



* 8 1 2 3 7 8 0 . 2 9 *

FILED FOR RECORD AT REQUEST OF:

Meyer, Fluegge & Tenney, P.S.
Attn: James C. Carmody
230 S. Second Street
Yakima, Washington 98901

FILE# 8123780
YAKIMA COUNTY, WA
11/09/2021 03:16:06PM
COVENANT
PAGES: 29
MEYER, FLUEGGE & TENNEY P.S.

Recording Fee: 231.50

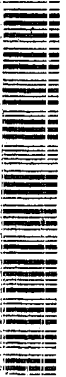
**NOT SUBJECT TO
REAL ESTATE EXCISE TAX**

S Webb NOV 09 2021
DEPUTY TREASURER

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS AND RESERVATIONS
FOR APPLE TREE PHASE 1B**

FILE# 8123781
YAKIMA COUNTY, WA
11/09/2021 03:16:07PM
EASEMENT
PAGES: 29
MEYER, FLUEGGE & TENNEY P.S.
Recording Fee: 203.50

* 8 1 2 3 7 8 1 2 9 *



The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose and shall not affect the intent of any warranty contained in the document itself.

Reference number(s) (if applicable):

Declarants: 1. KINLOCH BORTON ENTERPRISES, L.L.C., a Washington limited liability company, and APPLE TREE CONSTRUCTION COMPANY, L.L.C., a Washington limited liability company

Legal Description:

Lots 1-8 of Short Plat recorded under Auditor's File No. 8119261, records of Yakima County, Washington

Assessor's Tax Parcel ID Number(s):

- Lot 1 = 171336-44403
- Lot 2 = 171336-44404
- Lot 3 = 171336-44405
- Lot 4 = 171336-44406
- Lot 5 = 171336-44407
- Lot 6 = 171336-44408
- Lot 7 = 171336-44409
- Lot 8 = 171336-44410
- Lot 9 = 171336-44411

TABLE OF CONTENTS

RECITALS..... 1

I. DEFINITIONS 2

1.1 Definitions 2

1.2 Form of Words..... 4

1.3 Exhibits..... 5

II. PROPERTY, COMMON AREAS AND EASEMENTS..... 5

2.1 Property and Master Plan..... 5

2.1.1 Property Subject to Declaration..... 5

2.1.2 Master Plan..... 5

2.1.3 Irrigation Delivery System 5

2.1.4 Entry Monument and Landscaping..... 5

2.2 Use of Common Areas/Facilities 6

2.3 Abandonment of Common Areas..... 6

2.4 Maintenance of Common Areas 6

2.5 Easements for Utilities..... 6

III. DESIGN REVIEW, IMPROVEMENT STANDARDS AND USE RESTRICTIONS 6

3.1 Uniformity of Use and Appearance..... 6

3.2 Residential Home Design Options..... 7

3.2.1 Apple Tree Portfolio 7

3.2.2 Custom Home – Reservation of Rights 7

3.2.3 Home Construction 7

3.3 Code Compliance..... 7

3.4 Building Specifications and Restrictions 7

3.4.1 Size – Minimum Square Feet..... 8

3.4.2 Lot Size..... 8

3.4.3 Set Backs..... 8

3.4.4 Local Codes..... 8

3.5 Appearance..... 8

3.5.1 Roofing 8

3.5.2 Residence/Exterior..... 8

3.5.3 Garages..... 8

3.5.4 Entry Walks, Porches and Decks 9

3.5.5 Driveways 9

3.5.6 Fences..... 9

3.5.7 Chimneys..... 9

3.5.8 Utilities..... 9

3.5.9 Mailboxes..... 9

3.6 Landscaping and General Property Maintenance 9

3.6.1 Approval of Landscaping Plan..... 9

3.6.2 Appearance of Lot..... 9

3.6.3 Limitations on Landscaping..... 9

3.6.4 Landscape Installation 10

3.7 Residential Uses	10
3.7.1 Parking	10
3.7.2 Signs.....	10
3.7.3 Animals.....	10
3.7.4 Temporary Structure	10
3.7.5 Clothes Lines.....	10
3.7.6 Radio and Television Aerials/Satellite Dishes	11
3.7.7 Trash Containers and Debris	11
3.7.8 Offensive Activities.....	11
3.7.9 Underground Utilities.....	11
3.7.10 Water Supply/Sewage Disposal.....	11
3.7.11 Damage.....	11
3.7.12 Lots.....	11
 IV. MANAGEMENT AND ADMINISTRATION.....	 11
4.1 Designation of Manager	11
4.2 Management of Common Area/Facilities	12
4.3 Master Association	12
4.4 Costs and Expenses.....	12
4.5 Administration of Declaration/Covenants.....	12
4.6 Protection of Common Areas.....	12
4.7 Adoption of Rules and Regulations.....	13
4.8 Enforcement of Covenants/Assessments	13
4.8.1 Notice of Violation	13
4.8.2 Opportunity to Cure.....	13
4.8.3 Enforcement	13
4.8.4 Legal Proceedings	13
4.8.5 Costs of Enforcement.....	13
 V. ASSESSMENTS AND CONNECTION CHARGES	 14
5.1 Assessments.....	14
5.1.1 Regular Assessments.....	14
5.1.2 Special Assessment.....	14
5.1.3 Service Charges	14
5.2 Connection Charges.....	15
5.2.1 Sewer Connection Fees.....	15
(a) Trunkage Element.....	15
(b) Collection Pipes Charge.....	15
5.2.2 Irrigation Water Service.....	15
5.2.3 Cascade Natural Gas.....	15
 VI. LIEN AND COLLECTION OF ASSESSMENTS	 16
6.1 Assessments are a Lien: Priority	16
6.2 Lien for Assessment/Connection Fee.....	16
6.3 Assessments are Personal Obligations	16
6.4 Late Charges and Interest on Delinquent Accounts.....	16
6.5 Remedies Cumulative	17

6.6	<i>No Avoidance of Assessments</i>	17
VII.	FAILURE OF APPLE TREE TO INSIST ON STRICT PERFORMANCE – NO WAIVER	17
VIII.	INSURANCE	17
IX.	DAMAGE AND REPAIR OF DAMAGE TO PROPERTY	17
X.	DURATION	18
XI.	RESERVATION OF DECLARANT'S RIGHT TO AMEND	18
11.1	<i>Amendment by Declarant</i>	18
(a)	<i>Mortgage Requirements</i>	18
(b)	<i>Interests of Development/Property Owners</i>	18
11.2	<i>Proposals by Lot Owners</i>	18
11.3	<i>Authorization to Amend</i>	18
XII.	GENERAL PROVISIONS	19
12.1	<i>Severability</i>	19
12.2	<i>Effective Date</i>	19
12.3	<i>Assignment</i>	19
12.4	<i>Binding Effect</i>	19
12.5	<i>Dispute</i>	19
12.6	<i>Interpretation</i>	20

EXHIBITS

Exhibit A – Short Plat of Apple Tree Phase 1B

Exhibit B – Property Subject to Declaration

THIS DECLARATION of covenants, conditions, restrictions, easements and reservations for Apple Tree Phase 1B is made collectively by KINLOCH BORTON ENTERPRISES, L.L.C., a Washington limited liability company, and APPLE TREE CONSTRUCTION COMPANY, L.L.C., a Washington limited liability company (Collectively "Declarants"), as of this ____ day of October, 2021.

RECITALS

- A. This Declaration of Covenants, Conditions, Restrictions, Easements and Reservations for Apple Tree Phase 1B is prepared for the purpose of assuring the mutual interests and expectations of homeowners and Apple Tree Resort Development. It is the purpose of these provisions to make the home owning experience rewarding and pleasant for all lot owners. Much thought and research has gone into these provisions in order to protect and enhance the value of the investment; promote an enjoyable recreational lifestyle; and offer and sustain a quality living environment for all within the resort and residential communities.
- B. Kinloch Borton Enterprises, L.L.C. is the owner of the subject property which is a part of the Apple Tree Resort, a multi-phased residential, commercial, resort and golf course community authorized as a planned development pursuant to approvals from City of Yakima, Washington. The master plan for development of Apple Tree Resort was initially set forth in twelve (12) phases. Apple Tree Resort has expanded to include the Plat of Cameo Court and Plat of Golden Grove.
- C. While various phases of Apple Tree Resort were developed under different ownerships, Apple Tree Resort is managed by Apple Tree Construction Company, L.L.C. (hereinafter "Apple Tree Construction or Apple Tree") (or its successors or assigns) in a manner which integrates, coordinates and assures the orderly and consistent development of the entire project and harmonizes the various phases of development.
- D. Apple Tree Construction shall have the sole and exclusive responsibility for construction and installation of common use areas and facilities (i.e., private roadways, irrigation water delivery system, recreational areas and facilities, and other limited common facilities); the interpretation and administration of these covenants, conditions, restrictions and reservations; the repair, maintenance and replacement of common areas and facilities; and design review for proposed site and structural improvements. Apple Tree Construction shall further have authority to levy assessments upon each lot or parcel within the Apple Tree Phase 1B for purposes established herein.
- E. Administration of these covenants, conditions, restrictions and reservations shall be applied in a manner consistent with the overall development of Apple Tree Resort Development. Oversight, guidance and enforcement shall be coordinated through the Apple Tree Resort Master Homeowner's Association ("Master Homeowner's Association") which will include representatives of each development phase within the project.

NOW, THEREFORE, Declarants declare that the property, and every portion thereof, shall be held, transferred, sold, conveyed, leased, used and occupied subject to the covenants, conditions, restrictions, easements, assessments, and liens hereinafter set forth which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the property and which shall be binding on all parties having any right, title, or interest in the property or any portion thereof, and their respective heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

I.
DEFINITIONS

1.1 Definitions. Unless otherwise expressly provided, the following words and phrases, when used in this Declaration and in any project documents, shall have the following meanings:

1.1.1 "Apple Tree" shall refer to Apple Tree Construction Company, L.L.C. and each related entity with ownership or responsibilities within Apple Tree Resort. Any duties or responsibilities of Apple Tree hereunder may be assigned to related entities or parties as deemed reasonable or appropriate by Apple Tree.

1.1.2 "Apple Tree Resort" shall mean the multi-phased planned development providing residential, multi-family, lodging, commercial and golf course properties and facilities located in Yakima County, Washington and as authorized by land use approvals from Yakima County and City of Yakima, Washington. Apple Tree contemplates the future expansion of the master planned development. All development rights and determinations are reserved to Apple Tree and shall be exercised in their sole discretion and authority.

1.1.3 "Assessment" shall mean periodic charges established by Apple Tree or its designated property manager to be paid by lot owners for administration of these covenants and provisions (including, but not limited to, design and lot improvement, review and approval; interpretation and enforcement of use restrictions, conditions, covenants, and all other aspects of this Declaration; and construction, installation, care, repair and maintenance, repair and replacement of irrigation water distribution system; capital costs, expenses for development of common areas and facilities (including swimming pools, tennis courts, pathways and recreational facilities); and other charges set forth herein. Assessments shall include three (3) separate charges: (i) regular assessments; (ii) special assessments; and (iii) service charges.

1.1.4 "Common Areas" shall mean those portions of real property (including the improvements and facilities thereon) designated herein for the common use and benefit of identified properties, including roadways, walkways, parking areas, open space, and community recreational areas and facilities. The common areas will be owned by Apple Tree but held for the common use and enjoyment of the identified owners served by the common area or facility. Common Areas may include categories based on the nature of benefited properties, namely:

(a) "Limited Common Areas" shall mean areas and facilities, if any, that benefit and are appurtenant to a limited number of specially benefited lots, including private roadways, entrance gates and designated open space. The amortized capital cost, and costs and

expenses for repair, maintenance, replacement and management, shall be specially assessed only to benefited parcels and lots.

(b) "Community Common Areas" shall mean areas and facilities available to and benefiting all properties within Apple Tree Resort including, but not limited to, community swimming pools, tennis courts, walkways and other community facilities. Amortized capital costs, and costs and expenses for repair, maintenance, replacement and management of such facilities, shall be a portion of regular assessments hereunder.

1.1.5 "Common Expenses" shall mean the shared cost and charges for maintenance, construction, improvement, repair, replacement, operation, insurance and management of common areas and facilities, and administration and management of the covenants applicable to properties which are the subject of this Declaration. The common expenses shall also include reserves for such purposes.

1.1.6 "Construction" and "Constructed" shall mean any construction, reconstruction, erection or alteration of an Improvement, except wholly interior alterations to a then existing structure.

1.1.7 "Declarants" shall refer collectively to Kinloch Borton Enterprises, L.L.C. and Apple Tree Construction Company, L.L.C. a Washington limited liability company, or such successors or assigns as Declarants may designate in writing recorded in the records of the Auditor of Yakima County.

1.1.8 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, and Reservations for Apple Tree Phase 1B, as it may from time to time be amended.

1.1.9 "Development Plan" shall mean the overall plan of development for Apple Tree Resort. The development of the golf course, public facility and residential components are part of an integrated planned development and each phase is a separate component of the project. The development plan is for a master planned development pursuant to prior land use approvals issued by Yakima County, Washington. Apple Tree (or other designated entities) shall coordinate overall development and reserves the right to modify development plans in the exercise of its sole discretion.

1.1.10 "Golf Course" shall mean the Apple Tree Golf Course, and all real and personal property appurtenant thereto. The golf course may be expanded or modified as determined reasonable or appropriate by Apple Tree.

1.1.11 "Improvement" shall mean any man-made undertaking which would modify the physical appearance of any lot or the common area, including construction of structures (residences, guest houses, garages, shops, sheds, pools, gazebos, platforms, decks or constructed patios); driveways, parking pads or other surface modifications where a vehicle will be parked or driven; or any other construction activity which would result in material impacts on adjoining properties and/or owners. Improvement shall also include any remodel or addition to an existing structure.

1.1.12 "Lot" shall mean each legally platted parcel of land within the property, with the exception of the Common Areas. For purposes of this Declaration, "lot" shall refer to Lots 1-8 of the Short Plat of Apple Tree Phase 1B, as recorded under Auditor's No. 8119261, records of Yakima County, Washington.

1.1.13 "Manager" or "Property Manager" shall mean Apple Tree or such entity appointed by Apple Tree to manage and administer the Declaration and perform duties and responsibilities hereunder with respect to management, maintenance, repair, assessment and enforcement within Apple Tree Resort.

1.1.14 "Master Association" shall mean the Apple Tree Resort Master Homeowners Association.

1.1.15 "Mortgage" shall mean a recorded mortgage, deed of trust or other real estate interest that creates a lien against a lot.

1.1.16 "Mortgagee" shall mean the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a lot created by a mortgage or deed of trust and shall also mean the vendor, or the designee of a vendor, of a real estate contract for the sale of a lot.

1.1.17 "Owner" shall mean the record owner of fee simple title to a lot within the property, but shall exclude persons or entities having any interest merely as security for the performance of any obligation. If a lot is sold under a recorded contract for sale, the purchaser (rather than the fee owner) shall be considered the "owner" of the property.

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

1.1.19 "Plans" shall mean site plan, building plan and landscape plan presented for review and approval by Apple Tree or Manager.

1.1.20 "Plat" shall mean the recorded Short Plat of Apple Tree Phase 1B as recorded under Auditor's File No. 8119261, records of Yakima County, Washington and any amendments, corrections or addenda thereto subsequently recorded.

1.1/21 "Project" or "Development" shall mean the master planned development of Apple Tree Resort. The property subject to this Declaration is a part of the master planned development and all matters shall be construed and applied in a manner consistent with the overall development.

1.1.22 "Structure" shall mean any building, fence, wall, driveway, walkway, patio, garage, storage shed, carport, mailboxes, swimming pool, rockery, dog run, or the like.

1.2 *Form of Words.* The singular form of words shall include the plural and the plural shall include the singular. Masculine, feminine and neuter pronouns shall be used interchangeable.

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

Exhibit A – Short Plat of Apple Tree Phase 1B

Exhibit B – Legal Description of Property Subject to Declaration

II.

PROPERTY, COMMON AREAS AND EASEMENTS

2.1 *Property and Master Plan.*

2.1.1 *Property Subject to Declaration.* This Declaration of Covenants, Conditions, Restrictions, Easements and Reservations shall be specifically applicable to the following described real property situated in Yakima County, Washington:

- Lots 1-8 of Short Plat recorded under Auditor's File No. 8119261, records of Yakima County, Washington.
- Public utility easement shown on the face of Short Plat recorded under Auditor's File No. 8119261 records of Yakima County.

2.1.2 *Master Plan.* Apple Tree Resort is a master planned development approved by Yakima County, Washington, and originally contemplated the development of residential, commercial, resort and golf course properties in twelve (12) phases. Apple Tree Resort expansions include Plats of Cameo Court and Golden Grove The development is an evolving design and may be modified or expanded in the exercise of the sole judgment of Apple Tree. The reservation of rights shall include authority to amend the master plan; add additional properties to the development; modify, change or expand golf course design, routing or facilities (including construction of additional golf holes); and develop shared common facilities for residents and visitors to the development (e.g., swimming pools, tennis courts and similar facilities).

2.1.3 *Irrigation Delivery System.* The irrigation water delivery system is owned by Apple Tree (or its assignee) but shall be for the use and benefit of properties holding water share rights or interests in Yakima-Tieton Irrigation District. The system use, charges and assessments shall be as more particularly set forth in that certain Agreement of Owner and Developer by and between Kinloch Borton Enterprises and Yakima-Tieton Irrigation District as recorded under Auditor's File No. 8119262, records of Yakima County, Washington.

2.1.4 *Entry Monument and Landscaping.* Declarant hereby reserves the right to construct entry monuments and landscape access locations associated with private roadways and recreational facilities designated herein and provide for the repair, maintenance, replacement and operation of entry facilities or controls and landscaping. Entry improvements may include monuments, lighting, gates and electronic access controls (or security system) as determined appropriate by Apple Tree and constructed in a manner with plat approvals. In the event that private interior roads become public roads at any future time, entry gates may have to be removed in accordance with City of Yakima requirements.

2.2 *Use of Common Areas/Facilities.* Common Areas may be utilized by lot owners (and guests) specifically benefited by the common area facility and subject to rules and regulations recommended by the Master Association and approved by Apple Tree. Such areas are divided into two categories: (i) community common areas benefiting all properties within Apple Tree Resort; and (ii) areas and facilities limited to the exclusive use of specific lots or parcels within Apple Tree Phase 1B ("limited common areas"). Management of all Common Areas, however, is exclusively vested in Apple Tree (or its assigns) and no owner shall exercise or possess any right to modify, alter or otherwise utilize the Common Areas, except for the limited purposes established herein. The right to use the Common Areas shall be appurtenant to the ownership of benefited parcels and shall extend to each owner, and his agents, tenants, members of his household, invitees, and licensees. The right to use the Common Areas shall not be assigned or conveyed except upon the transfer of a lot, and then only to the purchaser or transferee of the lot.

2.3 *Abandonment of Common Areas.* The Common Areas may not be abandoned or vacated by Apple Tree or any successor in interest provided, however, Apple Tree reserves the right to modify, reconfigure, alter or replace such areas and facilities as determined appropriate for the resort. Apple Tree may, in the exercise of its sole discretion, dedicate private roadways to a public agency, authority or utility and shall, upon such dedication and acceptance of roadways into the public road system, be released of any responsibility for maintenance, repair or replacement of such roadways.

2.4 *Maintenance of Common Areas.* Apple Tree (or its successor or designee) shall maintain, repair, replace, improve, and otherwise manage all of the Common Areas so as to keep them in good repair and condition. The maintenance, repair and improvement of Common Areas shall be consistent with standards established by Declarant for Apple Tree Resort and may also include pathways, landscaping of entry or common walkways or pathway areas, and establishment of rules and regulations to assure a uniform and high quality appearance for Apple Tree Resort. Any charges and reserves established by or incurred by Apple Tree (or its successor or designee) for taxes, maintenance, repair, replacement and management of Common Areas shall be specially assessed for benefited lots and owners.

2.5 *Easements for Utilities.* Declarant hereby creates and reserves a utility easement designated on the Plat of Apple Tree Phase 1B for the purpose of locating sewer and water facilities serving the properties.

III.

DESIGN REVIEW, IMPROVEMENT STANDARDS AND USE RESTRICTIONS

3.1 *Uniformity of Use and Appearance.* One of the purposes of this Declaration is to establish design criteria and use restrictions which preserve and enhance the resort living environment and assure quality of workmanship, materials, design, maintenance and location for any and all structures and improvements within Apple Tree Resort. It is in the best interests of each owner that such standards be maintained and coordinated with the overall development of properties. Apple Tree reserves the right, in its sole and absolute authority, to review and approve

or disapprove any and all proposed construction, alteration, or improvement of buildings, structures, landscaping, fences and exterior lighting placed on each residential lot.

3.2 Residential Home Design Options. Any residential construction and development within Apple Tree Phase 1B is subject review and approval by Apple Tree in order to assure consistency in residential design, construction standards, quality of workmanship and site design and planning. Design and construction options include the following: Owner and Apple Tree shall develop two (2) complete sets of plans and specifications for any proposed buildings, structures and other site improvements (including but not limited to landscaping, fencing, lighting, driveways, parking areas and concrete and/or masonry walls). The detailed building and construction plans specifications shall include identification of surface water runoff control and other pertinent design components. The site plan shall locate all utility installations as well as all trees, shrubs and other landscaping, having a present or reasonable expected height in excess of six (6) feet.

3.2.1 Apple Tree Portfolio. Apple Tree has developed a portfolio of residential home plans available for construction of residences with Apple Tree Phase 1B. An owner may select a residential home plan from the plan portfolio. Any revisions or modifications to a portfolio plan shall be subject to review and approval by Apple Tree. Apple Tree reserves the right and authority to limit the number and location of similar residential portfolio plans within Apple Tree Phase 1B.

3.2.2 Custom Home – Reservation of Rights. An owner desiring to construct a custom home shall submit to Apple Tree two (2) complete sets of plans and specifications for all proposed buildings, structures and other site improvements (including but not limited to landscaping, fencing, lighting, driveways, parking areas and concrete and/or masonry walls), together with a detailed site plan setting forth the location of such building, structure or site improvement. Apple Tree shall review the plans and specifications to assure consistency with the overall development standards established for Apple Tree Phase 1B and may approve or deny such custom plan based upon such review and assessment. Approval by Apple Tree shall be based, among other things, on: (a) consistency with development standards set forth in this Declaration; (b) conformity and harmony of external design with neighboring improvements; (c) effects of location and use of proposed improvements on neighboring lots, and common areas; (d) natural landscaping of the lot in relation to that of neighboring lots; (e) proper facing of the main elevation with respect to adjacent lots and common areas; and (f) the conformity of plans to the purpose and general plan and intent of Apple Tree Resort.

3.2.3 Home Construction. All residence constructed within Apple Tree Phase 1B shall be built by either Apple Tree Construction or an Apple Tree approved builder.

3.3 Code Compliance. Notwithstanding anything set forth herein, the construction, modification or alteration or any structure shall comply with the more restrictive of either (i) the terms and conditions of this Declaration, or (ii) the laws, codes, ordinances and regulations of Yakima County or any other governmental entity having jurisdiction over the subject matter.

3.4 Building Specifications and Restrictions. All single-family residences, secondary buildings and other site improvements authorized on lots within the subdivision shall comply with the following requirements.

3.4.1 *Size – Minimum Square Feet.* Apple Tree is a diverse resort community with a variety of housing alternatives. In order to assure the coordinated development of properties, the following minimum size requirements (exclusive of garages, decks and porches) are established for the identified lots:

<i>Structure</i>	<i>Minimum Size</i>
single story	1,700 square feet
two story	2,000 square feet

3.4.2 *Lot Size.* No lot (or portion thereof) within this plat shall be divided and/or transferred where a resulting parcel shall be less than seven thousand (7,000) square feet.

3.4.3 *Set Backs.* Lots will have a minimum front, side and rear set backs required by applicable building code or zoning ordinance. Absolutely no structures, including fences, shall be permitted within such setback area unless specifically approved by Apple Tree.

3.4.4 *Local Codes.* All buildings or structures shall be constructed in accordance with the applicable codes and regulations of City of Yakima. In the event of a conflict between any applicable codes and these covenants, the more restrictive provision shall govern.

3.5 *Appearance.* Unless otherwise approved by Apple Tree, the following design/construction requirements shall apply.

3.5.1 *Roofing.* No residence or other building within the development shall have aluminum, flat gravel, asphalt or tarred roof. Acceptable roofing material shall consist of wooden shingles or shakes, architectural composition, or tile; provided, however, that modern roofing materials generally acceptable and used in high-quality residential construction shall be allowed if reviewed and approved by Declarant.

3.5.2 *Residence/Exterior.* All exterior portions of a single-family residence shall be constructed of brick, stone, stucco, wood product or composite product/material approved by Apple Tree. The architecture of each residence (including siding) shall be uniform and consistently applied to all exterior sides of the single-family residence. Those portions of the structure not constructed of ornamental masonry or brick shall be painted with two coats of paint or stain in colors consistent with development design and standards established by Apple Tree. No residence or other structure shall be erected on a lot within the subdivision which contains synthetic siding such as fiberglass or aluminum; provided, however, that modern siding materials generally acceptable and used in high-quality residential construction may be allowed following review and approval by Apple Tree. All wood siding used on residences shall be individual board siding, such as cedar or redwood; and no plywood sheeting, T-111, or similar type siding shall be allowed within the subdivision.

3.5.3 *Garages.* Each residence shall be constructed with a garage that holds at least two (2) but no more than five (5) full-size vehicles. All automobiles (including pick-ups) must be parked in the garage or driveway of the residence. Guest vehicles may be parked on the street (if necessary) for a temporary period associated with the visit.

3.5.4 *Entry Walks, Porches and Decks.* All front entry walks shall be concrete, exposed aggregate concrete, pavers or other products approved by Apple Tree. All decks and wood porches shall be constructed of approved wood products or comparable high quality material approved by Apple Tree.

3.5.5 *Driveways.* All driveways shall be constructed of concrete, exposed aggregate concrete paving, pavers or other approved materials (but not asphalt).

3.5.6 *Fences.* Individual residences shall include a uniform six foot (6') privacy fencing which shall be constructed and installed at time of home construction. The uniform privacy fencing shall be as approved by Apple Tree. Limited fencing and privacy screen of a deck, patio or limited backyard area may be permitted upon review and approval by Apple Tree.

3.5.7 *Chimneys.* Any fireplace chimney shall be constructed of brick, rock or other suitable product approved by Apple Tree in design review.

3.5.8 *Utilities.* All utilities shall be installed underground.

3.5.9 *Mailboxes.* Apple Tree reserves the right to require uniform community mailboxes or mailbox clusters. Each lot owner shall have the right to choose between a locked or conventional box. The cost of purchasing the individual locked mailbox shall be the responsibility of the lot owner.

3.6 *Landscaping and General Property Maintenance.* Unless otherwise approved by Apple Tree, the following landscaping and General Property Maintenance requirements shall apply.

3.6.1 *Approval of Landscaping Plan.* All landscaping within the Subdivision shall be subject to the approval of Declarant. The term "landscaping" shall include an in ground sprinkler system and shall be predominantly comprised of lawns; shrubs, trees and bushes; and garden areas.

3.6.2 *Appearance of Lot.* No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon properties (whether improved or vacant) and no refuse, garbage, disabled or unused motor vehicles or unsightly objects shall be allowed to be placed or to remain anywhere upon the subject properties. In the event that any owner of property shall fail or refuse to keep the premises free from weeds, underbrush, refuse piles, garbage, unused motor vehicles or other unsightly growth or objects, Apple Tree may proceed with enforcement pursuant to Section 4.7 to abate or remedy the condition or violation. Such entry shall not be deemed a trespass and, for purposes of such entry, the lot owner hereby grants to Declarant an irrevocable license to enter upon their respective property.

3.6.3 *Limitations on Landscaping.* The use of large trees as part of an owner's landscaping plan shall be discouraged and no tree shrub or other planting shall exceed the elevation of twelve (12) feet in height. In the event a lot owner's landscaping includes any trees or other plants which establish a root system under the common areas, including streets, the

subject lot owner or owners shall be solely responsible for all costs incurred to repair any damage caused directly or indirectly by said landscaping. In addition, Apple Tree shall have the right, but not the obligation, to order removal of any tree, shrub or plant causing damage to common areas or otherwise obstructing or impairing views from adjoining properties (irrespective of height) as determined by Apple Tree. The cost of removal shall be borne solely by subject lot owner.

3.6.4 *Landscape Installation.* All landscaping must be completed within ninety (90) days from the date of issuance of the certificate of occupancy, however, with good cause shown, Apple Tree *may* extend this term. All lots shall be maintained in a neat and orderly condition during construction.

3.7 *Residential Uses.* Lots within Apple Tree Phase 1B are reserved for single-family residential purposes and shall be subject to the following use restrictions designed to preserve, protect and enhance the residential character of such properties:

3.7.1 *Parking.* No commercial-type trucks, campers, trailers, motor homes, recreational vehicles, boats or trailers (boat, utility, camping, horse or otherwise) shall be parked or permitted to remain on any lot, unless the same is stored or placed in a garage or in an approved screened carport. No such vehicles shall be parked overnight on any street adjoining a single-family residence; provided that such vehicles belonging to Guests may be temporarily parked in driveways or curbside areas adjoining the single-family residence. No motor vehicles, inoperative for reasons of mechanical failure, shall be parked and/or stored on any lot or in the street right-of-way for more than 72 hours.

3.7.2 *Signs.* No sign of any kind shall be displayed which is visible to the public on any lot without the prior written consent of Declarant, except for customary "For Sale" signs in a form not prohibited by any rules or regulations of Apple Tree. This restriction shall not apply to any lots owned by Declarant or authorized builder.

3.7.3 *Animals.* No horses, livestock, poultry, reptiles, pigs or other non-domestic animals shall be kept on any lot. All domestic animal enclosures must be kept in a clean, neat and odor-free condition at all times. Any dogs must be controlled when outdoors. In the event that Apple Tree determines that any pet is a nuisance, the owner shall be responsible for correcting or alleviating the nuisance and otherwise controlling the animal. All owners shall also comply with applicable governmental laws, codes, ordinances, and relations pertaining to pets and animals.

3.7.4 *Temporary Structure.* No structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuilding shall be installed, placed or used on any lot as a residence, either temporarily or permanently. Contractors may locate temporary offices on site during a period of construction and upon approval by Apple Tree.

3.7.5 *Clothes Lines.* No washing, rugs, clothing, apparel or any other article shall be hung from the exterior of any structure or on a lot so as to be visible from the adjacent streets or roadways.

3.7.6 *Radio and Television Aerials/Satellite Dishes.* No television or radio aerial shall be erected or placed on any lot. No satellite receiving dishes more than twenty-four (24) inches in diameter may be permitted without review and approval by Apple Tree.

3.7.7 *Trash Containers and Debris.* All trash shall be placed in sanitary containers either buried or screened so far as not to be visible from adjoining structures, streets or roadways. No lot or any portion thereof shall be used as a dumping ground for trash or rubbish of any kind. Yard waste and debris resulting from landscaping work or construction shall not be dumped onto adjoining lots or streets or roadways. Compost piles may be kept upon the lots provided they are kept in a clean, neat, odorless and sanitary condition.

3.7.8 *Offensive Activities.* No noxious activity, including but not limited to the creation of excess levels of noise, shall be carried on in any lot, nor shall anything be done therein which may be or become an annoyance or nuisance to other owners or tenants.

3.7.9 *Underground Utilities.* No outdoor overhead wire or service drop for the distribution of electric energy or for telecommunications purposes nor any pole, tower or other structure supporting said outdoor overhead wires shall be erected, placed or maintained within the property. All owners shall use underground service wires to connect any structure to electric or telephone utility facilities.

3.7.10 *Water Supply/Sewage Disposal.* No individual water supply system or individual sewage system shall be permitted on any lot.

3.7.11 *Damage.* Any damage to streets, plat improvements, entry structure or monuments, fences, landscaping, mailboxes, lights and lighting standards by lot owners, their children, contractors, agents, visitors, friends, relatives or service personnel shall be repaired and restored to like new condition by Apple Tree at the sole cost and expense of owner causing such damage.

3.7.12 *Lots.* In addition to the use restrictions set forth above, all lots (Lots 1-8) shall be subject to the following additional restrictions:

- (a) No sign of any kind shall be displayed to the public view with the exception of one (1) "For Sale" sign of not more than five (5) square feet;
- (b) No structure or enclosure for the purpose of containing pets shall be allowed except for a small dog run if properly screened and landscaped.

IV.

MANAGEMENT AND ADMINISTRATION

4.1 *Designation of Manager.* Apple Tree is designated as manager and vested with administrative responsibilities for installation and construction of common facilities (private roadways, irrigation water delivery system, and other community facilities); review and approval of plans for property improvements (structures and landscaping); the interpretation and administration of covenants, conditions, restrictions and reservations applicable to properties; and assessments for common expenses and appropriate reserves. The management and

administration shall be in accordance with the terms and provisions of this Declaration as more particularly set forth herein.

4.2 Management of Common Area/Facilities. Apple Tree shall be responsible for construction, installation, maintenance and management of common areas and facilities made available to residents of Apple Tree Resort (e.g., central swimming, tennis, reception and recreational facilities), including but not limited to private roadways, entry monuments and gates (if any), irrigation water delivery system, common pathways and other facilities. The repair and maintenance responsibilities shall include but not be limited to repair and maintenance of private roadways in good and workable order and condition; repair of defects or breaks in systems; street cleaning and snow removal; and other common requirements of common management.

4.3 Master Association. Apple Tree Resort Master Homeowner's Association is established for the purpose of providing the following: (a) enforcement of covenants, conditions, restrictions or reservations applicable within Apple Tree Resort; (b) recommending and proposing advice on overall care, maintenance and servicing of properties; and (c) communicating with property owners and residents regarding community matters. Owner representatives will be appointed by the homeowner's (including condominium development and associations) from each of the developed phases of the resort project. Apple Tree 1B homeowners shall be entitled to appoint one (1) representative to serve on the board of the Master Association. Appointment shall be made upon such rules and regulations as established by lot owners within Apple Tree Phase 1B and shall be based upon nomination and election at an annual meeting.

4.4 Costs and Expenses. Any and all reasonable costs, expenses and charges for installation, repair, maintenance or improvement of common facilities or systems shall be billed to and paid by Apple Tree. Such costs and expenses shall include, but not be limited to, labor, materials, finance charges, insurance, property taxes, utility charges, overhead and allowable staff charges. All such costs and expenses shall be considered in establishing assessments hereunder.

4.5 Administration of Declaration/Covenants. Master Association shall have the responsibility for enforcement of the provisions of this Declaration, subject to the approval of Apple Tree. The failure of any owner to comply with the provisions of this Declaration, or the rules and regulations of Apple Tree Resort will give rise to a cause of action to Master Association, Apple Tree and any aggrieved lot owner or Apple Tree for recovery of damages, or injunctive relief, or both. If a legal action is brought to interpret or enforce compliance with the provisions of this Declaration, or the rules or regulations of the Apple Tree Resort, the prevailing party shall be entitled to judgment against the other party or its reasonable expenses, court costs, and attorneys' fees in the amount awarded by the Court.

4.6 Protection of Common Areas. Apple Tree may spend such funds and take such action as it may from time to time deemed necessary to preserve the Common Areas, settle claims, or otherwise act in what it considers to be the best interests of the property owners. Master Association may make recommendations regarding care, maintenance, improvement and/or modifications to common areas or improvements.

4.7 *Adoption of Rules and Regulations.* Apple Tree is authorized to adopt, amend, and revoke reasonable and detailed administrative rules and regulations necessary or convenient from time to time to ensure compliance with the general guidelines of this Declaration; to promote the comfortable use and enjoyment of the property; and to govern consistent and uniform development and management of all properties within Apple Tree Resort. The rules and regulations of Apple Tree shall be binding upon all owners and occupants and all other persons claiming any interest in the property.

4.8 *Enforcement of Covenants/Assessments.* Master Association shall have the right to enforce, by any proceedings at law or in equity, these conditions, covenants, restrictions and reservations. Apple Tree retains the right to enforce any and all regular assessments, special assessments or service charges; enforcement and foreclosure of liens; and recovery of costs, expenses and damages reasonably incurred with respect thereto. Any enforcement shall be subject to the following procedures and notifications:

4.8.1 *Notice of Violation.* A notice of any violation or breach of covenants, conditions or restrictions hereunder shall be provided to a lot owner, with such notice specifically identifying the violation or breach and establishing a reasonable period of time for cure of such violation or breach. In the event of a violation or breach which causes immediate harm or threat to residents or properties within Apple Tree Resort, Apple Tree and/or Master Association is authorized to immediately take action (without notice) in order to abate the immediate and threatened violation or breach, or otherwise protect properties and residents of Apple Tree Resort.

4.8.2 *Opportunity to Cure.* Lot owner shall be provided with a reasonable period of time in which to cure, correct or abate any asserted violation or breach of the covenants, conditions or restrictions contained herein. The period for cure, correction or abatement shall be established by Apple Tree (in the exercise of its sole discretion) and determined in light of the nature of the violation or breach; the reasonable time required for cure, correction or abatement; and such other factors as determined reasonable or appropriate by Apple Tree.

4.8.3 *Enforcement.* In the event a lot owner fails to cure, correct or abate the identified violation and/or breach within the specified period of time, Apple Tree and/or Master Association is authorized to take any and all actions reasonable or necessary to remedy the violation or breach including, but not limited to, entry upon the property; enforcement by litigation; or such other remedy as determined reasonable and/or appropriate. Failure, delay or omission by Apple Tree and/or Master Association to enforce any such provisions shall in no way be deemed a waiver of the right to do so thereafter.

4.8.4 *Legal Proceedings.* Apple Tree and/or Master Association may commence such legal or equitable proceedings as are determined to be necessary or proper to correct or enjoin any activity or condition in violation or breach of provisions of this Declaration; enforce and collect assessments and charges; or otherwise assure compliance with the intent of this Declaration.

4.8.5 *Costs of Enforcement.* Any and all costs and expenses incurred by Apple Tree in the enforcement and/or correction of any violation or breach of the covenants, conditions and restrictions shall be borne solely by the property owner. Costs and expenses shall include

any and all costs of litigation, including but not limited to reasonable attorney's fees, filing fees, expert witness and discovery costs and expenses, deposition and transcript fees, and any and all other costs and expenses reasonably incurred in the enforcement and correction of the violation or breach.

V.
ASSESSMENTS AND CONNECTION CHARGES

5.1 Assessments. Apple Tree shall establish assessments to individual lots for the promotion of the health, safety and welfare of residents of subdivision and Apple Tree; provide for repair, maintenance and operation of common areas and facilities; administer and enforce provisions of these covenants, conditions and restrictions; and otherwise provide for the coordinated and integrated management of the Apple Tree Resort. The specific assessments shall be as follows:

5.1.1 Regular Assessments. Apple Tree shall determine and fix the amount of an annual assessment (regular assessment) against each lot at least thirty (30) days in advance of the date of each calendar year. The regular assessment shall fund and establish reserves for: (i) administration and enforcement of covenants, conditions and restrictions; (ii) maintain, repair and replace infrastructure and improvements serving lots within the development (including but not limited to irrigation water delivery system, common community facilities, pathways, and related facilities); (iii) defray administrative costs incurred by Apple Tree and their agents in the performance of their duties; (iv) provide for the amortization of capital costs associated with community facilities (such as swimming pools, tennis courts and other recreational facilities); and (v) for such other purposes and may be deemed appropriate for the collective benefit and welfare of owners.

5.1.2 Special Assessment. Apple Tree may establish a special assessment for properties specifically benefited by common areas and facilities, including but not limited to private roadways, security gates and systems, and exclusive recreational areas. The special assessment shall consider costs and expenses incurred in the repair, maintenance and replacement of such facilities; amortization of capital costs and investments, reserves for future repair, maintenance and replacement; street cleaning and snow removal; maintenance of entry monuments; landscaping for entry areas; utility charges; insurance; and property taxes. Such assessment shall include an equitable allocation of overhead and management compensation attributable to exclusive common area activities. The special assessment shall be allocated and assessed only to properties specially benefited by such common areas and facilities.

5.1.3 Service Charges. Service charges are assessments imposed on an owner for services provided by Apple Tree unique to the specific lot and/or owner, or for any act or omission of the owner which is contrary to or in conflict with this Declaration. The amount of the service charge shall be based on all reasonable costs and expenses incurred by Apple Tree in the enforcement, cure or abatement of a breach or violation of this Declaration; interest on said costs and expenditures; allocations for administrative or management charges; and any and all additional charges, costs or expenses arising from or related to such enforcement, cure or abatement.

5.2 *Connection Charges.* Apple Tree has installed sewer trunk and collection lines, as well as an irrigation water delivery system, for the benefit of residential properties within the development. A connection charge for irrigation water and sewer shall be as follows:

5.2.1 *Sewer Connection Fees.* Owner shall be responsible for any and all connection fees and costs with respect to connection to public sewer service for the property and payable to the City of Yakima. The connection fees shall include, but not be limited to, the treatment component of such connection charges together with applicable tax and service fee thereon. City of Yakima shall not charge Owner for the trunkage element (YMC 7.58.060) or the collection element of wastewater connection charges. The trunkage and collection element of the wastewater connection charges have been waived because of Apple Tree's funding, construction and installation of the sewer trunk lines and collection systems. Prior to connection to public sewer service, owner shall pay Apple Tree as reimbursement for funding, construction and installation of such trunk and collection lines the following:

(a) *Trunkage Element.* An amount equal to the connection charge established by City of Yakima for Base Trunk/Interceptors Charge (calculated pursuant to YMC 7.58.060, as amended or updated from time to time), together with an amount charged by City as tax and service fee thereon. In no event, however, shall such charge be less than twenty-four cents (24¢) per square foot. The payment shall be made to Apple Tree in consideration for the installation of a trunk line from prior city service (64th and Washington) to Apple Tree Resort.

(b) *Collection Pipes Charge.* An amount equal to the connection charge established by City of Yakima for Base Collection Pipes Charge (calculated pursuant to YMC 7.58.070, as amended or updated from time to time), together with an amount charged by City as tax and service fee thereon. In no event, however, shall such charge be less than thirty-nine cents (39¢) per square foot. The payment shall be made to Apple Tree in consideration for the construction and installation of collection lines and systems.

5.2.2 *Irrigation Water Service.* Apple Tree will have installed an irrigation water delivery system prior to the issuance of the first certificate of occupancy for the subdivision. Owner shall pay to Apple Tree a connection charge as equitable reimbursement for the installation of the irrigation water delivery system. The connection fee shall be Three Hundred Dollars (\$300.00), such amount subject to periodic amendment for additional costs, finance charges and related expenses. Any valves, turnouts, flow control devices or other equipment or mechanisms necessary for a site delivery line to the lot or parcel shall be the sole expense of owner.

5.2.3 *Cascade Natural Gas.* Cascade Natural Gas has agreed to provide natural gas service to lots and parcels within the subdivision. The agreement for provision of service anticipates connection of all properties to the natural gas service and impose a charge of Two Hundred Dollars (\$200.00) for any parcel not connecting to the service. In the event that a lot owner elects not to receive natural gas service from Cascade Natural Gas, the owner shall pay to Apple Tree the sum of Two Hundred Dollars (\$200.00) with respect to the election of non-service by the natural gas provider.

VI.
LIEN AND COLLECTION OF ASSESSMENTS

6.1 *Assessments are a Lien: Priority.* All unpaid sums assessed by Apple Tree for regular and/or special assessments, service charges or connection fees under the authority of this Declaration shall constitute a lien on the lot and all its appurtenances from the date the assessment becomes due and until fully paid. The lien for such unpaid assessments shall be subordinate to tax liens on the lot in favor of any assessing unit and/or special district, and to all sums unpaid on prior mortgages of record, but shall have priority over all other liens against the lot. A first mortgage that obtains possession through a mortgage foreclosure or deed of trust sale, or by taking a deed in lieu of foreclosure or sale, or a purchaser at a foreclosure sale shall take the lot free of any claims for the share of common expenses or assessments by Apple Tree chargeable to the lot which became due before such possession, but will be liable for the assessments and connection charges that accrue after the taking of possession. A lot's past-due share of assessments and connection charges shall be incorporated in subsequent regular assessments to all the lot owners, including the mortgagee or foreclosure sale purchaser and their successors and assigns, in proportion to the number of lots owned by each of them. Notwithstanding any of the foregoing, however, the owner shall continue to be personally liable for past due assessments and connection charges.

6.2 *Lien for Assessment/Connection Fee.* In the event a parcel owner fails to pay an assessment or connection fee on or before the due date, the unpaid assessment and/or connection fee shall become a lien on the property for all outstanding and unpaid amounts, together with interest at the rate of twelve percent (12%) per annum and any and all additional costs, including reasonable attorney's fees, all costs of enforcement and collection, and all costs of foreclosure. Such lien shall become effective upon the recording of a notice of lien with Yakima County Auditor, which lien may be foreclosed in the same manner as a mechanic's or materialmen's lien under Washington State law (RCW 60.04, et seq.).

6.3 *Assessments are Personal Obligations.* In addition to constituting a lien on the lot, all sums assessed by Apple Tree and chargeable to any lot together with interest (at the rate of twelve percent (12%) per annum), late charges, all costs of collection, enforcement and/or foreclosure, and attorneys' fees in the event of delinquency, shall be the joint and several personal obligations of the owner and any contract purchaser of the lot when the assessment is made and their grantees. Suit to recover personal judgment for any delinquent assessments shall be maintainable without foreclosing or waiving the liens securing them.

6.4 *Late Charges and Interest on Delinquent Accounts.* Apple Tree may from time to time establish late charges and a rate of interest to be charged on assessments delinquent for a period of more than ten (10) days after the date when due. In the absence of another established, non-usurious rate, delinquent assessments shall bear interest at the rate of twelve percent (12%) per annum. If an installment on an assessment against a lot is not paid when due, Apple Tree may elect to declare the entire assessments against the lot for the remainder of the fiscal year to be immediately due and payable.

6.5 *Remedies Cumulative.* The remedies provided herein are cumulative and Apple Tree may pursue them, and any other remedies, which may be available under law although not expressed herein, either concurrently or in any order.

6.6 *No Avoidance of Assessments.* No owner may avoid or escape liability for assessments provided for herein by abandoning his or her lot.

VII.

FAILURE OF APPLE TREE TO INSIST ON STRICT PERFORMANCE – NO WAIVER

The failure of Apple Tree in any instance to insist upon the strict compliance with this Declaration or established rules and regulations, or to exercise any right contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of any term, covenant, condition, or restriction. The receipt by the Apple Tree of payment of any assessment from an owner, with knowledge of any breach by the owner, shall not be a waiver of the breach. No waiver by Apple Tree of any requirement shall be effective unless expressed in writing and signed by an authorized representative of Apple Tree.

VIII.

INSURANCE

At such time as Apple Tree deems appropriate, Apple Tree may purchase and maintain as a common expense a policy or policies which Apple Tree deems necessary or desirable to provide casualty insurance; comprehensive liability insurance, with such deductible provisions as Apple Tree deems advisable; insurance, if available, for the protection of Apple Tree's representatives from personal liability in the management of Apple Tree's affairs; and such other insurance as Apple Tree deems advisable.

IX.

DAMAGE AND REPAIR OF DAMAGE TO PROPERTY

In the event of any casualty, loss or other damage to the common area for which the then current assessments by Apple Tree are insufficient to repair, or restore or for which there are not insurance proceeds or insufficient insurance proceeds available to Apple Tree for such restoration or repair, Apple Tree may make a special assessment against each lot within the property benefited by the improvement or common area for its pro rata share of the cost and expenses to repair and/or restore the common areas. The special assessment shall be payable, at the determination of Apple Tree, in either monthly or quarterly installments or in a single lump sum amount. Apple Tree shall notify each lot owner of any such special assessment not less than twenty (20) days prior to the date such assessment or the first installment thereon is due and payable, which notice shall be accompanied by a reasonably detailed statement of Apple Tree's estimated costs and expense of repairing and/or restoring the common areas.

X.
DURATION

The covenants, conditions, and restrictions of this Declaration shall run with and bind the property and shall inure to the benefit of and be enforceable by the owners, their respective legal representatives, heirs, successors, and assigns, in perpetuity.

XI.
RESERVATION OF DECLARANT'S RIGHT TO AMEND

11.1 Amendment by Declarant. Declarant reserves the right to amend the Declaration for the following purposes:

(a) *Mortgage Requirements.* As may be necessary to comply with Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA") or Federal Housing Administration (FHA) regulations or requirements as necessary to enable the holders of first mortgages or deeds of trust to sell first mortgages or deeds of trust to FHLMC or FNMA or if such amendment is necessary to secure funds or financing provided by, through or in conjunction with FHLMC or FNMA or FHA or, if such amendment is necessary, in Declarant's sole opinion, for the efficient functioning of the Association, the property, or the plat.

(b) *Interests of Development/Property Owners.* Apple Tree may amend this Declaration, in the exercise of its sole discretion, for the purpose of coordinating, enhancing, facilitating or assuring the development of Apple Tree Resort as a first-class golf course, residential and commercial development, or is deemed reasonable or necessary for the protection of property interests and values within the Apple Tree Resort. The amendments may include (but not limited to) modifications, alterations or supplementations of development standards (structural and landscaping); use and occupancy conditions and restrictions; development and maintenance of common areas and facilities; and reasonable rules and regulations related thereto.

11.2 Proposals by Lot Owners. The owners of seventy-five percent (75%) of the lots which are subject to this Declaration may propose amendments to this Declaration. The proposed amendments shall contain a specific identification of the section to be amended; proposed language for the amendments; and statements providing a basis for the requested amendments. Apple Tree shall consider such amendments and, in the exercise of its sole discretion, determine whether such amendments promote the coordinated development of Apple Tree Resort and is in the best interests of all lot owners and occupants. In the event that Apple Tree determines that such amendment is appropriate, the proposed amendment will be approved by Apple Tree and incorporated under its reserved right of amendment hereunder.

11.3 Authorization to Amend. If Declarant, at its option, determines that it is necessary so to amend the Declaration, then Declarant, on behalf of all lot owners in the Association, is hereby authorized to execute and to have recorded (or filed, in the case of the Articles) said required amendment or amendments. All lot owners hereby grant to Declarant a full and complete power of attorney to take any and all actions necessary to effectuate and record said amendment or amendments and agree that said amendment or amendments shall be binding upon their respective lots and upon them and their heirs, personal representatives, successors and assigns

to the same extent as if they had personally executed said amendment or amendments. All lot owners hereby acknowledge and agree that the power of attorney granted herein shall be deemed coupled with an interest and shall be irrevocable.

XII.
GENERAL PROVISIONS

12.1 Severability. The provisions of this Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision, if the remainder affects the common plan.

12.2 Effective Date. This Declaration shall be effective upon recording.

12.3 Assignment. Declarant reserves the right to assign, transfer, sell, lease, or rent all or any portion of the property and reserves the right to assign or delegate all or any of its rights, duties, and obligations created under this Declaration.

12.4 Binding Effect. All present and future owners and occupants of lots or parcels shall be subject to and comply with the provisions of this Declaration, and any amendments thereto. The acceptance of a deed or conveyance for the entry into occupancy of any lot or parcel shall constitute an agreement that the provisions of this Declaration and amendments are accepted and ratified by each such owner and/or running with the land and shall bind any person having at any time an interest or estate in any lot or parcel subject to this Declaration.

12.5 Dispute. In the event of any dispute or cause of action arising from or related to the interpretation or enforcement of provisions of this Declaration, the parties agree to submit such dispute or cause of action to mandatory arbitration. A single arbitrator shall be appointed either upon the mutual consent of the parties or by the Superior Court of the State of Washington for Yakima County. The arbitration shall be conducted in accordance with the Mandatory Rules for Arbitration for Yakima County. Venue for the arbitration shall be in Yakima, Yakima County, State of Washington. An arbitration award may be entered in the court of any state that has jurisdiction over any of the parties. The costs of arbitration shall be borne equally by the parties with the arbitrator authorized to adjust such costs and award reasonable attorney's fees to the substantially prevailing party in the arbitration.

12.6 Interpretation. This Declaration shall be liberally construed to effectuate the purpose of protecting and enhancing the value, marketability and desirability of lots and parcels by providing a common plan for the development of the property in planned development.

DATED this 31st day of October, 2021.

DECLARANT:

**APPLE TREE CONSTRUCTION COMPANY, L.L.C.,
a Washington limited liability company**

By: *John E. Barton*
Its: Manager/Member

KINLOCH BORTON ENTERPRISES, L.L.C.

By: *[Signature]*
Its: Manager/Member

STATE OF WASHINGTON)
) ss.
County of Yakima)

I certify that I know or have satisfactory evidence that John E. Barton and _____ are the persons who appeared before me and signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as members of **APPLE TREE CONSTRUCTION COMPANY, L.L.C.**, a Washington limited liability company, to be the free and voluntary act of such limited liability company for the uses and purposes mentioned in the instrument.

Dated this 31 day of October, 2021.

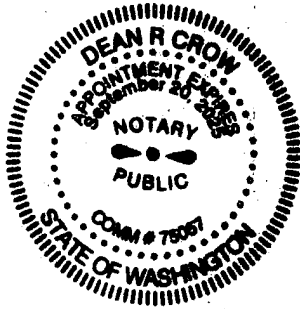


Dean R. Crow
Printed Name: Dean R. Crow
NOTARY PUBLIC in and for the State of
Washington, residing at Yakima
My commission expires 9-20-25

STATE OF WASHINGTON)
) ss.
County of Yakima)

I certify that I know or have satisfactory evidence that Jon Kintoch
and _____ are the persons who appeared before me and signed this
instrument, on oath stated that they were authorized to execute the instrument and acknowledged
it as members of **KINLOCH BORTON ENTERPRISES, L.L.C.**, a Washington limited liability
company, to be the free and voluntary act of such limited liability company for the uses and
purposes mentioned in the instrument.

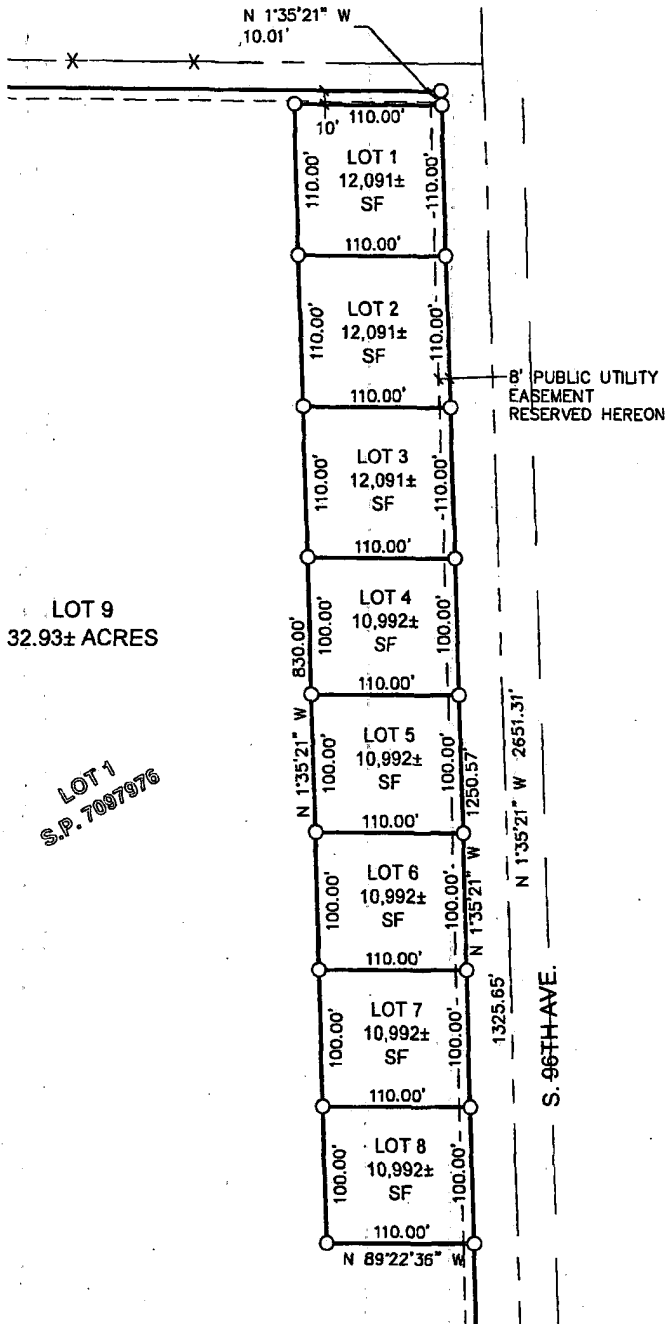
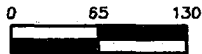
Dated this 31 day of October, 2021.



Dean P. Crow
Printed Name: Dean P. CROW
NOTARY PUBLIC in and for the State of
Washington, residing at Yakima
My commission expires 9-20-25

U:\DebbieG\Apple Tree Construction Co\Declaration for Apple Tree Phase 1B - final - 10052021.docx

EXHIBIT A :



P:\Projects\2021\21059\21059.dwg



HLA
Engineering and Land Surveying, Inc.

2803 River Road
Yakima, WA 98902
509.966.7000
Fax 509.965.3800
www.hlacivil.com

**SHORT PLAT
A.F. NO. 8119261**

KINLOCH BORTON ENTERPRISES, LLC
EXHIBIT A

EXHIBIT B

EXHIBIT B
LEGAL DESCRIPTION

**Lots 1-8 of Short Plat recorded under Auditor's File No. 8119261,
records of Yakima County, Washington**