations necessary or convenient from time to time to insure compliance with the general guidelines of this Declaration to promote the comfortable use and enjoyment of the property and to govern the operation and procedures of the Association. The rules and resolutions may, without limitation, authorize voting by proxy or mail, or both, on Association matters. The rules and regulations of the Association shall be binding upon all Owners and occupants and all other Persons claiming any interest in the Property.

6.2 Enforcement of Declaration, Etc. The Board shall have the power to enforce the provisions of this Declaration, and the rules and regulations of the Association for the benefit of the Association. The failure of any Owner to comply with the provisions of this Declaration, or the rules and regulations of the Association will give rise to a cause of action in the Association (acting through the Board) and any aggrieved Lot Owner for recovery of damages, or injunctive relief, or both. If a legal action is brought to interpret or enforce compliance with the provisions of this Declaration, or the rules or regulations of the Association, the prevailing party shall be entitled to judgment against the other party for its reasonable expenses, court costs, and attorneys' fees in the amount awarded by the Court.

6.3 Goods and Services. The Board shall acquire and pay for as common expenses of the Association all goods and services reasonably necessary or convenient for the efficient and orderly functioning of the Association and maintenance of all portions of the Common Areas not maintained by public utility companies or a governmental entity and of any planter islands within the Spokane County Right of Way inside the plat, if applicable. The goods and services shall include (by way of illustration and not limitation) utility services for the Common Areas; policies of insurance (as described in Section 6.4.5 herein below); office supplies and postage; and maintenance, repair, landscaping, gardening and general upkeep of the Common Areas. The Board may hire such employees as it considers necessary.

6.4 Common Areas. The Board shall have the authority and the obligation to perform each of the following duties:

6.4.1 Operation and Maintenance of Common Area. Operate, maintain and otherwise manage or provide for the operations, maintenance and management of the Common Area, including the repair and replacement of property damaged or destroyed by casualty loss. Specifically, the Association shall, at Declarant's sole discretion, operate



and maintain all properties owned by Declarant which are designated by Declarant for temporary or permanent use by Owners.

6.4.2 Reserve Account. Establish and fund a reserve account with a reputable banking institution or savings and loan association or title insurance company authorized to do business in the State of Washington, which reserve account shall be dedicated to the costs of repair, replacement, maintenance and improvement of the private streets and Common Area within the Plat.

6.4.3 Taxes and Assessments. Pay all real and personal property taxes and assessments separately levied against the Common Area or against the Association and/or any other property owned by the Association. Such taxes and assessments may be contested or compromised by the Association, provided, however, that such taxes and assessments are paid or a bond insuring payment is posted prior to the sale or disposition of any property to satisfy the payment of such taxes and assessments. In addition, the Association shall pay all other federal, state or local taxes, including income or corporate taxes levied against the Association, in the event that the Association is denied the status of a tax exempt corporation.

6.4.4 Water and Other Utilities. Acquire, provide and/or pay for water, garbage disposal, refuse and rubbish collection, electrical, telephone and gas and other necessary services for the Common Area, and to manage all domestic, irrigation and amenity water rights and rights to receive water held by the Association, whether such rights are evidenced by license, permit, claim, stock ownership or otherwise.

6.4.5 Insurance. Obtain insurance from reputable insurance companies authorized to do business in the State of Washington, and maintain in effect any insurance policy the Board deems necessary or advisable, including, without limitation the following policies of insurance:

6.4.5.1 Fire Insurance. Fire insurance including those risks embraced by coverage of the type known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreed amount basis for the full insurable replacement value of all improvements, equipment and fixtures located within the Common Area.

6.4.5.2 Public Liability Insurance. Comprehensive public liability insurance insuring the Board, the Association, the Declarant and the individual grantees and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Area and the Private Drives. Limits of liability of such coverage shall be as follows: Not less than One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000) per occurrence with respect to personal injury or death, and One Million Dollars (\$1,000,000) per occurrence with respect to property damage.



6.4.5.3 D&O Insurance. Full coverage directors' and officers' liability insurance with a limit of at least Two Hundred Fifty Thousand Dollars (\$250,000).

6.4.5.4 Other Insurance. Such other insurance, including motor vehicle insurance and worker's compensation insurance, to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonest conduct of any employee or other person charged with the management or possession of any Association funds or other property.

6.4.5.5 Trustees. The Association shall be deemed trustee of the interests of all Owners in connection with any insurance proceeds paid to the Association under such policies, and shall have full power to receive such Owner's interests in such proceeds and deal therewith.

6.4.5.6 Premiums. Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.

6.4.5.7 Adjustment of Limits. In its discretion, the Board may adjust any minimum insurance limits to reflect the impact of inflation or other changed conditions on the value of the particular coverage required.

6.5 Rule Making. Make, establish, promulgate, amend and repeal such Association rules as the Board shall deem advisable.

6.6 Newsletter. If it so elects, prepare and distribute a newsletter on matters of general interest to members of the Association, the cost of which shall be included in regular assessments.

6.7 Architectural Committee. Appoint and remove members of the ACC, subject to the provisions of this Declaration.

6.8 Private Streets, Signage and Lights. Maintain, repair or replace private streets, the Private Drives, street signs, and private street lights, if any, located within the Property. This duty shall run with the land and cannot be waived by the Association unless Spokane County consents to such waiver.

ARTICLE 7. BUDGET AND ASSESSMENT FOR COMMON EXPENSES

7.1 Fiscal Year; Preparation of Budget. The Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year. As soon as the Board in its discretion deems advisable and prior to the expiration of each fiscal year thereafter, the Board shall establish a budget for the Association, which



shall include, without limitation, the costs of maintaining the Common Area during the ensuing fiscal year. The Board shall then assess each Lot within the Property with its pro rata share, based upon the number of Lots then within the Property, of such estimated costs. The Board, at its election, may require the Lot Owners to pay the amount assessed equal monthly or quarterly installments or in a lump sum annual installment. The Board shall notify each Lot Owner in writing at least ten (10) days in advance of each assessment period of the amount of the assessment for said period, which notice shall be accompanied by a copy of the budget upon which the assessment is based. The assessments levied by the Board shall be used exclusively to promote the recreation, health, safety and welfare of the Lot Owners and for the improvement and maintenance of the Common Areas, as well as for the orderly and efficient administration of the Association.

7.2 Certificate of Unpaid Assessments. Any failure by the Board of the Association to make the budget and assessments hereunder before the expiration of any fiscal year for the ensuing fiscal year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the owners from the obligation to pay assessments during that or any subsequent year, and the assessment amount and payment method established for the preceding fiscal year (if any) shall continue until a new assessment is established. Upon the request of any Owner or Mortgagee or prospective Owner or prospective Mortgagee of a Lot, the Board will furnish a statement of the amount, if any, of unpaid assessments charged to the Lot. The statement shall be conclusive upon the Board and the Association as to the amount of such indebtedness on the date of the statement in favor of all purchasers and Mortgagees of the Lot who rely on the statement in good faith. All assessments and other receipts received by the Association shall belong to the Association.

7.3 Initial Contribution, Annual Assessments. Each Owner, other than a Participating Builder, at the time of purchase of his/her Lot, shall make a one-time only start-up contribution to the Association in the amount of Two Hundred and 00/100 Dollars (\$200.00) (which shall supplement annual assessments to reimburse Declarant for construction, landscaping, maintenance and operating expenditures of and for Common Areas during the house sales period). The initial annual assessment (which is in addition to the start-up fee) shall not be in excess of Two Hundred and Forty Dollars (\$240.00) per year and shall be prorated for any partial year at the time of purchase of the Lot. Commencing on the first January 1 following the Transition Date, and continuing each year thereafter, the annual assessment shall not be increased by more than fifteen percent (15%) without the approval of a majority of the members voting at a meeting duly called for such purpose. Notwithstanding the provisions set forth above, the Declarant shall not be liable for any fees or assessments assessed or due so long as Declarant owns any Lot within the Plat.

7.4 Special Assessments; Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Area or any other area owned or required to be maintained by the Association, provided that such assessment shall be approved



by a majority of the members voting at a special meeting (duly called for such purpose pursuant to Section 4.8 above).

ARTICLE 8. LIEN AND COLLECTION OF ASSESSMENTS

8.1 Assessments Are a Lien; Priority. All unpaid sums assessed by the Association for the share of the common expenses chargeable to any Lot and any sums specially assessed to any Lot under the authority of this Declaration shall constitute a lien on the Lot and all its appurtenances from the date the assessment becomes due and until fully paid. The lien for such unpaid assessments shall be subordinate to tax liens on the Lot in favor of any assessing unit and/or special district, and to all sums unpaid on all First Mortgages of record, but, to the extent permitted by applicable law, shall have priority over all other liens against the Lot. A First Mortgagee that obtains possession through a Mortgage foreclosure or deed of trust sale, or be taking a deed in lieu of foreclosure or sale, or a purchaser at a foreclosure sale, shall take the Lot free of any claims for the share of common expenses or assessments by the Association chargeable to the Lot which became due before such possession, but will be liable for the common expenses and assessments that accrue after the taking of possession. The Lot's past-due share of common expenses or assessments shall become new common expenses chargeable to all of the Lot owners, including the Mortgagee or foreclosure sale purchaser and their successors and assigns, in proportion to the number of Lots owned by each of them. Notwithstanding any of the foregoing, however, the Owner and the real estate contract purchaser shall continue to be personally liable for past due assessments as provided in Section 8.3. For purposes of this Section, "Mortgage" does not include a real estate contract and "Mortgagee" does not include the vendor or the assignee or designee of a vendor of a real estate contract.

8.2 Lien May be Foreclosed. The lien for delinquent assessments may be foreclosed by suit by the Board, acting on behalf of the Association, in like manner as the foreclosure of a mortgage of real property. The Board, acting on behalf of the Association, shall have the power to bid in the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

8.3 Assessments are Personal Obligations. In addition to constituting a lien on the Lot, all sums assessed by Association chargeable to any Lot together with interest, late charges, costs and attorneys' fees in the event of delinquency, shall be the joint and several personal obligations of the Owner and any contract purchaser of the Lot when the assessment is made and their grantees. Suit to recover personal judgment for any delinquent assessments shall be maintainable without foreclosing or waiving the liens securing them.

8.4 Late Charges and Interest on Delinquent Assessments. The Board may from time to time establish late charges and a rate of interest to be charged on assessments delinquent for a period of more than ten (10) days after the date when due. In the absence of another established, nonusurious rate, delinquent assessments shall bear interest at the rate of eighteen percent (18%) per annum. If an installment on an assessment against a Lot is not paid when due, the Board may elect to declare the entire assessments against the Lot for the remainder of the fiscal year to be immediately due and payable.



8.5 Corrective Assessments. Notwithstanding the above provisions with respect to assessments, the Board may levy a Corrective Assessment against an Owner as a remedy to reimburse the Association for costs incurred in bringing the Owner and/or the Owner's Lot into compliance with the provisions of the governing instruments for the Plat. This shall expressly include the authority to levy assessments against any Owner in violation of any of the requirements imposed on such Lot under this Declaration. Such assessment may be made in an amount up to fifty dollars (\$50.00) per day (or its equivalent value as compared with November 1, 2006 dollars and as adjusted by the Board in its discretion), for each violation which remains uncorrected after thirty (30) days' written notice is given to such Owner from the Association. The imposition of Corrective Assessments against an Owner may be, in the discretion of the Board, in addition to the costs and expenses that may be collected from the Owner as provided for otherwise in this Declaration.

8.6 Remedies Cumulative. The remedies provided herein are cumulative and the Board may pursue them, and any other remedies that may be available under law although not expressed herein, either concurrently or in any order.

8.7 No Avoidance of Assessments. No Owner may avoid or escape liability for assessments provided for herein by abandoning his or her Lot.

ARTICLE 9. FAILURE OF BOARD TO INSIST ON STRICT PERFORMANCE NO WAIVER

The failure of the Board in any instance to insist upon the strict compliance with this Declaration or rules and regulations of the Association, or to exercise any right contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of any term, covenant, condition or restriction. The receipt by the Board of payment of any assessment from an Owner, with knowledge of any breach by the Owner, shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless expressed in writing and signed for the Board.

ARTICLE 10. LIMITATION OF LIABILITY

So long as a Director, or Association member, or Declarant, acting on behalf of the Board or the Association, has acted in good faith, without willful or intentional misconduct, upon the basis of such actual information as is then possessed by such person, then no such Person shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error or negligence of such Person; provided that this Article shall not apply to the extent the liability of such person for such act, omission, error or negligence is covered by any insurance actually obtained by the Board.



ARTICLE 11. INDEMNIFICATION

Each Director, and Declarant 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 such person may be a party, or in which such person may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not such person holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by insurance actually obtained by the Board and except in such cases wherein such Director or Declarant is adjudged guilty of willful misfeasance in the performance of his or her duties; provided, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association.

ARTICLE 12. INSURANCE

At such times as the Board deems appropriate, the Board shall cause the Association to purchase and maintain those policies of insurance as described in Section 6.4.5 hereinabove, with such deductible provisions as the Board deems advisable; insurance, if available, for the protection of the Association's Directors, and representatives from personal liability in the management of the Association's affairs; and such other insurance as the Board deems advisable. The Board shall review the adequacy of the Association's insurance coverage at least annually.

ARTICLE 13. DAMAGE AND REPAIR OF DAMAGE TO PROPERTY

13.1 Casualty and Loss. In the event of any casualty, loss or other damage to the Common Area or the Private Drives for which the then current assessments by the Board are insufficient to repair, or restore or for which there are not insurance proceeds or insufficient insurance proceeds available to the Board for such restoration or repair, the Board may make a special assessment against each Lot within the property for its pro rata share of the cost and expenses to repair and/or restore the Common Areas or the Private Drives. The special assessment shall be payable, at the determination of the Board, in either monthly or quarterly installments or in a single lump sum amount. The Board shall notify each Lot Owner of any such special assessment not less than twenty (20) days prior to the date such special assessment or the first installment thereon is due and payable, which notice shall be accompanied by a reasonably detailed statement of the Board's estimated costs and expenses of repairing and/or restoring the Common Areas.

13.2 Damage Caused by Owner. Each Owner shall be fully liable for any damage to any Common Area which may be sustained by reason of the negligence or willful misconduct of the Owner, such Owner's resident tenant or contract purchaser, or such Owner's family and guests, both minor and adult. In the case of joint ownership of a Lot, the liability of the Owners of such Lot shall be joint and several. The cost of correcting such damage shall be an assessment against the Lot and may be collected as provided herein for the collection of other assessments.



ARTICLE 14. AMENDMENTS OF DECLARATION

After the Transition Date, any Lot Owner may propose amendments to this Declaration to the Board. A majority of the members of the Boards may cause a proposed amendment to be submitted to the members of the Association for their consideration. If an amendment is proposed by Owners of twenty percent (20%) or more of the Lots, then, irrespective of whether the Board concurs in the proposed amendment, it shall be submitted to the members of the Association for their consideration at their next regular or special meeting for which timely notice shall be given pursuant to the Bylaws. Notice of a meeting at which an amendment is to be considered shall include the text of the proposed amendment. Amendments may be adopted at a meeting of the Association or by written consent of the requisite number of persons entitled to vote, after notice has been given to all Persons entitled to receive notice of a meeting of the Association. The unanimous consent of all Owners shall be required for adoption of an amendment changing the voting power or portion of assessments appurtenant to each Lot. All other amendments shall be adopted if approved by at least sixty-seven percent (67%) of all Lot Owners. Once an amendment has been adopted by the Association, the amendment will become effective when a certificate of the amendment, executed by a member of the Board, has been recorded in the real property Records of Spokane County, Washington.

ARTICLE 15. ANNEXATION AND SUBDIVISION

Residential property including Common Areas may be annexed or added to the Property by Declarant at any time prior to the Transition Date. Thereafter, residential property including Common Areas may be annexed or added to the Property only with the consent of sixty-seven percent (67%) of the Lot Owners. No Lots shall be subdivided without the approval of all Lot Owners.

ARTICLE 16. DURATION

The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Owners, their respective legal representatives, heirs, successors and assigns, for a period of fifteen (15) years from the date this Declaration is recorded, after which time the covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by a majority of the then Owners has been recorded agreeing to terminate the covenants, conditions and restrictions.

ARTICLE 17 OFFSITE IMPROVEMENTS

The Lot Owners, their heirs, successors and assigns hereby agree to construct or participate in the construction of certain offsite improvements relating to impacts from the Plat, equal to its impacts or provide comparable value in offsite property acquisitions.

ARTICLE 18 RESERVATION OF DECLARANT'S RIGHT TO AMEND



18.1 Amendment by Declarant. Declarant reserves the right to amend the Declaration as may be necessary to comply with Federal Home Loan Mortgage Corporation (“FHLMC”) or Federal National Mortgage Association (“FNMA”) or Federal Housing Administration (“FHA”) regulations or requirements as necessary to enable the holders of first mortgages or deeds of trust to sell first mortgages or deeds of trust to FHLMC or FNMA or if such amendment is necessary to secure funds or financing provided by, through or in conjunctions with FHLMC or FNMA or FHA or, if such amendment is necessary, in Declarant’s sole opinion, for the efficient functioning of the Association, the Property or the Plat.

18.2 Authorization to Amend. If Declarant, at its option, determines that it is necessary so to amend the Declaration, then Declarant, on behalf of all Lot Owners in the Association, is hereby authorized to execute and to have recorded (or filed, in the case of the Articles), said required amendment or amendments. All Lot Owners hereby grant to Declarant a full and complete power of attorney to take any and all actions necessary to effectuate and record said amendment or amendments and agree that said amendment or amendments shall be binding upon their respective Lots and upon them and their heirs, personal representatives, successors and assigns to the same extent as if they had personally executed said amendment or amendments. All Lot Owners hereby acknowledge and agree that the power of attorney granted herein shall be deemed coupled with an interest and shall be irrevocable.

18.3 Duration. Declarant’s rights under this Article 18 shall exist until the last Lot owned by Declarant is sold to a retail purchaser.

ARTICLE 19. SEVERABILITY

The provisions of this Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision, if the remainder affects the common plan.

ARTICLE 20. EFFECTIVE DATE

This Declaration shall be effective upon recording of the same.



Exhibit "A"

Legal Description

Lots 1 through 15, inclusive, within the final plat of Whispering Winds, parcel 44033.9039, as recorded on December 7, 2006 in Book 33 of Plats, Pages 79 and 80, under Auditor's File No. 5469685. All that certain real property lying entirely in the Southwest ¼, Section 3, Township 24 North, Range 44 East, Willamette Meridian, County of Spokane, State of Washington, and being more particularly described as Replat of Lot 31, Block 1, Painted Hills 6th Addition. Said parcel contains 8.60 acres more or less.

Lot 16, parcel 44033.1938, unplatted portion of parcel 44033.9039, more particularly described as commencing at the Southwest corner of Lot 31, Block 1, Painted Hills 6th Addition; thence North 02°35'12" East along the West line of said Block 1, for a distance of 126.89 feet to the North line of Assessor's Parcel Number 44033.9100 (as of 2006) and the TRUE POINT OF BEGINNING; thence proceeding South 88°58'45" West along said North line, 148.26 feet to the West line of said Section 3; thence North 01°01'15" West along said West line, 529.99 feet to the South line of Painted Hills 2nd Addition; thence North 55°31'28" East along said South line, 81.26 feet; thence North 52°41'00" East along said South line, 89.34 feet; thence South 87°24'49" East 47.93 feet to the Northwest Corner of said Lot 31, Block 1, Painted Hills 6th Addition; thence South 02°35'12" West along the West line of said Block 1, 625.89 feet to the TRUE POINT OF BEGINNING. Said parcel contains 2.26 acres more or less.

Unofficial Document