

Return recorded document to:

Weatherby, LLC

Attn: David J. Sprinkle

10515 – 20th Street SE, Suite 100

Everett, Washington 98205



200405260026 25 PGS

05-26-2004 09:38am \$43.00

SNOHOMISH COUNTY, WASHINGTON

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
PLAT OF WEATHERBY**

Reference Nos.: N/A

Grantor: Weatherby, LLC, a Washington limited liability company

Grantee: Weatherby Homeowners' Association, a Washington non-profit corporation

Legal Description: Ptn. NE 1/4, Sec. 19, T.28N., R.7E., WM & Ptn. NW 1/4, Sec. 20, T.28N., R.7E., WM

Tax Parcel Nos: 28-0719-001-001-00

INTRODUCTION

This Declaration of Covenants, Conditions, Restrictions and Reservations for Plat of Weatherby ("Declaration") is made this 30th day of April, 2004 by Weatherby, LLC, a Washington limited liability company, ("Declarant").

WITNESSETH

WHEREAS, Declarant owns certain real property in Snohomish County, State of Washington, known as the Plat of Weatherby (the "Plat" or "Weatherby"), such Plat being recorded in the office of the Snohomish County Recorder, and is desirous of subjecting the real property described in the Plat to the easements, restrictions, covenants and conditions hereinafter set forth, each and all of which is and are for the benefit of said property and for each Owner thereof and shall inure to the benefit of and pass with and bind the successors in interest and any

Owner thereof. These easements, restrictions, covenants and conditions are intended to protect the value and desirability of the aforesaid real property, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

WHEREAS, this Declaration hereby establishes a plan for the private ownership of Lots and the buildings constructed thereon, for the dedication of certain areas to Snohomish County, and for maintenance and management of all the remaining land and related easements, hereafter defined and referred to as the Common Areas. The authority to administer the Common Areas, the easements, covenants, conditions and restrictions herein, and any other documents or instruments affecting Weatherby, shall reside in the Declarant, until such authority is delegated by Declarant to the Weatherby Homeowners' Association ("Association") as set forth in this Declaration. The Association shall be created by Declarant for the purpose of maintaining and administering the Common Areas, administering and enforcing these easements, restrictions, covenants and conditions, and collecting and disbursing the assessments and charges hereinafter created. During the Development Period, as that term is herein defined, the Declarant shall be the sole Member of the Association. At the termination of the Development Period, all the Owners shall immediately become Members of the Association. During the Development Period no Owner other than the Declarant shall be entitled in any way to either be a Member of the Association or to have any right respecting the governance or decision-making of the Association.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, transferred, sold and conveyed subject to the following easements, restrictions, covenants and conditions described in this Declaration. All provisions of this Declaration shall be binding upon all parties having or acquiring any right, title, or interest in Weatherby or any part thereof, and shall inure to the benefit of the Owners thereof and to the benefit of the Association and are intended to be and shall in all respects be regarded as covenants running with the land.

ARTICLE I
Interpretation; Definitions

Section 1.1. Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation, maintenance, construction, appearance and harmony of Weatherby, and providing the Declarant (during the Development Period) and thereafter the Association control and flexibility in managing and controlling activities within Weatherby. Any rules of strict construction or constructing any ambiguities in this Declaration or other documents utilized to implement the Development Plan against the Declarant, or the Association after the Development Period, are not applicable.

Section 1.2. Definitions:

a. "Architectural Control Committee" shall mean and refer to that committee described in Article VI, Section 6.5, below.

b. "Association" shall mean and refer to WEATHERBY HOMEOWNERS' ASSOCIATION, a Washington nonprofit corporation, its successors and assigns.

c. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

d. "Common Areas" shall mean all real property owned, used and/or maintained in common by the Lots, including property designated as Common Area, Common Open Space, Stormwater Detention Facilities and/or Native Growth Protection Area on the Plat. The Common Areas include ownership and maintenance obligations for Tracts 990 through 999 inclusive, as designated on the Plat of Weatherby, and any other obligations of the Association as set forth in the Declaration. Tracts 998 and 990 of the Plat of Weatherby are subject to a 50-foot radius temporary turn around easement that expires upon extension of the public street north, and acceptance and maintenance by Snohomish County or its successors.

Also included in the definition of "Common Areas" for purposes of maintenance and payment for repair and/or operation expenses for said areas, are the Plat entry private lighting system, street lighting, and/or entry monuments on Tracts 990, 994, 995, 997 and 998 and in the area described in that certain Sign and Maintenance Easement dated October 3, 2003 and recorded under Auditor's File No. 200310240450, including but not limited to any water lines for irrigation, power lines, and the pumps and other mechanical components of the waterfall on Tract 995, NGPA/E buffers (except those lying within an Owner's Lot), mailboxes, mailbox shelters, if any, all Common Area landscaping, Common Area irrigation systems, and landscaping, irrigation, lighting and fencing in the public right of ways in the interior portions and frontage of the Plat or within any private easement upon a Lot which may be granted to the Association on the face of the Plat or in a future recorded document, any storm water detention facilities outside of the public right-of-way (including but not limited to any and all detention ponds and associated conveyance systems whether within a tract, Common Areas or Lot).

e. "Contract" shall mean and refer to a real estate contract as defined in RCW Section 61.30.010(1).

f. "Declarant" shall mean and refer to Weatherby, LLC, a Washington limited liability company, its successors and/or assigns if such successors and/or assigns should acquire all or substantially all of the undeveloped portions of Weatherby from the Declarant for the purpose of development (excluding Participating Builders).

g. "Development Period" shall mean and refer to that period of time beginning on recordation of this Declaration and ending at the earlier of (i) 10 years from the date hereof, or (ii) written notice from the Declarant to the Owners of the Association in which the Declarant elects to terminate the Development Period, or (iii) the date that none of the Lots is owned by Declarant.

h. "Development Plan" shall mean the Declarant's intended use and development of the Property, provided however that the Development Plan includes and is subject to any and all regulations imposed by state, federal and local law or as otherwise set forth in the Plat, or conditions imposed as a part of the approval of the Plat.

i. "Governing Documents" shall mean and refer to this Declaration, any Supplementary Declarations, the final Plat as recorded for Weatherby in Snohomish County, the Articles of Incorporation and Bylaws of the Association, rules and regulations of the Association, if any, and rules and procedures of the Architectural Control Committee as any of the foregoing may be amended from time to time.

j. "Lot" or "Lots" shall mean and refer to all parcels of land shown upon the recorded Plat, with the exception of (i) Common Areas, and (ii) any land conveyed or dedicated to Snohomish County.

k. "Mortgage" shall mean any mortgage, deed of trust, or Contract which constitutes a lien against a Lot or Common Area.

l. "Native Growth Protective Area/Easement" (hereinafter "NGPA/E") shall mean the real property designated as a Native Growth Protection Area/Easement on the face of the final Plat.

m. "Occupant" shall mean and refer to a person who is not an Owner, but is actually occupying the dwelling unit on a Lot as such person's residence.

n. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Plat, including the Declarant, Contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

o. "Participating Builder" shall mean and refer to a person or entity that acquires all or a portion of Weatherby from Declarant for the purpose of building a home or homes for resale to any person for use as a single family residence.

p. "Split Level House" shall mean a house having an entryway from which there are stairs up and down, with no rooms (other than the entryway) on the entryway level.

q. "Structure" shall mean any residence, garage, or other building; wall, rockery, fence, deck, arbor, trellis or mailbox standard; driveway, walkway, patio or sport court; swimming pool, hot tub, basketball standard/backboard or recreational/playground apparatus; antenna or satellite dish; or the like.

ARTICLE II
Property Rights

Section 2.1. Owners' Right of Enjoyment. The Common Areas are hereby granted and conveyed to the Association subject to an emergency maintenance easement granted and conveyed to Snohomish County. Every Owner shall have a right and easement of enjoyment, subject to the restriction set forth herein, in the final Plat or applicable laws, in and to the Common Areas by virtue of ownership of a Lot, which shall be the sole qualification for membership in the Association. Maintenance of the Common Areas shall be the responsibility of the Association. Easements and restrictions set forth in the recorded final Plat are incorporated herein and hereby reserved on each Lot. Any interest of an Owner in and/or to the Common Areas shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable assessments of fees for use, maintenance, preservation, insurance and other costs related to the Common Areas.

(b) The right of the Declarant to make use of or occupation of, or utilize for purposes of ingress, egress, utilities and other similar purposes, in the Common Areas for the duration of the Development Period.

(c) The right of the Association to adopt reasonable rules for the use of the Common Areas, and to restrict an Owner's right to make use of the Common Areas for non-payment of assessments authorized herein.

(d) The right of the Declarant, during the Development Period, to grant or convey perpetual easements in, over or upon all or any part of the Common Areas.

(e) The easement rights granted to Snohomish County, as more particularly described in the final Plat.

(f) The easement rights granted to Snohomish County PUD #1 under and upon the exterior 10 feet parallel with and adjoining the street frontage of all Lots, Tracts and Common Areas, as more particularly described in the final Plat.

(g) The temporary turnaround easement shown on Tracts 998 and 999, as more particularly described in the final Plat, which shall automatically expire when the public street is extended north, and accepted and maintained by Snohomish County or its successors.

Section 2.2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, his or her right of enjoyment to the Common Areas and facilities to

the members of his or her family, his or her tenants, or Contract purchasers who reside on the Property. Owners' rights of use of the Common Areas shall be appurtenant to and shall not be separated from the ownership of each Lot and shall not be assigned or conveyed in any way except upon the transfer of title to such Lot and then only to the transferee of such title. The rights to use the Common Areas shall be deemed so transferred and conveyed whether or not it shall be so expressed in the deed or other instrument conveying title.

Section 2.3. Further Subdivision. No further subdivision of any Lot without resubmitting for formal plat procedure is allowed. The sale or lease of less than a whole Lot in the Plat is expressly prohibited except in compliance with Snohomish County Code.

Section 2.4. Maintenance of Common Areas. The Association shall maintain the Common Areas consistent with Snohomish County Code. The use of the Common Areas shall be restricted to those uses specified in the final Plat. The Common Areas shall be maintained and used in compliance with all Snohomish County regulations and conditions specified in the final Plat. All Restricted Open Space shall be protected as open space in perpetuity. Use of the Restricted Open Space is limited to those uses approved for the rural cluster subdivision within the approved Open Space Management Plan for Weatherby, A Rural Cluster Subdivision dated April 2, 2003 and on file with the Snohomish County Department of Planning and Development Services or its successor agency. Uses, facilities and buffering within the Restricted Open Space tracts shall be preserved and maintained as approved and constructed.

ARTICLE III
Association Membership and Voting Rights

Section 3.1. Description and Nature of Association. Declarant shall form the Association prior to or contemporaneous with the recording of this Declaration. The Association shall be a nonprofit corporation organized and existing under the Laws of the State of Washington charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as they may be amended from time to time; provided, however, that no Governing Documents other than this Declaration shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. During the Development Period, Declarant shall be the sole Member of the Association, and no Owner other than Declarant shall have any right to membership in the Association nor shall such Owner have any right respecting the governance or decision-making of the Association. Accordingly, during the Development Period, the Association shall not be deemed a "Homeowners Association" for purposes of RCW 64.38 et seq. Upon the termination of the Development Period, all Owners shall become Members of the Association and the Association shall at that time become a "Homeowners Association" for purposes of RCW 64.38 et seq. At such time, membership in the Association and payment of dues or other assessments for maintenance and other purposes described in this Declaration shall be a requirement of Lot ownership and shall remain appurtenant to and inseparable from each Lot. The Articles of Incorporation of the Association shall provide for its

perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, then each Lot shall immediately succeed to an equal and undivided ownership interest in the Common Areas, as well as the responsibility for their maintenance; provided that Owners of the Lots may provide for a successor corporation, partnership, association or entity to perform such maintenance obligations and allow for the collection of dues to pay the cost of the maintenance. In that event, all of the assets, rights, powers and obligations of the Association existing immediately prior to its dissolution, except the ownership interest in the Common Areas, shall thereupon automatically vest in the successor entity and such vesting shall thereafter be confirmed and evidenced by appropriate conveyances and assignments by the Association pursuant to and in accordance with the Washington State Nonprofit Corporation Act, RCW Chapter 24.03 et seq.. To the greatest extent possible, any successor entity shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the entity.

Section 3.2. Membership. During the Development Period, the Declarant shall be the sole Member of the Association. Upon the date of termination of the Development Period, every Owner, including the Declarant if an Owner, and only Owners, shall be Members of the Association; provided, however, that if any Lot is held jointly by two (2) or more persons, such Lot shall be entitled, for the purposes of voting rights in the Association, to only one membership interest per Lot. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Following the termination of the Development Period, ownership of fee simple title to, or a Contract purchaser's interest in, any such Lot or Lots shall be the sole qualification for membership in the Association.

Section 3.3. Number of Votes. During the Development Period, the Declarant shall be the only Member of the Association and the only person or entity entitled to vote on Association matters. Following termination of the Development Period, each Member shall have one (1) vote on all matters submitted to the membership of the Association for each Lot owned by him within Weatherby.

Section 3.4. Association Board. During the Development Period, the Declarant shall be the sole member of the Board of Directors of the Association, and shall have all the powers of the Board set forth herein and in the Articles of Incorporation. During the Development Period, Declarant may, in its discretion, appoint other board members or officers of the Association. At the termination of the Development Period, the Declarant shall select a temporary Board of Directors of the Association consisting of not fewer than three (3) persons, who need not be Owners, to manage the Association. Subject to the Declarant's powers herein, the temporary Board shall have the full authority to manage the Association under the Governing Documents and shall be subject to all provisions of the Governing Documents. The terms of the temporary board selected by the Declarant shall be for one (1) year, after which the Board shall be elected from among the Owners, as provided in the Bylaws of the Association. The Board shall elect officers of the Association from among the Board members, which shall include a President who shall preside over meetings of the Board and meetings of the Association.

ARTICLE IV
Association Regulations and Assessments

Section 4.1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association:

(a) annually, semi-annually, quarterly or monthly assessments or charges;
and

(b) special assessments to be established and collected as hereinafter provided.

Notwithstanding the foregoing, however, Lots owned by the Declarant or a Participating Builder shall not be subject to assessment unless the home built on the Lot is actually occupied. Assessments shall be adopted in accordance with the Bylaws of the Association and this Declaration. The assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon and shall attach to the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees incurred in collecting the same, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due, irrespective of the ownership of the Lot at the date of collection

Section 4.2. Purpose of Assessment. The assessment levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents in the Plat, including but not limited to the improvement, construction, repair, maintenance, insurance and other expenses related to or arising from Common Areas or improvements thereon (e.g., taxes, utility charges, gardening, landscaping, irrigation, lighting, storm water retention facilities and associated conveyance systems, and NGPA/E preservation); any other responsibilities or obligations of the Association such as right of way landscaping, NGPA/E signage, irrigation, lighting, insurance, etc.; or other items or obligations deemed necessary and proper by the Association to keep Weatherby in a good, clean, attractive and safe condition in compliance with all applicable codes, laws, rules and regulations.

Assessments may also be levied to pay for any professional services or consultation incurred by the Association in carrying out its duties, including but not limited to biologists, management companies, certified public accountants and legal counsel.

Section 4.3. Commencement of Assessment. The liability for assessments as to all Lots (except those not subject to assessment as provided above) shall commence upon the first day of the month following the conveyance of the first Lot from the Declarant to someone other than a

successor Declarant or a Participating Builder. Liability of an Owner (except those not subject to assessment) shall commence on the first day of the calendar month following the date of any deed or Contract of sale for the Lot, or on the first day of the calendar month following occupancy of the Lot, whichever is earlier. Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum assessment shall not exceed three hundred fifty and no/100 dollars (\$350.00) per year. The assessments shall be established, reviewed and/or adjusted by the Board of Directors, subject to member ratification, as provided in the Bylaws of the Association.

Section 4.4. Special Assessments. In addition to the assessments authorized above, the Association may, in accordance with and to the provisions of the Bylaws of the Association and any applicable laws, levy special assessments through the use of a special budget as authorized by the Bylaws of the Association. The special assessments may be used to cover unanticipated financial shortfalls, and/or for the purpose of defraying, in whole or in part, extraordinary expenses such as the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Areas, street lighting maintenance and liability expenses, fixtures or improvements of the Association, including repairs or renovation. To the extent such costs and expenses are caused by the misconduct of an Owner or Occupant, the Association may, after notice and an opportunity to be heard, specially assess that expense against that Owner's Lot.

Section 4.5. Reserves for Repair or Replacement. As a common expense and as a part of the Association budget, the Association may establish and maintain a reserve fund for repair or replacement of improvements and community facilities thereon by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Association. The reserve fund shall be expended only for the purpose of repair, replacement or improvement to the Common Areas and any improvements and community facilities for which the Association is responsible, and for start up expenses and operating contingencies of a non-recurring nature. The proportional interest of any Owner in any such reserve shall be considered an appurtenance of such Owner's Lot and shall not be separately withdrawn, assigned, or transferred, or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot in the event of a transfer or sale.

Section 4.6. Common Areas Exempt. The Common Areas and any other property dedicated to and accepted by a government or public authority shall be exempt from assessments, mortgages or other liens by the Association and any Owner.

Section 4.7. Exception to Maximum Assessment Limitation. The limitations of maximum assessments shall not apply with respect to fines or other charges imposed against an Owner or member by the Board pursuant to this Declaration or the Bylaws of the Association.

Section 4.8. Notice and Quorum for Establishing a Budget. Written notice of any meeting called for the purpose establishing a budget from which the assessments are based shall

be personally delivered or mailed to all members in a manner consistent with the provisions of the Bylaws of the Association.

Section 4.9. Uniform Rate of Assessments; Lots Owned by Declarant Exempt. Except as otherwise authorized herein all assessments must be fixed at a uniform rate for all Lots, provided, however, that (1) any vacant or unimproved Lot owned by Declarant shall not be subject to any assessment or charge herein, and (2) any Lot sold to a builder shall not pay assessments until the month following the sale or occupancy of the house (whichever comes first).

Section 4.10. Date of Commencement of Assessments; Due Dates. The assessments provided for herein shall not commence prior to the first day of the month following the conveyance of the first Lot from the Declarant. As to each particular Lot involved, the assessments shall begin on the first day of the calendar month following the date of any deed or contract of sale for the Lot, or on the first day of the calendar month following occupancy of the premises, whichever is earlier, unless a later date is set forth in section 4.9 above. The assessments may be budgeted on an annual basis (referred to herein as "annual assessment") subject to adjustments according to the number of months remaining in the calendar year. The due dates shall be established by the Board and shall be payable on a monthly, quarterly, semiannual or annual basis as determined by the Association. The Owner may prepay one (1) or more installments on any assessment without a prepayment penalty.

Section 4.11. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of the rate of twelve percent (12%) per annum or the maximum allowed by law. Unpaid assessments, plus interest, costs and attorney fees incurred by the Association in collecting assessments, filing and recording liens, enforcing the provisions of this Declaration or the Bylaws of the Association, or defending itself in any litigation shall constitute and create a lien on the Lot(s), provided however, before the arrearage is actually assessed against an Owner, the Owner shall be provided an opportunity to be heard by the Board of Directors or such representative as is appointed by the Board of Directors. Said notice shall be deemed given when sent to the home address of the Owner. The failure to provide an opportunity to be heard as provided herein does not eliminate the accumulation of extra fees and charges, provided such opportunity is afforded before the extra fees and charges are actually assessed against the Owner and collected. The Association may bring an action at law against the Owner personally obligated to pay the same for collection of the assessments or other charges pursuant to this Declaration, and/or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his or her Lot.

Section 4.12. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first Mortgage (and to the lien of any second Mortgage given to secure payment of the purchase price) now or hereafter placed on the Lot, only in the event that the lien for delinquent assessments has not been recorded with the Snohomish County Auditor at the time of the recording of the Mortgage lien. Sale or transfer of

any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof

Section 4.13. Real Property Taxes. In the event that there are real property taxes on the Common Areas, the Association shall pay the same as an expense of the Common Areas. If the tax becomes delinquent, the total amount of the delinquent taxes shall be divided equally among all the Owners, and said portion of each Owner's share of delinquent taxes shall be a lien on said Owner's Lot to the same extent as if the delinquent tax was on the Owner's Lot.

Section 4.14. Maintenance Responsibility: Common Areas and Other. Maintenance, repair, replacement, improvements, taxes, insurance and other obligations and expenses or assessments arising from or through this Declaration or the final plat shall also be the responsibility of the Association unless otherwise specified in this Declaration. In addition to the maintenance of the Common Areas, the Association shall maintain the Plat entry private lighting system, street lighting, and/or entry monuments on Tracts 990, 994, 995, 997 and 998 and in the area described in that certain Sign and Maintenance Easement dated October 3, 2003 and recorded under Auditor's File No. 200310240450, including but not limited to any water lines for irrigation, power lines, and the pumps and other mechanical components of the waterfall on Tract 995, NGPA/E buffers (except those lying within an Owner's Lot), mailboxes, mailbox shelters, if any, all Common Area landscaping, Common Area irrigation systems, and landscaping, irrigation, lighting and fencing in the public right of ways in the interior portions and frontage of the Plat or within any private easement upon a Lot which may be granted to the Association on the face of the Plat or in a future recorded document, and any storm water detention facilities outside of the public right-of-way (including but not limited to any and all detention ponds and associated conveyance systems whether within a tract, Common Areas or Lot). The Association shall perform regular maintenance upon the drainage facilities installed, or to be installed, upon the Plat. Regular maintenance shall include, at a minimum, annual inspection of the stormwater drainage system. As applicable, the system shall include the stormwater conveyance system pipes, ditches, swales, and catch basins; stormwater flow regulation system detention ponds, vaults, pipes, retention ponds, flow regulation and control structures; infiltration systems and water quality control system. Snohomish County shall have the perpetual right of entry across adjacent lands of the Owners for purposes of inspecting, auditing, or conducting required maintenance of the drainage facility. Maintenance and repair obligations with respect to any NGPA/E buffers lying within any Lot shall be the responsibility of the Owner of said Lot.

Section 4.15. Rules and Regulations. The Declarant during the Development Period, and the Board of Directors thereafter, shall have the power to adopt and enforce rules and regulations governing the use of the Common Areas or activities within Weatherby, so long as such rules and regulations are consistent with law and this Declaration. The Association or the Declarant may prescribe penalties for the violation of such rules and regulations, including but not limited to suspension of the right to use the Common Areas or portions thereof. Any such rules and regulations shall become effective thirty (30) days after promulgation or amendment and shall be mailed to all Owners within thirty (30) days after promulgation or amendment. A copy of the

rules and regulations then in force shall be retained by the secretary of the Association and shall be available for inspection by any Owner during reasonable business hours. Such rules shall have the same force and effect as if set forth herein.

Section 4.16. Indemnification of Board Members and Officers. Directors, officers and committee members of the Association shall not be liable to the Association or its members for damages caused by an action taken on behalf of the Association in good faith. This provision may not limit liability for failure to exercise the degree of care and loyalty required under RCW 24.03. Directors, officers and committee members of the Association shall be indemnified and held harmless from and against any damages, liabilities, judgments, penalties, fines, settlements and reasonable expenses (including attorney fees) actually incurred as a result of all actions undertaken by said person in good faith, and (a) in the case of conduct in his or her official capacity with the Association, he or she reasonably believed his or her conduct to be in the Association's best interests, or (b) in all other cases, he or she reasonably believed his or her conduct to be at least not opposed to the Association's best interests, or (c) in the case of any criminal proceedings, he or she had no reasonable cause to believe his or her conduct was unlawful. Said persons shall be indemnified and held harmless to the full extent permissible under Washington law.

The foregoing right of indemnification shall not be exclusive of other rights to which such director, officer or committee member may be entitled to as a matter of law. The Board of Directors may obtain insurance on behalf of any person who is or was a director, officer, employee, or agent against any liability arising out of his or her status as such, whether or not the Association would have power to indemnify him or her against such liability.

ARTICLE V

Acceptance of Covenants

In consideration of the acceptance hereby, the purchasers and grantees of deeds or Contracts to the Lots in the Plat, their heirs, assigns, personal representatives, successors and assigns, and all persons or concerns claiming by, through or under such grantees, declare and agree with each and every person who shall be or who shall become an Owner of any of said Lots, that said Lots shall be and hereby are bound by the covenants set forth herein and shall be held and enjoyed subject to and with the benefit and advantage of the protective covenants, restrictions, limitations, conditions and agreements set forth herein.

ARTICLE VI

Restrictions

Section 6.1. Occupancy and Use. No Lot, building or Structure thereon, or any part thereof shall be used or occupied for any purpose other than as a single family residence unless specifically authorized by zoning laws and regulations, this Declaration, and the Declarant during the Development Period or the Association thereafter. The conduct or carrying on of any

manufacturing, trade, business, commerce, industry, profession or other occupation whatsoever, upon any such Lot or any part thereof, or in any building or Structure thereon erected, shall constitute a breach of this restriction, excepting the right of any Participating Builder and the Declarant to construct residences on any Lot, to store construction equipment and materials on said Lots in the normal course of said construction, and to use any single family residence as a sales office or model home for purposes of sale in Weatherby. Notwithstanding the foregoing, and subject to this Declaration and all rules promulgated hereunder, the Owners are permitted to (i) lease or rent their Lot and improvements to one family for residential use, or (ii) operate a home business approved by the Board, in which case this Declaration and all rules promulgated hereunder will also apply with full force and effect to the lessee/tenant, or (iii) operate a home office without Board approval so long as the Owner's main place of business is elsewhere and business visitors are no more than sporadic.

Section 6.2. NGPA/E Restrictions and Maintenance. All areas designated as NGPA/E shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur within these areas, except the activities set forth in SCC 32.10.110(29)(A), (C) and (D) (or any successor statute or code) are allowed when approved by Snohomish County. Some activities that may be permitted are: (1) underground utility lines and drainage discharge swales may cross such areas utilizing the shortest alignment possible if and only if no feasible alignment is available which would avoid such a crossing; (2) fences, when the NGPA/E and its buffer are not detrimentally affected; and (3) removal of hazardous vegetation by the property owner. No adjustment to the boundary of any such area shall occur unless first approved through the formal replat process. The Association shall be responsible for operating, maintaining and restoring the condition of the NGPA/E in the event any unauthorized disturbance occurs.

Section 6.3. Construction of Improvements. For the purpose of further insuring the development of the lands in Weatherby as a residential area of uniform and high standards during the Development Period, Declarant reserves the right during the Development Period to control the buildings, Structures and improvements, including the location, placed on each Lot and the Common Areas. The Owner or Occupant of each Lot, by acceptance of title thereto or by taking possession thereof, covenants and agrees to the same and agrees that any improvements placed or constructed thereon shall conform to this Declaration and the Development Plan.

Section 6.4. Architectural Control. No building, garage, carport, storage shed, rockery, hot tub, or spa (including decks, patios or coverings for same), mailbox, sports court, landscaping device or object, wall, fence, outbuilding, pet house, masonry, signs, lamp post, swimming pool, or other Structure or improvement (hereinafter "improvement(s)") shall be placed upon any Lot, unless and until the construction plans and specifications have been approved in writing by the Declarant during the Development Period, or the Architectural Control Committee thereafter. No alteration of the exterior appearance (including, without limitation, the color of any buildings or structures) of any improvement shall be made without like written approval.

Section 6.5. Architectural Control Committee. During the Development Period the Declarant shall be the Architectural Control Committee (hereinafter "Committee"), provided the Declarant may from time to time during the Development Period appoint an interim Committee of not less than three (3) and not more than five (5) persons. The members of the interim Committee need not be Owners. During the Development Period, the Declarant may remove any member of the Committee from office at any time, or may dissolve such interim committee and resume the responsibilities of the Committee. A member of the interim Committee shall not be entitled to any compensation for services performed pursuant to this Declaration. After expiration of the Development Period, the Board shall appoint members to the Committee which Committee shall be not less than three (3) or more than five (5) persons, who need not be Members of the Association, as vacancies occur. The Architectural Control Committee, any member thereof, the Association, its directors or officers, and the Declarant shall not be liable to any Owner, occupant, builder or developer for any damages, loss or prejudice suffered or claimed on account of any action or inaction of the Committee or a member thereof, provided that the member has, in accordance with the actual knowledge possessed by him, acted in good faith.

Section 6.6. Approval Procedures. Except for applications for approval of plans to the Declarant for the initial construction of homes by a Participating Builder, applications for approval of plans to the Declarant or Architectural Control Committee shall be accompanied by a fee not to exceed Two Hundred Fifty and no/100 Dollars (\$250.00), as adjusted every five (5) years by changes in the Consumer Price Index for the City of Everett. Applications for approval shall include complete plans and specifications for all proposed buildings or structures and exterior alterations, together with detailed plans showing the proposed location of the same on the Lot, and shall be submitted to the Architectural Control Committee at least thirty (30) days prior to the proposed construction starting date, and such construction or alteration shall not be started until written approval thereof is given by the Architectural Control Committee. Should the Architectural Control Committee fail to approve, approve with conditions, or disapprove the plans and specifications submitted by an Owner within thirty (30) days after submission of an application therefor, then the applicant may request in writing a response within an additional fourteen (14) days. In the event there remains no response, the application shall be deemed approved, provided, however, the plans and specifications must still comply with this Declaration in all respects.

Section 6.7. Criteria for Approval. The Architectural Control Committee shall have the right to approve or refuse to approve any design, plan or color for any improvements, construction or alterations, which are not suitable or desirable, aesthetically or otherwise, in the opinion of the Architectural Control Committee. The Architectural Control Committee shall have the right to take into consideration the suitability of the proposed building or other structure, the material with which it is to be built, and its exterior color scheme and harmony thereof with the Lot and surrounding Lots and improvements, the effect or impairment that said improvements will have on the view of surrounding Lots, and any and all facts which, in the opinion of the Architectural Control Committee, shall affect the desirability or suitability of such proposed improvements. The Architectural Control Committee may adopt general or specific standards for

all or any part of the design or construction of buildings within Weatherby. Any action or inaction by the Declarant or the Architectural Control Committee shall be in its sole discretion and all parties, Owners and/or potential Owners shall hold and save Declarant, the Association, and the Architectural Control Committee harmless to the maximum extent permitted by law.

Section 6.8. Exemptions and Variances from Requirements. The Architectural Control Committee may, upon application, grant exemptions and variances from the rules and procedures of the Committee and this Declaration when the party requesting such exemption or variance establishes to the satisfaction of the Committee that the improvement or other matters which are desired by the applicant are compatible with the overall character of Weatherby. Requests for an exemption or variance shall be submitted in writing to the Committee and shall contain such information as the Committee shall from time to time require. The Committee shall consider applications for exemption or variance and shall endeavor to render its decisions within twenty (20) days after notice to the Owner of proper submission. The failure of the Committee to approve an application for an exemption or variance shall constitute disapproval of such application.

Section 6.9. Minimum Size Requirements/Split Level House/Height Restrictions. No building shall be allowed on any Lot except one single-family dwelling house, all for the use and occupancy of one immediate family and attendant bona fide domestic servants only, except that an auxiliary building may be constructed on a Lot if its designed and constructed as to be compatible in appearance with the main building and has been fully approved by the Architectural Control Committee. Said dwelling house shall have a fully enclosed living area, excluding attached garage or carport, which has a heated floor area of not less than 2000 square feet. No auxiliary building, with the exception of garages and carports, shall have a ground coverage in excess of three hundred (300) square feet. No Split Level House shall be allowed on any Lot. No dwelling house shall exceed two (2) stories (excluding the basement) or be more than the maximum legally allowed under Snohomish County Code. The above requirements do not supersede any governmental requirements that are more restrictive, and may be changed by the Declarant during the Development Period by written document recorded with the Snohomish County Auditor. The construction of residences shall also comply with the minimum floor elevations, if any, specified for each Lot on the final Plat. All residences and other structures shall comply with all governmental setback standards and, if applicable, any further recorded setback restrictions imposed upon any Lot by this Declaration or an amendment thereto.

Section 6.10. Construction. All construction of properly authorized improvements shall be diligently pursued to completion thereof in a manner and at a rate reasonably consistent with building standards prevailing in the immediate area relating to high quality construction of a similar type, and in no event shall the period of construction of any improvement exceed nine (9) months from the date of commencement of construction to completion as to external appearance, including finished painting. No Structure or vehicle, other than a completed permanent dwelling house as contemplated by these restrictions and limitations, shall be used on any Lot at any time

as a residence, either permanently or temporarily. No auxiliary building shall be deemed completed as long as the dwelling house is incomplete.

Section 6.11. Landscaping. The Owner of each Lot shall be responsible for the landscaping thereon. Each Lot shall be landscaped in accordance with plans and specifications approved by the Architectural Control Committee. All front and side yards and landscaping thereon must be completed within thirty (30) days from the date of completion of the building or Structure constructed thereon, and all rear yards and landscaping thereon must be completed within one hundred eighty (180) days from the date of completion of the building or Structure constructed thereon. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval by the Declarant or the Architectural Control Committee. All landscaped areas in public rights-of-way shall be maintained by the Declarant or the Association and may be reduced or eliminated if deemed necessary for or detrimental to Snohomish County road purposes.

Section 6.12. Window Coverings. All window coverings within any residence shall be permanent in nature (e.g., other than sheets, blankets or towels), provided however, during the first thirty (30) days from the date of occupancy temporary window coverings may be used in bedrooms and bathrooms.

Section 6.13. Plantings and Fences. No hedge more than six (6) feet in height, nor any fence, wall or other similar Structure more than six (6) feet in height, shall be constructed, erected, placed, planted, set out, maintained or permitted on any Lot. All fencing and walls must be specifically approved by the Architectural Control Committee prior to their installation. The Architectural Control Committee is free to adopt a fencing policy detailing acceptable styles of fencing if it deems appropriate. The location and height of all fences and other obstructions within an easement as dedicated to Snohomish County on the final Plat shall be subject to the approval of Snohomish County, in addition to the Architectural Control Committee.

Section 6.14. Antennas. No television antennas, including satellite communication dishes, or such similar devices (other than "mini dishes" with a diameter of less than 24 inches placed in a location hidden from the road), radio aerials, ham radio broadcast or receiving apparatus shall be erected, maintained or placed on any Lot without specific written approval by the Architectural Control Committee. Rotary beams or other similar devices shall not be constructed on any Lot.

Section 6.15. Changing Lot Contours and Drainage; Subdivisions. The surface grade or elevation of the various Lots shall not be substantially altered or changed in any manner which would affect the relationship of such Lot with other Lots, or which would result in materially obstructing the view from any other Lot, or which would otherwise produce an effect out of harmony with the general development of the immediate area in which said Lot is located. Whether or not such alteration or change in the elevation or grade of any Lot would be prohibited shall be determined by the Declarant during the Development Period in its sole and uncontrolled

discretion. In addition, prior approval must be obtained from the appropriate governmental authority before any Structures, fill or obstructions, including fences, are located within any drainage easement, delineated flood plain area or drainage swale. No further subdivision of any Lot without resubmitting for formal plat procedure is allowed. No drainage swales shall be graded, impeded or materially altered. The sale or lease of less than a whole Lot in the Plat is expressly prohibited.

Section 6.16. Maintenance by Owners. Unless otherwise specifically provided herein, the Owner of each Lot shall be responsible for the maintenance and upkeep of the improvements and landscaping located thereon, and shall maintain their hedges, plants, shrubbery, trees, and lawns in a neat and trim condition at all times. After written notice to an Owner from the Declarant, or the Association after the Development Period, of such Owner's failure to maintain said Lot, landscaping and/or improvements in accordance herewith, and after approval at a meeting of the Board of Directors or other Association committee to which such oversight responsibility shall have been delegated, to which meeting the Lot Owner shall have been given at least five (5) days written notice, the Association shall have the right, through its agents and employees, to enter upon any Lot in order to repair, maintain and/or rectify the same to such standards. The cost of such work shall be a special assessment on such Owner and such Owner's Lot, and the provisions of this Declaration regarding the collection of assessments shall apply thereto.

Section 6.17. Garbage Disposal. The Owners of the Lots shall ensure that no garbage can or other receptacle will be visible from any place outside the residence except on collection day.

Section 6.18. Clotheslines. No Owner or Occupant of any Lot shall place or permit clotheslines thereon which are visible from any other Lot or street in Weatherby.

Section 6.19. Roofing Materials and Siding. All roofs shall be built in accordance with specifications as to type, style, color and other criteria as adopted by the Declarant or the Architectural Control Committee. Until such adoption, all roofing materials must be cedar shingles, shake, tile or a minimum 30-year composition, and all siding shall be non-plywood type wood (beveled or grooved), vinyl, or masonry. The use of T1-11 siding is explicitly prohibited. For the purposes of this Section the face of a Structure is any portion of the Structure that has a 90-degree angle or less to a right of way.

Section 6.20. Underground Utilities. All utilities, on and in public dedicated areas, private property, or on and in the Common Areas, including water, cable television and Internet, natural gas, storm sewer, and power shall be installed underground in compliance with all governmental regulations for the installation and maintenance of the same.

Section 6.21. Nuisance. Nothing shall be done or maintained on any Lot in Weatherby which may be or become an annoyance or nuisance to the neighborhood. No livestock, animals,

poultry or fowl shall be kept on any Lot other than animals or birds of the type and species generally recognized as common household pets, such as dogs, cats, canaries and parakeets which are kept on said property solely as household pets, provided that no such household pet which is or becomes an annoyance or nuisance, in the sole discretion of the Board, shall thereafter be kept on any Lot. No dog houses, dog runs or dog kennels may be placed on any Lot unless they are screened from the view of neighboring properties and the streets. All dogs which become a nuisance by barking at inappropriate hours shall be kept in the residence or garage from the hours of 9:00 p.m. to 7:00 a.m. so as to eliminate or minimize disturbances.

Section 6.22. Trash and Accumulations. No trash, refuse pile, vehicles, underbrush, compost pile, or other unsightly growth or objects shall be allowed to grow, accumulate or remain on any Lot so as to be a detriment or unreasonable annoyance or become a fire hazard. In the event any such condition shall exist upon any Lot, Declarant or the Association may enter upon said Lot and remove the same at the expense of the Lot Owner who, on demand shall reimburse Declarant or the Association for the cost thereof, and such entry and removal shall not be deemed a trespass.

Section 6.23. Non-Permitted Parking. No boats, boat trailers, house trailers, campers, motor homes, or any part thereof, shall be stored or permitted to remain on any residential site or Lot for more than forty-eight (48) hours unless the same is stored or placed in a garage or other fully enclosed space, or is entirely screened so as not to be visible from any street and abutting Lots. All screening is to be approved by the Declarant or the Architectural Control Committee. Commercial vehicles (which shall include but not be limited to automobiles which display any type of commercial signage), disabled and/or non-operational vehicles shall be subject to the same restrictions. Upon forty-eight (48) hours notice to the Owner of a Lot where an improperly parked or stored vehicle, boat, or other equipment is located, the Association may have the item removed at the Owner's expense.

Section 6.24. Signs. Except for entrance, street, directional, traffic control, and safety signs, and such promotional signs as may be maintained or approved by Declarant or a Participating Builder, no signs of any kind shall be placed on any Lot or residential site in Weatherby where the same is visible from any Lot or street in Weatherby, except in accordance with such rules and regulations as may from time to time be adopted by the Declarant or Association. In the absence of such rules and regulations, no signs whatsoever other than conventional house numbers indicating the address of the premises shall be placed on any Lot or residential site. One "For Sale" or "For Rent" sign which does not exceed the maximum size of two feet by three feet may be placed on a Lot without the approval of the Declarant or Association. During the Development Period, Declarant may require all signage on Lots and homes to be uniform in the dimension and general character regardless of the builder or Realtor or other person involved in marketing the Lot or home. Uniformity standards may be adopted by the Declarant or the Architectural Control Committee.

Section 6.25. Vehicle Storage. Each residence shall have an enclosed garage providing sufficient storage for at least one automobile. No garage shall be permanently enclosed or converted to other use without the substitution of another garage. Automobiles shall not be parked on a driveway or street in lieu of being parked in an available space in the garage. Garage doors shall be kept closed at all times practicable. Vehicles shall be adequately maintained to ensure that leaking fluids from the vehicles will not occur. If any leaking occurs on a driveway or street, the leaking shall be promptly cleaned and the driveway or street returned to its normal condition.

Section 6.26. Mailboxes. The mailbox and mailbox shelters' maintenance, repair, or replacement shall be the responsibility of the Association. The mailboxes and mailbox shelters shall be constructed in locations and according to plans approved by the Architectural Control Committee.

Section 6.27. Woodpiles. Woodpiles or wood supplies shall not be stored on any front yard, or be visible from the streets within Weatherby.

Section 6.28. Sales and Construction Facilities. Notwithstanding any other provision in this Declaration to the contrary, it is expressly permissible during the Development Period for the Declarant, and its agents, employees or nominees, to maintain on any portion of the Property owned by the Declarant or on the Common Areas such facilities as the Declarant may reasonably feel are required, convenient or incidental to the construction and/or sales of Lots or improvements thereon. The Declarant may permit, in writing, an individual Owner to maintain temporary equipment and construction material on the Owner's Lot when the Declarant feels the same is reasonably required, convenient or incidental to construction activities for improvement on said Lot. It is also expressly permissible during and after the Development Period for any Participating Builder, and its agents, employees or nominees, to maintain on any portion of Weatherby that is owned by said Participating Builder, such facilities as the Participating Builder may reasonably feel are required, convenient or incidental to the construction and/or sales of Lots or improvements on Weatherby.

Section 6.29. Drainage Waters. Following original grading of the roads and ways of Weatherby, no drainage waters on any Lot or Lots shall be diverted or blocked from their natural course so as to discharge upon any public road rights-of-way. The Owner of any Lot or Lots, prior to making any alteration in the drainage system, must make application to and receive approval from the appropriate governmental authority. Any enclosing of drainage waters in culverts or drains or rerouting thereof across any Lot shall be done by and at the expense of such Owner.

Section 6.30 Relief from Provisions. In cases where an Owner has made a factual showing that strict application of the provisions of this Article 6 would work a severe hardship upon him, the Board by Association Action may grant the Owner relief from any of such

provisions; provided, however, that such relief shall be limited by its scope or by conditions to only that necessary to relieve the hardship; and provided further, that no such relief shall be granted if the condition thereby created would, in the reasonable judgment of the Board, adversely affect the Association's right or ability to enforce any provision of this Declaration in the future. The decision of the Board in granting or denying such relief shall be final and conclusive. Nothing in this Section 6.30 shall diminish the authority of the Committee to grant variances and exceptions for matters within the purview of Section 6.8.

Section 6.31. Easements and Restrictions on Final Plat. Easements and restrictions set forth in the recorded final Plat maps or notes for Weatherby are incorporated herein and hereby reserved on each Lot and/or the Common Areas. No Owner shall construct or locate any structure or portion thereof within the utilities easement areas, and no Owner shall relocate, remove or disturb any utility within the utilities easement, including any utility box, without the written approval of the Architectural Control Committee and the current holder(s) of the utilities easement. Any easement entered upon for the purposes stated above shall be restored as near as possible to its original condition by the individual or entity entering said easement. No lines or wires for the transmission of electric current, telephone or cable TV shall be placed or be permitted to be placed upon any Lot unless the same shall be underground or in conduit attached to a structure.

ARTICLE VII

Insurance; Casualty Losses; and Condemnation

Section 7.1. Insurance Coverage. The Association shall obtain and maintain at all times as an Association expense a policy or policies and bonds written by companies licensed to do business in Washington which shall provide:

- (a) Insurance against loss or damage by fire and other hazards covered by the standard extended coverage endorsement in an amount as near as practicable to the full insurable replacement value (without deduction for depreciation) of landscaping and improvements located in the Common Areas, with the Association named as insured as trustee for the benefit of Owners and Mortgagees as their interests appear.
- (b) General comprehensive liability insurance insuring the Association, the Owners, and Declarant against any liability to the public or to the Owners and their guests, invitees, licensees, or tenants, incident to the ownership or use of the Common Areas.
- (c) Worker's compensation insurance to the extent required by applicable laws.
- (d) Fidelity coverage naming the Association as an obligee to protect against dishonest acts by the Board, Association officers, committees, managers, and

employees of any of them, and all others who are responsible for handling Association funds, in an amount equal to not less than three (3) months general assessments on all Lots, including reserves.

- (e) Such other insurance as the Association deems advisable, including without limitation directors and officers error and omission insurance; provided that, notwithstanding any other provisions herein, the Association shall continuously maintain in effect casualty, flood, and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for similar projects established by Federal National Mortgage Association, Governmental National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Authority, and Veterans Administration, so long as any of them is a Mortgagee or Owner, except to the extent such coverage is not available or has been waived in writing by all applicable agencies.

Section 7.2. Casualty Losses. In the event of substantial damage to or destruction of any of the Common Areas, the Association shall give prompt written notice of such damage or destruction to the Owners and to the holders of all First Mortgages. Insurance proceeds for damage or destruction to any part of the Common Areas shall be paid to the Association as a trustee for the Owners, or its authorized representative, including an insurance trustee, which shall segregate such proceeds from other funds of the Association.

Section 7.3. Condemnation. In the event any part of the Common Areas is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, the Association shall give prompt notice of any such proceeding or proposed acquisition to the Owners and to the holders of all First Mortgages who have requested from the Association notification of any such proceeding. All compensation, damages, or other proceeds therefrom, shall be payable to the Association.

ARTICLE VIII

General Provisions

Section 8.1. Covenants to Run with Land. This Declaration shall constitute a servitude upon all Lots in Weatherby conveyed by Declarant, its successors or assigns, to any grantee, and shall run with the land and be binding upon all such grantees and all persons claiming by, through or under them. The acceptance of any such conveyance by any such grantee shall constitute an agreement on the part of any such grantee, for himself or herself, his or her heirs, devisees, personal representatives and assigns, to all such covenants, restrictions, limitations, conditions and agreements.

This Declaration, as amended or supplemented, shall remain in full force and effect for a period of twenty (20) years from the date recorded, at which time it shall automatically extend for successive periods of ten (10) years each, unless by written agreement of the then Owners of a majority of the Lots in Weatherby it is agreed to terminate or change this Declaration in whole or in part. In the event this Declaration is extended to include adjoining lands through the annexation procedures herein, this Declaration may only be terminated or changed in conjunction with the adjoining Lands, and in such case, the agreement of the then Owners of a majority of all Lots subject to this Declaration, as amended and extended, shall be recorded to affect such termination or change. Termination of this Declaration or modifications which materially affect the Common Areas or obligations of the Association shall first receive approval from any governmental agency potentially impacted by the termination or modifications. Any termination or change shall become effective upon the recording of such agreement, duly signed and acknowledged by the necessary parties, as above provided, in the offices of the Auditor of Snohomish County, Washington.

Section 8.2. Breach of Covenants. In the event of the violation or breach or attempted violation or breach of any of these covenants, restrictions, limitations, conditions, duly adopted rules and regulations or agreements by any person or concern claiming by, through or under the Owner, or by virtue of any judicial proceedings, Declarant, the Owner of any Lot or the Association, or any of them, jointly or severally, shall have the right to institute, defend or intervene in litigation or administrative proceedings to compel compliance with the terms hereof or to prevent such violation or breach. The Association may be involved in its own name on behalf of itself or two or more Owners on matters affecting the Association, but not on behalf of Owners involved in disputes that are not the responsibility of the Association. In the event of such enforcement the prevailing party shall be entitled to, in addition to other relief, recovery of its attorney fees and costs.

In addition to the foregoing, Declarant, or its nominee, or the Association shall have the right whenever there is a violation of these restrictions, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the Owner, who, on demand and after notice and opportunity to be heard by the Board of Directors or its representative, shall reimburse the cost thereof including attorney fees and costs incurred. Such entry and abatement or removal shall not be deemed a trespass. Except in the event of an emergency, three (3) days' written notice must be given to the non-complying party before summary abatement or removal may occur.

Section 8.3. Failure to Enforce. The failure to enforce any right, reservation, covenant, restriction, limitation, condition or agreement herein contained, however long thereafter, either as to the breach or violation involved or as to any similar breach or violation occurring prior or subsequent thereto, shall not bar or affect the enforcement of any such right, reservation, covenant, restriction, limitation, condition or agreement as to any such breach or violation thereof, nor shall said failure in any way be construed as or constitute a waiver of said provision.

Section 8.4. Right to Assign by Declarant. The Declarant may assign any and all of its rights, powers obligations, privileges, and interest under this instrument to any other person or concern, and in any such case any such successor or assignee may exercise and enjoy such rights, powers, privileges and interest and shall be responsible for such obligations to the same extent as Declarant would have been had such assignment not been made.

Section 8.5. Annexation. Additional real property may become subject to this Declaration in the following manners:

(a) Additions by Declarant. Declarant, its successors and assigns, shall have the right, but shall not be obligated, to include additional real property of Declarant's selection as a part of the Properties subject to and restricted by this Declaration. This right may be exercised without obtaining the consent or approval of the Association or its members. The additions of other real property authorized by this subsection shall be made by incorporating the provisions of this Declaration by reference on the face of any such final plat map of such annexed real property, or the Declarant may record an addendum to this Declaration containing such additions and modifications as may be appropriate or necessary to reflect the different character, if any, of the additional properties.

(b) Additions by Others. Upon approval in writing of the Declarant during the Development Period and thereafter by the Association, the Owner of such real property who desires to subject such other real property to the provisions of this Declaration and to subject it to the jurisdiction of the Declarant, may file for record a supplementary Declaration of covenants, conditions and restrictions, which by its terms, expressly extends the covenants contained in this Declaration to such other real property.

Section 8.6. Amendment of this Declaration. Unless otherwise specifically addressed elsewhere, an amendment to any term or provision of this Declaration shall require the affirmative vote of seventy-five percent (75%) of the voting power of the Association. This Declaration may be amended during the Development Period by an affirmative vote of fifty-one percent (51%) of the voting power of the Association. Amendments to any provision of this Declaration which alter the rights, duties, obligations, conditions, restrictions and requirements of Declarant and/or a Participating Builder shall not be valid without the affirmative written consent of the Declarant and/or the affected Participating Builder. In the event that the Declarant has the necessary votes and desires to amend the Declaration during the Development Period, the Declarant may waive any requirements to conduct a membership meeting if and to the extent permissible by law. Any amendment to this Declaration must be recorded with the Snohomish County Auditor.

Section 8.7. Severability. Should any of the provisions of this Declaration be declared void, invalid, illegal or unenforceable for any reason, it shall in no way affect the validity of the

EXHIBIT "A"
Legal Description of Weatherby

PARCEL 2 OF SNOHOMISH COUNTY BOUNDARY LINE ADJUSTMENT NO. 03 102597
RECORDED UNDER AUDITOR'S FILE 200305020886 RECORDS OF SNOHOMISH
COUNTY, WASHINGTON.