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## RETURN ADDRESS:

Michael E. Gossler  
Montgomery Purdue Blankinship & Austin PLLC  
701 Fifth Avenue, Suite 5500  
Seattle, WA 98104

**DOCUMENT TITLE(S)** (or transactions contained therein):

Declaration and Covenants, Conditions, Restrictions, Easements and Reservations for Windsong Ranch Estates.

**REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:**

n/a

**GRANTOR(S)**

Aloha Lumber Corporation.

**GRANTEE(S)**

Windsong Ranch Estates Homeowners Association.

**LEGAL DESCRIPTION** (abbreviated: i.e., lot, block, Subdivision or section, township, range)

All of the Real Property within the Aloha Lumber Long CaRD PL05-0457 Subdivision, as per Plat recorded Under AF# 200804090088,  
Records of Skagit County.

**DECLARATION AND COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS AND RESERVATIONS FOR  
WINDSONG RANCH ESTATES**

THIS DECLARATION AND COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RESERVATIONS FOR WINDSONG RANCH ESTATES (the "Declaration") is made by Aloha Lumber Corporation, a Washington corporation ("Declarant").

**RECITALS**

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

The Property is subdivided as shown in the Aloha Lumber Long CaRD PL05-0457, recorded under AF # \_\_\_\_\_ Records of Skagit County, Washington (the "Subdivision").

Declarant wishes to subject the Property to this Declaration.

NOW, THEREFORE, Declarant declares that the Property, subject to all restrictions and easements of the Subdivision, 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. 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 Windsong Ranch Estates 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 and

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the Pasture and Barn Lease Area, including roadways, walkways, parking areas, parks, open space buffer and landscape areas shown on the Subdivision which will be conveyed by Declarant to the Association and held for the common use and enjoyment of the members of the Association.

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 Aloha Lumber Corporation, a Washington corporation, or such successor or assign (including a Participating Builder) as Declarant may designate by a writing recorded in the records of the Auditor of Skagit County.

1.1.6 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, and Reservations for Windsong Ranch Estates, 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 "Lot" shall mean any of the cluster of 11 residential lots, each approximately one acre in size, created by the Subdivision and designated therein as lots 2 to 12, and one additional lot containing an existing residence designated therein as Lot 1.

1.1.9 "Existing Residence Lot" shall mean the lot containing an existing single family residence designated as Lot 1 of the Subdivision.

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.

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

1.1.15 "Subdivision" shall mean the recorded Subdivision of Windsong Ranch Estates and any amendments, corrections or addenda thereto subsequently recorded.

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

1.1.17 "Retail Purchaser" shall mean a Person who acquires a Lot for the purpose of constructing their own residence or who acquires from a Participating Builder a Lot improved with a residence.

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

1.1.19 "Transition Date" shall be as defined in Section 4.9.

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 interchangeably.

Section 1.3 Exhibits. The following are exhibits to this Declaration:

**Exhibit A** - Legal Description of the Property

**Exhibit B** - Pasture and Barn Area Lease

## ARTICLE 2. COMMON AREAS AND EASEMENTS.

Section 2.1 Conveyance to Association. Declarant hereby grants and conveys the Common Areas to the Association.

Section 2.2 Use. Except for the approximately thirteen (13) acre pasture and barn located adjacent to the Existing Residence Lot and described in the Pasture and Barn Area Lease attached hereto as **Exhibit B** (the "Pasture and Barn Area"), each Owner shall have the right to use the common areas ("Common Areas") in common with all other Owners subject to the limitations and restrictions on said use as imposed by the OS-PA and OS-NRL designations for said portions of the Common Areas as set forth in the Deed of Natural Resource Land Easement recorded pursuant to section 6.5 of this Declaration. 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,

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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 the Subdivision, this Declaration, the Bylaws, and the rules and regulations of the Association. The Owner of the Existing Residence Lot shall have the sole and exclusive right to use the Pasture and Barn Area, subject to the terms and conditions of the Pasture and Barn Area Lease attached hereto as **Exhibit B**. If the Owner of the Existing Residence Lot at any time declines to sign or renew the Pasture and Barn Area Lease, the right to use the Pasture and Barn Area shall revert to the Association and may be used or leased as determined by the Board.

Section 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 67% of the Owners and compliance with any restrictions on the face of the Subdivision, 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.

Section 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 and in conformance with all provisions of the Subdivision and applicable law.

Section 2.5 Private Road Easement. Declarant hereby creates and reserves an easement for ingress, egress and utility purposes to Lots 1 to 12 over that portion of the Property accessed by a private road tentatively noted as Windson Lane on the Subdivision and in accordance with all such specifications (the "Road Easement"). The Owners of Lots 1-12 shall share equally in the costs of maintaining, repairing and replacing the Road Easement in accordance with a budget to be adopted pursuant to Section 7.1. However, if damage or destruction to the Road Easement arises from the actions or negligence of a particular Lot Owner or their guests, agents or invitees, it shall be the sole responsibility and cost of said Lot Owner to repair the damage or destruction, in timely manner, upon written request of the other Lot Owners using the driveway. Any dispute between the Lot Owners with respect to allocation of the costs of maintenance, repair and replacement work of the Road Easement shall be submitted to the Board, whose decision shall be binding upon the Lot Owners. Any Lot Owner may submit any such dispute to the Board if the Lot Owners have unsuccessfully attempted to resolve their differences for a period of at least 20 days. No Lot Owner shall obstruct or interfere with the use of the Road Easement by any other Lot Owner, their guests, agents or invitees.

### 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 a uniformity of use and quality of workmanship, materials, design, maintenance and location of Structures with respect to topography and finish

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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.

Section 3.2 Submission and Approval of Plans.

3.2.1 Construction; Board Approval. 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 Board in its capacity as the Architectural Control Committee. The Board's approval of any Plans 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, 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 of Plans. At least 45 days before commencing Construction of any Structure on any Lot, the Owner shall submit to the Board two complete sets of detailed building, construction, surface water run-off control 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").

3.2.3 Approval. The Board may withhold its approval by reason of its reasonable determination that any proposed Structure fails to conform with the requirements of subsections 3.2.5 and 3.2.6 below. The Board's approval or disapproval of Plans shall be made within 45 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.

3.2.4 Residential Use. All lots within the Property shall be used only for private single-family residential purposes.

3.2.5 Size; Outbuildings. Each residence may include outbuildings of a type associated with private single family residential property such as a private garage (attached or detached) and a barn or shelter suitable for up to two horses. All houses shall have a living area, excluding the garage or carport, with a floor area of not less than 1800 square feet for the ground floor. Structures on Lots 7 through 12 shall be restricted to a maximum height of twenty (20) feet from its first floor finished grade elevation or original ground elevation, whichever is lower.

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3.2.6 Permanent Foundations; Materials. All houses shall be built on a permanent foundation, which shall be constructed of solid masonry or concrete at the exterior wall line and shall be affixed to the land and to the structure in such a manner that the structure may not be readily moved. All houses shall be constructed with a wood, stucco, fiber cement siding (e.g., Hardie plank or board) or brick exterior. The term "residence" expressly excludes mobile homes, trailer homes and other moveable structures used or designed for use as a residence or sleeping quarters.

Section 3.3 Completion of Construction; Maintenance during Construction. Any Structure erected or placed on any Lot shall be completed as to external appearance within ten months from the date Construction is started, however, with good cause shown, the Board may extend this term. All Lots shall be maintained in a neat and orderly condition during Construction. After the clearing of any vegetation for construction, the debris from the clearing operation shall be promptly removed from the Lot and disposed of off site. In no case shall any vegetation cleared from one Lot be deposited on an adjacent Lot or on any Common Areas. Erosion prevention shall be practiced at all times during Construction and disturbed slopes shall be promptly repaired, hydro-seeded and/or netted as needed based on weather conditions and season. During Construction, periodic efforts shall be made by the Owner to pick up scrap materials and other construction debris and to periodically dispose of said materials off site. No dumping of any such debris or refuse shall be allowed on adjoining Lots or on any Common Areas. Upon completion of Construction on any Lot and prior to occupancy, the Owner shall be responsible for keeping the improvements clean and neat including but not limited to regular landscape maintenance, watering, trimming and upkeep to present a finished, manicured appearance from the adjacent right-of-way. In the event that the Owner fails to so maintain the Lot and fails to cure the defect within three (3) days after written notice, the Board may, by resolution adopted by seventy-five percent (75%) of the total Board membership, engage a third party to dispose of the materials and assess such disposal as a charge against the Lot.

Section 3.4 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, in a rear yard area screened from adjoining lots as approved by the Architectural Control Committee, or in a screened carport as approved by the Architectural Control Committee.

Section 3.5 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.

Section 3.6 Animals. Except for a maximum of two horses per Lot, and except for the Pasture and Barn Area, no livestock, poultry, reptiles, pigs or other non-domestic animals shall be kept on any Lot. All animal enclosures must be kept in a clean, neat and odor-free

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condition at all times. Notwithstanding anything set forth herein all Owners shall comply with all applicable governmental laws, codes, ordinances, and relations pertaining to animals.

Section 3.7 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.

Section 3.8 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.

Section 3.9 Offensive Activity. Unless otherwise approved by the Board, 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 children residing on that Lot and not more than four non-domiciliary children, provided that there shall be no external signage 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. Board approval shall not be required for a "home office" located in a Structure on a Lot so long as there is no external signage of such activity, use of the "home office" is limited to persons residing on the Lot, and there is no increased vehicular traffic to and from the Lot as a result of such activity.

Section 3.10 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.

#### ARTICLE 4. WINDSONG RANCH ESTATES HOMEOWNERS ASSOCIATION.

Section 4.1 Form of Association. The Owners of Lots within the Property shall constitute the members of Windsong Ranch Estates Homeowners Association, a Washington nonprofit corporation to be 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.

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Section 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 Windsong Ranch Estates Homeowners Association and shall serve until the Transition Date. Except, however, so long as Declarant owns any Lot within the Subdivision, the initial Board shall continue to function in its capacity as the Architectural Control Committee, as more particularly set forth in Article 3. At such time as the last Lot owned by Declarant is sold to a Retail Purchaser, 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, 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 as Directors pursuant to this Declaration. 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.

Section 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. Ownership of a Lot shall be the sole qualification for membership in the Association. Membership shall be appurtenant to and may not be separate from Ownership of any Lot, 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 persons constituting the new Owners.

Section 4.4 Voting Rights. The Association shall have two (2) classes of voting membership:

Class A: Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) 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. Except with respect to contract purchasers, when more than one person holds an interest in any Lot, all such persons shall be members.

Class B: Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership effective on the Transition Date.



**Section 4.5 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. Unless otherwise expressly provided in this Declaration, a quorum is present throughout any meeting of the Association if the Owners to which thirty-four percent (34%) of the votes of the Association are allocated are present in person or by proxy at the beginning of the meeting.

**Section 4.6 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 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 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.

**Section 4.7 Annual and Special Meetings.** Within one year following recording of the final Subdivision, on a date selected by the Board, there shall be a meeting of the members of the Association and thereafter there shall be an annual meeting of the members of the Association in the first quarter of each fiscal year at such reasonable place and time as may be designated by written notice from the Board delivered to the Owners not less than 14 nor more than 60 days in advance of the meeting. At the first such meeting after the Transition Date, and at each annual meeting thereafter, the Owners shall elect by majority vote individuals to serve as Directors until a successor is elected at the next annual meeting. Until the Transition Date, the directors appointed by the Declarant shall serve as the Directors. Except as otherwise provided in Section 4.4 of this Declaration, each Lot shall be entitled to one vote for each Director and the voting for Directors shall be non-cumulative. The financial statement for the preceding fiscal year (if any) and the budget the Board has adopted for the pending fiscal year shall be presented at the annual meeting for ratification by the members, as more specifically provided in Section 7.1. Special meetings of the members of the Association may be called at any time upon not less than 14 days prior written notice to all Owners, for the purpose of considering matters which require the approval of all or some of the Owners, or for any other reasonable purpose. Any First



Mortgagee of a Lot may attend or designate a representative to attend the meetings of the Association.

Section 4.8 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 Owners, Mortgagees, and the agents or attorneys of either of them, during normal business hours and at any other reasonable time or times.

Section 4.9 Transition Date. The "Transition Date" shall be the date control of the Board passes from the initial Board 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 60th 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 a Participating Builder shall not be deemed transferred for purposes of determining the Transition Date until the Lot is further transferred by the 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  
Windsong Ranch Estates Homeowners Association  
c/o Aloha Lumber Corporation  
10260 S.W. Greenburg Road, Suite 1150  
Portland, OR 97233

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 Skagit County, Washington which (i) refers to this Declaration and this Article 5 and (ii) sets forth the Board's new address.

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## 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 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.

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 judgment against the other party for its reasonable expenses, court costs, and attorneys' fees in the amount awarded by the Court.

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 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 and other landscaping, including street trees, within the public right of way inside the Subdivision. The goods and services shall include (by way of illustration and not limitation) utility services for the Common Areas; 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 Maintenance of Storm Water Detention Facilities and Open Space by Declarant. Declarant shall be responsible for maintenance of all open space, trails, wetlands and storm water and drainage conveyance systems on the Common Areas in accordance with the maintenance plan set forth in the Windsong Ranch – Operation & Maintenance Manual for the Storm Water Collection System and Detention Systems recorded under Skagit County Recording No. 200804090088 which is incorporated herein by this reference. The costs incurred by Declarant in performing said maintenance shall be included in the annual budget to be adopted pursuant to Section 7.1 and paid for from annual assessments imposed thereunder.

Section 6.5 Natural Resource Land Easement. As condition of approval of the Subdivision by Skagit County, Declarant included on the face of the Subdivision (recorded as

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Aloha Lumber Long CaRD PL05-0457, under AF # 200 80409 00 83 Records of Skagit County, Washington), a Deed of Natural Resource Land Easement recorded under Skagit County Recording No 200 804090086 the terms of which are incorporated herein.

**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 after formation of the Association, 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 in accordance with Section 6.4 during the ensuing fiscal year, and the maintenance of the private road easement pursuant to Section 2.5, and shall mail a summary of the budget to all of the Owners. Within thirty days after adoption by the Board, the Board shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the Owners of a majority of the votes in the Association or any larger percentage specified in the Articles or Bylaws reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. 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 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 and provision of other goods and services described in Section 6.3, including without limitation the amount of all taxes and assessments levied against, and the cost of liability and other insurance on, the Common Areas; the cost of utilities and other services; and the cost of funding all reserves established by the Board, including, when appropriate, a general operating reserve and a reserve for replacements.

**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

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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 Initial Contribution, Annual Assessments. The first Retail Purchaser of each Lot, at the time of purchase of his/her Lot, shall make a start-up contribution to the Association in the amount of \$300 (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 be \$250 per year and shall be prorated for any partial year at the time of purchase of the Lot. The annual assessments, unlike the start-up fee, shall be payable by Participating Builders as well as the other Lot Owners. 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 Subdivision.

Section 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 any Structures or other improvements upon the Common Area, the private road easement, 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 meeting duly called for such purpose; provided, however, that where the special assessment is a result of or arises from the imposition of governmental requirements, a court order or any other requirements outside the control of the Association or the Board, then approval of the members shall not be required prior to imposition of the special assessment.

#### 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

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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 in 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 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.

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 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 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 8.6 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.

#### 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, based upon the number of Lots then within the Property, 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 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.

**ARTICLE 14. AMENDMENTS OF DECLARATION, ARTICLES OR BYLAWS.**

After the Transition Date, any Lot Owner may propose amendments to this Declaration, the Articles, or the Bylaws 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 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 67% of all Lot Owners. Once an amendment has been adopted by the Association, the amendment will become effective when: (i) a certificate of the amendment, executed by a member of the Board, has been recorded in the real property Records of Skagit County, Washington, with respect to an amendment of this Declaration, (ii) an amendment, executed by a member of the Board, has been filed with the Secretary of State's office with respect to an amendment of the Articles, and (iii) an amendment, executed by a member of the Board, has been filed in the records of the Association with respect to an amendment of the Bylaws.

**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 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 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.**

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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 ("FMC") 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 or, if such amendment is necessary, in Declarant's sole opinion, for the efficient functioning of the Association, the Property, or the Subdivision, or to add to the Property under Article 15.

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 17 shall exist until the last Lot owned by Declarant is sold to a Retail Purchaser.

#### 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 Declaration shall be effective upon recording.

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ARTICLE 21. 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 or delegate all or any of its rights, duties, and obligations created under this Declaration.

ALOHA LUMBER CORPORATION,  
a Washington Corporation

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

Ewan W. Rose, Vice President

STATE OF OREGON )

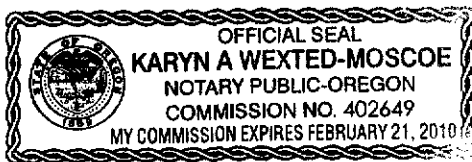
) ss.

COUNTY OF WASHINGTON )

On this day personally appeared before me Ewan W. Rose, to me known to be the Vice President of Aloha Lumber Corporation, the company who executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

GIVEN under my hand and official seal this 11<sup>th</sup> day of February, 2008.

Karyn A. Wexted-Moscoe  
(Signature)



Karyn A. Wexted-Moscoe  
(Print Name)  
Notary Public in and for the State of Oregon  
Oregon, residing at Sherwood, OR  
My commission expires February 21, 2010



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## Exhibit A

### Legal Description of the Property

All of the Real Property within the Subdivision of Windsong Estates, as per Subdivision recorded under AF# 200804090083 Records of Skagit County.



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## Exhibit B

### Pasture and Barn Area Lease

This Lease Agreement, dated \_\_\_\_\_, \_\_\_\_\_, is between \_\_\_\_\_ ("Landlord"), and \_\_\_\_\_ ("Tenant"). Landlord leases to Tenant the approximately thirteen (13) acre pasture and barn located adjacent to Tenant's property at Pinelli Road, Sedro-Woolley, WA 98284 and legally described on Exhibit A ("Premises"), upon the terms and conditions provided in this Lease.

1. **TERM.** The Premises are leased for a term of One (1) year commencing on the date of this Lease. The Lease shall automatically renew on an annual basis unless Tenant provide written notice of termination on or before thirty (30) days prior to the end of the then-existing term or unless the Lease is otherwise terminated as provided herein.

2. **ADJACENT PROPERTY.** Tenant owns property commonly known as 7773 Pinelli Road, Sedro-Woolley, WA 98284 which is directly adjacent to the Premises (the "Adjacent Property"). Tenant acknowledges that its use of the Premises is ancillary to its ownership and occupancy of the Adjacent Property.

3. **RENT.** Tenant shall pay rent in advance to Landlord on or before the first day of each annual One year term in the amount of One Hundred Dollars (\$100.00).

4. **TENANT'S OBLIGATIONS.** Tenant shall:

4.1. Maintain the Premises as a pasture and related horse and livestock uses, manage the pasture such that it is not overgrazed or otherwise overused, and comply with all applicable laws and regulations to continue classification of the Premises as open space property;

4.2. Maintain adequate fencing in and around the Premises to safely contain horses and livestock;

4.3. Manage and maintain the barn and other outbuildings in their existing condition or better;

4.4. Refrain from using or permitting the use of the Premises or any portion thereof as living quarters, sleeping quarters or for lodging purposes;

4.5. Not permit a nuisance or common waste; and

4.6. Comply with applicable laws regulating the use and occupancy of the Premises.

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5. **ALTERATIONS; IMPROVEMENTS.** Other than as specifically provided in Tenant's Obligations set forth above, Tenant shall not make any improvements to the Premises or alterations to existing improvements without Landlord's prior written approval.

6. **TAXES; ASSESSMENTS.** Tenant shall pay or cause to be paid all real and personal property taxes, general and special assessments, and other charges of every description levied on or assessed against the Premises, improvements located on the Premises, personal property located on or in the land or improvements, the leasehold estate, coming due during the Term of this Lease. Tenant shall make all such payments to the Landlord within ten (10) days of notice from Landlord of the amount due.

7. **INDEMNIFICATION; INSURANCE.**

7.1. Indemnification. Tenant shall indemnify, defend, and hold Landlord harmless from any suit or claim for damage or injury sustained on the Premises or arising out of Tenant's use of the premises during the term of this Lease.

7.2. Liability Insurance. During the Lease term, Tenant shall pay for and maintain liability insurance on the Premises. This policy shall name Landlord as an additional insured, and shall insure Tenant's activities and those of Tenant's employees, officers, contractors, licensees, agents, servants, employees, guests, invitees or visitors with respect to the Premises against loss, damage or liability for personal injury or death or loss or damage to property with a combined single limit of not less than \$1,000,000, and a deductible of not more than \$5,000. The insurance will be noncontributory with any liability insurance carried by Landlord.

7.3. Tenant is advised to obtain insurance for Tenant's possessions and protection. Loss of any personal property in or near the Premises or storage shall be at the Tenant's sole risk. Tenant agrees neither Landlord nor Landlord's agent shall be liable for any loss or damage sustained by action of any third party, fire, water, theft or any other cause. Neither shall the Landlord be liable for any injury to Tenant, Tenant's family, guests, employees or any person entering the Premises, building or property of which the Premises is a part.

8. **SUBLET/OCCUPANCY.** Tenant shall not sublet the Premises nor assign this Lease or any part thereof without Landlord's prior written consent which may be withheld in Landlord's sole discretion.

9. **REMEDIES UPON DEFAULT.** If Tenant defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Landlord may give Tenant notice of such default and if Tenant does not cure any such default within three (3) days after the giving of such notice (or if such other default is of such a nature that it cannot be completely cured within such period, if Tenant does not commence such curing within such three (3) days and thereafter proceed with reasonable diligence and in

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good fair to cure such default), then Landlord may terminate this Lease on not less than three (3) days' notice to Tenant. On the date specified in such notice the term of this Lease shall terminate, and Tenant shall then quit and surrender the Premises to Landlord, without extinguishing Tenant's liability. If this Lease shall have been so terminated by Landlord, Landlord may at any time thereafter resume possession of the Premises by any lawful means and remove Tenant its effects. No failure to enforce any term shall be deemed a waiver.

**10. SURRENDER OF PREMISES.** Upon termination of this Lease, Tenant shall return any keys to the Premises and shall surrender possession of the Premises to Landlord.

**11. ACCESS.** Landlord reserves the right of access to the Premises (which shall be at reasonable times except in cases of emergency or abandonment and upon such notice as may be required by law) for the purpose of inspecting the Premises.

**12. NON-WAIVER.** Failure by Landlord to take action or declare a default as a result of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of that term, covenant, or condition, or of any subsequent breach of any term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of that preceding breach at the time of acceptance of the rent.

**13. NOTICES.** Any notices required or desired to be given under this Lease shall be in writing and either personally handed to the other party, transmitted by certified mail to the addresses below, or by facsimile.

**To Tenant:**

**To Landlord:**

**TENANT:**

**LANDLORD:**



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**Tenant Acknowledgement**

STATE OF WASHINGTON )

) ss.

COUNTY OF \_\_\_\_\_)

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes stated therein.

Dated \_\_\_\_\_.

Name: \_\_\_\_\_

NOTARY PUBLIC, State of Washington

My appointment expires \_\_\_\_\_

**Landlord Acknowledgement**

STATE OF WASHINGTON )

) ss.

COUNTY OF \_\_\_\_\_)

I certify that I know or have satisfactory evidence that (Name of Person) 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 (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed) to be the free and voluntary act of such party for the uses and purposes stated therein.

Dated \_\_\_\_\_.

Name: \_\_\_\_\_

NOTARY PUBLIC, State of Washington

My appointment expires \_\_\_\_\_



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**Exhibit A**  
**Legal Description**



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