

After recording return to:

Wilmoor Development Corporation  
16981 Redmond Way  
Redmond, WA 98052



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Kathy Hill, Skagit County Auditor  
11/12/1999 Page 1 of 21 9:30:16AM

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS AND RESERVATIONS FOR  
THE CREST AT 41st**

FIRST AMERICAN TITLE CO.  
ACCOMMODATION RECORDING ONLY

M713D

Grantor(s): WILMOOR DEVELOPMENT CORPORATION

Grantee(s): THE PUBLIC

Abbreviated Legal Description: Lots 1 thru 8 of Anacortes Short Plat entitled "The Crest at 41<sup>st</sup>" (formerly Lot 1 of Short Plat AN-82-002 and Lot X, Plat of Parkside Division No. 2)

Assessor's Property Tax Parcel Account Number(s): 350125-3-018-0003 and 4644-000-900-0403

SKAGIT COUNTY WASHINGTON  
Real Estate Excise Tax

NOV 12 1999

Amount Paid \$  
By Skagit Co. Treasurer Deputy

**THIS DECLARATION AND COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RESERVATIONS** (this "Declaration") is made by **Wilmoor Development Corporation.**, a Washington Corporation ("Declarant") as of the \_\_\_ day of \_\_\_\_\_, 1999.

#### RECITALS

**DECLARANT** is the owner of certain real property (the "Property") in Anacortes, Skagit County, Washington, legally described on **Exhibit 1** hereto.

The Property is subdivided as shown in the Short Plat development known as **The Crest at 41st** recorded with the Auditor of Skagit County, Washington.

Declarant wishes to subject the Property to this Declaration;

**NOW, THEREFORE**, Declarant declares that the Property subject to all restrictions and easements of said 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 owner thereof.

#### ARTICLE 1 DEFINITIONS

**Section 1.1 Words Defined.** For the purpose of 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 **The Crest at 41<sup>st</sup> Owners' Association** described in Article 4 of this Declaration, its successors and assigns.



1.1.2 "Board" shall mean the board of directors of the Association.

1.1.3 "Common Area" and "Common Area Improvements" shall each have the meaning set forth in Section 2.1.

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

1.1.5 "Declarant" shall mean **Wilmoor Development Corporation**, a Washington Corporation.

1.1.6 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, and Reservations for **The Crest at 41st**, 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. For purposes of determining the percentage of First Mortgagees approving a proposed decision or course of action in cases where a Mortgagee holds First Mortgages on more than one Lot, such Mortgagee shall be deemed a separate Mortgagee for each such First Mortgage so held.

1.1.8 "Lot" shall mean any one of the 8 lots numbered lots 1 through 8, together with the Structures and Improvements thereon.

1.1.9 "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.

1.1.10 "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.

1.1.11 "Owner" shall mean the record owner, whether one or more Persons, of fee simple title to a Lot within the Property, including a contract seller except those having such interest merely for the performance of an obligation.

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

1.1.13 "Plat" shall mean the recorded Short Plat for **The Crest at 41st** and any amendments, corrections or addenda thereto subsequently recorded.

1.1.14 "Property" shall mean the land described on Exhibit 1 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.

1.1.15 "Structure" shall mean any building, fence, wall, patio, swimming pool, or the like.

1.1.16 "Transition Date" is defined in Section 4.10.

**Section 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 inter-changeably.

## ARTICLE 2

### COMMON AREAS AND EASEMENTS

**Section 2.1** **Common Areas.** "Common Areas" shall include the retention pond area which is the westerly 50 feet of Lot 1.

**Section 2.2** **Association to Maintain Certain Common Areas.** The Association shall maintain the Common Areas, including the landscaping as approved by the Board. If the Association does not maintain those common areas which are its responsibility, the City of Anacortes shall have the right to enforce these covenants that pertain to the obligation of the Association to maintain those Common Areas.

**Section 2.3** **Alteration of Common Area.** Nothing shall be altered or constructed upon or removed from the Common Areas except upon the prior written consent of the Board.

**Section 2.4** **Easements for Utilities and Drainage.** Declarant does hereby establish, create and reserve for the benefit of itself, the Association and all Owners, and their respective heirs and assigns, an easement (the "Utilities and Drainage Easement") for the installation and maintenance of master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers and drainage systems and electrical, gas, telephone, water and sewer lines over: a ten (10) foot wide strip measured from and parallel to, the front line of each Lot. No Lot Owner shall allow or permit any structure or landscaping to be located, installed or grow upon the area subject to the Utilities and Drainage Easement which might in any way damage or interfere with the installation and operation of such utilities and systems. Each person utilizing the Utilities and Drainage Easement areas located on another's Lot shall promptly restore such area to a condition as close to its original condition as



reasonably practical after making such use. Each Lot Owner shall maintain the area of his Lot subject to the Utilities and Drainage Easement in a condition which will not interfere with the operation and maintenance of said utilities and systems.

**Section 2.5**                    **Maintenance of Entry.** The landscaped entry shall be maintained by the Association, including signs and the property in the right of way.

### ARTICLE 3

#### CONSTRUCTION ON LOTS AND USE OF LOTS

**Section 3.1**                    **Uniformity of Use and Appearance.** One of the purposes of this Declaration is to assure within the Property: (i) a uniformity of use and quality of workmanship, materials, design, maintenance and location of Structures with respect to topography and finish grade elevation and (ii) that there will be no undue repetition of external designs. It is in the best interests of each Owner that such uniformity of use be maintained as hereinafter provided. No building (except for Accessory Structures) shall be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling. Accessory Structures including carports and storage buildings are permitted as allowed by the requirements of this Article 3. 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.

**Section 3.2**                    **Submission of Plans.** At least ten (10) days before commencing Construction of any Structure on any Lot, the Owner shall submit to the Board two (2) complete sets of detailed building, Construction, surface water run-off control and landscaping plans and specifications 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"). The Plans shall be submitted in a form satisfactory to the Board, which may withhold its approval by reason of its reasonable dissatisfaction with the location of the Structure on the Lot, color scheme, finish, architecture, height, impact on view from another Lot or Lots, appropriateness of the proposed Structure, materials used therein, or because of its reasonable dissatisfaction with any other matter which, in the reasonable judgment of the Board, would render the proposed Structure inharmonious with the general plan of development of the Property or other Structures nearby. The Board's approval or disapproval of Plans shall be in writing and approval shall be evidenced by written endorsement on such Plans. One (1) copy shall be delivered to the Owner of the Lot upon which the Structure is to be Constructed and one (1) copy shall be kept by the Board.

**Section 3.3**                    **Construction.** No Structure shall be Constructed or caused to be Constructed on any Lot unless the Plans for the Structure, including landscaping, have been approved in writing by the Board. The Board's review and approval or disapproval of Plans on the basis of cost, aesthetic design, harmony with previously approved Structures on or about other



Lots in the Property, and location, shall be absolute and enforceable in any court of competent jurisdiction. The Board's approval of any Plans, however, shall not constitute any warranty or representation whatsoever by the Board 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 Board or any of them, and their heirs, successors and assigns, of any nature whatsoever, based upon engineering or structural integrity or sufficiency or compliance with applicable governmental laws, codes, ordinances and regulations.

**Section 3.3.1**                    **Power of the Board to Grant a Variance.** The Board shall have the power to grant a variance to an owner, who, at the time the owner submits his plans for approval, also submits a request for a variance. The variances which may be allowed by the Board shall be limited to those matters herein covered by Section 3.4 (minimum size), and Section 3.6.12 (setbacks). The granting of the request for a variance shall be in writing and shall also be entered in the minutes of the Board.

**Section 3.4**                    **Minimum Size.** The floor area of the main house Structure, exclusive of open porches and garages shall be not less than (i) 2,300 square feet. Each home must have a garage which shall be of such size as to accommodate at least two full size automobiles. The Board is authorized to grant a variance as to these size requirements upon receiving an application from the owner of a lot showing that the grade of the lot will not reasonably accommodate those size requirements.

**Section 3.5**                    **Maximum Height.** All buildings or Structures shall be Constructed in accordance with the laws of the City of Anacortes and other applicable codes.

**Section 3.6**                    **Use Restrictions.**

**3.6.1**                    **"Residential Use".** The dwellings within the Structures are intended for and restricted to use as single family residences only, on an ownership, rental, or lease basis, and for social, recreational, or other reasonable activities normally incident to such use. In addition to the foregoing, Declarant and any Participating Builder may use dwellings it owns as sales offices and models for sales of other Lots.

**3.6.2**                    **"Maintenance of Buildings and Lots".** Each Owner shall, at the Owner's sole expense, keep the interior and exterior of the Structure on the Owner's Lot, as well as the Lot, in a clean and sanitary condition, free of rodents and pests, and in good order, condition and repair and shall do all redecorating, painting, landscaping, and maintenance at any time necessary to maintain the appearance and condition of the Structure and the Lot. The landscaping shall be maintained to the curb on the edge of the street.

**3.6.3**                    **"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. All yards and landscaping must be completed within three (3) months from the date of completion of the Structure, however, with good cause shown, the Board may extend this term. All Lots shall be maintained in a neat and orderly condition during Construction.

**3.6.4 "Parking"**. No trucks, campers, trailers boats, motorcycles or other vehicle or any part thereof shall be parked or permitted to remain on any Lot, unless the same is stored or placed in a garage or in the rear yard area and screened from sight. 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.

**3.6.5 "Signs"**. 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.

**3.6.6 "Animals"**. Animals, including horses, livestock, poultry, reptiles or pigs, shall not be kept on any lot. Household pets shall not exceed three (3) in number; provided that unweaned puppies or kittens may be kept. All animal enclosures must be kept in a clean, neat and odor free condition at all times. All animals must be kept at a distance of not less than 20 feet from abutting Structures and erosion control Structures if directed by the Board. The Board may at any time require the removal of any pet which it finds is disturbing other Owners or tenants unreasonably, in the Board's determination, and may exercise this authority for specific pets even though other pets are permitted to remain. Notwithstanding anything set forth herein all Owners shall comply with all applicable governmental laws, codes, ordinances, and regulations pertaining to animals.

**3.6.7 "Temporary Structures"**. No Structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuilding shall be installed, placed, or used on any Lot as a residence, either temporarily or permanently.

**3.6.8 "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.

**3.6.9 "Radio and Television Aerials"**. No television or radio aerial and no satellite receiving dish or other electronic receiving device shall be placed or erected outside of any building on any lot, except small digital dishes. Those items may be placed if, upon an application for their use to the Board, the Board approves their use with specific location and screening requirements.



**3.6.10 "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 and sanitary condition.

**3.6.11 "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, 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 with the Property. No noxious or offensive 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.

**3.6.12 "Setbacks"**. No Structure shall be located closer than (i) 20 feet from the front line of any Lot, (ii) 10 feet from any side line of any Lot and (iii) 20 feet from the rear line of any Lot, provided that accessory buildings may be located closer to the various Lot lines if approved by the Board in writing in advance. For purposes of this Section, eaves, steps and open porches shall be considered as part of the Structure; provided that this Section shall not be construed to permit any portion of a Structure on any Lot to encroach upon any other Lot. All Structures shall also comply with all applicable governmental laws, codes, ordinances and regulations pertaining to setbacks. The City will enforce the setbacks, lot coverage and accessory building for the underlying R-1 zone.

**3.6.13 "Fences"**. No fence shall be constructed on any Lot without the prior written approval of the Board, which approval may be granted or denied in the Board's sole discretion. All fences shall be constructed in a good and workman-like manner of suitable fencing materials and shall be artistic in design and shall not detract from the appearance of any adjacent Structures. All fences shall comply with the design plan adopted by the Board.

**3.6.14 "Underground Utilities"**. All utility lines located outside a dwelling unit shall be in conduits attached to such units or underground.

**3.6.15 "Drainage"**. Any and all drainage from a Lot, which in the reasonable opinion of the Board causes erosion problems, shall be piped at the Lot Owner's expense to the nearest underground public storm sewer line, street ditch or dry well. All roof drains shall be connected to public storm sewer system. Absolutely no dumping of any pollutants into the storm sewer systems shall be permitted.



**3.6.16 "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 by such Owner within twelve (12) days from the occurrence of such damage.

**3.6.17 "Roofs"**. The roof of any building on any lot shall be constructed of Celotex Presidential composition roofing. All roofs are to have a 6:12 pitch or greater. Roof colors shall be limited to black or gray. The Board may approve the use of substitute roofing materials which will, in their opinion, meet the goals and purposes of Section 3.1, supra. The Board may also approve a roof having less than a 6:12 pitch.

**3.6.18 "Driveways"**. All driveways shall be paved with Portland cement concrete from the edge of the paved street to connect with the paved surface of the floor of the carport or the garage. Flag lots can be either Portland cement concrete or Asphalt. The Asphalt exemption is for the flag lots only.

**3.6.19 "Mailboxes"**. Developer to build a mail and paper structure. The Declarant will construct the initial mailbox and newspaper boxes. If they require replacement, they will be replaced with a mailbox and newspaper box which are of the same design and size of those initially constructed by the Declarant.

**3.6.20 "Compliance with Laws"**. Notwithstanding anything to the contrary set forth herein, each Owner and the Association 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.

#### ARTICLE 4

#### THE CREST AT 41st OWNERS' ASSOCIATION

**Section 4.1 Form of Association**. The Owners of Lots within the Property shall constitute the members of **The Crest at 41st Owner's Association**. The rights and duties of the members and of the Association shall continue to be governed by the provisions of this Declaration.

**Section 4.2 Board of Directors**. The affairs of the Association shall be governed by a Board of Directors (the "Board") which shall be composed of two or more members, to be determined in the reasonable discretion of the Board. The initial Board shall be **Joseph E. Wilson and Gregory J. Wilson**. Subject to any specific requirements hereof, 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 have full authority to appoint a successor member or members. Members of the Board shall



not be entitled to any compensation for services performed pursuant to this Declaration. Upon the Transition Date and without further action by any person or persons, (i) the term of the initial Board members or their successors shall end, and (ii) the initial Board members and their then successors shall be released from any and all liability whatsoever for claims arising out of or in connection with this Declaration, exempting only claims arising prior to the Transition Date.

**Section 4.3**                    **Qualification for Membership.** Each fee owner of a Lot (including Declarant) on the Property shall be a member of the Association and shall be entitled to one membership and 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.

**Section 4.4**                    **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, 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 new Owner.

**Section 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. The Owner or Owners of each Lot within the Property shall be entitled to one vote. If a Person (including Declarant) owns more than one Lot, he or she shall have the votes appertaining to each Lot owned.

**Section 4.6**                    **Voting.** If a Lot is owned by husband and wife and only one of them is at a meeting, the one who is present will represent the marital community. 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.

**Section 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 Lot Owner has pledged his vote to the Mortgagee on all issues arising after such declaration and during the continuance 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.





## 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 Board member or mailed to the residence address of the president or secretary of the Board.

## ARTICLE 6

### AUTHORITY OF THE BOARD

**Section 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 regulations 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.

**Section 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 recreation, health, safety and welfare of the Lot Owners and for the improvement and maintenance of the Common Areas.

**Section 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 maintenance of all portions of the Common Areas not maintained by public utility companies or a governmental entity. The goods and services shall include (by way of illustration and not limitation) policies of insurance; and maintenance, repair, landscaping, gardening, and general upkeep of the Common Areas. The Board may hire such employees as



it considers necessary.

**Section 6.4**                      **Protection of Common Area.** The Board may spend such funds and take such action as it may from time to time deem necessary to preserve the Common Areas, settle claims, or otherwise act in what it considers to be the best interests of the Association. In connection with maintaining the retention pond, the Association shall adopt a maintenance schedule which, at a minimum, shall include the following:

- 6.4.1 The retention pond facility shall be inspected annually and maintained by the Association at its expense. All parts of the retention pond facility shall be maintained and/or restored to assure performance as intended. All maintenance must be accomplished by a licensed, bonded and insured contractor.
- 6.4.2 A representative of the Association shall make periodic visual inspections of the private detention pond and schedule routine maintenance as required. This shall include the following:
  - 6.4.2.1 Trash and Debris. Any trash which exceeds 1 cubic foot per 1,000 square feet (about 1 standard size office garbage can) shall be cleared from the site.
  - 6.4.2.2 Grass. Mowing is needed when grass exceeds 18 inches in height. The grass shall be mowed to a height of approximately 2 inches.
  - 6.4.2.3 Tree Growth. If trees are not interfering with access or maintenance, leave them along.
  - 6.4.2.4 Erosion. Eroded damage over 2 inches deep where the potential for continued erosion is present shall be repaired and stabilized.
  - 6.4.2.5 Sediment. Accumulated sediment that exceeds 10% of the designed pond depth shall be cleaned out.

## ARTICLE 7

### BUDGET AND ASSESSMENT FOR COMMON EXPENSES

**Section 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 costs of maintaining the Common Area during the ensuing fiscal year. That proposed budget shall be submitted to the members in the manner provided for in RCW 64.38.025. 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 in 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.

**Section 7.2**                    **Certificate of Unpaid Assessments.** Any failure by the Board or 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.

**Section 7.3**                    **Date of Commencement of Annual Assessments.** The annual assessments provided for herein shall commence as to all Lots at such time as the Board in its absolute discretion deems advisable. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year.

## ARTICLE 8

### LIEN AND COLLECTION OF ASSESSMENTS

**Section 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 by 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.

**Section 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 on the Lot at the foreclosure sale, and to acquire and hold, lease, Mortgage, and convey the same.

**Section 8.3**                    **Assessments Are Personal Obligations.** In addition to constituting a lien on the Lot, all sums assessed by the Association chargeable to any Lot, together with interest, late charges, costs and attorney's 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.

**Section 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 12% 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.

**Section 8.5**                    **Recovery of Attorney's Fees and Costs.** In any action to collect delinquent assessments, the prevailing party shall be entitled to recover as a part of its judgment a reasonable sum for attorney's fees and all costs and expenses reasonably incurred in connection with the action, in addition to taxable costs permitted by law.

**Section 8.6**                    **Remedies Cumulative.** The remedies provided herein are cumulative and the Board may pursue them, and any other remedies which may be available



under law although not expressed herein, either concurrently or in any order.

**Section 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 Board member, or Association member, or Declarant has acted in good faith, without willful or intentional misconduct, upon the basis of such 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 where the consequences of such act, omission, error, or negligence are covered by any insurance actually obtained by the Board.

## ARTICLE 11

### **INDEMNIFICATION**

Each Board member, and Declarant shall be indemnified by the Association against all expenses and liabilities, including attorney's 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 holding or having held such position, or any settlement thereof, whether or not he holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by insurance and except in such cases wherein such Board member 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 as a common expense a policy or policies which the Board deems necessary or desirable to provide casualty insurance; comprehensive liability insurance; 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

In the event of any casualty, loss or other damage to the Common Area 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. 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 Common Areas.

## ARTICLE 14

### AMENDMENTS OF DECLARATION

Any Lot Owner may propose amendments to this Declaration to the Board. A majority of the members of the Board 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 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 may be given. 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 either (1) an amendment changing the voting power or portion of assessments appurtenant to each Lot, or (2) an amendment of Section 3.7 or of this Article 14. All other amendments shall be adopted if approved by 70% of the 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 Skagit County, Washington. Any amendment which would change the obligation of the Association to maintain the drainage system must first be approved by the City of Anacortes.

## ARTICLE 15

### ANNEXATION AND SUBDIVISION

Residential property other than Common Areas may be annexed or added to the Property only with the consent of two-thirds of the Association. No Lot shall be subdivided or combined 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 thirty (30) 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

### RESERVATION OF DECLARANT'S RIGHT TO AMEND TO COMPLY WITH FNMA, FHLMC OR FHA REQUIREMENTS

**Section 17.1**                    **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 conjunction with FHLMC or FNMA or FHA.



**Section 17.2**                    **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.

**Section 17.3**                    **Duration.** Declarant's rights under this Article shall exist only until the Transition Date.

## ARTICLE 18

### 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 19

### EFFECTIVE DATE

This Amended Declaration shall be effective upon recording.

## ARTICLE 20

### ASSIGNMENT BY DECLARANT

Declarant reserves the right to assign, transfer, sell, lease, or rent all or any portion of the Property and reserves the right to assign all or any of its rights, duties, and obligations created under this Declaration.

## ARTICLE 21

### SPECIAL PROVISIONS

**Section 21.1**                    **Hookup Fees and Impact Fees.** This project is subject to applicable water, sewer, and stormwater hookup fees and transportation, fire, school, and park



impact fees. These fees are payable at levels in effect at the time of the building permit issuance and may differ from those fee levels currently in effect.

**Section 21.2** Drains. Roof and footing drains from each lot shall have access to the storm and ground water drainage system either by direct tap to the storm drain or direct flow to recharge the wetlands.

**Section 21.3** Garages & Driveways. Each lot will have a 2 car garage and a driveway length adequate for 2 additional parking spaces.

DATED this 10<sup>th</sup> day of NOVEMBER, 1999.

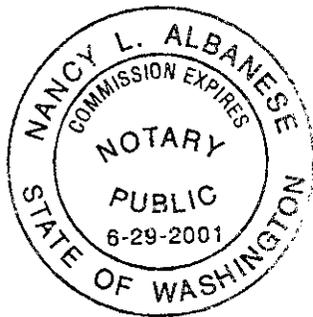
**Wilmoor Development Corporation**

By: [Signature]  
GREGORY J. WILSON  
Secretary/Treasurer

STATE OF WASHINGTON )  
( ss.  
County of SKAGIT )

I certify that I know or have satisfactory evidence that **GREGORY J. WILSON** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Secretary/Treasurer of **Wilmoor Development Corporation** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 10<sup>th</sup> day of November, 1999.



[Signature]  
(Signature)  
NANCY L. ALBANESE  
(Print Name)  
Notary Public  
My Appointment Expires: 6-29-2001

**EXHIBIT 1**

Lots 1 thru 8 of Anacortes Short Plat entitled The Crest at 41<sup>st</sup>. Before approval of the Short Plat the property was described as:

**Parcel A:**

Lot 1 of Short Plat No. AN-82-002, as approved October 13, 1982, and recorded May 17, 1983 in Volume 6 of Short Plats, page 47, Records of Skagit County, Washington, under Auditor's File No. 8305170017, being a portion of the Southwest 1/4 of the Southwest 1/4 of Section 25, Township 35 North, Range 1 East, W.M.

**Parcel B:**

Lot "X," "PLAT OF PARKSIDE DIVISION NO. 2," according to the plat thereof, recorded in Volume 16 of Plats, pages 20 through 22, Records of Skagit County, Washington.



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