

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
PHEASANTS HOLLOW

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KING COUNTY, WA

The Declaration of Covenants, Conditions and Restrictions of Pheasants Hollow ("Original Declaration") was recorded in the records of King County on August 25, 1993. The Original Declaration's recording number is 9308251253.

The Original Declaration stated that the Chaffey Corporation ("Declarant") owned certain property in King County, Washington, more particularly described as follows and hereinafter referred to as the "Subdivision":

Lots 1 through 116 and Tract B of the Plat of Pheasants Hollow,  
as recorded in Volume 165, Pages 41 through 48, records of  
King County, Washington, under Auditors File No. 9308110390.

The Original Declaration provides that all of the properties in the Subdivision shall be held, sold and conveyed subject to those easements, restrictions, covenants and conditions set forth in the Original Declaration, which are imposed upon the property in the Subdivision for the purpose of protecting the value and desirability of, and which shall run with, the real property and bind all parties having any right, title or interest in the described properties or any part thereof, and their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

The Declarant's Original Declaration has served to guide the Association in maintaining the property and in managing the affairs of the Association. The Declarant's ownership of property within the Subdivision expired on or before January 1, 2000.

Through the shared experience of owning and living in a common interest community, the Owners have learned that by caring for the physical improvements of the property and by attending to the quality of the relationships among Owners, the value of the common property and of individual property is preserved and enhanced.

This Amendment to the Original Declaration ("Amendment") is an outgrowth of a shared desire by the Owners to update the Original Declaration in a manner that creates for their mutual benefit and protection a clear statement of what this community of Owners expects of each Owner, a clear statement of each Owner's responsibilities to others and a clear framework for self-governance. The Owners desire, through this Amendment, to protect and enhance the uniform plan of development reflected in the Original Declaration and to protect and enhance the value and desirability of the community of Pheasants Hollow. The Owners hereby declare that all of the properties in the Subdivision shall continue to be held, sold and conveyed subject to the easements, restrictions, covenants and conditions, set forth in the Original Covenants, as amended by this Amendment, which continue to serve

the purpose of protecting the value and desirability of, and which shall run with, the real property and which continue to bind on all parties having any right, title or interest in the described properties or any part thereof, and their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## ARTICLE I.

### INTERPRETATION

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 the Project.

Section 1.2. Definitions.

1.2.1. "Act" or "Homeowners' Associations Act" shall mean chapter 64.38 RCW.

1.2.2 "Association" shall mean and refer to PHEASANTS HOLLOW HOMEOWNERS ASSOCIATION, a Washington non-profit corporation, its successors and assigns.

1.2.3. "Article" or "Articles" shall mean an article of these Covenants.

1.2.4. "Articles of Incorporation" shall mean the articles of incorporation for the Association.

1.2.5. "Assessment" shall mean all sums chargeable by the Association against a Lot and its Owner, including, without limitation (a) general and special Assessments for Common Expenses, charges, and fines imposed by the Association, (b) interest and late charges on any delinquent account, (c) costs of collection, including reasonable attorney's fees, incurred by the Association in connection with the collection of a delinquent Owner's account, (d) costs and attorney's fees incurred by the Association in connection with the enforcement of the Governing Documents, and (e) all other sums payable by an Owner to the Association as provided in the Governing Documents, unless the context clearly indicates otherwise.

1.2.6. "Architectural Control Committee" or "ACC" shall mean the committee of the Association established to review and approve plans for Exterior Improvements on Lots.

1.2.7. "Association" shall mean and refer to PHEASANTS HOLLOW HOMEOWNERS ASSOCIATION, a Washington non-profit corporation.

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

1.2.9. "Building" shall mean any structure used or intended for supporting or sheltering any use or occupancy.

1.2.10. "Business" and "Trade" shall have their ordinary meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) the activity is engaged in full-time or part-time, (b) the activity is intended to or does generate a profit, and (c) a license is required to engage in the activity.

1.2.11. "Bylaws" shall mean the bylaws adopted in accordance with Section 3.2 of these Covenants.

1.2.12. "Common Area" shall mean all real property or improvements owned, used and/or maintained by the Association. Included in the definition of Common Area for purposes of maintenance obligations is the vegetative enhancement plan and facilities constructed on or within the Plat, including portions of Tract C, Tract E in its entirety, Lot 38 (a neighborhood park to be owned and maintained by the Association) and the landscaping and entry monuments at the entrances to the plat (Lots 1 and 33) that were installed initially by the Declarant or the Association within the designated easement areas.

1.2.13. "Conveyance" shall mean any transfer of the ownership of a Lot, including a transfer by deed or by real estate contract.

1.2.14. "Covenants" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Pheasants Hollow and any amendments to these Covenants.

1.2.15. "Design Guidelines" shall mean the aesthetic standards governing Improvements and Exterior Improvement Projects adopted under Section 5.4 of these Covenants.

1.2.16. "Exterior Improvement" and "Exterior Improvement Project" shall mean any alteration of exterior appearance of an Improvement, and it includes, without limitation, construction or alteration of an Improvement, grading, paving, painting, and staining.

1.2.17. "Fence" shall mean a fence, wall, hedge or other such boundary barrier planting.

1.2.18. "Foreclosure" shall mean a forfeiture or judicial or nonjudicial foreclosure of a mortgage or a deed in lieu of foreclosure.

1.2.19. "Governing Documents" shall mean the Articles of Incorporation, Bylaws, Plat, Covenants, all properly adopted rules, policies, resolutions, and decisions, or other written instrument by which the Association has the authority to exercise any of the powers provided for in the Act or to manage, maintain, or otherwise affect the property under its jurisdiction, and all future amendments to any of these documents.

1.2.20. "Improvement" shall mean any dwelling, guest house, accessory structure, shed, gazebo, barn, garage, carport, fence, landscaping intended to serve as a fence or property line delineation, wall, retaining wall, masonry, gate, patio, deck, sport court, cabana, swimming pool or other recreational facility, sign, pavement, sidewalk, pet house, children's play structure, any utility and storm water facilities, screening, and any other building or structure of any type on any Lot.

1.2.21. "Landscaping" shall mean landscaping or vegetation of any type on the Property.

1.2.22. "Leasing" means (a) granting a right to use or occupy a Lot in exchange for receiving money or other goods or services of value and (b) allowing sole occupancy of a Lot, regardless of whether money or other goods or services of value are received in exchange. Co-ownership of a Lot is not Leasing. Co-habitation of a Lot with its Owner is not Leasing unless the Owner has granted the co-habiting Occupant a right to use or occupy a Lot in exchange for receiving money or other goods or services of value. Allowing a Related Party to occupy a Lot is not Leasing. "Lease" and "rent", when used as verbs, are synonymous.

1.2.23. "Lot" shall mean and refer to any plat or parcel of land shown upon any recorded subdivision map of the Subdivision with the exception of (a) the Common Area, and (b) any land conveyed or dedicated to King County or local municipal corporations or otherwise transferred or conveyed to the Association for the common use, enjoyment and/or maintenance of the Owners.

1.2.24. "Majority of Members" shall mean more than 50% of the Members present in person or by proxy at a meeting of the Association at which a quorum is present.

1.2.25. "Member" shall mean any person or entity holding membership in the association.

1.2.26. "Mortgage" shall mean a mortgage, deed of trust or real estate contract.

1.2.27. "Mortgagee" shall mean any holder of a Mortgage on a Lot.

1.2.28. "Occupant" shall mean anyone who (a) occupies a Lot as a permanent residence or who (b) stays overnight on any Lot more than fourteen (14) days in any calendar month or more than sixty (60) days in any calendar year.

1.2.29. "Owner" shall mean and refer to the record owner, whether one or more persons or entities of a fee simple title to any lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.2.30. "Person" means a natural person, corporation, partnership, limited partnership, or other legal entity.

1.2.31. "Plat" shall mean the Plats of Pheasants Hollow, as recorded at instrument number 9308110390.

1.2.32. "Registered Vehicle" shall mean a boat, trailer, truck (other than pickup truck or sports utility vehicle), camper, other recreational vehicle, inoperable vehicle, vehicle in significant disrepair, unlicensed vehicle, and any other similar machinery or equipment.

1.2.33. "Related Party" means a person who has been certified in a written document filed by an Owner with the Association to be the spouse, parent, parent-in-law, sibling, sibling-in-law, or lineal descendant of the Owner.

1.2.34. "Subdivision" shall mean and refer to that certain real property hereinabove described.

1.2.35. "Native Growth Protective Easements" shall mean the real property designated a Native Growth Protective Easement (NGPE) on the face of the Plat. Dedication of a NGPE conveys to the public a beneficial interest in the land within the NGPE. This interest includes the preservation of the native vegetation for all purposes that benefit the public health, safety, and welfare, including control of surface water and erosion, maintenance of slope stability, visual and aural buffering, and protection of plant and animal habitat. The NGPE imposes upon all present and future owners and occupiers of the land subject to the easement the obligation, enforceable on behalf of the public by the City of Kent, to leave undisturbed all trees and other vegetation within the easement. The vegetation within the easement may not be cut, pruned, covered by fill, removed or damaged without the express permission of the City of Kent, which permission must be obtained in written form from the City of Kent or its successor agency.

Before and during the course of any grading, building, construction, or other development activity on a lot subject to the NGPE, the common boundary between the easement and the area of development activity must be fenced or otherwise marked to the satisfaction of the City of Kent as set forth on the Final Plat.

Native Growth Protection Easements are located in Tracts A, C,D, E and F. Said Tracts have been dedicated to the City of Kent with a NGPE easement in favor of the public and drainage easements, and Tracts C and F also designated as Drainage Facilities.

(NOTE: Prior to July 1, 2010, the above referenced Tracts were dedicated to King County with a NGPE easement. On July 1, 2010, the property on which Pheasants Hollow is located was annexed to the City of Kent. Accordingly, it is presumed that as of July 1, 2010, the City of Kent is the agency governing the above referenced NGPEs.)

## ARTICLE II.

### Property Rights

Section 2.1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment, subject to restrictions set forth in the NGPEs or on the face of the Final Plat, in and to the Common Area which 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 Area.
- (b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the total membership agreeing to such dedication or transfer has been recorded.

Section 2.2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, their right of enjoyment to the Common Area and facilities to the members of their family, their tenants, or contract purchasers who reside on the property. The easement in favor of the owners for the Common Area shall be appurtenant to and shall not be separated from the ownership of any 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 easement shall be deemed so transferred and conveyed whether or not it shall be so expressed in the deed or other instrument conveying title.

## ARTICLE III.

### OWNERS' ASSOCIATION

Section 3.1. Form of Association.

The Owners of Lots shall constitute an owners association to be known as Pheasants Hollow Homeowners Association. The Association shall be a nonprofit Corporation. The number of Board members, their terms of service, the qualifications and procedures for election to the Board shall be provided in the Bylaws. The rights and duties of the Board and of the Association shall be governed by the provisions of the Governing Documents and all applicable laws. (See also Article IX regarding application of the Act to the Association.)

Section 3.2. Bylaws.

Bylaws supplement these Covenants and provide for the administration of the Association and the Property in a manner consistent with these Covenants. The Bylaws may be amended by a majority vote of a quorum of those Owners present and voting, in person or by proxy, at a regular or special meeting of the membership.

Section 3.3. Membership.

3.3.1. Automatic Membership. Each Owner is (a) a Member of the Association upon becoming an Owner and (b) a Member of the Association until the Owner ceases to own a Lot.

3.3.2. Rights and Duties. An Owner has the rights and duties set out in the Governing Documents.

3.1.2. Membership Appurtenant to Lot. Association Membership is appurtenant to the Lot which gives rise to the Membership. A transfer of title to a Lot automatically transfers the appurtenant Membership to the new Owner. Membership shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of title to the Lot to which it is appurtenant and then only to the new Owner. A prohibited transfer, if made, is void.

Section 3.4. Voting Rights.

3.4.1. One Vote Per Lot. The Association shall have one (1) class of voting membership. Each Member shall be entitled to one (1) vote for each Lot owned.

3.4.2. One Voting Representative Per Lot. Each Lot shall have one (1) voting representative. An Owner shall designate a Lot's voting representative by written notice to the Board. The voting representative need not be an Owner. This designation is revocable. It may be revoked by a party having an ownership interest in a Lot. It is revoked by so notifying the Board. The revocation is effective upon actual notice to the Board. Absent an effective designation, the group composed of all Owners of a Lot shall comprise the Lot's voting representative.

3.4.3. No Division of a Vote. A Lot's vote (1) shall not be divided, and (2) shall be cast as a single vote. Joint Owners who cannot agree how to cast their Lot's vote on a matter are deemed to have forfeited the right to cast that vote on the matter in question.

Section 3.5. Written Approval. Action requiring Owners' approval, agreement or consent may be taken by Written Approval, unless state law or the Covenants expressly provide that such action only be taken by vote at a meeting of the Membership. [Note: Decisions to reject a budget (RCW 64.38.025), remove a board member (RCW 64.38.025), waive an audit (RCW 64.38.045), amend the Articles of Incorporation or the Bylaws (RCW 64.38.035) must be made by a vote taken at a meeting.] "Written Approval," as used herein, means a written statement, signed by a Lot Owner, substantially the same as the following statement, delivered to the Association:

## Written Approval

Date Issued By Association: \_\_\_\_\_ ("Association Issue Date")

My name is \_\_\_\_\_.

I am an Owner of Lot \_\_\_\_\_.

I have received a copy of the proposed Motion / Amendment ("Proposed Action") entitled \_\_\_\_\_.

Through this Written Approval, I intend to exercise my right to take part in the Association Membership's approval or disapproval of the Proposed Action. This Written Approval is valid for eleven (11) months from the Association Issue Date stated above and, while valid, shall be counted in any tallying of approvals and disapprovals related to the Proposed Action. I do hereby:

**Mark "X" in EITHER "Consent / Approve" Box OR "Not Consent / Disapprove" Box**

**CONSENT / APPROVE**       **NOT CONSENT / DISAPPROVE**

**Signed:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

The Association shall perform an ongoing tally of the number of written approvals and disapprovals it receives and shall continue performing such tally until the earlier of (i) achieving total approvals needed to approve or disapprove the Proposed Action, or (ii) a date that is eleven (11) months from the Association Issue Date. The number of written approvals received must equal or exceed the number of votes that would be required to approve the matter had its approval been sought by a Membership vote.

## ARTICLE IV.

### BUDGET, ASSESSMENTS AND ASSOCIATION RESPONSIBILITIES

#### Section 4.1. Budget and Assessments

4.1.1. Purpose of Assessments. All Assessments shall be used to promote the health, safety and welfare of the residents of the Properties, the improvement, operation and maintenance of the Common Area, and the performance of the duties of the Association as set forth in the Governing Documents.

4.1.2. Budget. The Association's fiscal year shall be the calendar year unless the Board designates another fiscal year. Prior to the beginning of each fiscal year, the Board shall adopt an Association budget for the following fiscal year. The Budget shall set forth the amounts reasonably estimated for Common Expenses and make suitable provisions for accumulation of reserves. Within thirty (30) days after adopting the budget, the Board shall provide each Member with a budget summary and set a date for a ratification meeting of the Association. The date for the ratification meeting shall be not less than fourteen (14) nor more than sixty (60) days after the budget summary is provided. Unless at that meeting at least fifty-one percent (51%) of the total voting power of the Association reject the budget, the budget shall be ratified, whether or not a quorum is present. If a budget is not adopted, or is not ratified, or the required meeting notice is not given, the periodic

budget last ratified by the Owners shall be continued until a new budget is adopted and, after the required notice is given to Owners, is ratified.

4.1.3. Supplemental Budget. If during the year the budget proves to be inadequate for any reason, including nonpayment of any Owner's Assessment, the Board may prepare a supplemental budget for the remainder of the year. A supplemental budget that results in an increase in any Owner's Assessments must be ratified pursuant to Section 4.1.2.

4.1.4. Special Assessments. In addition to the annual Assessments authorized above, the Association may levy, in any fiscal year, a special Assessment, for the purpose of defraying, in whole or in part, the cost of any unanticipated or extraordinary expense, including assessments for capital improvements and/or legal fees, as provided below.

4.1.4.1 Capital Improvements. The Board may levy special assessments for the purpose of defraying in whole or in part the cost of any installation, construction, reconstruction, extraordinary repair or replacement, of any Capital Improvements upon the Common Areas, provided that any Capital Improvements costing five thousand dollars (\$5,000) or more must be approved by a Majority of Members.

4.1.4.2 Legal Fees and Damages. The Board may levy from time to time a special assessment payable in a lump sum or installment basis, as the Board directs, for the purpose of defraying in whole or in part any legal fees, costs and/or damages or awards incurred in legal actions in which the Association is a party, or in which a member of either the Board or the ACC is named as a party as a result of a decision made or action performed while acting on behalf of the Association. Notwithstanding the foregoing, no special assessment necessary to fulfill the indemnification obligations of these Covenants shall be subject to disapproval.

4.1.4.3 Notice and Quorum for Any Action Authorized Under this Section. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4.1.4.1 and 4.1.4.2 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. Notwithstanding anything in these Covenants to the contrary, at the first meeting called, the presence, in person or by proxy, of fifty-one percent (51%) of the Members of the Association entitled to cast votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement; the required quorum at the subsequent meeting shall be thirty-four percent (34%) of the Members.

4.1.5. Date of Commencement of Assessments. Upon approval of the budget, the Board shall fix the general and/or special assessments, and shall notify each Owner of its respective assessment amount and due dates.

4.1.6. Amount of Assessments. The amount of the general or special assessment attributable to each Lot shall be equal to the total amount of such assessment divided by the total number of Lots located on the Property.

4.1.7. Payment of Assessments. Each Owner shall pay or cause to be paid to the treasurer of the Association all Assessments against the Lot for that year. The Board will establish a due date that is not less than thirty (30) days after the budget is ratified as provided in this Article IV. Any Assessment not paid by the thirtieth (30<sup>th</sup>) day of the calendar month in which it is due shall be delinquent and subject to late charges, interest charges and collection procedures as provided in the Governing Documents.

4.1.8. Creation of Liens and Personal Obligations of Assessments.

4.1.8.1 The Owner of each Lot covenants and agrees to pay to the Association any and all Assessments charged pursuant to these Covenants. Each subsequent Owner of a Lot is, by acceptance of a deed to such Lot, deemed to covenant and agree to pay to the Association any and all Assessments charged pursuant to these Covenants.

4.1.8.2 The amount of any Assessment assessed to any Lot and the Owner of any Lot shall be a charge on the land and shall be a continuing lien upon the Lot against which such Assessment is made from the time that the Assessment is due. No further notice of such lien need be recorded to perfect this lien, but the Association may record a notice of lien. Upon request and for a reasonable charge, the Board shall furnish a signed certificate setting forth whether all Assessments on a specified Lot have been paid. A properly executed certificate as to the status of Assessments on a Lot shall be binding upon the Association as of the date of its issuance.

4.1.8.3 In addition to constituting a lien on the Lot, each Assessment shall be the joint and several personal obligation of the fee owner(s) and contract purchaser(s) of a Lot.

4.1.8.4 No Owner may waive or otherwise escape liability for the Assessment provided for herein by nonuse, or abandonment of his or her Lot.

4.1.9. Effect

4.1.9.1 The lien for payment of Assessments shall have priority over all other liens and encumbrances, recorded or unrecorded, except that the liens created under these Covenants upon any Lot for Assessments shall be subject to the rights of a Mortgagee whose Mortgage was recorded before the Assessment was due.

4.1.9.2 The Board may from time to time establish late charges and a rate of interest to be charged on Assessments that may thereafter become or remain delinquent. Initially, the rate of interest shall be twelve percent (12%) per annum.

4.1.9.3 The Association shall be entitled to recover any costs and reasonable attorney's fees incurred in connection with the collection of delinquent Assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the prevailing party shall be entitled to recover costs and reasonable attorney's fees on appeal and in the enforcement of a judgment.

4.1.9.4 The Board on behalf of the Association may foreclose the lien of any Assessment by appropriate action in court in the manner that a mortgage is foreclosed or in any other manner provided by law as the laws of the State of Washington may from time to time be changed or amended. In any action to foreclose a lien against any Lot for nonpayment of delinquent Assessments, any judgment rendered against the Owners of such Lot in favor of the Association shall include a reasonable sum for attorney's fees and all costs and expenses reasonably incurred in preparation for or in the prosecution of said action in addition to taxable costs permitted by law. The Association shall have the power to bid in at any resulting sale and to purchase, acquire, lease, hold, mortgage and convey any Lot it acquires through foreclosure.

4.1.9.5 The Association shall have the right to suspend the voting rights and the Common Area use rights of an Owner who is past due more than sixty (60) days on payment of an Assessment. The suspension shall remain in effect until the Owner has brought payment of the Owner's Assessments fully current.

4.1.9.6 These Assessment collection remedies are cumulative. The Board may use one, some, or all of these remedies and may use, as well, such other collection remedies as the law provides.

#### Section 4.2. Association Responsibilities.

4.2.1. Common Area Maintenance Responsibility. Maintenance, repair, replacement, improvements, taxes and insurance to and for the Common Area, including vegetative enhancement compliance, and other areas or improvements for which such obligations or responsibilities are imposed upon the Association as described in the final plat or this Declaration, shall be the responsibility of the Association. In addition, the Association shall maintain the landscaping and signage installed by the Declarant or Association within the easement depicted on Lots 1 and 33.

4.2.2. Rules and Regulations. The Association shall have the power to adopt, from time to time by Association action, and to enforce rules and regulations governing the use of the Property, in addition to the use restrictions contained in this Declaration and whether or not expressly contemplated herein, so long as such rules and regulations are not inconsistent with this Declaration. The Association may prescribe penalties for the violation of such rules and regulations, including but not limited to suspension of the right to use the Commons 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.

### ARTICLE V.

#### ACCEPTANCE OF COVENANTS

In consideration of the acceptance hereof by the several purchasers and grantees of deeds or contracts to the Lots in said Subdivision, their heirs, devisees, personal representatives, successors, and

assigns, and all persons or concerns claiming by, through or under such grantees, they declare to 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 that the Lots included in said Subdivision and any and all buildings or structures built or constructed thereon 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.

#### Section 5.1. Single Family Occupancy – Residential Use – Home Occupations.

No Building of any kind shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single-family dwelling for single-family occupancy only, one (1) garage and one (1) guest house and such other accessory structure(s) permitted under the applicable King County or City of Kent building and land use codes and regulations. Each Lot shall be used for single family residential purposes only, except that a home occupation, conducted entirely within a residence or accessory structure and conducted in full compliance with applicable land use ordinances, is permitted, provided that (a) no equipment or supplies used in connection with any permitted home occupation shall be stored outside, (b) the business activity does not increase the Association's premium(s) for liability or casualty insurance, (c) the business is not industrial or manufacturing in character, and (c) the business does not involve persons coming into the Property who do not reside within the Property. Renting a residence to a family member or to an unrelated third party is considered a "single family residential use" for purposes of this Section 5.1. No more than one family shall be in regular residence on each Lot, together with occasional guests, except that servants and caretakers may occupy on a permanent basis such guest dwelling as may be constructed thereon. No trailer, camper or motor home may be occupied on a regular basis while it is on the Property. (See also RCW 64.38.060, set forth in Exhibit A.)

#### Section 5.2. Residential Site.

No portion of any Lot in the Subdivision shall be owned, used or occupied except as a part of a single residential site. A residential site shall consist of:

- (a) one or more full Lots;
- (b) one or more full Lots and portions of a contiguous Lot or Lots; or
- (c) contiguous parts of Lots which shall form one plot of land suitable for use as a site for a residence, provided that each residential site shall extend from the fronting street to the existing rear property line of the component Lots and shall have front and rear dimensions, neither of which are less than those of the smallest component Lot shown on the plat of the Subdivision as of the date of this Declaration. A component Lot shall be deemed to be a Lot any portion of which is included in such residential site.

#### Section 5.3. Construction of Improvements.

For the purpose of further insuring the development of the lands in this Subdivision as a residential area of high standards, the Association reserves the right to control the buildings and structures, including the location, placed on each lot and the common area. The Owner or occupant of each site, by acceptance of title thereto or by taking possession thereof, covenants and agrees that the same and any Improvements placed or constructed thereon shall conform to this Declaration and the Development Plan. No other structure, fence, wall, building, carport, lamp post, swimming pool or any

other structure or Improvement of any sort or nature may be constructed, placed, located or built upon any Lot.

**Section 5.4. Design Standards.**

**5.4.1. Design Review Required.** All exterior Improvement projects ("Exterior Improvement Projects") require prior written approval from the Architectural Control Committee ("ACC") before any work associated with the project begins. Exterior Improvement Projects include Improvements, construction and alterations of and to buildings, structures or other Improvements. All Exterior Improvement Projects must comply with these Covenants, the design guidelines, if any, and the ACC's submission and approval process.

**5.4.2. Purpose.** The Association desires to (a) enhance and preserve the value of the Properties and the Lots, and (b) establish and preserve the aesthetic elements of Pheasants Hollow, including the architectural harmony of its residences. To advance these purposes, the ACC shall, in reviewing applications for proposed Exterior Improvement Projects, follow the procedures identified in Section 5.4.5 below and apply any Guidelines adopted under Section 5.4.3 below.

**5.4.3. Guidelines.**

**5.4.3.1** The Board is authorized to adopt rules and regulations on behalf of the Association and may develop policy guidelines ("the Guidelines") which Guidelines shall be applied by the ACC in reviewing proposals for Exterior Improvement Projects. The Guidelines are meant to advance the purposes stated in Section 5.4.2 above. The Guidelines shall not be inconsistent with these Covenants or the Bylaws. The Guidelines may include standards and criteria by which a proposed Exterior Improvement Project's conformance with the purposes stated in Section 5.4.2 above might be measured or quantified. The Guidelines shall establish the submittal and approval process and may provide for a reasonable design review fee.

**5.4.3.2** In addition to the Guidelines, in evaluating development proposals, the ACC shall determine whether the external design, color, building materials, appearance, height, and configuration of the proposed Exterior Improvement harmonize with (a) the various features of the natural and built environment, and (b) the aesthetic character of the other residences in Pheasants Hollow. The ACC may, in evaluating development proposals, also consider any other factors that affect the desirability or suitability of a proposed Exterior Improvement. Where the design of a proposed Exterior Improvement fails to meet the standards recited above, the ACC shall (a) decline to approve the design, or, in its sole discretion, (b) approve the design with conditions intended to bring the design into compliance with the above recited standards.

**5.4.4. Composition.** The ACC shall consist of three (3) Owners, at least two of whom shall be members of the Board. The Board shall designate each committee member's term provided, however, that no committee member shall serve more than three (3) consecutive years on the ACC without a break in service of at least one (1) year. The Board may also appoint a fourth member to the ACC which member (a) may be a non-Owner qualified to serve based on training or experience in the types of tasks entrusted to the ACC to perform and (b) may advise the ACC on, but may not vote upon, matters which come before the ACC for action.

#### 5.4.5. Procedure.

5.4.5.1 Submission. An application for approval of an Exterior Improvement shall be submitted in duplicate to the ACC at least sixty (60) days prior to the proposed date for commencement of the Exterior Improvement.

5.4.5.2 Design Review Fee. A design review fee may be required by the Board to offset any costs incurred in the review of an application for approval of an Exterior Improvement.

5.4.5.3 Content of Application. The application shall be submitted in duplicate and shall include the name and address of the Owner submitting the application, the identity of the Lot involved, and a complete set of schematic plans, working drawings, specifications, and site and grading plans for the proposed work. The application shall also identify:

- (a) The location of the proposed Exterior Improvement(s) on the Lot;
- (b) The elevation of the Exterior Improvement with reference to the top back of existing street curb and finished Lot grade;
- (c) The general design and layout of the Exterior Improvement;
- (d) The exterior finish materials, including roof materials and siding materials, and the colors of such materials or of the paint or stain which is proposed to be applied to the materials;
- (e) Any other information that may be required by the Guidelines; and
- (f) Any other information that the ACC may require to provide itself with information it determines may be helpful to it in performing the tasks entrusted to it.

5.4.5.4. Timing. Within 30 days after the receipt of a complete application, the ACC shall approve, conditionally approve, or disapprove the proposed Exterior Improvement.

5.4.5.6. Disapproval or Conditional Approval. The ACC may disapprove a proposed Exterior Improvement which, in its opinion, does not conform to the requirements of these Covenants or to the Guidelines. The ACC may, in approving a proposal, impose upon it conditions which will, in its opinion, adequately mitigate those potential impacts which, if not mitigated, would result in an ACC decision to disapprove the proposed Exterior Improvement. The ACC shall indicate its approval, conditional approval, or disapproval on both copies of the plans and specifications provided by the applicant and shall return one such copy to the Owner at the address shown on the plans and specifications and shall retain the other copy for the Association's records.

5.4.6. Owner Conferences. An Owner may request an opportunity to meet with the ACC to explain and discuss the Owner's proposed Exterior Improvement. Such a meeting may take place at the time the application is submitted, or at such other time as the ACC may set.

5.4.6.1. In the event that the ACC conditionally approves, or disapproves, a proposed Exterior Improvement, the Owner may, within fourteen (14) days of the date of that decision, request an

opportunity to meet with the ACC to discuss that decision, to explore possible modifications to the proposal and/or to ask that the ACC reconsider its decision.

5.4.6.2. The ACC may request to meet with the Owner, to meet with other Owners, to receive written submissions from interested Owners and/or to enter onto a Lot(s) for the purpose of gathering information relating to a pending application, which information may be helpful to the ACC in performing the tasks entrusted to it.

5.4.7. Failure to Act. In the event the ACC fails to approve, conditionally approve or disapprove in writing an application within thirty (30) days after the complete set of plans and specifications have been submitted, the approval will be deemed to have been granted. Notwithstanding the operation of this Section 5.4.7 any such ACC failure to act shall not relieve an Owner from the duty to comply with restrictions or requirement imposed by these Covenants and/or the Rules and Regulations and/or the Guidelines.

5.4.8. Review Required for Changes to Approved Plans. Notwithstanding the prior written approval or acquiescence of the ACC in any proposal submitted by an Owner, any proposed change in the location, design, materials, or construction of any Exterior Alteration shall also be submitted to the ACC for approval pursuant to these Covenants and the Guidelines.

5.4.9. Code Compliance. In all cases, ultimate responsibility for satisfying all local building codes and requirements rests with the Owner and contractor employed by the Owner. The ACC has no responsibility for ensuring that the plans and specifications that it reviews comply with building and zoning codes and requirements and shall have no liability if Exterior Improvements or alterations that it authorizes fail to comply with relevant building and zoning codes and requirements. No person on the ACC acting on behalf of the ACC shall be held responsible for any defect in any plans or specifications that are approved by the ACC, nor shall any member of the ACC or any person acting on behalf of the ACC be held responsible for any defect in any Exterior Improvement or alteration that was built pursuant to plans and specifications approved by the ACC.

## Section 5.5. Minimum Size Requirements.

No building shall be allowed on any residential site in the Subdivision except one single-family dwelling house, all for the use and occupancy of one immediate family and attendant bona fide domestic servants only. Any auxiliary building must be so designed and constructed as to be compatible in appearance with the main building and must have ACC approval. Said dwelling house shall have a fully enclosed living area, excluding attached garage or carport, which has a floor area of not less than 1,100 square feet in the case of one story houses, and 1,650 square feet in the case of multi-floored houses. No such auxiliary building, with the exception of garages and carports, shall have a ground coverage in excess of three hundred (300) square feet. No such dwelling house shall exceed two (2) stories (excluding basement) or be more than thirty (30) feet in height, without prior written approval of the ACC, nor shall any such auxiliary building or authorized CQ structure be more than fourteen (14) feet in height without said approval. Height of buildings shall be measured from the highest point at which the natural contour of the ground comes in contact with such building or structure. The above requirements do not supersede any governmental requirements that are more restrictive.

#### Section 5.6. Construction.

All construction of properly authorized improvements on any residential site which shall have been commenced, 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 itself is incomplete. No dwelling, residence or portion thereof shall be erected upon any Lot so that any part thereof, including eaves or overhangs, shall be:

- (a) closer than twenty (20) feet to the boundary line of said Lot which extends along a platted street in the Subdivision;
- (b) closer than five (5) feet to the rear boundary line of said Lot; or
- (c) closer than five (5) feet to any other boundary line of said Lot.

The construction of residences shall also comply with the minimum floor elevations specified for each Lot on the Final Plat.

#### Section 5.7. Fences.

No hedge over six (6) feet in height, nor any open type fence over six (6) feet in height, nor any solid fence, wall or other structure over six (6) feet in height, shall be constructed, erected, placed, planted, set out, maintained or permitted on any residential site.

#### Section 5.8. Utilities and Antennas.

Utilities shall be placed underground. No external antenna, satellite dish, tower or similar device for radio, television or other reception shall be placed or permitted to remain on the exterior of any Building or Structure nor be placed or permitted to remain free standing on any Lot, except as provided in the Design Review Guidelines.

#### Section 5.9. Grading Lot Contours.

The surface grade and elevation of a Lot shall not be materially altered without the prior written approval of the ACC. In reviewing a request to alter the surface grade and/or elevation of a Lot, the ACC shall consider whether the alteration, if approved, will likely (a) reduce the aesthetic harmony of the built environment within the Property, and/or (b) increase the surface water runoff experienced by any other Lot.

#### Section 5.10. Maintenance by Owners.

Unless otherwise specifically provided herein, the Owners of Lots or other residential sites in said Subdivision shall be responsible for the maintenance and upkeep of the improvements and landscaping located on their property. All such Owners shall likewise maintain their hedges, plants, shrubbery, trees, and lawns in the neat and trim condition at all times.

Each Lot Owner agrees to promptly landscape all portions of the Lot facing any street. Each Owner shall maintain his or her Lot and all landscaping and improvements present on the Lot in a manner consistent with the Governing Documents and with applicable provisions of such policies as the Association may adopt to establish its standards for landscaping maintenance and its process for exercising its rights to remedy Owner noncompliance with such policies. After notice to an Owner from the Association of such Owner's failure to maintain said lot, landscaping and/or improvements in accordance herewith, and after approval by a majority vote of the Board of Directors or other Association committee to which such oversight responsibility shall have been delegated, the Association shall have the right, through its agents and employees, to enter upon any Lot or improvement which has been found to violate the foregoing standards 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 improvements, and the provisions of this Declaration regarding the collection of assessments shall apply thereto.

#### Section 5.11. Garbage and Debris.

Garbage, trash, rubbish, yard and vegetation debris, other wastes, and recycling material shall (a) not be permitted to accumulate on any Lot, (b) be kept in appropriate sanitary containers for proper disposal and (c) be kept out of public view on other than pick up days.

#### Section 5.12. Clothesline.

No Owner or occupant of any residential site shall place or permit clotheslines thereon which are visible from any place outside the premises.

#### Section 5.13. Roofing Materials and Siding.

All roofs shall be in accordance with specifications as to type, style, color and other criteria as adopted by the ACC.

#### Section 5.14. Underground Utilities.

All utilities, on and in public dedicated areas, private property, or on and in the Common Areas, including water, sewer, natural gas, storm sewer, and power shall be installed underground in compliance with all Governmental regulations for the installation and maintenance of the same. No lines or wires for the transmission of current or for telephone use shall be constructed, placed, or permitted to be placed upon any residential site outside the buildings thereof unless the same shall be underground or in the conduit attached to a building.

#### Section 5.15. Nuisance.

Nothing shall be done or maintained on any Lot or other residential site which may be or become an annoyance or nuisance to the neighborhood. No livestock, animals, poultry or fowl shall be kept on any Lot or other residential site other than animals or birds of the type and species generally recognized as common household pets in the immediate area, 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 to the

neighborhood shall thereafter be kept on any Lot or residential site. No dog houses, dog runs or dog kennels may be placed on any Lot or residential site unless it is screened from the view of neighboring properties and the streets and does not create an annoyance or nuisance.

Section 5.16. Vehicles.

5.16.1. A "Regulated Vehicle" means a boat, trailer, truck (other than pickup truck or sports utility vehicle), camper, other recreational vehicle, inoperable vehicle, vehicle in significant disrepair, unlicensed vehicle, and any other similar machinery or equipment. A Regulated Vehicle shall either be stored within an enclosed garage or stored on a Lot in a manner and with such aesthetic screening that it is not visible from the Common Areas, or from any other Lot. Screening is an Improvement for which prior written ACC approval must be obtained. A Vehicle which is disabled or is a Commercial Vehicle is not considered a Regulated Vehicle and shall not be stored on, or permitted to remain on, any Lot except as described in Section 5.16.4 below. Exception: Between Memorial Day and Labor Day holidays, recreational vehicles may be stored on a residential site for occasional use during that period of time. This exception does not apply to utility vehicles.

5.16.2. A "Commercial Vehicle" means a vehicle that:

- (a) Has a carrying capacity in excess of three quarters of a ton;
- (b) Has dimensions exceeding 12' in height, 7' in width, or 20' in length;
- (c) Is licensed in connection with any business or trade;
- (d) Is licensed as a vehicle "for hire";
- (e) Possess post-factory lettering or signage that identifies or advertises a commercial enterprise; or
- (f) Possesses non-factory modification to its exterior. A vehicle owned by the County or other governmental agency is not a Commercial Vehicle.

5.16.3. A "Low Impact Commercial Vehicle" means a Commercial Vehicle that:

- (a) Has a carrying capacity equal to or less than three quarters of a ton;
- (b) Has dimensions that do not exceed 12' in height, 7' in width, and 20' in length;
- (c) Possesses post-factory lettering or signage that identifies or advertises a commercial enterprise; or
- (d) Does not possess non-factory exterior modifications to the vehicle.

5.16.4. A Low Impact Commercial Vehicle may park on the Lot, subject to the following limitations:

- (a) Only one Low Impact Commercial Vehicle per residence may be parked outside the garage; and
- (b) Parking the Low Impact Commercial Vehicle at the residence is reasonably necessary to the occupant's performance of tasks associated with the occupant's employment.

Section 5.17. Signs.

No sign of any kind shall be displayed within the Property except for (a) entrance signs, (b) safety signs, (c) street signs, (d) signs indicating a Lot is for sale, lease or rent, (e) non-solicitation signs, and (f) during a period beginning six weeks before an election and ending two days after an election, political

yard signs not exceeding two (2) feet square. Lot Owners, in their approval of the 2012 amendments to the Declaration, considered these restrictions on political signs to be “reasonable” regulations of political signage, for purposes of RCW 64.38.034.

#### Section 5.18. Woodpiles.

Woodpiles or wood supplies shall not be stored on any front or side yard, or be visible from the streets within the Subdivision.

#### Section 5.19. Easements and Restrictions on Final Plat.

Easements and restrictions relating to installation and/or maintenance of utilities, sewage, drainage or any other purpose set forth in the recorded Plat map are hereby reserved on each Lot as shown on the final approved Plat of Pheasants Hollow.

#### Section 5.20. Rental Restrictions.

This Section applies to the Leasing of a Lot (which includes Leasing any portion of any residential structure located on a Lot), including all tenancies of any duration, all tenancies with options to purchase, all tenancies with first rights of refusal, and all living arrangements in any way governed by the provisions of chapter 59.12 RCW or chapter 59.18 RCW, and shall also apply to any sublease of a Lot and the assignment of any lease of a Lot.

5.20.1. Leasing. Because this Declaration is recorded, all who occupy a Lot do so with constructive knowledge of everything contained in the Declaration. This means that a Lease that lacks anything the Declaration requires of a Lease shall nonetheless be deemed to contain what is lacking. That said, the Declaration requires that a Lease:

- (a) shall be written;
- (b) shall have a minimum initial term of six (6) months;
- (c) shall not Lease less than the entire Lot;
- (d) shall not be for hotel or transient purposes (which here means Leasing for any period of less than thirty (30) days);
- (e) shall provide that the Lease is subject to the Governing Documents;
- (f) shall provide that the Tenant’s failure to comply with the Governing Documents shall be a default under the Lease; and
- (g) shall provide a written acknowledgment, signed by the Tenant, acknowledging receipt of the Governing Documents and acknowledging that the Tenant is bound to comply with the Governing Documents.

5.20.2. Board Authorized to Regulate Leasing. In addition to the Leasing requirements set forth in this Section, the Board is authorized to adopt reasonable Rules, consistent with the Declaration, governing any and all aspects of the Leasing of Lots, including (for example):

5.20.2.1. Rules requiring Tenant-screening, including, without limitation, establishing the nature of screening required; provided, however, that any such Tenant-screening rules shall (a) require that the Owner, and not the Association, be responsible for any required Tenant-screening and (b) require that the Owner demonstrate that any required Tenant-screening has been performed by either (i) submitting the results of such screening to the Association, or, in the Owners' sole discretion, (ii) certify to the Association in writing and under oath that any required Tenant-screening has been performed; and

5.20.2.2. Rules setting a reasonable fee to cover move-in and/or move-out damage to the common area and facilities and to cover Leasing-related administrative costs.

5.20.3. Rent to Association. If a Lot is Leased by its Owner, and that Owner is more than thirty (30) days delinquent in payment of Assessments or other costs to the Association, the Board may collect, and the Tenant shall pay over to the Board, so much of the rent for that Lot as is required to pay any amounts due the Association. The Tenant shall not have the right to question payment over to the Board. To the extent such rent is paid to the Association, that payment will discharge the Tenant's duty of payment of rent to the Owner. It will not discharge the liability of the Owner, a purchaser, and the Lot, for Assessments and charges, and it will not operate as an approval of the Lease. The Board may not exercise this power where a receiver has been appointed for the Lot or its Owner, or in derogation of any rights which a Mortgagee of the Lot may have to the rent.

## ARTICLE VI.

### PROTECTION OF GOOD FAITH

#### Section 6.1. No Personal Liability.

So long as a Board member, or Association committee member, or Association officer, has acted in good faith, without willful or intentional misconduct, upon the basis of such information as is then possessed by such person, no such person shall be personally liable to any Owner, or to any other person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of such person; provided, however, that this Section 6.1 shall not apply where the consequences of such act, omission, error, or negligence is covered by insurance obtained by

the Board. This insulation from liability provided by this Section 6.1 is in addition to the insulation from liability provided for Board Decisions above.

**Section 6.2. Indemnification.**

Each Board member, Association committee member, Association officer, and the Managing Agent shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which such person may be a party, or in which such person may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not such person holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by any type of insurance and except in cases where such person is adjudged guilty of willful misfeasance in the performance of such person's duties; provided, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association.

**Section 6.3. Insurance.**

The Board shall procure for the Association and continuously maintain as a Common Expense one or more policies of insurance as follows: (a) general comprehensive liability insurance for the Association, the Owners, and any agents, guests, invitees, licensees, or others, incident to the administration, interpretation and application of these Covenants and/or in the management of the Association, (b) fidelity coverage naming the Association to protect against dishonest acts by the Board or any officers, agents or other persons responsible for handling Association funds, (c) directors and officers liability insurance, (d) workers' compensation insurance to the extent required by applicable laws and (e) any other insurance the Board deems advisable.

**ARTICLE VII.**

**NOTICE**

**Section 7.1. Form and Delivery of Notice.**

Unless provided otherwise in these Covenants, a notice permitted or required by these Covenants shall be in writing and may be delivered in person or by mail. A properly mailed notice is deemed received the day it is deposited in the mail. Notice to the Owner of any Lot shall be sufficient if mailed to the Lot if no other mailing address has been given to the Board. Mailing addresses may be changed by notice in writing to the Board. All Membership Meeting Notices, as defined in any Amendment to the Bylaws, and any Governing Document Notice, as here defined, may be delivered by electronic transmission, provided that such delivery is made pursuant to, and in compliance with, such Amendment to the Bylaws. "Governing Document Notice" means a notice given to comply with a notice requirement imposed by the Declaration, the Bylaws, or the rules or regulations, but does **not** include notice of (a) failure to pay an Assessment, (b) foreclosure of an Association lien, (c) intent to enter a Lot, or (d) any enforcement or other action the Association may take against an Owner. Notices to the Board shall be given to the president or secretary of the Association.

**Section 7.2. Notification of Sale of Lot.**

Concurrently with the execution of any escrow instructions, in connection with a purchase and sale agreement, contract of sale, or other agreement for the sale or transfer of a Lot, under circumstances whereby the transferee will become the Owner thereof, the transferor shall notify the Association in writing of such sale. Such notification shall set forth:

- (a) The name of the transferor and the transferee;
- (b) The Lot number of the Lot to be purchased by the transferee;
- (c) The transferee's mailing address;
- (d) The name and address of the escrow holder, if any, for such sale and the escrow number; and
- (e) The scheduled date of sale or transfer.

Concurrently with the consummation of such sale or transfer, or within five (5) business days thereafter, the transferor shall notify the Association in writing of consummation of such sale or transfer. Such notification shall set forth the information called for in clauses (a), (b), (c) and (d) above, and the date on which the sale was consummated. Unless and until such notice is given and any unpaid Assessments have been paid on behalf of the transferor, the Association shall not be required to recognize the transferee for any purpose. Prior to receipt of such notification of consummation of the sale or transfer, any and all communications required or permitted to be given by the Association or the Board shall be deemed to be duly given and made to the transferee if duly and timely made and given to said transferee's transferor. In addition, until the notice of consummation of the sale or transfer has been given to the Association, the transferor shall remain jointly and severally liable with the transferee for all Assessments against the Lot so transferred.

**ARTICLE VIII.**

**GENERAL PROVISIONS**

**Section 8.1. Binding Effect.**

These Covenants are meant to benefit the Lots. These Covenants run with the land, and bind the Lots, the Owners and all their successors and assigns. These Covenants run with the land for twenty (20) years from the Effective Date and shall automatically extend for successive periods of ten (10) years, provided, however, that these Covenants may be amended as here provided.

**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, the Owner of any Lot or residential site in the Subdivision, or the Association, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent such violation or breach. 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, 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, shall reimburse the cost thereof including attorney fees and costs incurred; and such entry and abatement or removal shall not be deemed a trespass; provided, however, 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.

#### Section 8.4. Amendment of this Declaration.

Amendments to the Covenants shall be made by an instrument in writing entitled "Amendment to the Covenants" which sets forth the entire amendment. Except as otherwise specifically provided for in these Covenants, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Owners. Written notice of the proposed amendment, including the full text thereof, shall be given to all Owners entitled to vote thereon in the manner provided in Article VII of these Covenants. Amendments may be adopted at a meeting of the Owners if approved by at least sixty percent (60%) of the total voting power of the Association or, without any meeting, if all Owners have been duly notified and the amendment is consented to in writing by at least sixty percent (60%) of the total voting power of the Association. The amendment when adopted shall bear the signature of the president of the Association and shall be attested by the secretary, who shall certify that the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Said certification shall be conclusive as to the procedural validity of the Amendment. Amendments once properly adopted shall be effective upon recording in the official real estate records of King County.

#### Section 8.5. Severability.

Should any one of the covenants, conditions, restrictions, reservations, easements, or provisions of this Declaration be declared void, invalid, illegal or unenforceable for any reason by judgment or court order, such judgment or order shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

#### Section 8.6. Effective Date.

These Covenants shall take effect upon recording.

## ARTICLE IX.

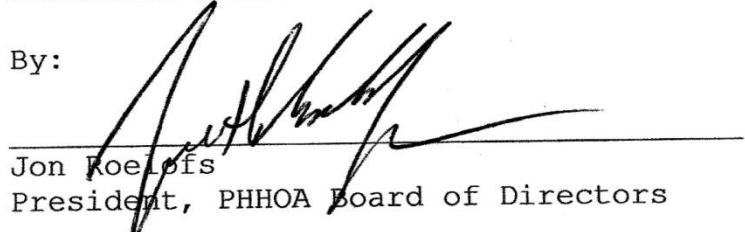
### THE HOMEOWNERS ASSOCIATION ACT

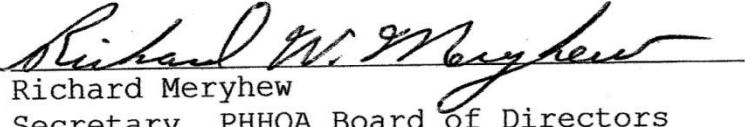
The Association is a “Homeowners’ association” as defined in RCW 64.38.010(11) and, as such, is subject to the Homeowners’ Association Act set forth at RCW 64.38.005, et. seq. (“Act”). The Association shall have the rights and authority conferred upon it by the Act. The Association shall have the obligations and responsibilities imposed by the Act. For ease of reference, certain portions of the Act are set out in Exhibit A to the Declaration and incorporated in the Declaration by this reference as though fully set forth in the Declaration.

IN WITNESS WHEREOF, the undersigned have hereunto set their hand and seal this 5<sup>th</sup> day of April, 2013.

Pheasants Hollow Home Owners Association (PHHOA) :

By:

  
Jon Roelofs  
President, PHHOA Board of Directors

  
Richard Meryhew

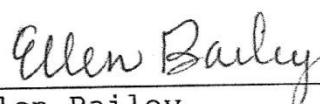
Secretary, PHHOA Board of Directors

STATE OF WASHINGTON

COUNTY OF KING

On this 5<sup>th</sup> day of April, 2013  
before me, a Notary Public in and for the State of Washington,  
personally appeared Jon Roelofs, President of Pheasants Hollow  
Homeowners Association, and Richard Meryhew, Secretary of  
Pheasants Hollow Homeowners Association, who acknowledged that  
they are authorized for and on behalf of said association and did  
so execute the above and foregoing Declaration of Covenants,  
Conditions and Restrictions of Pheasants Hollow, as the free and  
voluntary act and deed of said association for the  
uses and purposes therein set forth.

GIVEN under my hand and official seal the day and year first  
above written.

  
Ellen Bailey

Ellen Bailey

Notary Public in and for the State  
of Washington, residing at  
Maple Valley, WA.

My commission expires: 11/19/2013



**Exhibit A**  
**Selected Excerpts from the Homeowners Association Act (RCW 64.38, et. seq.)**

**[Note: Words *italicized* below are parts of the Act that address Reserve Studies.]**

**64.38.010**

**Definitions.**

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For purposes of this chapter:

- (1) "Assessment" means all sums chargeable to an owner by an association in accordance with RCW 64.38.020.
- (2) "*Baseline funding plan*" means establishing a reserve funding goal of maintaining a reserve account balance above zero dollars throughout the thirty-year study period described under RCW 64.38.065.
- (3) "Board of directors" or "board" means the body, regardless of name, with primary authority to manage the affairs of the association.
- (4) "Common areas" means property owned, or otherwise maintained, repaired or administered by the association.
- (5) "Common expense" means the costs incurred by the association to exercise any of the powers provided for in this chapter.
- (6) "*Contribution rate*" means, in a reserve study as described in RCW 64.34.380, the amount contributed to the reserve account so that the association will have cash reserves to pay major maintenance, repair, or replacement costs without the need of a special assessment.
- (7) "*Effective age*" means the difference between the estimated useful life and remaining useful life.
- (8) "*Full funding plan*" means setting a reserve funding goal of achieving one hundred percent fully funded reserves by the end of the thirty-year study period described under RCW 64.38.065, in which the reserve account balance equals the sum of the deteriorated portion of all reserve components.
- (9) "*Fully funded balance*" means the current value of the deteriorated portion, not the total replacement value, of all the reserve components. The fully funded balance for each reserve component is calculated by multiplying the current replacement cost of the reserve component by its effective age, then dividing the result by the reserve component's useful life. The sum total of all reserve components' fully funded balances is the association's fully funded balance.
- (10) "Governing documents" means the articles of incorporation, bylaws, plat, declaration of covenants, conditions, and restrictions, rules and regulations of the association, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction.
- (11) "Homeowners' association" or "association" means a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member. "Homeowners' association" does not mean an association created under chapter 64.32 or 64.34 RCW.

(12) "Lot" means a physical portion of the real property located within an association's jurisdiction designated for separate ownership.

(13) "Owner" means the owner of a lot, but does not include a person who has an interest in a lot solely as security for an obligation. "Owner" also means the vendee, not the vendor, of a lot under a real estate contract.

(14) "*Remaining useful life*" means the estimated time, in years, before a reserve component will require major maintenance, repair, or replacement to perform its intended function.

(15) "*Replacement cost*" means the current cost of replacing, repairing, or restoring a reserve component to its original functional condition.

(16) "*Reserve component*" means a common element whose cost of maintenance, repair, or replacement is infrequent, significant, and impractical to include in an annual budget.

(17) "*Reserve study professional*" means an independent person who is suitably qualified by knowledge, skill, experience, training, or education to prepare a reserve study in accordance with RCW 64.34.380 and 64.34.382.

(18) "Residential real property" means any real property, the use of which is limited by law, covenant or otherwise to primarily residential or recreational purposes.

(19) "*Significant assets*" means that the current replacement value of the major reserve components is seventy-five percent or more of the gross budget of the association, excluding the association's reserve account funds.

(20) "*Useful life*" means the estimated time, between years, that major maintenance, repair, or replacement is estimated to occur.

#### **64.38.020** **Association powers.**

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Unless otherwise provided in the governing documents, an association may:

- (1) Adopt and amend bylaws, rules, and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners;
- (3) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more owners on matters affecting the homeowners' association, but not on behalf of owners involved in disputes that are not the responsibility of the association;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common areas;
- (7) Cause additional improvements to be made as a part of the common areas;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;

- (9) Grant easements, leases, licenses, and concessions through or over the common areas and petition for or consent to the vacation of streets and alleys;
- (10) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common areas;
- (11) Impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the bylaws, rules, and regulations of the association;
- (12) Exercise any other powers conferred by the bylaws;
- (13) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and
- (14) Exercise any other powers necessary and proper for the governance and operation of the association.

#### **64.38.025**

##### **Board of directors — Standard of care — Restrictions — Budget — Removal from board.**

- (1) Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 24.03 RCW.
- (2) The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors; but the board of directors may fill vacancies in its membership of the unexpired portion of any term.
- (3) Within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.
- (4) *As part of the summary of the budget provided to all owners, the board of directors shall disclose to the owners:*

(a) The current amount of regular assessments budgeted for contribution to the reserve account, the recommended contribution rate from the reserve study, and the funding plan upon which the recommended contribution rate is based;

(b) If additional regular or special assessments are scheduled to be imposed, the date the assessments are due, the amount of the assessments per each owner per month or year, and the purpose of the assessments;

(c) Based upon the most recent reserve study and other information, whether currently projected reserve account balances will be sufficient at the end of each year to meet the association's obligation for major maintenance, repair, or replacement of reserve components during the next thirty years;

(d) If reserve account balances are not projected to be sufficient, what additional assessments may be necessary to ensure that sufficient reserve account funds will be available each year during the next thirty years, the approximate dates assessments may be due, and the amount of the assessments per owner per month or year;

(e) The estimated amount recommended in the reserve account at the end of the current fiscal year based on the most recent reserve study, the projected reserve account cash balance at the end of the current fiscal year, and the percent funded at the date of the latest reserve study;

(f) The estimated amount recommended in the reserve account based upon the most recent reserve study at the end of each of the next five budget years, the projected reserve account cash balance in each of those years, and the projected percent funded for each of those years; and

(g) If the funding plan approved by the association is implemented, the projected reserve account cash balance in each of the next five budget years and the percent funded for each of those years.

(5) The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause.

#### **64.38.035**

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#### **Association meetings — Notice — Board of directors.**

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(1) A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by owners having ten percent of the votes in the association. Not less than fourteen nor more than sixty days in advance of any meeting, the secretary or other officers specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first-class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner. The notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the articles of

incorporation, bylaws, any budget or changes in the previously approved budget that result in a change in assessment obligation, and any proposal to remove a director.

(2) Except as provided in this subsection, all meetings of the board of directors shall be open for observation by all owners of record and their authorized agents. The board of directors shall keep minutes of all actions taken by the board, which shall be available to all owners. Upon the affirmative vote in open meeting to assemble in closed session, the board of directors may convene in closed executive session to consider personnel matters; consult with legal counsel or consider communications with legal counsel; and discuss likely or pending litigation, matters involving possible violations of the governing documents of the association, and matters involving the possible liability of an owner to the association. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No motion, or other action adopted, passed, or agreed to in closed session may become effective unless the board of directors, following the closed session, reconvenes in open meeting and votes in the open meeting on such motion, or other action which is reasonably identified. The requirements of this subsection shall not require the disclosure of information in violation of law or which is otherwise exempt from disclosure.

#### **64.38.045**

#### **Financial and other records — Property of association — Copies — Examination — Annual financial statement — Accounts.**

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(1) The association or its managing agent shall keep financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its financial status. All financial and other records of the association, including but not limited to checks, bank records, and invoices, in whatever form they are kept, are the property of the association. Each association managing agent shall turn over all original books and records to the association immediately upon termination of the management relationship with the association, or upon such other demand as is made by the board of directors. An association managing agent is entitled to keep copies of association records. All records which the managing agent has turned over to the association shall be made reasonably available for the examination and copying by the managing agent.

(2) All records of the association, including the names and addresses of owners and other occupants of the lots, shall be available for examination by all owners, holders of mortgages on the lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the association or its managing agent. The association shall not release the unlisted telephone number of any owner. The association may impose and collect a reasonable charge for copies and any reasonable costs incurred by the association in providing access to records.

(3) At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association. The financial statements of associations with annual assessments of fifty thousand dollars or more shall be audited at least annually by an independent certified public accountant, but the audit may be waived if sixty-seven percent of the votes cast by owners, in person or by proxy, at a meeting of the association at which a quorum is present, vote each year to waive the audit.

(4) The funds of the association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds.

#### **64.38.033**

##### **Flag of the United States — Outdoor display — Governing documents.**

(1) The governing documents may not prohibit the outdoor display of the flag of the United States by an owner or resident on the owner's or resident's property if the flag is displayed in a manner consistent with federal flag display law, 4 U.S.C. Sec. 1 et seq. The governing documents may include reasonable rules and regulations, consistent with 4 U.S.C. Sec. 1 et seq., regarding the placement and manner of display of the flag of the United States.

(2) The governing documents may not prohibit the installation of a flagpole for the display of the flag of the United States. The governing documents may include reasonable rules and regulations regarding the location and the size of the flagpole.

(3) For purposes of this section, "flag of the United States" means the flag of the United States as defined in federal flag display law, 4 U.S.C. Sec. 1 et seq., that is made of fabric, cloth, or paper and that is displayed from a staff or flagpole or in a window. For purposes of this section, "flag of the United States" does not mean a flag depiction or emblem made of lights, paint, roofing, siding, paving materials, flora, or balloons, or of any similar building, landscaping, or decorative component.

(4) The provisions of this section shall be construed to apply retroactively to any governing documents in effect on June 10, 2004. Any provision in a governing document in effect on June 10, 2004, that is inconsistent with this section shall be void and unenforceable.

#### **64.38.034**

##### **Political yard signs — Governing documents.**

(1) The governing documents may not prohibit the outdoor display of political yard signs by an owner or resident on the owner's or resident's property before any primary or general election. The governing documents may include reasonable rules and regulations regarding the placement and manner of display of political yard signs.

(2) This section applies retroactively to any governing documents in effect on July 24, 2005. Any provision in a governing document in effect on July 24, 2005, that is inconsistent with this section is void and unenforceable.

#### **64.38.055**

##### **Governing documents — Solar panels.**

(1) The governing documents may not prohibit the installation of a solar energy panel by an owner or resident on the owner's or resident's property as long as the solar energy panel:

(a) Meets applicable health and safety standards and requirements imposed by state and local permitting authorities;

(b) If used to heat water, is certified by the solar rating certification corporation or another nationally recognized certification agency. Certification must be for the solar energy panel and for installation; and

(c) If used to produce electricity, meets all applicable safety and performance standards established by the national electric code, the institute of electrical and electronics engineers, accredited testing laboratories, such as underwriters laboratories, and, where applicable, rules of the utilities and transportation commission regarding safety and reliability.

(2) The governing documents may:

(a) Prohibit the visibility of any part of a roof-mounted solar energy panel above the roof line;

(b) Permit the attachment of a solar energy panel to the slope of a roof facing a street only if:

(i) The solar energy panel conforms to the slope of the roof; and

(ii) The top edge of the solar energy panel is parallel to the roof ridge; or

(c) Require:

(i) A solar energy panel frame, a support bracket, or any visible piping or wiring to be painted to coordinate with the roofing material;

(ii) An owner or resident to shield a ground-mounted solar energy panel if shielding the panel does not prohibit economic installation of the solar energy panel or degrade the operational performance quality of the solar energy panel by more than ten percent; or

(iii) Owners or residents who install solar energy panels to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of a solar energy panel.

(3) The governing documents may include other reasonable rules regarding the placement and manner of a solar energy panel.

(4) For purposes of this section, "solar energy panel" means a panel device or system or combination of panel devices or systems that relies on direct sunlight as an energy source, including a panel device or system or combination of panel devices or systems that collects sunlight for use in:

(a) The heating or cooling of a structure or building;

(b) The heating or pumping of water;

(c) Industrial, commercial, or agricultural processes; or

(d) The generation of electricity.

(5) This section does not apply to common areas as defined in RCW 64.38.010.

(6) This section applies retroactively to a governing document in effect on July 26, 2009. A provision in a governing document in effect on July 26, 2009, that is inconsistent with this section is void and unenforceable.

#### **64.38.050**

#### **Violation — Remedy — Attorneys' fees.**

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Any violation of the provisions of this chapter entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party.

#### **64.38.060**

#### **Adult family homes.**

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(1) To effectuate the public policy of chapter 70.128 RCW, the governing documents may not limit, directly or indirectly:

or  
(a) Persons with disabilities from living in an adult family home licensed under chapter 70.128 RCW;

(b) Persons and legal entities from operating adult family homes licensed under chapter 70.128 RCW, whether for-profit or nonprofit, to provide services covered under chapter 70.128 RCW. However, this subsection does not prohibit application of reasonable nondiscriminatory regulation, including but not limited to landscaping standards or regulation of sign location or size, that applies to all residential property subject to the governing documents.

(2) This section applies retroactively to any governing documents in effect on July 26, 2009. Any provision in a governing document in effect on or after July 26, 2009, that is inconsistent with subsection (1) of this section is unenforceable to the extent of the conflict.

#### **64.38.065**

##### **Reserve account and study.**

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*(1) An association is encouraged to establish a reserve account with a financial institution to fund major maintenance, repair, and replacement of common elements, including limited common elements that will require major maintenance, repair, or replacement within thirty years. If the association establishes a reserve account, the account must be in the name of the association. The board of directors is responsible for administering the reserve account.*

*(2) Unless doing so would impose an unreasonable hardship, an association with significant assets shall prepare and update a reserve study, in accordance with the association's governing documents and this chapter. The initial reserve study must be based upon a visual site inspection conducted by a reserve study professional.*

*(3) Unless doing so would impose an unreasonable hardship, the association shall update the reserve study annually. At least every three years, an updated reserve study must be prepared and based upon a visual site inspection conducted by a reserve study professional.*

*(4) The decisions relating to the preparation and updating of a reserve study must be made by the board of directors in the exercise of the reasonable discretion of the board. The decisions must include whether a reserve study will be prepared or updated, and whether the assistance of a reserve study professional will be utilized.*

#### **64.38.070**

##### **Reserve study — Requirements.**

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*(1) A reserve study as described in RCW 64.38.065 is supplemental to the association's operating and maintenance budget. In preparing a reserve study, the association shall estimate the anticipated major maintenance, repair, and replacement costs, whose infrequent and significant nature make them impractical to be included in an annual budget.*

*(2) A reserve study must include:*

*(a) A reserve component list, including any reserve component that would cost more than one percent of the annual budget of the association, not including the reserve account, for major maintenance, repair, or replacement. If one of these reserve components is not included in the reserve study, the study should provide commentary explaining the basis for its exclusion. The study must also include quantities and estimates for the useful life of each reserve component, remaining useful life of each reserve component, and current major maintenance, repair, or replacement cost for each reserve component;*

*(b) The date of the study, and a statement that the study meets the requirements of this section;*

*(c) The following level of reserve study performed:*

*(i) Level I: Full reserve study funding analysis and plan;*

*(ii) Level II: Update with visual site inspection; or*

(iii) *Level III: Update with no visual site inspection;*

(d) *The association's reserve account balance;*

(e) *The percentage of the fully funded balance that the reserve account is funded;*

(f) *Special assessments already implemented or planned;*

(g) *Interest and inflation assumptions;*

(h) *Current reserve account contribution rates for a full funding plan and baseline funding plan;*

(i) *A recommended reserve account contribution rate, a contribution rate for a full funding plan to achieve one hundred percent fully funded reserves by the end of the thirty-year study period, a baseline funding plan to maintain the reserve balance above zero throughout the thirty-year study period without special assessments, and a contribution rate recommended by the reserve study professional;*

(j) *A projected reserve account balance for thirty years and a funding plan to pay for projected costs from that reserve account balance without reliance on future unplanned special assessments; and*

(k) *A statement on whether the reserve study was prepared with the assistance of a reserve study professional.*

(3) *A reserve study must also include the following disclosure: "This reserve study should be reviewed carefully. It may not include all common and limited common element components that will require major maintenance, repair, or replacement in future years, and may not include regular contributions to a reserve account for the cost of such maintenance, repair, or replacement. The failure to include a component in a reserve study, or to provide contributions to a reserve account for a component, may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a reserve component."*

#### **64.38.075**

##### **Reserve account — Withdrawals.**

*An association may withdraw funds from its reserve account to pay for unforeseen or unbudgeted costs that are unrelated to maintenance, repair, or replacement of the reserve components. The board of directors shall record any such withdrawal in the minute books of the association, cause notice of any such withdrawal to be hand delivered or sent prepaid by first-class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner, and adopt a repayment schedule not to exceed twenty-four months unless it determines that repayment within twenty-four months would impose an unreasonable burden on the owners. Payment for major maintenance, repair, or replacement of the reserve components out of cycle with the reserve study projections or not included in the reserve study may be made from the reserve account without meeting the notification or repayment requirements under this section.*

#### **64.38.080**

##### **Reserve study — Demand for preparation and inclusion in budget.**

(1) *When more than three years have passed since the date of the last reserve study prepared by a reserve study professional, the owners to which at least thirty-five percent of the votes are allocated may demand, in writing, to the association that the cost of a reserve study be included in the next budget and that the study be prepared by the end of that budget year. The written demand must refer to this*

*section. The board of directors shall, upon receipt of the written demand, provide the owners who make the demand reasonable assurance that the board will include a reserve study in the next budget and, if the budget is not rejected by a majority of the owners, will arrange for the completion of a reserve study.*

*(2) If a written demand under this section is made and a reserve study is not timely prepared, a court may order specific performance and award reasonable attorneys' fees to the prevailing party in any legal action brought to enforce this section. An association may assert unreasonable hardship as an affirmative defense in any action brought against it under this section. Without limiting this affirmative defense, an unreasonable hardship exists where the cost of preparing a reserve study would exceed five percent of the association's annual budget.*

*(3) An owner's duty to pay for common expenses is not excused because of the association's failure to comply with this section or this chapter. A budget ratified by the owners is not invalidated because of the association's failure to comply with this section or this chapter.*

#### **64.38.085**

##### **Reserve account and study — Liability**

*Monetary damages or any other liability may not be awarded against or imposed upon the association, the officers or board of directors of the association, or those persons who may have provided advice or assistance to the association or its officers or directors, for failure to: Establish a reserve account; have a current reserve study prepared or updated in accordance with the requirements of this chapter; or make the reserve disclosures in accordance with this chapter.*

#### **64.38.090**

##### **Reserve study — Exemptions.**

*An association is not required to follow the reserve study requirements under RCW 64.38.025 and RCW 64.38.065 through 64.38.085 if the cost of the reserve study exceeds five percent of the association's annual budget, the association does not have significant assets, or there are ten or fewer homes in the association.*