

After recording, send to:

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
OF  
SOUTHCLIFFE  
PHASE 4

THIS DECLARATION, made on the date hereinafter set forth by Bauder-Young Properties, LLC, hereinafter referred to as "Declarant" or "Developer."

WITNESSETH

WHEREAS, Declarant is the owner of certain property in the County of Benton, State of Washington, which is more particularly described as follows (Note: abbreviated legal, complete legal found in Appendix A):

A PARCEL OF LAND SITUATED IN SECTION 8 AND THE SE ¼ OF SECTION 7, TOWNSHIP 8 NORTH, RANGE 29 EAST, OF THE WILLAMETTE MERIDIAN, CITY OF KENNEWICK, WASHINGTON PVA 16-01/PLN-2016-02948

WHEREAS, Declarant will convey the said properties, subject to certain protective covenants, condition, restrictions, and reservations, easements, rights of access, lines and charges as hereinafter set forth.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants end conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property.

These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall insure to the benefit of each owner thereof.

ARTICLE 1  
DEFINITIONS

"Lot" shall mean and refer to any plot of land shown upon any recorded Subdivision map of the properties.

"Unit," "Home," or "Dwelling" shall mean and refer to any individual dwelling located on a "lot" within the Southcliffe subdivision.

"Owner" shall mean one or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

“Declarant” shall mean and refer to the Developer, Bauder-Young Properties LLC, or its successors, and assigns.

“Association” or “HOA” shall mean and refer to Homeowner's Association, its successors, and assigns.

“Turnover date” shall mean the date upon which the written turnover of control of the Association by Developer is recorded in the records of the Recorder Benton County, WA.

“Design Review Committee” shall mean and refer to the Developer, or his designated committee that provides architectural oversight, or the designated committee that provides architectural review after the developer has yielded responsibility to the Association.

"Member" shall mean a person subject to membership in the Association pursuant to Article 4.

“Grid” shall mean an underground system of High Density Polyethylene loops to support the in-house geothermal heat pump.

“Common areas” shall refer to all areas common to all residents/builders/owners of the Southcliffe subdivision, including any landscape easements created for the common good of the community.

ARTICLE 2  
GENERAL PROTECTIVE COVENANTS and USER RESRTICTIONS and GENERAL PROVISIONS  
USE OF PROPERTY

Residential character of property: The term “residential lots” as used here in, means all of the lots now or hereafter platted on the existing property of the additions thereto. No structures or building of any kind should be erected, altered, placed or permitted to remain on any residential lot other than one detached single family dwelling, for single family occupancy, with a private garage or car port for not more than 3 standard sized passenger automobiles, except one other additional garage may be allowed only by written approval from the Developer. Absolutely no storage sheds or other structures of any type are allowed.

Use of Temporary Structures: No trailer, basement, tent, shack, garage, barn or other outbuildings or any structure of a temporary character erected or placed on the property shall at any time be used as a residence temporarily or permanently.

Trash and other waste: No trash or rubbish of any kind or yard debris shall be allowed to accumulate on any lot or tract. Yard rakings such as rocks, lawn and shrubbery clippings, dirt and other materials resulting from landscaping work, shall not be dumped into public streets, ditches, vacant lots, or Kennewick Irrigation District canal or right-of-way. The removal and disposal of all such materials shall be the sole responsibly of the individual owner. Should any individual lot owner or contract purchaser fail to remove such excess materials as described above within 10 days following the date on which notice is mailed to owner by another resident or Developer informing them of such violation, resident or Developer may have such material removed and the expense charged to said lot owner. Any such charges shall become a continuing lien on the non-compliant lot owner and his successors in interest.

Vehicles: No house trailers or other “RV” types should be allowed to stop on the property. No motorhomes, motorhome trailers, unmounted camper, boat or any other recreational vehicle type shall be stored or parked on the premises or in the streets of the SouthCliffe subdivision. Such recreational vehicles, as described above, if stored on the property, must be stored in an attached garage and not visible from the exterior of the dwelling.

No owner or contract Purchaser of any residential lot shall permit any vehicle owned by him or any member of his family or by acquaintance and which is in a state of disrepair, to be abandoned or to remain parked upon any street or within the existing property for a period in excess of forty-eight (48) hours. Should any such owner fail to remove such vehicle within two (2) days following the date on which notices is mailed to owner, by Developer or

fellow resident may have such vehicle removed and charged the expense of removal to said owner when its presence offends the reasonable sensibility of the occupants of the neighborhood.

Dishes, antennae, or other roof mounted features: No radio, television or other electronic signals related antenna shall be permitted to extend above the roof line or any residence without the written approval of Developer. Television dishes may be installed only on side yard walls at least 10 feet back from front of property facing primary access road.

Minimum Dwelling Square Footage (not including attached garages):

-Rambler: 2000 sq/ft (Rambler with daylight basement: 2000 sq/ft on Main Floor)

-Two story: 2000 sq/ft on the main level

Maximum Square Footage: There is no maximum square footage, although recommended max elevations (see Design Guidelines) and geothermal grid size (See Geothermal) will dictate reasonable and prudent maximum dwelling size.

Date for Start and Completion of Construction: Start date for construction of any dwelling or structure placed on any residential lot shall be within six (6) months of purchase date of lot. Completion of homesite as to external appearance, including finished painting and including landscaping, shall occur within nine (9) months from date of commencement of construction and thus not after fifteen months from purchase date of lot.

Pets, Livestock and Poultry: No animals or livestock or poultry of any kind shall be raised, bred or kept on any lot or in any dwelling except that dogs, cats or other typical household pets may be kept with a maximum of four (4) household pets allowed on any lot or in any dwelling at any given time

Signs: No signs shall be erected or maintained on any lot or dwelling in the subdivision, except that not more than one approved FOR SALE sign placed by the owner or the builder or by a licensed broker, not exceeding eighteen (18) inches high and twenty four (24) inches long. Additional model home signage and subdivision real estate signs shall be allowed if approved in writing by Developer or Association. All other signs are strictly forbidden.

Mail Box Delivery: No mail box, newspaper box or other delivery box shall be located in front of the front setback line or along the street right-of-way, except for cluster mail boxes where required and as specified by the United States Postal service.

Building setback: Building setback shall be determined in the front and back by the City of Kennewick building codes. Side setback shall either be ten (10) feet or per the City of Kennewick building codes, whichever is greater.

Fencing: Fencing is permitted, but must be of a black metal/iron artistic style and be 4 feet from ground level to top of fence. "Decorative" block walls will be permitted in side yards only, but must have visual design elements and may not have a plain "cinder block" appearance (see Design Guidelines for further guidance). Fencing plans must be submitted for approval to developer by mail at Bauder-Young Properties ATTN: PLAN APPROVAL, 2065 Morency Dr.

Richland, WA 99352. If in 45 days of receipt no approval/denial is issued, it shall be considered approved. Exception to automatic approval is that absolutely no chain link or wood fence or fence exceeding 5 feet or fence not complying to fencing guidelines is permitted on the property unless mandated by gov't code.

Variances shall be allowed for swimming pools so that fencing can meet City, County, State, or other applicable government building codes. Additionally, 5 foot fencing is allowed with permission from Developer when required for adequate pet containment.

Chain link fencing is permitted only if installed by Developer or the Kennewick Irrigation District.

Fireworks: The use of fireworks is strictly forbidden.

Lighting: Fixtures, standards and all exposed accessories shall be harmonious with building design. Lighting shall be restrained in design, and excessive brightness or unnecessary lighting must be avoided. Upon request by any adjacent homeowners, Developer or Association, the aberrant lighting will be changed so as to bring the lights to a harmonious and non-excessive level.

Exterior Maintenance: In the event an owner of any lot or dwelling in Southcliffe shall fail to maintain the premises in a respectable manner, in a manner satisfactory to the Developer or Association, the Developer or Association shall have the right, through his agent and employees, to enter upon said parcel and to repair, maintain, and restore the lot and/or dwelling and any other improvements erected thereon. The cost of such exterior maintenance shall become an assessment to the property and must be paid within 30 days. If the assessment is not paid, the late payment shall be treated in the same manner as other late assessment payments.

Enjoyment of property: The owners shall use their respective properties to their enjoyment in such a manner so as not to offend or detract from another owner's enjoyment of their own respective properties, except that the owner's enjoyment of view may be restricted due to eventual further development or construction at Southridge or adjoining properties. *Absolutely no guarantee of views or future views is given.*

In Derogation of Law: No owner shall carry on any activity of any nature whatsoever on his property that is in derogation or in violation of the law.

Nuisances: No noxious or offensive activity shall be carried on upon any lot or in any dwelling, nor shall anything be done thereon which may become a nuisance as such is defined in the laws of the State of Washington.

Oil and Mining Operations: No oil drilling, oil development operations, oil refining, quarry or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any lot.

Water Supply: No individual domestic water supply system shall be permitted on any lot.

Domestic landscape irrigation: No irrigation water runoff from any lot is allowed. Extra care and precaution in the design and operation of irrigation systems is required for sloping lots to prevent washouts and water related damage. The natural undisturbed landscape may be retained for those areas too steep to maintain or irrigate. A Solenoid valve must be installed to gate off the entire system in the event of power failure. All additional measures recommended by the owner's irrigation engineer to prevent damage from irrigation water must be installed.

Business and Commercial Use of Property: No trade, craft, business, profession, commercial or manufacturing enterprise or business or commercial activity of any kind shall be conducted or carried on upon any residential lot, or within any dwelling located on a residential lot, provided the exceptions below.

Exceptions:

- The developer or his agents may maintain a sales office for the sole purpose of marketing Southcliffe subdivision lots.
- Home occupations are permitted only as an accessory use clearly incidental and secondary to the occupancy of the dwelling for residential purposes.
- The operation shall allow for no more than one part-time employee (i.e., working 25 hours or less per week), other than the residents of the dwelling to be working on the premises.
- There shall be no more than three customer/client visits per week at the residence and no more than one on the premises at any given time. One customer/client visit shall be considered to include any number of persons arriving in a single vehicle.

- In addition to parking required for the residents, there shall be no more than one vehicle parked in the vicinity of the property as a result of the home occupation at any one time.
- Customer/client presence at the residence shall be limited to between the hours of 8AM and 6PM.
- One occupational vehicle associated with the home occupation is allowed to be stored at the residence, provided that said vehicle is parked in the garage at all times.
- Equipment and materials associated with the home occupation stored at the residence shall be the same or similar in character to the type and quantities of equipment and materials customarily associated with the occupation of the dwelling as a principle place of residence.
- Except as permitted by subsection (8) above, no outdoor storage or display of merchandise, equipment, marketing, or material related to the home occupation shall be permitted.
- Space requirements and utilization of that portion of the residence for activities associated with the home occupation shall not exceed 15% of the gross floor area of the residence or 300 Sq/ft, whichever is greater. Attached and detached garages shall be considered part of the residence and included in the determination of gross floor area.
- No internal or external alterations are permitted for the purposes of the home occupation which cause any affect to the character for the building as a residence.
- The home occupation shall operate in such a manner as to avoid any external (incl. transmittal through vertical or horizontal walls) effects which is incompatible with the characteristics of the residential zone or is otherwise violation of the Kennewick public nuisance ordinance.
- No signage for such home occupations shall be allowed on the premise, including structures or otherwise.
- No "day care" facilities either licensed or otherwise, are permitted.
- Approved builders (as specified by Developer) may operate a model home for sales purposes but must respect items above except those related to concurrent visitors.

Mortgages protected: Nothing herein contained shall impair or defect the lien of any mortgage or deed of trust now or hereafter recorded covering any lot or lots, but title to any property obtained as a resume or foreclosure shall thereafter be held subject to all of the provisions herein.

Enforcement of Covenants. The right and obligation to enforce the provisions contained herein, by injunction, together with the right to cause the removal by due process of law of any structure, is hereby vested in the Association, its successors and assigns and in each owner of any lot in this Property. These covenants and restrictions may all be enforced by a civil action for damages and by any other appropriate remedy at law or in equity. If any person or persons shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons vested with the title of any of the lots herein before described, the Association, its successors and assigns, or the Declarant, to proceed either in law or in equity, against such person or persons violating or attempting to violate any such covenants, and to enjoin them from so doing, to recover damages for such violation and to seek all other appropriate relief. In the event that the Association, or the Declarant should employ counsel to enforce any of the foregoing covenants and restrictions, all costs incurred in such enforcement, including but not limited to reasonable attorneys' fees, expense of removing or altering any Homesite which violates this Declaration and any other related expense shall be paid by the Owner of such Homesite against whom such enforcement action is brought, and any such expense shall become a Special Assessment against that Homesite and be enforceable in the same manner as is provided in this Declaration for other assessments. Any infraction or violation of these covenants that may also be a civil code violation can be reported to the governing authorities.

After the Turnover Date, the Association is solely obligated to enforce the provisions contained herein, however the Declarant and all individual lot owners shall maintain their vested rights to enforce the provisions, if they so choose. However, the Declarant, or individual lot owners shall not be responsible for the obligation of the Board to enforce the provisions contained herein.

Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Landscaping. All landscaping must be completed within six months of the completion of the building construction. All sites shall be maintained to present a neat and orderly appearance to all on and off-property vantage points. The landscaping requirements of the City of Kennewick shall be considered minimum requirements. The following conditions apply to each lot:

- a. The front and side setbacks along the public right of way shall be adequately landscaped.
- b. Underground sprinklers shall be utilized unless xeroscape design is used
- c. One "Street tree" per developers plan is required on each lot unless specifically noted in final plat.
- d. Maximum tree height shall not exceed the property's dwelling height.

Amendment: These covenants and restrictions have a term of 20 years from the date this declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument terminating these covenants which is signed by the owners or contract purchasers then owning not less than 95 percent of the property described shall have been filed with the Benton County Auditor. The Developer or his successors in interest may amend the covenants and restrictions of this declaration. In addition, they may be amended by an instrument signed by not less than the owners or contract purchasers then owning 95 percent of the property described. Amendments shall take effect when they have been recorded with the Auditor of Benton County.

Exemption of Developer: Nothing contained herein shall limit the right of Developer to subdivide, recombine, reconfigure or re-subdivide any portion of the Property, including unsold lots and Common Areas, to grant licenses, to reserve rights-of-way and easements to utility companies, public agencies or others. Nor shall anything contained herein limit the right of Developer to excavate, grade and construct improvements, including landscaping alterations, or to alter any of the foregoing or its construction plans and designs, or to construct such additional improvements as Developer deems advisable in its sole discretion in the course of development of the Property so long as any Lot in the Property remains unsold. Such right shall include, but shall not be limited to, erecting, constructing and maintaining on the Property such structures, signs and displays as may be reasonably necessary for the conduct of Developer's business of completing the work and disposing of the same by sales lease or otherwise.

Developer shall have the right at any time prior to acquisition of title to a Lot by a purchaser from Developer to grant, establish and/or reserve on that Lot additional licenses, reservations and rights-of-way to Developer, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. The rights of Developer hereunder may be assigned by Developer to any successor in interest in connection with Developer's interest in any portion of the Property.

### ARTICLE 3. GEOTHERMAL SYSTEM, INSULATION REQUIREMENTS, AND NATURAL GAS APPLIANCE REQUIREMENTS

Geothermal "grid" and insulation components: The Developers have provided a preinstalled geothermal "grid" [i.e. underground looping to support a geothermal heat-pump] in each lot of Phase 4. Each "grid" has been professionally engineered and installed by certified geothermal installers. Information about the installation and installers of the geothermal "grid" shall be supplied upon sale. Each lot's geothermal "grid" plan shall be included in the deed and shall become a document of record for the dwelling, and the homeowner shall be responsible for the protection of the "grid" upon purchase. Information about the installation and installers of the heat pump and other in-house geothermal related components, and provided warranties, shall be supplied to the homeowner by the home builder.

Each lot in Phase 4 (lots 1 – 10) has a geothermal "grid" capable of providing five (5) tons of heating and cooling capacity sufficient to condition the airspace of a 5,000 Sq/Ft home built to the "Energy Star" standard and required of builders in the covenants (see below).

Each dwelling must conform to the following requirements:

- Homes with forced-air systems will be required to use a ClimateMaster brand geothermal heat pump rated at or above the efficiency of the TE30/TT30 Series. Homes with radiant heat systems will be required to use a ClimateMaster brand geothermal heat pump rated at or above the efficiency of the TMW Series.
- Exterior walls shall have an R-26 thermal resistance value, or greater, which can be achieved either by R-5 exterior foam insulation or ICF (insulated concrete form) construction. Failure to build the dwelling to these insulation requirements is a violation of the covenants and shall require immediate remedy by the homeowner as stipulated in the covenants.

While not recommended or warranted, houses that require more than five (5) tons of heating and cooling capacity will need to do one of the following: add additional ground trenching and looping (i.e. enlarging their grid) and/or auxiliary means of heating and cooling the dwelling. Any increase in in-ground geothermal capacity is done with the homeowner and his/her associated contractors assuming all warranties and liability for both the new and existing in-ground geothermal components.

While Developer has used professional engineers and installers for the underground geothermal “grid,” no warrantee, expressed or implied, is provided by Developer regarding either the installation of the in-ground geothermal systems itself, or the heating and cooling capacity of the overall system. While the geothermal system should result in significant monetary savings for the homeowner, these savings are not guaranteed or warranted, either expressed or implied, by Developer.

Geothermal equipment requirements: Homeowners/builders ARE REQUIRED to purchase a ClimateMaster brand heat pump from ThermLink distributors of Duluth, MN. This exclusive agreement was established to ensure preferred pricing for builders/homeowners, preferred engineering support, and quality control for the geothermal systems installed in. Should ThermLink and/or ClimateMaster fail to exist at the time of heat-pump purchase by builder/homeowner, the builder/homeowner is released from this requirement, *but must still install a geothermal heat pump that equals or exceeded the efficiency rating stated previously.*

Should the lot be purchased without geothermal infrastructure, homeowner may use traditional HVAC equipment in place of a geothermal system but is still obligated to use the stated insulation requirements.

HVAC Installer/subcontractor: HVAC subcontractors must be Developer approved and they must maintain the IGSHPA certification. A list of approved subcontractors is available from Developer at 2706 Timberline Dr. West Richland, WA. These contractors have undergone additional training through ClimateMaster and under no circumstances shall an unapproved HVAC contractor be utilized.

Natural gas appliance requirements: Each home is required to have at least two natural gas appliances one of which being the primary hot water heater. Supplemental geothermal hot water heating is however permitted. The second appliance can be any reasonable appliance as selected by the buyer, e.g., range, fireplace, etc.

#### ARTICLE 4 HOMEOWNERS ASSOCIATION

Purpose: In order to provide for the maintenance and repair, replacement, administration, and operation of the Common and landscape easement areas, and such other functions as may be delegated and designated for it, the Association has been formed.

Members: Each Owner shall become a Member of the Association when a deed to a lot is delivered to the Owner and recorded in the records of the Recorder of Benton County, WA, conveying title to a lot to an Owner, but membership in the Association shall terminate when such person or persons cease to be an Owner and will be transferred by delivery and recording of a deed to the lot to the new Owner. The Association shall have one (1) class of Members who shall be all owners of lots. Each person holding an interest in any lot shall be a Member; provided, however, that each lot represented shall have only one (1) vote. No person or entity other than an Owner may be a Member.

**Voting Rights:** No Member other than Developer shall have any right to vote on any matter until the first to occur of the following events:

- i. The date (herein referred to as the Turnover Date) upon which the written turnover of control of the Association by Developer is recorded in the records of the Recorder Benton County, WA,
- ii. The date Developer no longer owns any lots in the entirety of the Southcliffe subdivision or,
- iii. Twenty (20) years after the date of the recording of the final plat of the Property.

**Board of Directors:** The initial Board of Directors shall be as designated in the Articles of Incorporation or thereafter appointed by Developer and such Directors, notwithstanding any provision in the Declaration or the Articles or the By- Laws to the contrary, shall be the directors until the Turnover Date or any of them are removed by Developer or the resignation of one or more of them, and in the event of any vacancy or vacancies occurring in the Board of Directors for any reason prior to the Turnover Date, every such vacancy shall be filled by a person appointed by Developer, which person or persons shall thereafter be deemed a member of the Board of Directors. After the Turnover Date, the Board shall be elected by the Association. The Board of Directors shall be the governing body of the Association representing all of the Members and being responsible for the functions and duties of the Association, including but not limited to the management, maintenance, repair, replacement and upkeep of the Common Areas, landscaped entrance ways, any lakes and ponds, fountains, and accent lighting, the payment of all other expenses pertaining to the Common Areas and the performance of services as detailed in this Declaration.

**Meetings:** Within thirty (30) days after the Turnover Date, the Association shall elect a Board of Directors and shall continue to do so annually in accordance with and as prescribed by the Bylaws, and the Members shall be entitled to vote for the election of the Board of Directors in accordance with the procedure outlined in the Bylaws. The turnover of control by Developer shall be effective whether or not such election is held.

**Right of Board of Directors to Adopt Rules and Regulations:** The Board of Directors may promulgate such additional rules and regulations regarding the operation of the Property including but not limited to the use of the Common Areas and other items as it may be necessary from time to time. Such rules as are adopted may be amended and supplemented by the vote of a majority of the Board of Directors which shall cause copies of such rules to be delivered and mailed promptly to all Owners.

**Annual Accounting.** Prior to the Turnover Date, no annual accounting shall be required. After the Turnover Date and annually thereafter the close of each calendar year and prior to the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared and furnished each Member a financial statement prepared by the accountant or accounting firm then serving the Association, or a qualified individual appointed by the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding calendar or fiscal year and all income of the Association during that same year.

**Proposed annual Budget.** Prior to the Turnover Date no annual budget is required. After the Turnover Date and annually thereafter, at least ten (10) days before the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing calendar or fiscal year estimating the total amount of the Common Expenses for the ensuing year and the amount of each Owner's Regular Assessment and Maintenance Assessment for that year, a copy of which shall be provided to each Member at least one week prior to the annual meeting. After the Turnover Date occurs, the annual budget shall be submitted to the Members at the annual meeting of the Association for adoption, and if so adopted, shall be the basis for the Regular Assessments and Maintenance Assessments (hereinafter defined) for the ensuing and regular fiscal year. At the annual meeting of the Members, the budget shall be approved in whole or in part or may be amended in whole or in part by a majority of the votes cast, provided, however, in no event shall the annual meeting be adjourned without or until the annual budget is approved at such meeting. The annual budget, the Regular Assessment, and any Special Assessments shall be established using generally accepted accounting principles applied on a consistent basis. The Association may provide for a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas and other anticipated expenses if the Board of Directors and Members of the Association deem the same is appropriate and necessary and may include a contribution for this fund in the Regular Assessment. Any delay or failure by the Board of Directors to prepare a proposed annual budget and to provide the



same to the Members shall not constitute a waiver or release in any manner of the obligations of each Owner to pay the Common Expenses as herein provided.

**Regular Assessments:** Association may levy and collect dues and assessments on all lots that are not owned by the Developer, whether or not the lot has a Dwelling located on it or is otherwise improved, including all lots to be recorded as additions to and sections of the recorded Plat of the Property. Prior to the Turnover Date occurring, the amount of all Regular, Maintenance and Special Assessments shall be established by the Board of Directors, appointed by the Developer, and shall be payable and enforceable as set forth herein. It shall have the authority to impose and collect monthly assessments for the operation, maintenance and improvement of the entryway or other common areas, or applicable easements; any lakes and ponds, and other such fees as may be determined by the Board. Those assessments shall be levied equally on each lot which is not owned by the Developer. If two contiguous lots are owned by the same person or persons and one home is constructed upon said lots, the representative owner(s) shall be assessed for both lots. After the Turnover Date occurs, the annual budget as adopted shall be used to establish the amount of the Regular Assessment for each lot, which is not owned by Developer, based on those expenses for the next fiscal year which are for common expenses, and contributions to any potential replacement reserve fund. The regular Assessment shall be based upon a budget prepared by the Board of Directors and provided to each Owner prior to the date the first installment of that assessment is due to be paid. Immediately following the adoption of the annual budget, each Owner shall be given written notice of the Regular and Maintenance Assessments against that Owner's Homesite (which Regular Assessment and maintenance Assessment and any Special Assessment are herein referred to collectively as the "Assessment".) The Assessment against each lot shall be paid by the Owner of that lot in advance annually, commencing on the first day of January of such calendar year and on the first day of each calendar year thereafter. Payments of the Assessments shall be made to the Association at the address provided by the Association to each Owner. The Assessment for the year shall become a lien on each Lot as of January 31 of each calendar year. The above dates of assessment and payment may be changed by the Board of Directors through rules and regulations or provisions in By-Laws without amending this Declaration.

**Calculation of Dues and Assessments.** The total of the monthly dues and assessments for non-developer owned lots shall not be more than One Hundred Seventy Five Dollars (\$175.00) per year, (the "Maximum Annual Assessment"), except as hereinafter adjusted. After the Maximum Annual Assessment is fixed for a particular year, it may thereafter be increased yearly by the greater of (i) three percent (3%) or (ii) the percentage that the CPI has increased during the preceding year. As used herein, "CPI" means the Consumer Price Index for All Urban Consumers (All Items) published by the Bureau of Labor Statistics of the United States Department of Labor. In the event the Bureau discontinues publishing the CPI, a comparable index will instead be used. Should the annual dues prove wholly inadequate for the satisfactory operations of the Association, the Board Of Directors may increase the annual assessment prior to the Turnover Date with majority of board members approving and notification to the Members, and after the Turnover Date upon the approval of 80% of voting members.

**Failure of Owner to Pay Assessments:** No Owner, other than Developer is exempt from paying Assessments and Special Assessments. If any Owner shall fail, refuse or neglect to make any payment of any Assessment when due, the Board of Directors may in its discretion declare the entire balance of unpaid Assessments to be due and payable, with interest. Said dues and assessments, including interest, costs of collection and attorneys' fees, if any, as hereinafter provided, shall be a lien in favor of the Association upon all lots against which such dues and assessments are charged.

**Notice of Unpaid Assessments.** The Association shall, upon the request of an Institutional Lender or purchaser who has a contractual right to purchase a lot, furnish a statement setting forth the amount of the unpaid Assessments against the lot, which statement shall be binding upon the Association and the Members.

**Maintenance of Common Areas.** The Association shall maintain the lawn and landscaping located in any Common and landscape easement areas including but not limited to entry wall areas, common park areas, gazebos or other improvements, and any landscaped boulevard islands, on a scheduled basis as determined by the Association, and shall be responsible for the timely repair and maintenance or replacement of any improvements located in a Common Area.

Failure to Maintain Property: In the event that the Association for any reason does not fulfill its duties as specified in this declaration, Developer shall have the right to hire an independent management company or use its own employees to provide for the maintenance of all Common Areas and applicable easements and to maintain the overall attractiveness of the Property. All costs including management fees and legal fees, incurred by Developer for the performance of said actions shall be paid from Association dues and assessments, which may necessitate a special assessment on all lots not owned by the Developer.

Indemnification of Officers, Directors, and Others: Subject to Washington law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Washington law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

## ARTICLE 5 ARCHITECTURAL CONTROL AND DESIGN

Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Southcliffe subdivision, agrees that Developer, along with fellow property owners, has a substantial interest in ensuring that the improvements within the property enhance the Southcliffe community and in no way impair the ability to market, sell, or lease its property located within the subdivision.

Therefore, each owner agrees that no activity within the scope of this Article shall be commenced on such Owner's lot unless and until the Design Review Committee or its designee has given its *prior written approval* for such work. Therefore, no structure or dwelling or any other physical object shall be placed, erected, or installed upon any lot within the Southcliffe subdivision and no improvements or other work (including staking, clearing, excavation, grading, building, and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the lot, either as new construction or remodel, unless design has been approved by the Design Review Committee.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. The burden of initiating and filing for Design Review Committee review shall rest solely with a lot owner and shall be their responsibility to diligently seek such review.

Purpose: The design review process is administered by the Design Review Committee (DRC) appointed by the developer, Bauder-Young Properties, LLC., or its successors and/or assigns. This review is not intended to be cumbersome nor expensive but rather is intended to achieve a pattern of quality and aesthetic benefit that preserves the visual impression of Southcliffe as a desirable community.

Architectural design is multifaceted, and includes building form and features, materials, colors, landscaping, fencing, roofing, and other factors, all of which contribute to an overall community image that is readily identifiable as a high quality development.

**Creation:** The Developer shall have full authority to appoint a Design Review Committee consisting of no less than three (3) nor more than five (5) committee members. After the Turnover Date, the design review committee shall be approved by the Association.

**Process:** The design review process shall have a minimum of two steps, and potentially more should the DRC determine additional review is necessary.

**Step 1: Preliminary Design Meeting.** Builder and owner as well as designer, if available, shall review Suggested Design Guidelines and Builders Checklist available from any approved builder or developer at: Bauder Young Properties, 2064 Morency Dr. Richland, WA 99352 prior to any meetings with DRC. Upon reviewing guidelines, said builder and/or owner shall request an ON SITE meeting with Design Review Committee or its representatives. At such meeting, builder and/or owner shall communicate initial thoughts on dwelling architecture and overall layout, including such items as housing style, height, roof style, exterior finishes, colors, landscaping integration, among others. *The goal of this meeting is for the DRC to convey any concerns about the designs prior to the builder and/or owner initiating significant design work.*

If the DRC is uncomfortable with the information presented in the initial on-site meeting, the DRC may request a 2<sup>nd</sup> Preliminary Design Meeting with owner and/or builder until DRC is satisfied with and has given permission for builder and/or owner to continue.

**Step 2. Final Design Meeting.** In the final design meeting, the builder and/or owner submits their completed exterior plans set, including:

**Site Plan, including:**

- Property lines, improvement location, setbacks and easements.
- If applicable, grading plan and on-site drainage/containment systems
- Front, sides, and rear elevation, with siding, trim, railing, and roofing materials *clearly* identified
- Landscape plan (may be submitted during home construction before landscaping occurs)
- Fencing (may be submitted during home construction)
- Solar panels or any other alternative energy source located on roof or elsewhere on said lot.

**Roof Plan:**

- Clearly illustrated roof plan with roofing material identified. No reflective roofing material permitted
- Roof mounted HVAC units, solar panels OR ANY OTHER item or device mounted to or protruding from roof, including vents or other plumbing or HVAC elements.
- Roof mounted accessories and chimneys

**Until receipt by the Design Review Committee of any required plans and specifications, the Design Review Committee may postpone review of any plan submitted for approval.**

**Approved builders:** Construction of all homesites must be by Developer approved homebuilders only. The approved builder list may be obtained from the Developer at Bauder Young Properties, 2064 Morency Dr. Richland, WA 99352.

**Inspection of work and enforcement:** Upon the completion of any work for which approved plans are required under this Article, the Owner shall give written notice of completion to the Design Review Committee. Within ninety (90) days thereafter, the Design Review Committee or its duly authorized representative may inspect such Improvement. If the Design Review Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such ninety (90) day period, specifying the particular noncompliance, and shall require the Owner to remedy the same.

Should the owner fail to remedy the non-compliance within 120 days, the breaching party shall be subject to any and all legal ramifications including damages and destruction, removal or the enjoining of any offending improvement or condition. In the event that an owner or his agent fails to comply the DRC and/or its authorized representatives may proceed with enforcement as provided for in this document. Any violation(s) of these CC&R's that are discovered will be forwarded in writing to the owner and/or the owner's agent(s) along with a reasonable

timeline to correct the violation(s). In the event the owner fails to comply within this specified time period the DRC and/or its authorized representatives may proceed with enforcement as provided by the Southcliffe CC&R's.

Limitation of Liability: The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties. Neither the Developer, nor the Design Review Committee nor any member thereof, nor its duly authorized Design Review Committee representative, shall be liable to the Association, or to any Owner, Grantee or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the Design Review Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Design Review Committee. The Design Review Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the Property generally. The Design Review Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of building, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.

Signed:

I \_\_\_\_\_ (buyer) and \_\_\_\_\_ (buyer) have read and accept these covenants on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

APPENDIX A

THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 8 TOWNSHIP 8 NORTH, RANGE 29 EAST, WILLAMETTE MERIDIAN, SITUATE IN THE CITY OF KENNEWICK, BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 10 OF THE PLAT OF SOUTHCLIFFE PHASE III, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 15 OF PLATS, PAGE 567, RECORDS OF BENTON COUNTY;

THENCE SOUTH 01°03'45" EAST 271.68 FEET ALONG THE WEST LINE OF SAID PLAT TO THE SOUTHERLY RIGHT OF WAY MARGIN OF WEST 23RD AVENUE AND TO THE BEGINNING OF A NON-TANGENT CURBE CONCAVE TO THE NORTH HAVING A RADIUS OF 420.00 FEET, THENCE EASTERLY 12.30 FEET ALONG THE ARC OF SAID CURVE AND ALONG SAID RIGHT OF WAY MARGIN THROUGH A CENTRAL ANGLE OF 01°40'42" (THE LONG CHORD OF SAID CURVE BEARS NORTH 84°15'10" EAST 12.30 FEET)

THENCE NORHT 83°24'48" EAST 38.09 FEET ALONG SAID RIGHT OF WAY MARGIN TO THE NORTHWEST CORNER OF TRACT 'B' OF THE PLAT OF SOUTHCLIFFE PHASE I, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 15 OF PLATS, PAGE 476, RECORDS OF BENTON COUNTY;

THENCE SOUTH 12°47'51" WEST 191.71 FEET, MORE OR LESS, ALONG THE WEST LINE OF TRACTS 'B' AND 'A' OF SAID PLAT OF SOUTHCLIFFE PHASE I TO THE CENTERLINE OF THE KENNEWICK IRRIGATION DISTRICT AP CANAL EASEMENT;

THENCE NORTH 71°49'40" WEST 65.38 FEET ALONG SAID CENTERLINE TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 573.00 FEET; THENCE NORTHWESTERLY 57.17 FEET ALONG THE ARC OF SAID CURVE AND ALONG SAID CENTERLINE THROUGH A CENTRAL ANGLE OF 05°43'00";

THENCE NORTH 77°32'40" WEST 223.80 FEET ALONG SAID CENTERLINE TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 191.00 FEET; THENCE NORTHWESTERLY 84.40 FEET ALONG THE ARC OF SAID CURVE AND ALONG SAID CENTERLINE THROUGH A CENTRAL ANGLE OF 25°19'00";

THENCE NORTH 52°13'40" WEST 127.20 FEET ALONG SAID CENTERLINE TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 191 FEET; THENCE NORTHWESTERLY 117.84 FEET ALONG THE ARC OF SAID CURVE AND ALONG SAID CENTERLINE THROUGH A CENTRAL ANGLE OF 35°21'00";

THENCE NORTH 16°52'40" WEST 3.23 FEET ALONG SAID CENTERLINE

THENCE 65°04'47" EAST 185.65 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 220.00 FEET, THENCE NORTHWESTERLY 78.21 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 20°22'08" (THE LONG CHORD OF SAID CURVE BEARS NORTH 13°30'58" WEST 77.80 FEET)

THENCE NORTH 03°19'54" WEST 16.95 FEET

THENCE NORTH 86°40'06" EAST 148.12 FEET

THENCE NORTH 03°19'54" WEST 56.81 FEET

THENCE SOUTH 88°22'19" EAST 153.64 FEET

THENCE SOUTH 04°18'41" EAST 28.04 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE WEST, HAVING A RADIUS OF 520.00 FEET; THENCE SOUTHERLY 29.48 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03°14'55";

THENCE SOUTH 01°03'55" EAST 15.44 FEET

THENCE SOUTH 89°08'20" EAST 155.06 FEET

TO THE POINT OF BEGINNING.

CONTAINING: 4.71 ACRES, MORE OR LESS