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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

STATE OF WASHINGTON

COUNTY OF SNOHOMISH

WEYERHAEUSER REAL ESTATE COMPANY, a Washington corporation, hereinafter called Declarant, does hereby declare and establish that:

The Declarant is the owner of the real property described in Article I of this Declaration (the "Property") and hereby subjects the Property to the covenants, conditions and restrictions hereinafter set forth, each and all of which is and are for the benefit of the Property, and for each owner thereof, and shall at all times during the term hereof be deemed an appurtenance to and run with the Property, and each and every tract, lot or parcel thereof, and shall apply to bind the successors in interest of Declarant a any owner thereof:

THEREFORE, the Declarant hereby declares that the Property described in and referred to in Article I hereof is and shall be held, transferred, sold and conveyed subject to the following covenants, conditions and restrictions (the "Covenants").

### ARTICLE I

The Subject Property The real property subjected to these covenants, conditions and restrictions, as herein provided, is located in portions of Sections 29, 31 and 32, Township 27 North, Range 7 East, Willamette Meridian, located in Snohomish County, Washington, which portions are more particularly described as (the "Property"):

Tracts 4 through 32, inclusive, of that certain Record  
of Survey recorded under Auditor's File Number  
9104045004 in Volume 34 of Surveys, Pages 198 through  
204, inclusive, Records of Snohomish County,  
Washington.

Said Record of Survey is referred to hereafter as the Plat.

### ARTICLE II

Purpose The purposes and considerations for subjecting the Property to these covenants, conditions and restrictions are:

- A. To further the best use and most appropriate development and improvement of each tract of land comprising the Property (individually and as such tracts may be further subdivided, a "Lot," and collectively, "Lots");
- B. To provide access to the Lots for the purposes of ingress, egress and utilities so as to promote the improvement, development and maintenance of the Property; and
- C. To set aside property for the construction, installation, and maintenance of roads and utilities on the Property, thereby enhancing property values for the benefit of purchasers of the Lots.

### ARTICLE III

3.1 Road Easements Private roadway easements sixty (60) feet in width are hereby dedicated and established as shown on the Plat and such additional easements as may be dedicated by Declarant, the owner or owners of a Lot or Lots or the Association to provide a way of access to all Lots. Such easements shall be for the purposes of ingress and egress and utilities and shall be appurtenant and beneficial to each of the Lots. In addition, there is reserved to Declarant and to the Cherry Valley Owners Association (the "Association"), their agents and servants, an easement over and upon each and every Lot for entry and access at reasonable times and places for the performance of all their rights and duties as provided in this Declaration.

3.2 Use of Easements The roadway easements shall be used for the purpose of constructing, installing, maintaining, repairing and replacing roads, drainage system and utilities equipment and services, including, without limitation, telephone, electric, gas, water and sewer lines, equipment and services.

3.3 Maintenance of Easements Every Lot shall be subject to assessment for the maintenance, repair and replacement of the roads and drainage system. Maintenance of such roads and drainage system shall include, but not be limited to the following:

- A. Maintaining or replacing the roadway surface of the roads in a level, smooth, and evenly covered condition to maintain the roads pursuant to Snohomish County standards for private roads;
- B. Removing all paper, debris, and refuse to the extent necessary to keep the roads in a clean and orderly condition;
- C. Replacing and keeping in repair any required signs, markers or lines;
- D. Installing and replacing such artificial lighting fixtures as required, and operating, keeping in repair, and replacing where necessary any existing lighting fixtures;
- E. Removal of snow and ice;
- F. Payment of all costs for materials, supplies, and equipment necessary to maintain, service, repair, and operate the roads including, but not limited to, engineering fees, surveyors' fees, contractors' fees, and any other fees;
- G. Maintaining, repairing, and replacing the drainage system existing in the roads;
- H. Payment of premiums for a policy or policies of insurance against liability coincidental to the use and maintenance of the roads and access points; and
- I. Payment of the costs of administration and attorneys' fees incurred in connection with the roads and drainage system.

#### 3.4 Maintenance Fund

3.4.1 Access Maintenance Fund A fund shall be established, held, administered and used by the Association for the maintenance of the roads and drainage facilities. Such fund shall be known as the Cherry Valley Common Access Maintenance Fund (the "Access Maintenance Fund"). The Access Maintenance Fund shall be owned jointly by all of the Lot owners, administered by the Association, used only for the maintenance expenses described above and shall not be subject to partition by any individual Lot owner.

3.4.2 Initial and Annual Payments An initial payment of Two Hundred Dollars (\$200.00) shall be paid by the first purchaser of each Lot (including, without limitation, each Lot created by any

further subdivision or platting of the tracts created by the Plat) to a fund to be known as the Cherry Valley Common Access Maintenance Fund, and a like sum shall be paid annually, on or before the fifteenth (15th) day of each February thereafter. Upon the subdivision of any Lot, The annual common

access maintenance assessment may be increased at any time by majority vote, as hereinafter defined, but it can be waived only by a two—thirds vote of the Lot owners.

3.4.3 Lien Rights Such assessment, together with interest and costs, including without limitation reasonable attorneys' fees, shall be a lien against the Lot to which such assessment is made. Each assessment, together with interest and any costs and attorneys' fees which may be incurred to collect said assessments, shall also be the personal obligation of the person who is the owner of such Lot at the assessment due date. If any assessment is not paid within thirty (30) days after its due date, the assessment shall bear interest at the maximum rate permitted by law from the due date until paid. The Association or its agents, shall have the right and power to bring all actions against any Owner personally for collection of such assessments as a debt and to enforce the lien rights of the Association, including foreclosure, by an action brought in the name of the Association in like manner as the foreclosure of a lien on real property. The liens provided for in this section shall be in favor of the Association, and shall be for the benefit of the Association. The Association shall have the power to bid in its interest at a foreclosure sale and to acquire and hold, lease, mortgage and convey the same. In the event of legal action to enforce or collect any assessment, the prevailing party shall be entitled to recover court costs, reasonable attorneys' fees, and any other expenses of litigation.

#### 3.4.4 Driveway Connections

3.4.4.1 All driveway connections to the roads shall be made in such a way that they do not unreasonably interfere with the use of the private roads by other owners and do not cross other Lots.

3.4.4.2 Entrance driveways shall be so constructed as to prevent the flow of surface water from the driveway onto the road surface of the private roads. Driveway crossings over drainage ditches must be constructed with culverts of adequate size to assure the free and unobstructed passage of the waters therein. Such culverts shall be at least twelve (12) inches in diameter and shall be installed at a depth sufficient to permit an unobstructed water flow in the ditch. The owner or other person in control or possession of the driveway shall keep the culvert under it unobstructed and in good operating condition.

3.4.4. 3 Any damage caused by driveway connections to the roads shown on the plat, or to the ditches or shoulders of the roads, or to the flow of draining water along the said roads, shall be repaired at the expense of the owners connecting such driveways. If such owners fail to repair the

damage within fourteen (14) days of notice by the Association of the need for repair, the Association may cause the repairs to be made and charge such owners for the costs of repair. If unpaid, the costs shall become a lien on such owners' Lot(s) which may be foreclosed by the Association as provided in subsection 3.4.3.

3.5 Extraordinary Use and Costs In the event that the owner of a Lot or Lots should by their use of the roads cause them to be subjected to other than ordinary and reasonable wear, and should the roads be damaged by such use, the owner subjecting the roads to such extraordinary use shall

have the obligation to repair the damaged roads to the condition existent prior to such use, and all expenses therefrom shall be borne by such owner.

#### ARTICLE IV

4.1 Membership Each owner of a Lot (including, without limitation, the owner of any Lot created by the further subdivision or platting of the tracts created by the Plat) shall be a member of the Association, and membership in the Association is appurtenant to the ownership (pursuant to a deed or as purchaser under a real estate or land contract) of each Lot. "Association" shall mean the Cherry Valley Owners Association.

4.2 Powers The Association is hereby established to effectuate the purposes of this Declaration, including but not limited to prescribing road and drainage system maintenance, controlling and administering the Cherry Valley Common Access Maintenance Fund, granting road use permits to owners of land adjoining the Property provided that the land benefited by such permits shall be subject to the Covenants and enforcing this Declaration. The Association shall organize, adopt the bylaws, elect officers, and operate freely within the restrictions contained herein. All actions of the Association requiring approval of owners shall be authorized if approved by the vote of the owners of a majority of the Lots. The Association shall have the right to construct roadways and drainage systems upon the areas of the Property that are subject to roadway easements as Located in the Plat and as the location of such easements may be. subsequently modified, provided that the expenditure of funds for such purposes shall require the approval of the owners of two thirds (2/3) of the Lots. The owner or owners of a Lot or Lots adjacent to an easement established in the Plat upon which a roadway or drainage system has not been constructed shall have the right to construct a roadway and drainage system upon such adjacent easement at the expense of such owner or owners, provided that the plans and specifications for such roadway and drainage systems are submitted to the Association and approved by the Association prior to construction.

#### 4.3 Voting Rights

4.3.1 One Vote Per Lot Each owner shall have one (1) vote for each Lot owned, whether improved or not. When more than one person is an owner of any Lot, all such owners shall be members. The vote for each Lot shall be exercised as the owners among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event that the owners of any Lot disagree among themselves as to how the one vote for the Lot shall be exercised with respect to a pending matter, any one of such owners may deliver written notice of such dispute to the president or secretary of the Association, and the vote for that Lot shall then be disregarded completely with respect to the matter or matters before the Association at that meeting. The right to vote may not be severed or separated from any Lot, and any sale, transfer or conveyance of said property interest to a new owner or owners shall operate to transfer the appurtenant vote without the requirement of any expressed reference thereto.

4.3.2 Suspension of Voting Right In the event any owner shall be in arrears in the payment of assessments due or shall be in default of the performance of any of the terms of the Declaration for a period of thirty (30) days or more, said owner's right to vote shall be suspended and shall remain suspended until all payments are brought current and all defaults remedied.

4.4 Procedure A president and board of directors of the Association shall be elected from among the owners. All owners shall receive written notice of any meeting of the Association at least fif-

teen (15) days in advance of any meeting. The presence of at least one half of the owners entitled to vote at any meeting shall constitute a quorum.

## ARTICLE V

5.1 Duration These covenants, conditions and restrictions shall run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2002, at which time said covenants shall be automatically extended for a period of ten (10) years unless by vote of a majority of the then owners of Lots, it is agreed to terminate or change said covenants in whole or in part.

5.2 Enforcement. If the parties hereto, or any of them, or their heirs, successors, or assigns shall violate or attempt to violate any of the covenants or restrictions herein, it shall be lawful for any other person or persons owning a lot or lots or the Association, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant or restriction, and either to prevent it, her,

him, or them from so doing or to recover damages and costs for such violation, including, without limitation, reasonable attorneys' fees. Failures of any person or persons to take action to restrain the violation of any of these covenants or restrictions shall not be construed as a waiver of any enforcement rights and shall not prevent the enforcement of such covenant or restriction in the future

5.3 Invalidation. Invalidation of any provision of this Declaration or any part thereof by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

## ARTICLE VI

6.1 Development Period Until such time as all but four (4) Lots within the Property have been sold (the "Development Period"), and unless Declarant elects otherwise, Declarant shall have exclusive authority to manage and operate the roads, including, but not limited to, assessing the owners for their share of the maintenance costs and all other rights, duties, functions, and authority granted to the Association hereunder. This requirement is made in order to ensure that the roads will be adequately administered in the initial stages of development, and to ensure an orderly transition to Association operation. Acceptance of an interest in a Lot evidences acceptance of this management and operational authority in Declarant. During the Development Period, each owner, with the exception of Declarant, shall be required to pay assessments in accordance with this Declaration; however, Declarant shall be responsible for all maintenance of the roads and shall ensure that the costs of maintenance are paid in full if the monies assessed against individual owners be insufficient.

6.2 Amendment by Declarant This Declaration may be amended during the Development Period by the sole signature of the Declarant. After the Development Period, this Declaration may be amended by an instrument signed by not less than a majority of the owners of all Lots. Any amendment must be recorded. In no event shall any amendment require more onerous restrictions than those contained herein as to any structure existing at the time of such amendment unless the same be unanimously approved by the owners of the Lots.

EXECUTED this 3rd day of July , 1991.

WEYERHAEUSER REAL ESTATE COMPANY

## **AMENDMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS**

STATE OF WASHINGTON

COUNTY OF SNOHOMISH

WEYERHAEUSER REAL ESTATE COMPANY, a Washington corporation ("Declarant"), the declarant of that certain Declaration of Covenants, Conditions and Restrictions dated July 3, 1991 and recorded July 17, 1991 as Auditor's File Number 9107170281, records of Snohomish County (the "Covenants"), and the Amendment of Covenants, Conditions and Restrictions dated September 9, 199 and recorded September 10, 1991 as Auditor's File Number 9109100361, records of Snohomish County, pursuant to the authority reserved to Declarant in the Covenants, hereby amends the Covenants as follows:

1. Article I of the Covenants is hereby deleted in its entirety and replaced by the following:

### **ARTICLE I**

The Subject Property. The real property subjected to these covenants, conditions and restrictions, as herein provided, is located in portions of Section 29, 31, and 32, Township 27 North Range 7 East, Willamette Meridian, located in Snohomish County, Washington, which portions are more particularly described as (the "Property"):

Tracts 1 through 3, inclusive, tracts 7 through 31, inclusive, and the S $\frac{1}{2}$  of the S $\frac{1}{2}$  of the 5W $\frac{1}{2}$  of the SW of said Section 32, of that certain Record of Survey recorded under Auditor's File Number 9104045004 in Volume 34 of Surveys, Pages 198 through 204, inclusive Records of Snohomish County, Washington.

Said Record of Survey is referred to hereafter as the Plat.

2. Except as amended herein, all of the terms and conditions of the Covenants remain in full force and effect.

EXECUTED this 20th day of September , 1991.

## **AMENDMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS**

STATE OF WASHINGTON

COUNTY OF SNOHOMISH

WEYERHAEUSER REAL ESTATE COMPANY, a Washington corporation ("Declarant"), the declarant of that certain Declaration of Covenants, Conditions and Restrictions dated July 3, 1991 and recorded July 17, 1991 as Auditor's File Number 9107170281, records of Snohomish County (the "Covenants"), pursuant to the authority reserved to Declarant in the Covenants, hereby amends the Covenants as follows:

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Tracts 1 through 3, inclusive, and tracts 7 through 31, inclusive, of that certain Record of Survey recorded under Auditor's File Number 9104045004 in Volume 34 of Surveys, Pages 198 through 204, inclusive, Records of Snohomish County, Washington.

Said Record of Survey is referred to hereafter as the Plat.

2. Except as amended herein, all of the terms and conditions of the Covenants remain in full force and effect.

EXECUTED this 9th day of September, 1991.

WEYERHAUSER REAL ESTATE COMPANY