

Filed for and Recorded at Request of:

Kamm Creek Partners, LLC  
1841 Front Street, Suite A  
Lynden WA 98264

Grantor: Kamm Creek Partners, LLC  
Grantee: The Public  
Abbreviated Legal: Lots 1 - 40, Kamm Creek Planned Residential Development  
Full legal descriptions on Exhibit A, page 15.  
Tax Parcel Number: 4003152481650000/128322 and 4003151831630000/128292

**DECLARATION OF COVENANTS, CONDITIONS,  
RESERVATIONS AND RESTRICTIONS OF  
KAMM CREEK PLANNED RESIDENTIAL DEVELOPMENT**

This Declaration is made by Kamm Creek Partners, LLC (the Declarant), with reference to the following facts and conditions:

**RECITALS**

**A.** The Declarant is the owner in fee simple of the real property located in Whatcom County, Washington, described on Exhibit A, which is attached and fully incorporated by reference.

**B.** The Declarant has received preliminary approval to develop the real property described on Exhibit A as a forty (40) lot planned residential development (PRD). The real property described on Exhibit A and subject to these covenants shall be referred to in this Declaration as the "Kamm Creek PRD" and/or as the "PRD." The recorded final plat maps depicting and dedicating the PRD and all rights-of-way will be referred to herein as the "Plat."

**C.** The Declarant intends for all lots located within the PRD to be subject to the benefits and burdens of this Declaration, and wishes to provide the means to enforce the rights, reservations, easements, liens and charges provided in this Declaration to provide for necessary maintenance and enhancement of the PRD and to provide for the formation of a Homeowner Association in the form of a non-profit corporation which includes as its members those persons who purchase any Lot within the PRD.

## DECLARATION

The Declarant hereby certifies and declares that the following covenants, conditions, reservations and restrictions shall inure and be binding upon the respective Owners of each lot or parcel within the PRD, and the Declarant further declares that all of the real property within the legal described on Exhibit A is held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, reservations and restrictions for the purpose of enhancing and protecting the value, desirability and attractiveness of the PRD and every part thereof. All of the following covenants, conditions, reservations and restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the PRD or any part thereof.

### 1. LAND CLASSIFICATION AND DEFINITIONS

The following words and classifications of land shall have the following meanings under this Declaration:

- 1.1 **Lot or Lots.** All lots within the PRD, individually or collectively, as set forth on the face of the Plat, that are designated for the location and construction of a single-family residence.
- 1.2 **Parcel.** Any parcel of real property within the boundaries of the PRD and real property dedicated to the City of Lynden, Washington.
- 1.3 **Person.** Any individual, firm, corporation, partnership, association, unincorporated association, or other legal entity.
- 1.4 **Owner.** Any person holding either fee title or a vendee's interest under a Deed and/or Real Estate Contract for a Lot as shown by the records of the Auditor of Whatcom County, Washington, or otherwise holding a beneficial ownership interest in a Lot.
- 1.5 **Declarant.** Declarant is Kamm Creek Partners, LLC, a Washington limited liability company.
- 1.6 **Common Properties.** Common properties are the following:
  - (a) **All Roadways/Streets** within the boundaries of the PRD, which are private streets, are delineated on the face of the Plat, and which will be known as Steelhead Way, Trout Way, and Street C.
  - (b) **The Pedestrian Paths/Trails**, including the portion running along the easterly boundary of the PRD parallel to Northwood Road, as well as the portions located south of Lots 11 through 17, and extending westward south of Lots 18 through 23, and separating Lot 23 from Lot 24, as shown

on the face of the Plat. Future trails/paths may be created as provided in Section 2.1(d) below.

- (c) **Open Space Tract(s)** in the westerly and southerly portions of the PRD as well as the northeast and southeast corners of the PUD, as identified on the face of the Plat.
- (d) **Stormwater Facilities** located within the street rights-of-way and other portions and areas of the Common Properties, as identified on the face of the Plat.

**1.7 Plat.** The final recorded plat maps for the Kamm Creek PRD, as filed under Whatcom County Auditor's File No. \_\_\_\_\_.

**1.8 Assessable Property.** Each of the individual Lots as defined in Section 1.1 above.

**1.9 Improvements.** Improvements shall mean and include, without limitation, any buildings, out-buildings, private streets and roads, driveways, parking areas, fencing, retaining walls, swimming pools, screening, walls, ornamentation, signs, stairs, decks, hedges, pedestrian trails, wind breaks, plantings, planted trees, shrubs, poles, lighting, utilities, hot tubs and any other structure or landscaping.

**1.10 Resident.**

- (a) Each person lawfully residing on or in any part of any Lot; and
- (b) Members of the immediate family of each such person actually living in the same household with such person.

**1.11 Board.** The Board of Directors of the Association.

**1.12 Association.** The community association of all Lot Owners, as more fully described in Section 6 hereof, which is being created concurrent with the execution hereof in the form of a Washington nonprofit corporation and which will be known as "Kamm Creek Homeowner Association."

**1.13 PRD.** The "PRD" shall refer to the real property referenced in the Recitals of this Declaration and legally described on Exhibit A, as well as the residential development being developed on said real property.

**1.14 Declaration.** This Declaration of Covenants, Conditions, Reservations, and Restrictions for the Kamm Creek PRD.

## **2. RESERVATIONS AND EASEMENTS**

**2.1 Creation of Easements.** Separate easements for access, drainage, sewers, water pipes and utilities, facilities and services (including, but not limited to, water supply, electricity, gas, telephone and television) are hereby granted, reserved, covenanted and created over, under,

upon, in and through all roadways and walkways, and over, under, upon, in and through those certain portions of Lots or other areas which are necessary for existing facilities and equipment serving the PRD, together with the right to enter upon such easements for their installation and repair, as identified on the face of the Plat. The easements created hereby include, without limitation, the following:

- a. The Steelhead Way Easement, which is that easement for ingress, egress, and utilities \_\_\_\_\_ feet in width as described and delineated on the face of the recorded Plat, and which benefits all Lots and property within the PRD, and which provides for a private street \_\_\_\_\_ feet in width [and sidewalk(s) \_\_\_\_\_]. This easement does not benefit the general public.
- b. The Trout Way Easement, which is that easement for ingress, egress, and utilities \_\_\_\_\_ feet in width as described and delineated on the face of the recorded Plat, and which benefits all Lots and property within the PRD, and which provides for a private street \_\_\_\_\_ feet in width [and sidewalk(s) \_\_\_\_\_].
- c. The Street C Easement, which is that easement for ingress, egress, and utilities \_\_\_\_\_ feet in width as described and delineated on the face of the recorded Plat, and which benefits all Lots and property within the PRD, and which provides for a private street \_\_\_\_\_ feet in width [and sidewalk(s) \_\_\_\_\_].
- d. The Pedestrian Trail/Path Easement, which is that easement for pedestrian-only access \_\_\_\_\_ feet in width as described in Section 1.6(b) above and delineated on the face of the recorded Plat. This easement benefits all the Lots and property within the PRD, but the public shall also have the right of pedestrian-only access over the Pedestrian Trail/Path Easement. This public pedestrian-only easement may be confirmed by a separate easement agreement between Declarant and the City of Lynden, but the public's right of pedestrian access over the trail/path is hereby confirmed and acknowledged even if no separate easement agreement is created. It is also expected that additional trails/paths may be constructed over and within the Open Space Tract(s) to provide future public use connections, including but not limited to connection to the East Lynden Loop Trail. The Association has ownership and control of Open Space Tract(s)/common areas within the PRD for the purpose of constructing such trails and granting further easements for the same, and for any future dedication/conveyance to the public or City of Lynden, in the event the Association's Board determines such dedication/conveyance to be in the best interests of the Association.
- e. Utility Easements in favor of the City of Lynden, as follows:
  - i) Utility Easements for water and/or sewer mains, which easements are twenty (20) and/or thirty (30) feet in width (depending on whether there is more than one public utility installed in such easement) within the private street rights-of-way and as otherwise shown on the face of the Plat.
  - ii) Utility Easements five (5) feet in width around the interior property line of all residential Lots, as shown on the face of the Plat, pursuant to LMC 18.14.075.

**2.2 Private Nature of Streets.**

a. While the Pedestrian Trail/Path Easement may be used by the public (for pedestrian-only use), it is understood and acknowledged that all area within the PRD remains private property, and that the streets within the PRD as further described in Sections 2.1(a), (b), and (c) are private streets and will be posted as such. These private streets and the easements therefor benefit all of the Lots and property within the PRD, as well as the Association, and the Declarant during the period of Declarant Control of the Association.

b. Nothing within the Plat or this Declaration shall be considered a public dedication, and the streets within the PRD shall continue their private nature unless or until a formal public dedication is made. Streets must be brought up to City standards prior to any request for City acceptance. The Association has ownership and control of the private streets for the purpose of granting further easements (as may be necessary and desirable for utility service or other purposes) and for any future dedication/conveyance to the public or City of Lynden, in the event the Association's Board determines such dedication/conveyance to be in the best interests of the Association and upon approval by the City.

c. The easements will be construed to benefit the Owners of the Lots within the PRD, utility providers and contractors performing utility and other work, as well as the Lot Owners' tenants, guests, invitees, and service providers. Use of the private streets by the Owners' guests, tenants, service providers (including delivery persons), and other invitees of such Owners constitutes use by the Owners benefitted by the easements and shall NOT be construed as public use or as any other type of non-permissive use which would give rise to prescriptive rights of access.

**2.3 Conveyance of Common Properties.** The Common Properties shall be conveyed by the Declarant to the Association at such time as determined in the sole discretion of the Declarant, but in any event no later than the date upon which Declarant achieves the sale to Owners of at least eighty percent (80%) of the Lots within the PRD.

**2.4 Reservation of Drainage Easement and The Right to Drain.** The Declarant hereby reserves the right to drain all roadways, walkways, easement ways, and areas over and across any Lot or parcel within the PRD as noted on the face of the Plat, identified herein and/or where water might take a natural course after the grading of such Lot or parcel. The Association shall be responsible for the maintenance and upkeep thereof, including regular cleaning to remove sediments, the replanting of grass and the replacement of rock as necessary to insure the effective operation thereof. All work related to the PRD drainage shall meet the approved stormwater plan and all identified operations and maintenance and comply with the Stormwater Facilities Inspection and Maintenance Agreement described in paragraph 2.5 below.

**2.5 Stormwater Facilities Inspection and Maintenance Agreement.** The entire Plat is subject to the Stormwater Facilities Inspection and Maintenance Agreement which is recorded under Auditor's File No. \_\_\_\_\_. The Declarant shall be responsible for compliance with the Stormwater Agreement during the period of

Declarant control, after which time the Association shall assume responsibility for compliance with the Stormwater Agreement.

**2.6 Easement Restoration.** Any work done within any easement created by this Declaration or by the Plat shall be done in a prompt and workmanlike manner and the property shall be restored as nearly as is reasonably practical to its condition prior to work within the easement.

**2.7 Obligation to Maintain.** The Association shall be obligated to operate, repair, maintain and preserve all of the Common Properties consistent with the purpose of and easement restrictions affecting each parcel. The Association’s maintenance obligations shall include but are not limited to [maintaining stormwater facilities, as well as] maintaining posted signs indicating the private nature of the streets, keeping the streets within the PRD in good repair, removing snow from said private streets and conducting regular cleaning and maintenance of said private streets, using materials and techniques that will not impede the free movement of water through the streets’ pervious/permeable pavement. This includes regularly removing foreign matter from the pavement so as to prevent the void spaces in the pervious/permeable pavement from becoming clogged with dirt, leaves, and other debris. Said shall not be used on the PRD streets to de-ice or provide traction; rather, rock salt or other snow-melt products appropriate for pervious/permeable pavement shall be used to prevent clogging. All operations and maintenance shall be per the approved stormwater report and associated operations and maintenance manual and as outlined in the Stormwater Facilities Inspection and Maintenance Agreement described in paragraph 2.5 above.

**3. GENERAL USE RESTRICTIONS AND REQUIREMENTS**

These general use restrictions and requirements apply to all Lots within the PRD, as defined in Section 1.1 above (without limiting the requirement for all improvements to be pre-approved by the Architectural Review Committee (“ARC”) as provided in Section 5 of this Declaration).

**3.1 Permanent Residential Purposes.** All Lots within the PRD shall be used exclusively for permanent single-family residential purposes. No business or commercial activity (including but not limited to home care facilities, domestic shelters, day care and/or pre-schools) shall be maintained, occur or be allowed on any Lot or Common Properties within the PRD. Only one single-family dwelling is allowed to be constructed and/or maintained on each Lot.

Notwithstanding the foregoing, the PRD also contains Open Space Tract(s) as shown on the face of the Plat and described in Section 1.6 above. The Open Space Tract(s) contain protected wetland and buffer areas which are subject to a Conservation Easement in favor of the Association which is recorded under Auditor’s File No. \_\_\_\_\_ . Use of the wetlands and buffer areas contained within the Open Space Tract(s) is limited to those uses permitted under the Conservation Easement and shall be in accordance with the requirements set forth in the Conservation Easement and the requirements of Lynden Municipal Code 16.16, including but not limited to the requirements for fencing and

signage along the buffer perimeters. Those portions of the Open Space Tract(s) that lie outside the wetland and buffer areas may be used as common/recreational space by the Owners, subject to reasonable rules that may be adopted by the Community Association. The entirety of the Open Space Tract(s) shall be kept in open space in perpetuity, and maintained by the Community Association as provided in Section 6.1(b)(ii) and consistent with the provisions of LMC 19.29 and the provisions of the Conservation Easement.

- 3.2 Recreational Vehicles.** All boats, utility trailers, trucks of more than one-ton rating, campers, recreational vehicles, travel trailers, motor homes and similar items or vehicles maintained or kept upon any Lot within the PRD shall at all times be enclosed within a garage or otherwise neatly stored behind the front wall line of the residence and reasonably screened from view from the street, and any such items or vehicles shall not be parked on any street within the PRD overnight. Out-of-town guests of an Owner may, with such Owner's permission, park a recreational vehicle or travel trailer on Lots for up to a maximum of two (2) weeks per guest visit within any calendar year without being in violation of this section.
- 3.3 Explosives.** No firearms or explosives shall be discharged within the boundaries of the PRD.
- 3.4 Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes. No animal shall be allowed to roam freely within the PRD. No animal shall be allowed to bark or make other noise for excessive periods. No pit bulls, rottweilers or any combination of these breeds of dog shall be allowed within the PRD.
- 3.5 Signs.** No signs or billboards shall be placed on any Lot, except one identification sign bearing the Owner's name and address may be placed upon the Owner's Lot. In addition, the Declarant and any Owner or such Owner's agent, may subsequently advertise any Lot for sale; and furthermore, an Owner may display signs of a political nature, promoting a candidate or a political proposition, during periods of political campaigns.
- 3.6 Garbage/Refuse.** No Owner shall deposit or permit the accumulation of any trash, ashes, garbage, or other refuse or debris on or about such Owner's Lot or any other property within the PRD, except in appropriate covered trash receptacles. Each Owner shall keep such Owner's Lot neat and orderly in appearance and shall not cause or permit any noxious or odorous conditions to exist, nor maintain any tangible objects, which are unsightly in appearance to exist, on any Lot within the PRD.
- 3.7 Vehicles and Parking.**
- a. All automobiles and all other permitted vehicles, if kept or parked on any Lot or otherwise within the PRD, shall be in good order and in working condition. Partially wrecked vehicles, discarded vehicles, unlicensed vehicles or vehicles which are in a state of disrepair shall not be kept on any Lot or street in the PRD, unless enclosed in a garage or otherwise completely screened from view from

outside the Lot. Non-muffled motorcycles, muffled or non-muffled motorbikes, trail bikes, snowmobiles and similar vehicles shall not be operated on any portion of the PRD (and the roads therein) whether licensed or not.

- b. All vehicles within the PRD shall be operated in a safe manner consistent with the rules of the road. Although the streets within the PRD are private rather than public, vehicles within the PRD shall travel at a maximum speed no greater than the City of Lynden speed limit in effect for the immediate surrounding area, and will otherwise operate under the standards imposed by the City's ordinances.
- c. It is recognized that pursuant to the current Lynden Municipal Code, a minimum of two (2) parking spaces are required for each residential unit on each Lot. If an enclosed garage for two (2) or more vehicles is provided, then a minimum of one (1) outside parking space must be provided.<sup>1</sup>
- d. Because the size of the lots within the PRD allows for substantial on-site parking within PRD lots, the City of Lynden approved the PRD's private street plan incorporating street widths of 30 feet with parking on only one side in some portions of the PUD, and street widths of only 24 feet in other portions. No on-street parking is permitted along those portions of street that are 24 feet in width. No parking is permitted adjacent to or within \_\_\_\_\_ feet of any hydrant. Owners must prioritize on-site parking for their own vehicles and that of their guests, so as to minimize use of the PRD's streets for parking purposes, and on-street parking within the PRD must be consistent with the standards imposed by the City's ordinances.
- e. All vehicle parking and operation within the PRD shall be conducted in such a way as to provide unimpeded access for emergency vehicles and personnel.
- f. The Association may adopt additional guidelines for vehicle operation and parking through bylaws or other rules; provided, however, that if the guidelines, bylaws, or rules adopted by the Association are more lenient than City ordinances, the stricter Lynden ordinances shall control.
- g. The provisions of this Section 3.7 shall be considered as an enforceable part of this Declaration regardless of modifications to the Lynden Municipal Code.

**3.8 Antennas.** No television, radio or satellite antenna, receivers, dishes or other telecommunication devices shall be installed on any portion of any Lot unless contained entirely within the interior of a building or in the backyard, reasonably screened from the view of all neighbors *except* that a satellite antenna disc of not more than eighteen (18) inches in diameter shall be allowed. The location of any permitted satellite disc shall be

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<sup>1</sup> Under City of Lynden requirements, a minimum of two outside spaces must be provided in the case of an enclosed single-car garage; however, pursuant to Section 3.20 of this Declaration, homes within the PRD may have no less than a two-car garage.

prior approved by the ARC.

- 3.9 Fences.** Wire and chain link fencing is prohibited. The Lot Owners may install and maintain fencing encompassing the yard of their individual Lot at the time of construction of a new home or any time thereafter as approved by the ARC; provided, however, that no fencing may be installed within three (3) feet of any sidewalk. Fencing of individual Lots shall be consistent in materials, color, and style with the perimeter fencing of the entire PRD, as approved by the ARC, and shall also be subject to the permitting requirements of the City of Lynden. Individual Lot fencing may be no more than six (6) feet in height. There is a 42" height limit on fences from the front yard to the front of the house. A fence permit must be secured from the City of Lynden prior to installation of any fence.
- 3.10 Retaining Walls.** Retaining walls shall not exceed a height of four (4) feet unless they are designed and installed consistent with plans produced by a licensed civil engineer and permitted by the City of Lynden. Retaining walls shall be constructed only of the following materials: stone, heavy timber, concrete with brick, stone or wood facing or concrete with high quality exposed aggregate finish.
- 3.11 Roof Materials.** Roof materials are limited to natural cedar shakes or shingles, concrete or clay tiles, slate or textured thirty-year plus mineral surfaced composition shingles. Materials for roofing and siding of outbuildings shall be consistent in color(s), style and design with that of the house on the Lot on which it is situated. Metal roofs on certain structures will be allowed with the approval of the ARC.
- 3.12 Chimney Design.** Exposed metal chimneys are not permitted.
- 3.13 Clothesline Restrictions.** Clotheslines are only permitted in the backyard of a Lot.
- 3.14 Surface Water Run-Off.** No Lot shall be improved in such a way as to cause excess surface water run-off that may damage or inconvenience other Lots or contiguous properties and the Owners thereof.
- 3.15 Damaged Improvements.** No Improvement which has been partially or totally destroyed by fire, earthquake or any other cause shall be allowed to remain in a state of disrepair for a period in excess of four months from the date of such partial or total destruction. Corrective construction or reconstruction shall be required to commence within such four month period and shall be completed in accordance with the provisions of Section 4.1 hereof; provided, however, that such four month period shall be extended by the ARC upon the written request of the Owner for a reasonable period thereafter in the event that corrective construction or reconstruction has not commenced as a result of factors beyond the control of the subject Owner and in the event that the subject Owner has exercised and does thereafter continue to exercise due diligence in an effort to eliminate such factors causing such delay in commencement.
- 3.16 Landscaping.** Within twelve (12) months after commencement of construction of individual improvements thereon all Lots shall be fully landscaped. All landscaping shall

be subject to approval from the ARC and the View Protection restrictions in section 3.21 herein. If the Owner of the Lot fails to properly maintain landscaping, then the Association may perform the work described in the approved landscaping plan and charge the Owner of the Lot for the cost of such work. The Association may collect this charge pursuant to the authority granted in Section 6.7 of this Declaration.

It is recognized that street trees and planting strips are required as part of the City of Lynden's approval of the PRD, with a minimum of one (1) street tree per lot, and a maximum of fifty (50) feet between each tree; provided, however, that trees shall not be placed so as to block view triangles. These improvements have been planted by the Declarant, but *must* be maintained by the adjoining Lot in accordance with the City of Lynden's engineering design and development standards. If the Owner of any Lot fails to properly maintain the street trees and/or planting strips adjoining said Owner's Lot, then the Association may perform the work and charge the Owner of the Lot for the cost of such work. The Association may collect this charge pursuant to the authority granted in Section 6.7 of this Declaration. No street tree shall be removed without the approval of the City of Lynden.

- 3.17 Setbacks.** All setbacks shall be consistent with setbacks required by the City of Lynden. Building setbacks are measured from the property line to building foundation. Garage door setbacks are measured from the edge of the property line or adjacent access easement to the face of the garage door. At the time of approval, the setbacks applicable to the PRD are as follows: a) a PRD perimeter setback of twenty-five (25) feet (except for Lot 11, where the PRD perimeter setback shall be reduced to seven (7) feet to allow a reasonable building footprint); b) rear setbacks of 20 feet for lots under 7,000 square feet in size, and 30 feet for lots 7,000 square feet in size or larger; c) side setbacks of seven (7) feet; d) front setbacks of fifteen (15) feet; and e) garage door setbacks of 24 feet. f) open sided decks and patios (three sides open) may encroach up to 12 (twelve) feet into the rear yard setback. Notwithstanding the foregoing, the ARC may impose more restrictive setbacks in their design guidelines as determined in their discretion.
- 3.18 House Size.** Each single-family dwelling shall be of permanent construction (no mobile or modular homes are allowed) and must be a minimum of 1,400 square feet, with two-story dwellings having a minimum of 800 square feet on the main floor, exclusive of garage, basement and porches. The maximum square footage of two-story dwellings shall be 5,500 above ground. The maximum square footage of single level dwellings shall be 4,000 above ground. Lot coverage shall not exceed a maximum of forty percent (40%) of the lot size. Location of all buildings shall have prior approval by the ARC in an attempt to preserve views of the surrounding mountain and valley area from all Lots consistent with section 3.21 herein.
- 3.19 Outbuildings.** All outbuildings are subject to the applicable City of Lynden development standards. Size and design of any outbuildings (shops, sheds, or any other structure detached from the residence) must also be approved by the ARC prior to construction and shall be of similar color and design with the residence approved for the Lot. Outbuildings shall only be allowed behind homes (*i.e.* on the opposite side of the home from the road the home faces). Pursuant to Section 3.21 below, the construction of outbuildings shall not block views of the surrounding mountain and valley area from

other Lots. The maximum size of outbuildings is 1,450 square feet, and outbuildings larger than 120 square feet require a building permit from the City of Lynden. Each parcel shall be allowed one outbuilding up to this maximum size and one shed not to exceed 20 by 15 feet. Provided, however, outbuildings may be large enough to accommodate a 14-foot-high door, with a maximum plate height of 16 feet, maximum peak height of 18 feet, and a minimum 5/12 roof pitch. Individual lot owners are allowed up to 1,750 square feet of accessory structures as long as they are below the lot coverage limits.

**3.20 Garages, Curb Cuts, Driveways and Pathways.** All houses shall have no less than a two-car garage. All garages must be a minimum of 400 square feet (2 car) and not more than 750 square feet (3 car). No Lot within the PRD will be allowed to have a driveway or curb cut along Northwood Road. Rather, access to and from all Lots within the PRD will be over and across the internal private streets within the PRD. Driveways must be a minimum of twenty-four (24) feet in length (as specifically allowed by the City of Lynden for this PRD, although the standard minimum is 25 feet). The City of Lynden also requires paved pathways to front doors throughout the PUD, and a vegetated strip (three to four feet in width) to avoid abrupt vertical changes in the sidewalk at each driveway cut. All pavement within the PRD, including not only the private streets and paths but also all driveways and pathways on individual Lots, must be constructed from pervious/permeable material. Each Owner must keep the paved areas within that Owner's individual Lot free of debris and in good repair, using materials and techniques that will not impede the free movement of water through the pavement, consistent with the standards for street maintenance as provided in Section 2.6. The Association may adopt additional bylaws or other rules governing maintenance of paved surfaces.

**3.21 View Protection.** It is the intent of the Declarant and the Association, to maintain views of the surrounding mountain and valley area to the extent reasonable. Accordingly, the location of all improvements on all Lots (including but not limited to houses, outbuildings and landscaping) shall have prior approval by ARC in an attempt to reasonably preserve views of the surrounding mountain and valley area.

No trees or vegetation over 10 feet are allowed, with the exception of trees installed or preserved pursuant to the approved mitigation plan and street trees. Any improvements (including the residence) shall be located in the areas approved by the ARC and shall not exceed 35 feet in height. The height of the improvements shall be certified by an engineer or architect on the plans submitted to the ARC and shall be calculated as follows: The vertical distance from the lowest existing grade at the wall of the building to the highest point of the coping of a flat roof or to the height of the highest gable of a pitch or hip roof. If the actual height of the improvements varies from the height set forth on the plans submitted and approved by the ARC, it shall be that Lot Owner's obligation to correct the improvements so that they meet the height identified in the approved plans.

**3.22 Density/Accessory Dwelling Units.** The currently permitted density shall be achieved with one single-family dwelling on each of the single-family Lots of the PRD. No Lots are eligible to apply for accessory dwelling units (ADU).

- 3.23 **Right to Farm Disclosure.** The PRD (and each of the Lots therein) is within or near designated agriculture lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. You may be subject to inconveniences or discomforts arising from such operations, including but not limited to noise, odors, flies, fumes, dust, smoke, the operation of machinery of any kind during any 24-hour period (including aircraft), the storage and application of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. Whatcom County has determined that the use of real property for agricultural operations is a high priority and favored use and will not consider be a nuisance those inconveniences or discomforts arising from farm operations, if such operations are consistent with commonly accepted good management practices and otherwise comply with local, state, and federal laws.
- 3.24 **Archaeological Discovery.** If archaeological materials (e.g., bone, shell midden, cobble tools, etc.) are observed during site work located within the PRD or any of the Lots located therein, work in the area of the discovery shall cease and the City of Lynden SEPA administrator, Lummi Nation Tribal Historic Preservation Office (360-384-2298) and the Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) as well as Lummi Nation Tribal Historic Preservation Office and the Washington State Office of Archaeology and Historic Preservation shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
- 3.25 **No Offensive Activities.** No Owner, their guests or invitees shall undertake or maintain any activity within the PRD that is obnoxious or offensive and/or constitutes disorderly conduct, disorderly house, and/or a breach of the peace pursuant to Lynden's Municipal Code.
- 3.26 **Areas in Floodplain.** The FEMA designated floodplain and elevation for the Nooksack River are shown on the Plat, and the base flood elevation (BFE) is delineated on the ground. Any development within the floodplain must comply with FEMA regulations and the Floodplain Management provisions set forth in LMC 16.12, approval of such work will be subject to cut and fill analysis, compensatory storage, and a biological assessment. The City of Lynden has mandated that lots that contact or are directly adjacent to the floodplain will require an elevation certificate, to ensure two (2) feet of freeboard above BFE, prior to final occupancy.
- 3.27 **Permitting Requirements; Fire Code; Residential Design Standards.** All improvements within the PRD are subject to the permitting requirements of the City of Lynden, including but not limited to building permits, and will be in full compliance with the Fire Code. In addition to the above standards, and except as otherwise specifically provided in this Declaration, all homes within the PRD will be subject to the Residential Design Standards set forth in LMC 19.22, which include but are not limited to articulations on building elevations that face toward public streets or shared green spaces, exterior finish details, porches and stoops, and the screening of mechanical equipment.

- 3.28 **Critical Areas, buffers and mitigation plantings.** The Declarant shall install mitigation as required by the approved mitigation plan and shall maintain and monitor the mitigation during the period of Declarant control. After the period of Declarant control has ended, the Association is responsible for maintaining and monitoring the mitigation plantings in accordance with the approved mitigation plan.

#### **4. CONSTRUCTION**

- 4.1 **Impact/Mitigation Fees.** Impact and/or mitigation fees for parks, fire, [traffic/transportation?] and/or other impacts may be due at the time of home construction on the Lots, and Owners are advised to check with the City of Lynden regarding those fees.
- 4.2 **Erosion Control.** Provisions shall be made at each construction site as may be reasonably required to control erosion, including use of straw bales, seeding and shielding excavations through the use of material such as ground fabric.
- 4.3 **Construction Equipment.** Lot Owners and their contractors shall take normal precautions to prevent damage to installed roadways, curbs, sidewalks, services and trees and vegetation. Sidewalks and curbs shall be adequately protected during movement and operation of construction vehicles and equipment across them. Owners and their contractors shall be responsible for damage to Common Properties/Improvements caused by their activities.
- 4.4 **Conduct of Work.** The impact of construction activities on other Lot Owners and residents must be kept to a reasonable minimum by treating neighbors in a courteous manner, and by limiting construction activities to the hours between 7:00 a.m. and 6:00 p.m. Construction materials should be neatly stored on site at the end of each construction day. Owners and their contractors shall take all normal steps to keep the streets, and neighboring lots free of trailers, job toilets, construction materials, mud, dirt and construction debris. The construction site and surrounding areas should be regularly monitored for unnecessary construction debris and for drainage and mud slides onto neighboring lots and into storm drains. Construction waste and garbage should be disposed of in a large on-site temporary trash receptacle or removed from the site as required to prevent an unsightly build-up of waste materials, and the street in front of the construction site should be kept broom clean.
- 4.5 **Time For Completion.** Construction of all house improvements shall be prosecuted diligently from the date of commencement of work until the exterior is completed and painted or finished and all sanitation and health requirements have been fulfilled. Furthermore, the maximum time limit for the completion of construction of an improvement shall be nine (9) months from the date construction commences, which is defined as the date building materials are first delivered to the Lot for such purpose. Construction shall not be deemed to be completed until all improvements are finished, the Lot has been cleaned of construction debris consistent with approved plans. In accordance with section 3.16 herein, landscaping must be completed twelve (12) months from the date

construction commences. The Lot Owner shall be responsible for the cost of replacing any survey stakes lost or moved during construction.

## 5. ARCHITECTURAL REVIEW COMMITTEE

- 5.1 **General.** Construction of improvements on any Lot within the PRD shall be subject to the approval of an Architectural Review Committee ("**ARC**"), that shall consist of no less than three members appointed by the Declarant. No improvements shall be erected, placed or altered on any Lots until the construction plan, specification, site plan and landscaping plan, showing the location of all proposed improvements on the Lot in a form established by the ARC, have been approved. The approval or disapproval of the ARC as to such construction plan, specifications, site plan and landscaping plan, shall be based upon the quality of materials utilized in the construction, the harmony of the external design and color scheme of the proposed improvements with other existing improvements within the PRD, bulk and location of improvements with respect to topography and finish grade, reasonable view protection and compliance with the Declaration and the standards to be developed and made available to Owners by the ARC. In addition, the ARC shall have the authority to control the location and orientation of each structure/roof pitch to reasonably protect the views of the surrounding mountain and valley area from other Lots in the PRD. All Lot Owners agree to cooperate in good faith to locate and orient their structures/roof pitch to reasonably protect the views of the surrounding mountain and valley area from the Lots in the PRD. Notwithstanding the foregoing, the ARC cannot guarantee protection of all views of the surrounding mountain and valley area.
- 5.2 **ARC Fee.** In addition to the construction plan, specifications, site plan and landscaping plan, the Owner shall give to the ARC **Two Hundred Dollars (\$200.00)** for each approval requested. A significant change to plans shall be deemed to be a new set of plans and shall require an additional **One Hundred Dollar (\$100.00)** fee. In addition, in the event the ARC implements outside review by a designer or architect the Owner shall be billed for the actual cost of the third-party review. The ARC is not obligated to commence review until the above specified fees have been paid. The fees for ARC review shall be considered an assessment and enforced as set forth in Section 6 below.
- 5.3 **Approval/Disapproval.** The ARC shall approve or disapprove the construction plans, specifications and site plan, including specified color finish, within thirty-five (35) days following receipt of a complete duplicate set thereof from the submitting Lot Owner or prospective Lot Owner. Any complete submission of construction plan, specifications, site plan and landscaping plan on which no action is taken by the ARC for sixty (60) days following the date of receipt thereof shall be deemed approved as submitted, unless within such sixty (60) day period the ARC has sought, in writing, clarifying information concerning the same. Two sets of construction plans, specifications (including exterior color finish detail), site plan and landscaping plan must be submitted to the ARC. One such complete set shall be returned to the submitting Lot Owner or prospective Lot Owner with the approval or disapproval endorsed upon such complete set by the ARC. The other complete set shall be retained by the ARC for its permanent files.

The ARC shall have the right to disapprove any construction plans, specifications and/or site plan in the event the same are not in accordance with the provisions of this Declaration, if the design or exterior color scheme of the proposed improvements is not in harmony with the general surroundings of the PRD or with the adjacent improvements, if the proposed improvements unreasonably interfere with the views of the surrounding mountain and valley area from other Lots in the PRD, if the construction plan, specification, site plan and landscaping plan are incomplete, or if the ARC determines that the construction plans, specifications and site plan, or any portion of them, are contrary to the interest, welfare and/or rights of the Owners of other Lots within the PRD.

**5.4**     **ARC General Guidelines.** The following are general guidelines for approval/disapproval of construction plans, specifications and/or site plans for the PRD.

- Exterior siding of all structures is required to be wood or high-quality wood-appearance fiber cementitious products. Alternative siding material shall only be permitted with ARC approval. No aluminum siding, vinyl siding, or similar siding is permitted. No stucco or dryvit exteriors are permitted.
- All homes shall have a minimum roof pitch of 6/12 and a maximum of 12/12 provided the height does not exceed the height limit or unreasonably interfere with view protection restrictions. Provided, however, outbuildings shall have a minimum 6/12 roof pitch.
- The location and orientation of each house on each Lot shall be approved in a manner to reasonably protect the views of the surrounding mountain and valley area from within the PRD.
- The top of the first floor shall not be less than twelve (12) inches above the road.
- Color schemes shall be muted tones that are consistent with the local community standard, and which blend with the adjacent structures.
- Lots within the floodplain and adjacent lots shall be elevated at least 2 (two) feet above base flood elevation.

**5.5**     **Variance.** In order to preserve the character of the PRD, and/or to resolve problems relating to unique and difficult topographical problems or in other extraordinary circumstances, the ARC shall have the right to grant a variance from the standards created by the ARC and from those restrictions relating to Improvements set forth in Section 3 of this Declaration. Any variance from the restrictions contained in this Declaration shall be made in recordable form and shall be placed of record on the Lot by the ARC.

**5.6**     **Conditional Approval.** Any approval given by the ARC may be conditioned upon compliance by the Owner with any reasonable condition which the ARC deems appropriate, including, without limitation, the posting of bonds or other acceptable security in order to ensure performance by the Owner in accordance with the construction plan, specifications, site plan and landscaping plan being approved.

**5.7**     **No Liability.** Neither the ARC, nor any member thereof nor any successor thereto nor the Declarant, shall be liable to any person for any action taken by the ARC or for any failure

to act by it under or pursuant to the provisions of this Declaration, so long as the ARC, and any successors thereto act in good faith and without malice.

- 5.8**     **Expiration.** The Declarant may remove and replace the ARC at the Declarant's sole discretion. This right to appoint and remove the ARC shall not expire until the Declarant no longer owns any Lots in the PRD and construction plan, specifications, site plan and landscaping plans have been approved for all Lots in the PRD.

**6.**     **COMMUNITY ASSOCIATION**

The Declarant shall form a Community Association, designated herein as the Association, to include as its members all Owners of any Lot within the PRD. This organization shall be a nonprofit corporation pursuant to Title 24 of the Revised Code of Washington and shall be known as "Kamm Creek Homeowner Association" and shall be authorized to enforce the terms and conditions herein.

**6.1**     **Purpose, Powers and Authority.**

- a.     **Purpose.** The purpose of the Association shall include, without limitation, the furtherance and promotion of the common welfare of the Owners of any Lot or Parcel within the PRD.
  
- b.     **Power/Authority to Maintain.** In addition to the powers set forth in RCW 64.90 and as otherwise set forth in this Declaration, the Association shall have full power and authority to use, care for, construct, operate, repair, maintain and preserve the Common Properties within the PRD, including without limitation the following:
  - i.     Maintenance of the private streets within the PRD consistent with the provisions of Section 2.6; maintenance and repair of light standards for the street lighting within the PRD to the extent that the standards deviate from City standards that were in effect at the time of their installation, and maintenance of any portions of private rights-of-way within the PRD that have not yet been developed as streets;
  
  - ii.    Maintenance and preservation of the Open Space Tract(s) in open space, as well as maintenance and preservation of [the stormwater facilities as well as] any landscaping and irrigation systems and pedestrian paths or trails located in the PRD;
  
  - iii.   Operation, maintenance and use of property held or controlled by the Association, including maintenance and repair of facilities within the Common Properties and such other facilities, equipment, activities, objects and purposes pertaining to the welfare, enjoyment, social well-being, protection and benefit of the members and of their Lots within the PRD,

- iv. Compliance with and performance of all obligations under the Conservation Easement granted in favor of the Association and recorded under Auditor's File No. \_\_\_\_\_;
  - v. Payment of taxes, if imposed, on Common Properties and Improvements; and the protection and preservation of the interests of the Lot Owners for the common good.
- c. Power/Authority to Regulate. In addition to the powers set forth in RCW 64.90 and as otherwise set forth in this Declaration, the Association shall have full power and authority to enact rules and regulations (through adoption of bylaws or other rules) regarding activities, objects and purposes pertaining to the welfare, enjoyment, social well-being, protection and benefit of the members and of their Lots within the PRD, as well as the use, care, and operation of the Common Properties within the PRD, and to adopt and impose penalties and sanctions for the violation of said rules. These regulatory powers shall include, but are not limited to:
- i. Regulating the maintenance and use of Common Properties and the facilities thereon;
  - ii. Regulating the operation and parking of vehicles within the PRD consistent with the provisions of Section 3.7, including the authority to enforce requirements for parking, speed limit and other driving/vehicle operation requirements as mandated by the City of Lynden and any other regulations adopted by the Association (provide such regulations are no less restrictive than comparable City requirements);
  - iii. Regulating the use of any portions of dedicated rights-of-way within the PRD that have not yet been developed as streets; and
  - iv. The protection and preservation of the interests of the Lot Owners for the common good.

**6.2** Meetings. All meetings shall be conducted as required by RCW 64.90.450 as hereinafter amended.

**6.3** Creation and Transfer of Control. The Association shall be organized at the instance of the Declarant, and each Lot Owner shall be a member of the Association. The Declarant shall initially designate and appoint a governing Board of the Association. Within sixty (60) days after Declarant has sold twenty-five percent (25%) of the 40 total Lots that may be created within the PRD (i.e., 10 Lots) to parties other than Declarant, at least one member of the Board of Directors (or 25% of the Board, whichever is greater) shall be elected by Lot Owners other than the Declarant. Within sixty (60) days after Declarant has

sold fifty percent (50%) of the Lots (i.e., 20 Lots) to parties other than Declarant, at least one-third (1/3rd) of the members of the Board of Directors shall be elected by Lot Owners other than the Declarant. The period of Declarant control of the Association will end sixty (60) days after Declarant has sold seventy-five percent (75%) of the Lots (i.e., 30 Lots) to parties other than Declarant. Irrespective of the foregoing, the Declarant, at its sole and exclusive option, may elect at any time prior to the sale of all of its Lots within these PRDs to transfer control of the Association to the members thereof.

**6.4** **Required Maintenance.** The Association shall perform all reasonable and necessary maintenance of the following: All of the repairs and maintenance required in Section 2.6 above as well as all repairs and maintenance required for the Common Properties, Easements and the Improvements located thereon as permitted in Section 6.1, including but not limited to compliance with all requirements related to the wetlands and buffers within the Open Space Tract(s), pursuant to Section 3.1 above, Lynden Municipal Code 16.16, and the Conservation Easement. All expenses related thereto shall be paid by the Association. The Association shall be authorized to require reimbursement for all expenses incurred in repairing or restoring the foregoing (apart from maintenance due from ordinary wear and tear) from the party causing the damage the required the repair or restoration.

**6.5** **Assessments and Liens.**

- (a) **Authority.** The Association during the period of Declarant control and at all times thereafter shall be empowered to establish and to collect dues and assessments upon Lots in the PRD for the common benefit of such Lots.
- (b) **Purposes.** The purposes for which dues and assessments may be established and collected include, without limitation, making provision for the payment of charges associated with utilities, road, gate and utility maintenance, the Common Properties identified in Section 1.6, recreational improvements, drainage, property protection, landscaping, insurance, maintenance, improvements, payment of taxes upon Common Properties, the holding of ownership or a leasehold interest therein, for any other common purposes or for collecting fines or recovering money expended on the landscaping of a Lot, all as determined pursuant to the Articles of Incorporation and By-laws of the Association.
- (c) **Personal Obligation and Lien Foreclosure.** Dues and assessments shall constitute a personal obligation of any Owner of record of a Lot on the due date thereof and shall also constitute a lien on the Lot assessed. Such lien may be enforced by the Association in the same form and manner of procedure as foreclosure of real property mortgages under the laws of the State of Washington.
- (d) **Amounts Included.** Each Owner and each party hereinafter owning or claiming an equity interest in a Lot agrees that in the event of any action to collect assessments and/or foreclose a lien securing the same involving such Lot, the Owner or Owners of such affected Lot or other party asserting an equity interest therein will pay the Association's expenses of title examination and insurance, the cost of attorney's fees incurred by the Association and court costs, as well as all other costs reasonably and necessarily incurred in such action, and/or the collection of any passed due assessment (whether or not litigation or foreclosure is instituted to collect such amounts). In any such action, delinquent assessments shall bear

interest at the rate of 12% per annum from the date the same became due until the date of the entry of the judgment of foreclosure thereon.

(e) **Other Liens and Foreclosure Actions.** The method and manner provided for foreclosure of liens set forth in this Section shall pertain to all liens referred to in this Declaration. First mortgage liens placed upon any of the Lots created shall be superior to any and all charges, assessments, and liens thereafter asserted pursuant to this Declaration.

- 6.6 Establishment and Assessment of Charges.** For the purpose of providing funds for uses specified herein the Board of the Association shall, for each year, charge yearly dues against all Lots. The Declarant shall determine the amount of the first-year dues to be paid. Until dues are assessed, the Declarant shall be responsible for payment of expenses of the Association. Each Lot shall be assessed an equal amount for each calendar year for all expenses common to all Lots. Assessments shall be adopted pursuant to the requirements set forth in RCW 64.90.480.
- 6.7 Special Assessment.** The Association may make special assessments against any Lot and Lot Owner for violating the terms of this Declaration, or if such Owner is responsible for damage to the Common Properties.
- 6.8 Annual Statement.** As soon as shall be practical in each calendar year, the Association shall send a written statement to each Owner setting forth the dollar amount of the assessment for such Lot for such calendar year. The Association may, in its sole discretion, provide for payment of such assessments on a periodic basis during such calendar year, with or without a service charge. This requirement shall not apply until the Declarant has elected to assess Lots in the PRD.
- 6.9 Penalty on Delinquent Assessments.** If an Owner shall fail to pay any installment of an annual assessment within thirty (30) days from the date the same is due, then the entire annual assessment for such Lot shall be delinquent and shall become immediately due and payable, shall bear interest at the rate of 12% per annum thereafter until paid and shall also bear a penalty in such amount as shall be determined by the Board of the Association.
- 6.10 Delinquency For More Than Ninety Days.** If the Owner of any assessable Lot shall be delinquent in the payment of the annual assessment, or any installment thereof, for more than ninety (90) days following the date the same is due, then the Association shall have the right to commence legal action seeking a personal judgment against such Owner and, in addition thereto, shall have the right to foreclose its lien upon such Lot. The total amount due from such Owner shall be such sums as provided in Sections 6.5, 6.6, and 6.7, plus any penalty imposed under Section 6.9 hereof.
- 6.11 Rules and Procedures for Billing and Collecting Assessments.** The Board of the Association shall have the power and authority to adopt rules and procedures respecting the billing and collecting of annual assessments, which shall be binding upon all Lot Owners.

- 6.12 Increase in Assessments.** Increase in assessments shall be made pursuant to RCW 64.90.480.
- 6.13 Application of Assessment.** The Association shall apply all funds received by it pursuant to this Declaration in the following order:
- (a) Administrative costs and expenses incurred by the Association in the exercise of its powers, authority and duties described in its Articles of Incorporation and By-Laws.
  - (b) The promotion of the recreation, health, safety, enjoyment and welfare of the users of the Common Properties, and the enhancement of the values of the Common Properties by means of construction, repair, maintenance, operation and administration of the Common Properties, including, but not limited to, the payment of taxes and insurance premiums on the Common Properties.
  - (c) The service, repair, maintenance and/or replacement of any and all Improvements, including, but not limited to landscaping, fences, roads, paths, utilities, drainage facilities, lighting, and all other Improvements whatsoever belonging to the Association.
  - (d) As to monies received on special assessments, to fulfill the purpose of the special assessment.
- 6.14 Authority to Maintain surplus.** The Association shall not be obligated to spend in any particular time period all of the sums collected or received by it during such time period or any other time period. The Association may carry forward, as surplus, any balances remaining. The Association shall not be obligated to apply any such surplus to the reduction of the amount of the annual assessment in any future year.

## **7. PROTECTION OF MORTGAGE OR DEED OF TRUST HOLDER**

No violation or breach of any covenant, condition, reservation or restriction contained in this Declaration, or in any supplement hereto, and no action to enforce the same, shall defeat, render invalid or impair the lien of any mortgage or deed of trust taken in good faith and for value against any title or interest in any Lot which is the subject of an action arising from such violation or breach. A purchaser of any such Lot at a trustee's sale, Sheriff's sale or Tax Foreclosure sale shall take title to such Lot free and clear of any violations or breaches which have occurred on such Lot, or by the previous Owner thereof, prior to such foreclosure, but such purchaser shall nevertheless take subject to this Declaration and to any supplements hereto.

## **8. TENANTS AND INVITEES**

Tenants and Invitees of the Owners or residents of the PRD shall be bound by the terms and conditions of this Declaration, as well as Rules and Regulations adopted by the Board of the Association.

## **9. ENFORCEMENT**

The Association, the Declarant and any Owner shall have the right to enforce, by any proceedings at law or in equity, all covenants, conditions, restrictions, reservations, liens and charges now

or hereafter imposed by this Declaration. The failure of the Association, of the Declarant or of any Owner to enforce any rights hereunder shall not be deemed to constitute a waiver of the right to do so thereafter. The prevailing party in any litigation involving the enforcement of any provision of this Declaration shall be entitled to judgment for the reasonable attorney's fees and costs incurred in such litigation by such prevailing party.

**10. GRANTEE'S ACCEPTANCE**

The grantee of any Lot subject to this Declaration shall, by the acceptance of a deed conveying title thereto or by the execution of any contract for the purchase thereof, whether from Declarant or any subsequent Owner of such Lot, accept such deed or contract upon, and subject to, each and every provision of this Declaration and the provisions contained herein, including the jurisdiction, rights and powers of Declarant, and by such acceptance shall, for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with Declarant and to and with the grantees and subsequent Owners of each of the Lots within the PRD, to keep, observe, comply with and perform all obligations set forth herein.

Each such grantee also agrees, by such acceptance, to assume, as against Declarant, its successors or assigns, all of the risks and hazards of ownership and occupancy attendant to such Lot, including, but not limited to, its proximity to any Common Properties, public paths, streams or other water courses.

**11. AMENDMENT TO DECLARATION**

Each and every provision of this Declaration shall run with and bind the land and shall inure to the benefit of, and be enforced by, the Association, the Declarant, the Owners of any Lots subject hereto, their respective legal representatives, heirs, successors and assigns, for a period of ten (10) years from the date that this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless otherwise terminated or amended as provided herein and consistent with all applicable laws. This Declaration may only be amended by an instrument adopted by the Board and signed by not less than seventy-five (75%) percent of the Owners of all Lots subject to this Declaration. Any such amendment shall take effect upon being recorded with the Whatcom County Auditor.

No Amendment or termination of this Declaration shall affect, change, or terminate any of the following restrictions, obligations, limitations and/or easements without the prior written consent of the City of Lynden:

- Subsections 2.1, 2.3, 2.4, and 2.6;
- The provisions of subsection 3.1 relating to the Open Space Tract(s);
- The provisions of subsection 3.16 relating to street trees and planting strips;
- The provisions of subsection 3.20 relating to access/curb cuts via Northwood Road; and
- Subsection 3.23, 3.24, 3.25, 3.26, and 3.27.
- Subsection 6.4.

**12. SEVERABILITY**

In the event that any provision hereof is deemed by proper judicial decree to be invalid, then the remaining portion of this Declaration shall in no way be affected.

**13. PARAGRAPH HEADINGS**

The paragraph headings in this Declaration are for convenience only and shall not be considered in construing this Declaration.

**14. NO WAIVER**

The failure of any party entitled to enforce any provision hereof to take steps to enforce such provision shall not, in any fashion, operate or be deemed to be a waiver of any such provision or of any other provision hereof.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

Halo Holdings, LLC  
Managing Member of  
Kamm Creek Partners, LLC

By: \_\_\_\_\_  
Jeremy Parriera

Its: \_\_\_\_\_

By: \_\_\_\_\_  
Tim Koetje

Its: \_\_\_\_\_

STATE OF WASHINGTON            }  
  }  
COUNTY OF WHATCOM        }        ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of **Kamm Creek Partners, LLC**, a Washington limited liability company, who acknowledged that he was authorized to execute this document on behalf of the company and acknowledged said instrument to be the free and voluntary act and deed of the company for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first written above.

\_\_\_\_\_  
Notary Public in and for the State of Washington  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## Exhibit A

### Legal Description of the Property

Lots 1 through 40, inclusive, of the Kamm Creek Planned Residential Development, as per the Plat thereof, recorded under Whatcom County Auditor's File No. \_\_\_\_\_ and located within the City of Lynden, Whatcom County, Washington, together with any Open Space Tract(s) within said Planned Residential Development.

Situate in Whatcom County, Washington.

Formerly known by the following metes-and-bounds legal description:

#### **PARCEL 1 (400315 248165 0000/128322):**

THE EAST 5 ACRES OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., EXCEPT NORTHWOOD ROAD ALONG EASTERLY BOUNDARY THEREOF, AND EXCEPT UNDIVIDED ONE HALF (1/2) INTEREST IN OIL, GAS AND MINERAL RIGHTS AS RESERVED UNDER WHATCOM COUNTY AUDITOR FILE NO. 927862.

SITUATE IN WHATCOM COUNTY, WASHIGTON

#### **PARCEL 2 (400315 183163 0000/128292):**

THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., EXCEPT THE EAST 5 ACRES THEREOF, AND EXCEPT UNDIVIDED ONE HALF (1/2) INTEREST IN OIL, GAS AND MINERAL RIGHTS AS RESERVED UNDER WHATCOM COUNTY AUDITOR FILE NO. 927862.

SITUATE IN WHATCOM COUNTY, WASHIGTON