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AFTER RECORDING RETURN TO:

SLOAN G. JOHNSON
ATTORNEY AT LAW
P.O. BOX 854
711 E. MORRIS ST.
LA CONNER, WA 98257

**DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS OF
"TILLINGHAST/DALAN ESTATES"**

Declarant: PAMELA JOHNSON, individually as her separate property and as
Trustee of the Edwin R. Dalan Trust, its successors and assigns.

Abbreviated Legal Description: Portion of Tillinghast/Dalan Estates.

Assessor's Tax Parcel ID No. Portion of 74230, 74233

LEGAL DESCRIPTION OF SUBDIVISION:

Portion of Plat of Tillinghast/Dalan Estates, Lots 1-22 inclusive, as per plat recorded
under Skagit County Auditor's File No. 200410290108

SITUATE IN THE TOWN OF LA CONNER, COUNTY OF SKAGIT, STATE OF
WASHINGTON.

INTRODUCTION:

Declarant owns all of the above-described Subdivision and has established a general plan for the improvement and development of the real property on which the Subdivision is located, and hereby declares the covenants, conditions, reservations and restrictions as hereinafter set forth and upon which and subject to which all lots and portions of such lots shall be improved, sold and conveyed. Each and every one of the covenants, conditions reservations and restrictions hereinafter set forth, is for the benefit of each owner of land within the Subdivision, or any mortgage or other interest therein, and shall inure to the benefit of and pass with each and every parcel of the Subdivision and shall bind the respective successors in interest of the present owners. All covenants, conditions, reservations and restrictions contained in this instrument are imposed upon each and every lot in the Subdivision and, shall be construed as restrictive covenants running with the title to such lots and with each and every parcel thereof. Lots 23 and 24 have been intentionally excluded from the Homeowner's Association, and are not subject to the terms of this Declaration.

COVENANTS, CONDITIONS, RESERVATIONS AND RESTRICTIONS:

1. DEFINITIONS:

- 1.1 **Association:** "Association" shall mean and refer to the "Tillinghast/Dalan Estates Homeowners Association," its successors and assigns.
- 1.2 **Owner:** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Subdivision, but excluding those having interest merely as security for the performance of an obligation.
- 1.3 **Subdivision:** "Subdivision" shall mean and refer to that certain real property described above (Lots 1-22) and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
- 1.4 **Lot:** "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Subdivision with the exception of the Common Area.
- 1.5 **Declarant:** "Declarant" shall mean and refer to Pamela Johnson, individually as her separate property and as Trustee of the Edwin R. Dalan Trust, its successors and assigns.

2. HOMEOWNERS' ASSOCIATION:

Each lot owner within the Subdivision, Lots 1-22 inclusive, shall be a member of the Tillinghast/Dalan Estates Homeowners' Association, a Washington nonprofit corporation, which is to be formed within 90 days of final plat approval by the Town of La Conner for the purpose of administering and enforcing these Covenants and providing or contracting to provide for the common services and benefits contemplated by these Covenants. Declarant shall be responsible for the formation and operation of the Tillinghast/Dalan Estates



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Homeowners' Association until at least fifty percent (50%) of the lots in the parcel have been sold, at which time Declarant may appoint new officers, or officers may be elected by a majority vote of all lot owners. With respect to the Association, each lot owner's rights, duties and obligations shall be as set forth in said Association's Articles of Incorporation and Bylaws. Membership in the Association shall be appurtenant to and may not be separate from ownership of any lot which is subject to these Covenants. When more than one person or entity owns an interest in a lot within the Subdivision, any vote in the Homeowners' Association may be exercised among the owners of such lot as they determine, but in no event shall more than one (1) vote be cast with respect to any single lot. Among other things, the Association's Articles and Bylaws shall set forth and describe the powers and duties with respect to the imposition of assessments used to promote the health, safety and welfare of residents within the Subdivision and for improvement and maintenance of the Common Areas. At a minimum, every lot shall be annually assessed fifty dollars (\$50) as "Association Dues," which amount may be increased as needed, through Association action.

Declarant reserves the right to waive collection of annual assessments on a year to year basis. In other words, in Declarant's sole discretion minimum assessments may or may not be incurred, provided Declarant exercises reasonable discretion in the best interest of all owners. In the event Declarant waives collection of assessment on any one (1) lot, collection of assessments on all lots shall likewise be deemed waived.

3. **DALAN PLACE ROAD ASSOCIATION – MAINTENANCE OBLIGATIONS.**

The owners of lots 15, 16, 17, 18, 19 & 20 shall be referred to as the Dalan Place Road Association and hereby agree to maintain and repair the private street that provides access to the lots, identified on the plat as "Dalan Place." The purpose of the Dalan Place Road Association shall be to ensure maintenance of the road, and to administer the organizational functions necessary to achieve that purpose, including establishing a means of assessing maintenance costs equitable to the lot owners served by Dalan Place, as listed above. The Dalan Place Road Association shall be a sub-group of the Association. The initial assessment shall be \$50.00 (fifty dollars) per lot, separate from and in addition to the initial assessment payable to the Homeowners' Association outlined in Section 2. The Association shall apply all monies collected from the Dalan Place Road Association to the maintenance of Dalan Place. The Association shall be bound by the construction and maintenance obligations clause pursuant to LCMC 15.30.230 (4):

"The cost of construction and maintaining all roads not herein dedicated as "town roads" and all access roads to the plat, unless the same are dedicated as "town roads", shall be the obligation of all of the owners of the lots in the plat and/or of any additional plats that may be served by said roads, streets, and/or alleys, and that obligation to maintain shall be concurrently the obligation of any



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corporation in whom title of said roads, streets and/or alleys beheld. In the event that the owners of any of these lots or the corporate owners of any of the roads, streets and/or alleys of this plat or any additional plats served by these roads, streets, and/or alleys shall petition the town council to include these roads, streets, and/or alleys in the road system, said petitioner shall be obligated to bring the same to the town standards in all respects prior to acceptance by the town."

Enforcement of this covenant to keep Dalan Place in good repair shall be subject to the provisions of Section 13.5 of this Declaration.

4. **ARCHITECTURAL CONTROL/REVIEW AND APPROVAL OF BUILDING PLANS:**

For the purpose of ensuring the development of the Subdivision as a high quality residential community, Declarant reserves the right to control buildings and structures as set forth in these Covenants and hereby reserves the right, in its sole and absolute authority, to approve or disapprove any and all proposed construction, alteration or improvement of the buildings, structures, landscaping, fences and exterior lights placed on each residential site. The Owner or occupant of each residential lot by acceptance of title thereto, or by taking possession thereof, covenants and agrees that no building, wall, fence, landscaping, lamppost, exterior lights, swimming pool, spa, hot tub, or other structure shall be placed upon a lot within the Subdivision unless and until plans and specifications have been reviewed and approved in writing by the Declarant or its "nominee" as hereinafter set forth. Each such building, wall, fence, landscaping, plantings, swimming pool, spa, hot tub or other structure shall be placed on a lot within the Subdivision only in accordance with the plans and specifications and plot plan so approved in writing. Approval or rejection of plans and specifications may be based upon any ground, including purely aesthetic grounds, which the Declarant or its nominee, in the exercise of its sole and absolute discretion, shall deem sufficient. No alteration of the exterior appearance of any building or improvements (including but not limited to the color of any building or improvement) shall be made without the prior written approval of the Declarant or its nominee.

- 4.1 **Nominee – Architectural Control Committee.** For purposes of this Declaration, the "nominee" of the Declarant shall be known and referred to as the "Architectural Control Committee," appointed by the Declarant and serving at the will of the Declarant until such time as fifty percent (50%) of the lots within the Subdivision have been sold, at which time the Homeowners' Association may appoint the Architectural Control Committee with all of the powers authorized or implied in this Declaration.



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4.2 **Submission of Plans.** Complete plans and specifications of all proposed buildings, structures and other improvements (including all fences, landscaping, concrete and masonry walls, etc.) together with detailed plans showing the proposed location of the same on the particular building site (i.e. a plot plan), shall be submitted to the Declarant or the Architectural Control Committee not less than forty-five (45) days prior to the proposed construction starting date and such construction or alteration shall not be started until written approval for the construction is given by the Declarant or the Architectural Control Committee. The plans and specifications submitted to Declarant or the Architectural Control Committee shall be drawn to a scale not less than one-eighth ($1/8^{\text{th}}$) of an inch equals one (1) foot ($1/8"=1'$), shall contain a plot plan, shall designate the direction "north," shall locate all existing and proposed improvements, shall locate all utility installations, and shall locate all trees, bushes or other landscaping, having a present or reasonably expected excess of six (6) feet. The plans shall also include a plan indicating the location of all exterior walls and four (4) major exterior building elevations indicating exterior materials, finishings, window sizes and materials, door sizes and materials, and exterior finish color scheme. Once approved, a set of approved plans must be on the job site at all times.

4.3 **Time for Review.** If the Declarant or the nominee fails to approve or disapprove plans and specifications submitted by an Owner of a residential site within thirty (30) days after receipt of a written request meeting the requirements of paragraph 3.2 above, then such approval shall not be required; provided, however, notwithstanding the presence or absence of prior approval, no building, deck, wall, fence, lamppost, exterior lights, swimming pool, spa, hot tub, landscaping or other structure or exterior improvement shall be erected or allowed to remain on any site which violates any of the covenants, conditions, reservations or restrictions contained in this Declaration. Plan review by the Architectural Control Committee shall take place prior to any application for a building permit through the Town of La Conner or Skagit County.

4.4 **Exercise of Discretion.** As to all improvements, construction and alterations on residential lots within the Subdivision, Declarant or the Architectural Control Committee shall have the absolute right to disapprove any design, plan or color for such improvement, construction or alteration, which is not suitable or desirable in the Declarant's or the Architectural Control Committee's opinion, for any reason, aesthetic or otherwise. Declarant or the Architectural Control Committee shall have the right to take into consideration the suitability of the proposed building or other structure, the materials of which it is to be built, the exterior color scheme and



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texture, the harmony of such improvements with the surroundings and improvements already constructed within the Subdivision, the effect or impairment that such structures will or may have on the view of other residential or building sites and any and all facts which, in the Declarant's or the Architectural Control Committee's sole and absolute discretion, shall affect the desirability or suitability of such proposed improvements, construction or alterations. Neither the Declarant nor the Architectural Control Committee shall be responsible for any structural defect in any plans or specifications or for any violations of an owner of the restrictive covenants set forth in this Declaration, or in any building or structure erected in accordance with such plans and specifications. The Declarant or the Architectural Control Committee may appoint advisors or advisory committees from time to time to advise on matters pertaining to the development of the Subdivision.

5. **TOWN ZONING AND BUILDING RESTRICTIONS:**

This Subdivision is located within the boundaries of the Town of La Conner and, therefore, is subject to all ordinances, rules and regulations of the town, including, without limitation, land use, zoning and building regulations. This Declaration is to be interpreted and applied consistent with the requirements and interpretations of the rules and regulations of the Town of La Conner as the same now exists or may hereafter be amended, which are specifically applicable to the property located within the Subdivision. It is the intent of the Declaration to supplement, in certain respects, existing town ordinances, rules and regulations and, in certain cases to be more restrictive in nature than the requirements set forth in such ordinances, rules and regulations. Although the zoning ordinances of the Town of La Conner may directly or indirectly permit uses different from or greater than those specified in this instrument, Declarant expressly intends that the land located within the Subdivision only be used for the purposes and uses specifically allowed in this instrument.

6. **RESIDENTIAL USE.**

Each lot within the Subdivision is to be used and occupied solely for single-family residential purposes subject to the general and specific restrictions set forth in this Declaration. As noted above, this provision does not apply to Lots 23 or 24, which have existing commercial zoning and use. For purposes of this Declaration, "single-family residential purpose" means the construction and owner occupation of a home built and designed for occupancy by a single family, as opposed to a multiple-family unit such as a duplex, triplex, etc. Single-family use or a single-family residence shall not mean or include mobile homes,



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manufactured or prefabricated homes, all of which shall be prohibited on all lots within the Subdivision.

- 6.1 **Building and Improvements.** No building or structure intended for or adapted to any purpose other than a single-family residence, as defined above, shall be erected, placed, permitted, or maintained within the Subdivision, or any part thereof. Without limiting the generality of the foregoing, the permitted construction and uses within the Subdivision shall be (1) single-family residences; (b) private attached, enclosed garages for the sole use of owners and occupants of the single-family residences, with a capacity of not less than two (2) nor more than four (4) cars (the definition of "attached" shall be within the sole discretion of the Declarant and/or the Architectural Control Committee); (c) enclosed buildings for storage of noncommercial vehicles and equipment used to maintain the residences and lots on which the same is situated; (d) private greenhouses; and (e) pump or bathhouses which are accessories to private swimming pools. (The improvements listed in parts (b), (c), (d), and (e) of the previous sentence are referred to as "accessory buildings.") Any accessory building must be designed and constructed as to be compatible in appearance with the single-family residence constructed on the lot. Accessory Dwelling units as defined in the Growth Management Act may be allowed if approved by both the Architectural Control Committee and the Association. No structure of a temporary character, trailer, partially completed residence, garage, shack, barn, or other outbuilding shall be used on any lot or at any time as a residence, either temporarily or permanently.
- 6.2 **Time and Manner of Construction.** All construction of properly authorized improvements on any lot within the Subdivision once commenced, shall be diligently pursued to completion in a manner and at a rate reasonably consistent with building standards prevailing in the Town of La Conner area with respect to high-quality residential construction. Notwithstanding the foregoing, in no event shall the period for construction of any improvement, including the primary single-family residence, exceed nine (9) months from the date of commencement of construction to the date the improvement is completed as to external appearance, including finished painting. A single-family residence must be constructed and substantially completed in accordance with this paragraph before any secondary building on any lot within the Subdivision may be constructed and used.
- 6.3 **Prohibition Against Commercial and Business Use.** No business or profession of any nature shall be conducted or allowed upon any lot within the Subdivision and no building or structure intended or adapted for any such business or profession or any



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apartment house, flat building, lodging house, daycare facility, rooming house, hotel or sanitarium shall be erected, placed or permitted to remain on any lot within the Subdivision. Notwithstanding the foregoing and subject to any applicable provisions of the Town of La Conner's Uniform Development Code, lot owners may have a home office or conduct a home occupation within the single-family residences constructed the lot, subject to the following:

- a. No person other than members of the family residing at the premises shall be engaged in such occupation (This prohibition shall not apply to those professionals or independent contractors engaged in their own profession in association with the home occupation. For example, a bookkeeper, accountant, or tax preparer who on occasion necessarily performs services on behalf of the home occupation at the premises would not be prohibited.);
- b. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 25% of the floor area of the dwelling unit shall be used in the conduct of the home occupation;
- c. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation;
- d. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met pursuant to the requirements of the Town of La Conner, and shall not affect the amount of parking required for the Subdivision.
- e. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, hazardous waste, odors, or electrical interference detectable to normal senses off the lot, if the occupation is conducted in a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any normally-shielded radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

No room or rooms in any single-family residence located within the Subdivision or any part thereof may be rented or leased for business purposes only. Nothing in this paragraph, however, shall be construed as preventing the renting or leasing of an entire single-family residence, together with its improvements as a single unit to a single family.

- 6.4 **Parking.** All lots shall provide a minimum of 2 (two) off-street parking spaces.



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7. **BUILDING SPECIFICATIONS AND RESTRICTIONS.**

Without in any way limiting the generality of any of the foregoing provisions contained in this Declaration, and subject to plan approval by Declarant, or the Architectural Control Committee, all single-family residences, secondary buildings and other improvements authorized on lots within the Subdivision shall comply with the following requirements:

- 7.1 **Size-Minimum and Maximum Square Footage.** Each single-family residence constructed in a lot within the Subdivision, exclusive of garage and porches, must enclose an area of not less than one thousand two hundred (1,200) square feet and not more than four thousand (4,000) square feet.
- 7.2 **Height.** It is the Declarant's intention to protect and preserve, to the extent possible, the views for all reasonable building sites on lots within the Subdivision. In order to accomplish this purpose, no residence, buildings, improvements, trees, plantings or natural or artificial obstructions of any kind shall be placed, constructed or allowed on lots within the Subdivision which exceed the heights allowed under the La Conner Uniform Development Code (LCMC 15.20.060). All buildings shall comply with LCMC Chapter 15.70 Floodplain Management guidelines for determining finished floor elevation, design details and the requirements for a Flood Elevations Certificate.
- 7.3 **Exterior and Roofs.** All single-family residences and other structures located within the Subdivision shall be painted with two coats of paint or stain in colors consistent with existing single-family residences in the immediate area unless constructed of ornamental masonry or brick, and no residence or other structure shall be erected on a lot within the Subdivision which contains synthetic siding such as fiberglass or aluminum, provided, however, that modern siding materials generally acceptable and used in high-quality residential construction shall be allowed, provided it is consistent with the general architecture and high-quality residences located within the Subdivision, subject to Architectural Control Committee approval. All wood siding used on the residences shall be individual board siding, such as cedar or redwood and no plywood sheeting, T-111 or similar type of siding shall be allowed. No residence or other building within the Subdivision shall have composition (i.e. asphalt, 3-tabbed shingles), aluminum, flat gravel or tarred roofs. Acceptable roofing material shall consist of wooden shingles or shakes, steel roofing, architectural composition shingles, tile; provided however, that modern roofing materials generally acceptable and used in



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high-quality residential construction shall be allowed subject to Architectural Control Committee approval, provided it is consistent with the general architecture and high-quality residences located within the Subdivision.

7.4 **Setbacks.** As shown on the face of the plat of Tillinghast/Dalan Estates.

7.5 **Fences.** It is the Declarant's intention, to the extent possible, to maintain the concept of a consistent common area landscaping theme for the Subdivision, and no fences or barriers (natural or artificial) shall be constructed or planted on lots within the Subdivision without the prior written approval of the Declarant or the Architectural Control Committee.

Any and all fences consistent with this paragraph and approved by the Declarant or the Architectural Control Committee shall be of wood, brick or other modern building materials to ensure compatibility with the high-quality, single-family residences located within the Subdivision. No chain link (slatted or unslatted) or barbed wire fences shall be allowed on any lot within the subdivision. Fences shall be constructed consistent with all applicable height restrictions of this Declaration and of local zoning authorities. All natural or "living" fences shall be neatly trimmed and groomed, and also shall be subject to the height limitations set forth in this Declaration and in any applicable zoning code or regulation.

8. **LANDSCAPING AND GENERAL PROPERTY MAINTENANCE:**

8.1 **Approval of Landscaping Plan.** All landscaping within the Subdivision shall be subject to the approval of Declarant or the Architectural Control Committee. The term "landscaping" shall include an inground sprinkler system which conforms with the design standards promulgated from time to time by Declarant or the Architectural Control Committee. Landscaping of each single-family lot shall be completed within a reasonable time, not to exceed six (6) months from the date a single-family residence is completed.

8.2 **Appearance of Lot.** No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon subject real property and no refuse pile, garbage, unused motor vehicles or unsightly objects shall be allowed to be placed or to remain anywhere within the Subdivision. In the event that any owner of property within the Subdivision shall fail or refuse to keep the premises free from weeds, underbrush, refuse piles, garbage, unused motor vehicles or other unsightly growth or objects, then Declarant or authorized agents of the Association may enter upon



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the lands to remove the same at the expense of the owner. Such entry shall not be deemed a trespass, and for purposes of such entry, the lot owner hereby grants to Declarant or the Association an irrevocable license to enter upon their respective property.

- 8.3 **Limitations on Landscaping.** For lots 6, 7, 8, and 9, the use of large trees as part of an Owner's landscaping plan shall be discouraged and no tree, shrub or other planting shall exceed the elevation of twenty (20) feet in height above finished floor. The intent for such prohibition is to preserve views and light throughout the Subdivision. In addition to the recourse provided in Section 12 herein below, the Declarant and/or the Association shall have the right to prune any trees, shrub, or other plant in excess of twenty (20) feet after giving the offending owner written notice and thirty (30) days to cure the violations. Failure to cure the violation within the thirty (30) day period shall give the Declarant and/or the Association the right to prune the vegetation down to the twenty (20) foot maximum limit using commercially reasonable procedures. Commercially reasonable procedures shall mean procedures undertaken to accomplish the intent given herein by a licensed and bonded landscaper, logger or other applicable professional. The cost of such procedures may become a lien upon the violating owner's lot in favor of the Declarant and/or the Association.

In the event a lot owner's landscaping includes any trees or other plants which establish a root system under the Common Areas within the Subdivision, including but not limited to sidewalks, streets, light fixtures or other utilities, the subject lot owner or owners shall be solely responsible for all costs incurred to repair any damage caused directly or indirectly by said landscaping. In addition, the Board of Directors of the Association shall have the right, but not the obligation, to order removal of any tree, shrub or plant causing damage to Common Areas, with the cost of removal to be borne solely by the subject lot owner.

9. **PETS.**

No domestic, wild or farm animals of any kind shall be raised or permitted within the Subdivision other than a reasonable number of household pets (not to exceed three (3)) which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance to other lot owners or persons. Pets shall not be permitted to run loose or unattended. Dogs shall be on a leash, confined to their owner's property or under effective voice control. Owners of pets that create a nuisance or disturb the peace and tranquility of the Subdivision may be required by the Board of Directors of the Association to permanently remove their pets from the Subdivision.



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Ownership or possession within the Subdivision of a vicious dog is prohibited. A "vicious dog" is described as (1) any dog which, when unprovoked, approaches any person in a vicious or threatening manner in an apparent attack anywhere other than on the owner's property; (2) any dog which has a known propensity, tendency or disposition to attack without provocation, to cause injury or to otherwise endanger the safety of persons or other domestic animals; (3) any dog which bites, inflicts injury upon, assaults or otherwise attacks a person or domestic animal without provocation on common, public or private property; and (4) any dog which is kept or trained for the purpose of dog fighting.

10. **MAINTENANCE AND APPEARANCE.**

10.1 **General.** The owners or occupants of all lots within the Subdivision shall at all times and continuously maintain the grounds and improvements in a clean, neat and attractive condition and in good repair. All garbage containers, refuse, yard trimmings, cuttings, debris, tools and equipment shall be screened from view from adjacent property, common areas and roadways.

10.2 **Common Areas.** Maintenance of the Common Areas of the Subdivision, including landscape areas within the Tillinghast Drive right-of-way, shall be the responsibility of the Association. The Association shall maintain all common areas in a first class condition consistent with the high quality residential character of the Subdivision. The costs for maintaining and repairing all Common Areas, unless otherwise determined by the Board of Directors of the Association, shall be paid for by the Association from funds raised through member assessments.

11. **OTHER RESTRICTIONS ON EXTERIOR USE AND IMPROVEMENT OF LOTS.**

11.1 **Utility Lines – Radio and Television Antennas.** All electrical service, telephone lines and other utilities serving lots within the Subdivision or any part or parcel thereof, shall be placed and installed underground in compliance with all governmental regulations. No exposed or exterior radio or television transmission or receiving antennas, except for "mini" satellite dish antennas (with diameters of 20" or less), shall be erected, placed or maintained on any lot or structure located within the Subdivision.

11.2 **Signs.** Signs other than those stating the name of the occupant, the address of the unit, a name given the property by the property owner and customary "for sale" or "open house" signs approved by the Board of Directors of the Association are prohibited. In addition, Owners must comply with all applicable Town of La Conner rules and ordinances relating to signs.



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- 11.3 **Hot Tubs.** Hot tubs and spas shall be operated and used in a manner that does not disturb the peace and tranquility of the Subdivision or interfere with the use and enjoyment of adjacent property by their respective owners.

12. **GENERAL PROVISIONS.**

- 12.1 **Easements.** Declarant reserves for itself, its successors, assigns and for the benefit of all lot owners within the Subdivision, permanent easements under, along and over the easements as shown on the face of the plat of the Subdivision for the purpose of carrying utilities, water or sewage, and for the necessary maintenance of such facilities; and nothing shall be done on any other building lot that interferes with the natural drainage of surface water to the injury of other property.
- 12.2 **Utility Reimbursement.** Declarant has entered into agreements with utility providers relating to use of utility services within the Subdivision. In the event an owner elects not to hook up to the available utility, the Declarant may be charged a fee based on the decreased usage of the utility company's services. If a fee is charged to Declarant or an amount to be reimbursed to Declarant is withheld as a result of an owner's decision not to use a certain utility, the owner shall be responsible for immediate payment to the Declarant for the amount of the fee and/or for the reimbursement withheld by the utility company, regardless of any future use of the utility by the owner or his successors.
- 12.3 **Mortgages.** The breach of any of the covenants, conditions, reservations or restrictions contained in this Declaration, or any re-entry by reason of a breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any lots or portions thereof located on the subject real property; provided, however, all such covenants, conditions, reservations and restrictions shall be binding upon and effective against any mortgagee or trustee or owner, whose title or whose grantor's title is or was acquired by foreclosure, trustee sale or otherwise.
- 12.4 **Remedies for Breach.** The covenants, conditions, reservations and restrictions contained in this Declaration shall inure to the benefit of and be enforceable by (a) the Declarant, its successors or assigns; (b) the Association; (c) the grantees in deeds conveying land within the Subdivision, their respective heirs, personal representatives and assigns; and (d) any subsequent owner of any lot within this Subdivision. Such parties shall have the right to proceed at law or in equity to compel compliance with any covenant, condition, reservation or restriction contained in this



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Declaration, or to prevent the violation or breach of any of them, or to recover damages for such breach.

- 12.5 **Enforcement of Covenants – Notice.** In the event any lot owner, Declarant, the Architectural Control Committee, or the Association determines that there is a violation by any owner or owners of any of the provisions of this Declaration, then the complaining party shall give the subject lot owner(s) written notice describing the alleged violation and allowing the subject lot owner(s) no less than ten (10) days to provide a written response to the Board of Directors of the Association if the violation is disputed. If the Board determines after considering the response that there is a violation, the offending owner shall be allowed twenty (20) days from the Board's determination (or thirty (30) days from the initial complaint if there is no response to cure the default. Should such violation continue after the giving of the required notice, Declarant or the complaining party, as the case may be, shall be entitled to commence an action in the Superior Court of the State of Washington for the County of Skagit, seeking injunctive or other relief. The prevailing party in such action shall be entitled to reasonable attorney's fees in addition to the costs of the suit.

In addition, should the violation involve the failure to maintain any lot or any other covenant which may be corrected by the hiring of labor and purchasing of materials, Declarant, the Architectural Control Committee, or the Association, after expiration of the notice period described above, may hire the necessary labor or acquire the materials to remedy the violation and the cost thereof shall be assessed against the violating owner and lot involved and all such costs, including twelve percent interest and reasonable attorney's fees, shall constitute a lien on the lot once filed with the Skagit County Auditor as provided by law. Such lien may be foreclosed using the procedures for foreclosing mechanic's or materialmen's liens under the laws of the State of Washington.

- 12.6 **Non-Waiver of Breach.** The failure of the Declarant or any other person or organization to promptly enforce any covenant, condition, reservation or restriction contained in this Declaration shall not constitute a waiver of any such covenant, condition, reservation or restriction, or the right to enforce them in the future. Under no circumstances shall any action be brought or maintained by any person whomsoever against Declarant, the Association or other lot owners, for or on account of their failure to enforce any breach of the covenants, conditions, reservations and restrictions contained in this instrument, or for imposing restrictions in this Declaration which may later be found unenforceable.

- 12.7 **Term of Covenants.** These covenants shall be considered as covenants running with the land and shall be binding upon the



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parties, persons and entities owning land within the Subdivision, and their heirs, personal representatives, successors and assigns, until January 1, 2034; provided, these covenants and restrictions shall automatically extend in their entirety for successive periods of ten (10) years, unless by appropriate instrument in writing, consent to their termination, in whole or in part, has been executed and acknowledged by not less than two-thirds (2/3) of the then lot owners within the Subdivision and filed in the official records of the Skagit County Auditor. Any amendments and alterations to these covenants shall be approved by the La Conner Town Council or the Mayor prior to filing with the Skagit County Auditor.

- 12.8 **Amendments.** These covenants, conditions, reservations and restrictions may be amended with the approval of not less than seventy-five percent (75%) of the lot owners within the Subdivision; provided, however, no amendment adding to the functions, duties or obligations of the Association shall be effective unless consented to by not less than ninety percent (90%) of the lot owners within the Subdivision.
- 12.9 **Severability.** In the event any one or more of the covenants, conditions, reservations and restrictions contained in this Declaration is declared, for any reason, by a court of competent jurisdiction to be unenforceable or void, all covenants, conditions reservations and restrictions which remain and are not expressly held to be void or unenforceable, shall continue to remain in full force and effect.
- 12.10 **Assessments.** Except for the special assessments levied against defaulting lot owners as set forth elsewhere in this Declaration, all assessments by the Association shall be uniform as to all lots within the Subdivision. It is specifically understood and agreed that the lien in favor of the Association securing said assessments shall constitute a first and prior lien on the property of each lot owner within the Subdivision; provided, however, the lien shall be deemed subordinate to liens associated with first mortgage and/or deed of trust financing, if any, with respect to the subject property.



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Dated this 29th day of October, 2004:

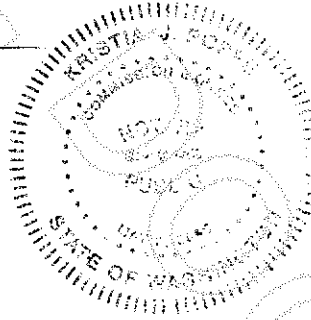
Declarant:

Pamela Johnson
Pamela Johnson

STATE OF WASHINGTON)
COUNTY OF SKAGIT)SS

I, the undersigned, a notary public in and for the State of Washington, hereby certify that on this 27th day of October, 2004, personally appeared before me Pamela Johnson and _____, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Kristina J. Poppe



200410290109
Skagit County Auditor