

After filing, return to:  
Stephen A. Brandli  
3320 126<sup>th</sup> Ave. NE  
Bellevue, WA 98005



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Skagit County Auditor

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## Declaration of Covenants for the Fox Hollow Water System Association

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### DOCUMENT SUMMARY

Grantors (Declarants): John Peth & Sons, Inc.; Don Farmer Insurance, Inc.,  
Randall G. and Barbara B. Schultz; Michael D. Yeates

Grantee: THE PUBLIC; Fox Hollow Water System Association

Abbrev. Legal Description: Portion of the NW ¼ of Section 19, and a portion of the NE  
¼ of the NE ¼ of Section 24, Township 36N, Range 3E.

Tax Parcel Numbers: P49443, P49458, P118588, P118589, P118590, P118655

No other documents are affected.

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THIS DECLARATION (“**DECLARATION**”) is made this 15<sup>th</sup> day of November, 2002, by John Peth & Sons, Inc., a Washington Corporation; and Don Farmer Insurance, Inc., an Oregon Corporation; Randall G. Schultz and Barbara B. Schultz, husband and wife; and Michael D. Yeates, a married person as his separate estate (the “**DECLARANTS**”).

### WITNESSETH:

WHEREAS, Declarants are owners in fee of certain real property situated in Skagit County, Washington, described in Exhibit A, and including all residences and other structures thereon now existing or to be constructed in the future, and all easements appurtenant thereto (together the “**PROPERTY**”);

WHEREAS John Peth & Sons, Inc., as the developer of said Property, and in order to provide additional value to the Property it has sold and intends to sell in the future, has built a water system (the "SYSTEM", as defined herein), to provide water to the Property;

WHEREAS John Peth & Sons, Inc., wishes to place control over and responsibility for the System into the hands of the Declarants;

WHEREAS the Declarants wish to provide for the Property's current and future enjoyment of the System through the mutual control and maintenance of the System, reasonable restrictions on its use, and equitable distribution of the burdens of maintenance of the System; and

WHEREAS the above recitals are a material part of this Declaration;

NOW THEREFORE the Declarants hereby agree and declare that all of the Property, and any portion thereof will be held, sold and conveyed subject to the following Covenants, all of which are for the purposes of controlling and maintaining the System for the mutual benefit of the Property. These Covenants shall run with the Property, and each part of it, and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of each Owner (as defined herein) thereof. Acceptance of an interest in any portion of the Property shall be deemed acceptance of the terms and provisions of this Declaration, and any conveyance hereafter of any portion or interest in the Property shall be subject to these covenants.

#### 1. DEFINITIONS

"ASSOCIATION" shall mean the Fox Hollow Water System Association, a Washington Non-profit Miscellaneous and Mutual Corporation, its successors and assigns.

"DECLARANT" or "DECLARANTS" shall mean the parties to this Declaration.

"DECLARATION" shall mean this Declaration of Covenants.

"LOT" or "LOTS" shall mean the individual building lots, as certified and approved by Skagit County or other local government authority, and as served by the System, initially as specified in Exhibit A, and as modified subject to the provisions of this Declaration.

"LOT ASSESSMENTS" shall mean assessments against the Lots for System Expenses as provided for herein.

"OFFICER" shall mean an Officer elected by the Board of Directors, per the Bylaws, to serve a particular function.

"OWNER" or "OWNERS" shall mean the record owners of the Lots, whether one or more persons or entities, but excluding those having such interest merely as security. A real estate contract purchaser of any Lot shall be deemed its Owner and not the real estate contract vendor of said Lot.



**"NOTICE"** shall mean a written notice as defined in Paragraph 7.1 of this Declaration.

**"PROPERTY"** shall mean the real property situated in Skagit County, Washington, initially described in Exhibit A, and all residences and other structures thereon, now existing or to be constructed in the future, together with all lots added to the list of Lots served by the System pursuant to Paragraph 3.2.3 of this Declaration.

**"SYSTEM"** shall mean the Fox Hollow Water System, including a well, piping, pumps, tanks, water treatment equipment, monitoring and control equipment, and other mechanicals, and the structures to house them, required to deliver water to the Lots, as defined by the "Group B Water System Report" for the Fox Hollow Water System, approved by Skagit County on March 14, 2001, and as modified subject to the provisions of this Declaration. The System shall include the well, the individual meters positioned on the Lots, and all components of the water system in between the well and the individual meters.

**"SYSTEM EXPENSES"** shall mean all costs incurred by the Association for the maintenance, repairs, improvements, insurance premiums, and other reasonable expenses for the System, as defined in Section 4.

A **"VOTING SHARE"** is the portion of the total voting power of the Association allocated to a Lot, as defined in Paragraph 2.4.1.

## 2. ASSOCIATION FORMATION AND GOVERNANCE

### 2.1. Formation

The Declarants hereby authorize Stephen A. Brandli to form the Association by filing with the Secretary of State of Washington the Articles of Incorporation previously accepted by the Declarants, such Articles being consistent with the provisions of this Declaration.

### 2.2. Governing Documents

The **"GOVERNING DOCUMENTS"** of the Association shall consist of this Declaration, the Articles of Incorporation, and the Bylaws.

#### 2.2.1. Association Bylaws

The Association shall maintain Bylaws to ensure the Association meets its responsibilities to the Owners, and to govern the processes and procedures of the Association. The initial Bylaws have been previously accepted by the Declarants, who hereby instruct the initial Board of Directors, named in the Articles of Incorporation of the Association, to ratify said Bylaws.

#### 2.2.2. Conflict in Governing Documents

Where there arises a conflict in the provisions between the Governing Documents such that it is not possible to abide by the provisions of all of the Governing Documents, then priority shall be given to the Articles of Incorporation, followed by this Declaration, followed by the Bylaws.



### 2.2.3. Modification of Governing Documents

No provision of the Articles of Incorporation or this Declaration shall be amended or modified except by the unanimous affirmative vote of all Voting Shares of the Association. No provision of the Bylaws shall be amended or modified except by the affirmative vote of at least two-thirds (2/3rds) of the Voting Shares of the Association. Votes on amendments to the Bylaws must be done at a Special Meeting of the Owners, or at an Annual Meeting of the Owners where the Notice of the Annual Meeting includes a statement specifying that an amendment to the Bylaws will be considered. Amendments to this Declaration shall be recorded for all Property.

### 2.3. Membership

#### 2.3.1. Qualification

Each Owner shall be deemed a member in the Association. Ownership of a Lot shall be the sole qualification for membership in the Association, and the membership of the Association at all times shall consist exclusively of the Owners. Should the Association, through the provisions in this Declaration, add or remove Lots from the list of those served by the System, then the corresponding Owners of those Lots added or removed shall be added and removed as members of the Association. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or in any way affect the Owner's membership.

#### 2.3.2. Transfer of Membership

The Association membership of each Owner shall be appurtenant to the Lot giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon transfer of title to said Lot, and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer of membership shall be void automatically. Any transfer of title to a Lot shall operate automatically and immediately to transfer membership in the Association appurtenant thereto to the new Owner thereof.

### 2.4. Voting

#### 2.4.1. Voting Rights

Each Lot Owner has a right to vote at meetings of the Association, on such matters as may lawfully come before such meetings. A Lot shall afford its Owner(s) a single Voting Share.



#### 2.4.2. Joint Owner Disputes

The Voting Share for a Lot must be cast as a single vote, and split votes for Lots shall not be allowed. If only one of the multiple Owners of a Lot is present at a meeting of the Association, in person or by proxy or by written ballot, said Owner is entitled to cast the entire Voting Share for the Lot. If more than one of the multiple Owners of a Lot are so present (including by proxy or by written ballot), the Voting Share for that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. There shall be deemed to be a majority agreement if any one of the multiple Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. In the absence of majority agreement, the conflicting votes (for one Voting Share) shall be deemed an abstention of the Voting Share for such Lot.

#### 2.4.3. Proxies and Voting by Written Ballot

The Voting Share of a Lot may be cast pursuant to written ballot or written proxy, duly executed by the Lot's Owner and delivered to the person presiding at the meeting, in person or by mail, at or before the commencement of the meeting. If a Lot is owned by more than one Owner, each Owner of the Lot may vote or register protest to the casting of votes by the other Owners of the Lot by written ballot or through a duly executed proxy. An Owner of the Lot may not revoke a proxy given pursuant to this section except by written notice of revocation delivered to the person presiding over a meeting of the Association before the commencement of the meeting. Any proxy is void if it is not dated or purports to be revocable without notice. Unless stated otherwise in the proxy, a proxy shall terminate eleven (11) months after its date of issuance.

#### 2.5. Meetings

##### 2.5.1. Annual Meeting

The Association shall hold a meeting of the Owners once a year, as specified in its Bylaws. This "ANNUAL MEETING" shall include, but shall not be limited to, the following agenda items:

- a. An Officer shall report on the financial condition of the Association, including a summary of the Lot Assessments collected, interest and other income, expenses incurred, accounts receivable, liabilities payable, and balances of accounts.
- b. An Officer shall list by Lot and Owner any past due Lot Assessments, including the amount owing and the original due date.
- c. An Officer shall report on the mechanical condition of the System, including listing any major components that were replaced in the previous year, summarizing maintenance done on the System in the previous year, and listing any condition that may jeopardize the System's ability to meet its responsibilities.
- d. An Officer shall report on the results of any and all water quality testing performed on the System over the past year.



- e. An Officer shall declare the Lot Assessments to be collected in the next year, as provided for in this Declaration and in the Association's Bylaws.
- f. The Owner(s) of each Lot shall appoint one Director to serve on the Board of Directors for the following year, as provided for in this Declaration.

### 2.5.2. Special Meetings

The Association may hold Special Meetings of the Owners between Annual Meetings in order to consider business that requires a vote of the Owners to accomplish. A Special Meeting may be called by the Association's Board of Directors, or by the Owners of any two or more Lots upon written application to an Officer of the Association. The Notice for a Special Meeting shall state the purpose of the meeting, and the agenda for the meeting shall be limited to those items required to accomplish the stated purpose.

### 2.5.3. Meeting Locations

All Annual and Special Meetings of the Association shall be held at a residence on one of the Lots served by the Association. If no Owner of a Lot will host a meeting, then the meeting shall be held at an alternate location in Skagit County.

### 2.5.4. Notice of Owners Meetings

The Association shall serve Notice to the Owners of all Annual and Special Meetings of the Owners. Such Notice shall be made in accordance with Sub-section 7.1 herein, and shall be made no less than thirty (30) days and no more than fifty (50) days before the date of the meeting. The Notice for any meeting shall state the place, day and hour of the meeting. The Notice for a Special Meeting shall specify the purpose of the meeting.

### 2.5.5. Waiver of Notice of Meeting

Whenever any Notice of a meeting to an Owner is required to be given by the Association, a waiver thereof in writing signed by the Owner, whether made before or given after the time stated therein, shall be equivalent to the giving of such Notice.

### 2.5.6. Quorum

A quorum is present in an Annual Meeting of the Owners if at least 51% of the Voting Shares of the Association are represented in person or by proxy at the beginning of the meeting. A quorum exists for a Special Meeting of the Owners if at least the number of Voting Shares to accomplish the purpose of the Special Meeting, or any portion of the purpose thereof, is represented in person, by proxy, or by written ballot at the beginning of the meeting.

### 2.5.7. Written Unanimous Consent

Any matter that may be decided at a Special Meeting of the Owners may be decided in lieu of such meeting through written unanimous consent of the Owners.



## 2.6. Board of Directors

### 2.6.1. Composition

The Association shall maintain a Board of Directors to provide for the administration of the affairs of the Association and for the day-to-day operation and maintenance of the System. The Board of Directors shall consist of a representative from each Lot served by the System, appointed by the Owner(s) of each Lot at each Annual Meeting. A representative need not be an Owner. No person who has been removed from the Board of Directors within the preceding five (5) years may serve on the Board of Directors, unless approved through unanimous consent of the Voting Shares of the Association. Each Director shall serve until the next Annual Meeting, or until he/she resigns or is removed in accordance with this Declaration. The Board will consist of that number of Directors currently serving on the Board.

### 2.6.2. Directors When Serving Single Lot

Should the System be serving only a single Lot at the time of an Annual Meeting, or at the time of the resignation or removal of a Director, then the Board of Directors shall consist of two (2) or three (3) Directors at the option of the Owner(s) of the single Lot served by the System. At each Annual Meeting, said Owner(s) shall appoint the Directors for the next term. Should a Director resign or be removed, then said Owner(s) shall have the option of filling the vacancy by appointment, provided however that said Owner(s) must fill the vacancy if doing so is necessary to maintain a minimum of two (2) Directors on the Board of Directors. If a Lot is added to the System, pursuant to Paragraph 3.2.3, at a time when the System is serving a single Lot, then at the next Annual Meeting the number of Directors and method of appointment shall be determined pursuant to Paragraph 2.6.1.

### 2.6.3. Resignation and Removal of a Director

A Director may resign from the Board of Directors by providing written Notice of his/her resignation to the President or Secretary of the Association. A Director may be removed from the Board of Directors by unanimous consent of all other Directors. The Owner(s) who appointed the Director may not remove the Director once appointed. Upon resignation or removal of a Director, the Owner(s) who appointed said Director may choose another person to represent that Lot as Director, subject to the restrictions in Section 2.6.1.

### 2.6.4. Officers

The Board of Directors shall, at the first meeting of the Board of Directors after each Annual Meeting, elect those Directors who will serve as "Officers". The titles and duties of the Officers shall be defined in the Bylaws of the Association.



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### 3. ASSOCIATION ASSETS AND RESPONSIBILITIES

#### 3.1 Responsibilities of the Association

##### 3.1.1. Provision of Service

The Association shall provide to each Lot potable water service to a meter for the Lot, which is owned by the Association and located on each Lot near the Lot's boundary. Such service shall be of a quality, volume and at such pressure as is required by Skagit County and the State of Washington for Group B Water Systems, or as required by any future regulations pertaining to the System. The Owner(s) of each Lot are responsible for all piping and other equipment downstream from the Association-owned meter.

##### 3.1.2. Maintenance of the System

The Association shall maintain the System in good operating condition, and shall provide its best effort in providing continuous water service to each of the Lots. The Association shall perform maintenance on, and upgrades to, the System in its best effort to minimize the total, long-term costs of the System.

##### 3.1.3. Quality Test of the System

The Association shall periodically test the quality of the water served by the System at a frequency mandated by State or local law, or by the Bylaws of the Association, whichever is more frequent. An Officer shall report at each Annual Meeting the results of every test performed in the year prior to that Annual Meeting. Should a water quality test not meet State or local quality standards, the Association shall immediately send Notice of such failure to each Owner(s) of each Lot.

##### 3.1.4. Liability Insurance

The Association shall pay for and maintain liability insurance protecting the Association against claims arising out of problems with water service, including but not limited to interruptions of service and contaminated water. Such liability insurance shall pay up to at least one million dollars (\$1,000,000) per occurrence.

##### 3.1.5. Limitation on Total Water Use

The Association shall take reasonable steps to insure that the total amount of water drawn from the well shall not exceed 5000 gallons per day. The Association may use the enforcement described in Paragraph 5.2 of this Declaration to compel compliance with this requirement.



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### 3.2. Lots Served by The System

#### 3.2.1. Initial Lots Served

The Association shall initially serve the Lots specified in Exhibit A. A Lot is considered served if it has the right to draw water from the System per this Declaration, even if it does not do so currently. The list of Lots served can be modified only through the provisions of this Declaration.

#### 3.2.2. Service Limited to Lots Served

The Association shall provide service only to those Lots that have a right to service as provided for in this Declaration. The Association shall not serve any other lots, nor buildings and improvements on any other lots, than those Lots with a right to service. The Owners, lessees, and other occupants of Lots with a right to service shall not provide water from that service to any other lots, nor buildings and other improvements on any other lots. The Association may impose the remedies specified in Paragraph 5.3 of this Declaration to enforce this provision.

#### 3.2.3. Adding Lots to the System

The Association may, through unanimous affirmative vote of its current Voting Shares, add lots to the list of Lots served by the System. Such unanimous affirmative vote may be obtained in any manner provided for in Paragraph 2.5 of this Declaration.

The Owners may, in lieu of immediate approval of the addition of a lot, conditionally approve the addition of said lot, through unanimous consent of such approval along with the conditions of approval. Conditions can include, but are not limited to, the installation of piping and a meter to serve the new lot, payment of a startup fee, and such other conditions as set by the Owners at their sole discretion. The Board of Directors shall determine if and when the conditions of the approval have been met. Conditional approval may include a time limit for the conditions to be met.

Upon unanimous affirmative vote of the Voting Shares of the Association, or upon the Board of Directors' declaration that the conditions previously approved by the Owners pursuant to the preceding paragraph have been met, a lot shall be considered added to the list of Lots served by the System upon execution by the new lot's Owner(s) and recording of a signed document accepting the terms of this Declaration and all of its amendments, this Declaration and said amendments to be attached to the document as exhibits.

In no circumstances shall the Association approve, whether immediately or conditionally, the addition of a lot to the System if such addition will not enable the System to meet the water quantity, quality, and pressure standards mandated in Sub-section 3.1 of this Declaration.

#### 3.2.4. Removing Lots from the System

The Owner(s) of a Lot may remove the Lot from the list of Lots served by the System by providing the Association a Notice containing all of the following:

- a. A statement of the Owner's request to remove the Lot from the Association.
- b. A statement of the Owner's request for the Lot's water service to be cut off from the System.
- c. An acknowledgment that the Owner's request for disconnection can be reversed only through the provisions of this Declaration, and that such a reversible may not be obtainable.
- d. A statement disclaiming all rights to the assets of the Association, including Lot Assessments paid by the Owner and held in reserve by the Association.
- e. A notarized and recorded disclaimer of all rights as the benefited property to easements concerning the wells, well-protection circles, pump houses, piping and all other infrastructure owned by the Association.
- f. A payment in full, at the time of the Notice, of all of the System's assessments owing by or for said Owner(s) and/or said Lot.
- g. A notarized signature of a person authorized to make the above requests, and attesting to this authorization.

Upon receipt of this Notice requesting removal from the System, the Association will remove the specified Lot from the list of Lots served by the System, and may at any time in the future physically disconnect the said Lot from the System. The Association shall prepare and deliver a final Lot Assessment for the removed Lot in accordance with this Declaration and the Bylaws.

Removal from the System does not modify any rights of the Association to collect Lot Assessments, impose interest and penalties on past due Lot Assessments, and to take any other action provided for in this Declaration and the other Governing Documents.

### 3.2.5. Subdivision of Lot

If a Lot is subdivided into two or more lots through a legal subdivision as certified and approved by Skagit County or other local government authority, the Owner(s) of the original Lot (the "Original Lot") shall designate one of the resulting lots ("Resulting Lots") as the successor (the "Successor Lot") to the Original Lot. All other Resulting Lots shall be considered "Non-Successor Lots". Such designation shall be in the form of a Notice to the Association made within 90 days following the recording of the subdivision, such Notice to be included in the minute book of the Association. If the Owner(s) of the Original Lot fails to designate a Successor Lot within 90 days following the recording of the subdivision, then the Association shall make a designation unilaterally, giving preference to the Resulting Lot containing the primary residence, if any. Such designation made by the Association shall be deemed final, and may be modified only under the provisions of this Declaration.



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The Successor Lot shall inherit all rights and burdens of this Declaration and the Association from the Original Lot. All Non-Successor Lots shall not have rights to service provided by the System, and shall not be the subject of Lot Assessments for authorized use of service. However, Non-Successor Lots shall continue to be parties to this Declaration including, but not limited to, easements granted to the Association or its members, and penalties for unauthorized use of service. Any current and future owners of the Non-Successor Lots shall not be deemed members of the Association by virtue of ownership of the Non-Successor Lots.

If a Non-Successor Lot is receiving water from the System, the owner of the said Non-Successor Lot shall cooperate with the Association in disconnecting the lot from the System. Should the owner of the Non-Successor Lot fail to cooperate in such disconnection, then the Association may pursue the remedies described in Paragraph 5.3 against the Non-Successor Lot, including charging penalties in the form of special Lot Assessments against the Non-Successor Lot.

#### 4. LOT ASSESSMENTS

##### 4.1. Purpose

The Association shall make Lot Assessments for the following purposes:

- a. To pay for the expenses of maintaining and insuring the System.
- b. To pay for the expenses of administering the Association.
- c. To build a reserve to cover unexpected required maintenance and the update and replacement of System components.
- d. To build a reserve to cover unpaid Lot Assessments and potential legal action.
- e. To impose penalties and interest for late or non-payment of Lot Assessments, and to reimburse the Association for the expenses it incurs to collect such payments.
- f. To impose penalties for unauthorized or excessive use of water.
- g. To pay for any other expenses mandated by the Association's Bylaws.

These purposes, together, shall be the "System Expenses".

##### 4.2. Calculation

Except for penalties, interest, and the reimbursement of collection expenses, the Association shall compute Lot Assessments to cover the System Expenses by determining four rates:

- a. Annual fixed amount charged against each unimproved Lot not drawing water from the System.
- b. Annual fixed amount charged against each Lot capable of drawing water from the System.

- c. Amount charged per unit of water for water drawn from the System.
- d. Amount charged per unit of water over some per Lot limit as a penalty for drawing too much water.

These four rates shall apply equally, as applicable, to all Lots. In addition, the fixed amount charged against each unimproved Lot not drawing water from the System shall be less than or equal to the fixed amount charged against each Lot capable of drawing water from the System. Also, the limit over which the penalty amount will be charged per unit of water shall be equal to or greater than the minimum amount of water Skagit County and the State of Washington requires the System to give each Lot.

#### 4.3. Bylaws Determine Formula

The Bylaws of the Association shall determine, through a formula, the four rates described in the previous section. This formula may be based only on the following:

- a. Figures fixed by the Bylaws.
- b. Figures fixed through a majority vote of two-thirds (2/3rds) of the Voting Shares of the Association at an Annual or Special Meeting of the Owners, where the Notice for such a meeting includes a statement that a modification to the Lot Assessment calculation will be considered.
- c. Actual expenses and capital costs incurred by the Association.
- d. Actual balances in the accounts of the Association.

The formula may not be based on decisions of any Officer, Director, the Board of Directors, Owner, or the Owners collectively except as specified above.

#### 4.4. Determination

The Lot Assessments for the upcoming year shall be determined and announced at the Annual Meeting by determining and announcing the four rates. The Bylaws of the Association shall specify the frequency by which the Lots are assessed (e.g. monthly, quarterly).

#### 4.5. Charges Pro Rata

Each fixed rate shall apply pro rata to a Lot for only that portion of the year in which the Lot matches the criteria for that rate. For example, should a Lot be improved and made capable of drawing water during the year, then it will be charged the unimproved lot rate for that portion of the year in which it was not capable of drawing water, and the improved lot rate for that portion of the year in which it was capable of drawing water.



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#### **4.6. Distribution of Surplus Funds**

If the Bylaws of the Association provide for the distribution of funds in excess of those required to meet its responsibilities, and the Board of Directors determines that those excess funds may be distributed to the Owners while still meeting the Association's responsibilities under this Declaration, then the Board of Directors may distribute those excess funds to the Owners in a manner and proportion that is mandated by the Bylaws.

### **5. REMEDIES AND WAIVER**

#### **5.1. Lot Assessment Collection**

The Owner(s) of each Lot shall pay Lot Assessments to the Association in accordance with this Declaration and the Bylaws. The Association shall send a Notice of Lot Assessment to the Owner(s) of each Lot at least thirty (30) days before the due date of each Lot Assessment. In the event a Lot Assessment is past due, the Association will send a Notice of the delinquent Lot Assessment to the Owner(s). If thirty (30) days after the date of that Notice, the Lot Assessment is still delinquent, the Association may take any and all of the following actions:

- a. Assess, as an additional Lot Assessment, a late charge in the amount set by the Bylaws on each delinquent Lot Assessment.
- b. Assess, as an additional Lot Assessment, interest at a percentage set by the Bylaws on amounts past due, starting thirty (30) days after the date of the Notice of delinquent Lot Assessment to the Owner(s).
- c. Record a lien against the Lot for which payment is delinquent, as allowed by Paragraph 5.5 herein.
- d. Initiate and complete foreclosure proceedings against the Lot for which a Lot Assessment is delinquent, as provided for in Paragraph 5.5 herein.
- e. Initiate proceedings required to disconnect permanently the Lot from the System.
- f. Pursue any other remedies provided by law and specifically called for in the Bylaws.

#### **5.2. Excessive Use of Service**

The Association, through its Bylaws, shall set a maximum usage of water per day per Lot (the "Quota"). At regular intervals, the Association shall determine if a Lot has exceeded its Quota, and shall take action against that Lot Owner(s). As authorized by the Association's Bylaws, the Association may take any or all of the following actions:

- a. Assess, as an additional Lot Assessment, a penalty per unit of water over the Quota.
- b. Assess, as an additional Lot Assessment, a fixed penalty per period of time for use of water over the Quota.



- c. If a Lot repeatedly uses water over its Quota, after at least two warnings giving by Notice to the Lot's Owner(s), initiate proceedings required to disconnect permanently the Lot from the System.

### 5.3. Unauthorized Use of Service

Should service designated for a Lot, through the actions of the Owners, lessees, agents, or occupants of that Lot, provide water to property or improvements not on the Lot, then the Association shall take action against that Lot's Owner(s), who shall be strictly liable for any such unauthorized service emanating from his/her Lot. As authorized by the Association's Bylaws, the Association may take any or all of the following actions:

- a. Assess, as an additional Lot Assessment, a penalty for unauthorized use of service.
- b. Initiate legal proceeds to obtain injunctive relief.
- c. If, after serving Notice to the Owner(s) of the authorized use of service, initiate proceedings required to disconnect permanently the Lot from the System.

The above actions may also be taken against a Non-Successor Lot receiving service from the System, as described in Sub-section 3.2.5 of this Declaration.

### 5.4. Additional Lot Assessments

All late charges, interest, and expenses, including recording, court, and attorney's fees, incurred by the Association in pursuing any and all remedies against a Lot shall be payable by the Owner(s) of the Lot, and shall become additional Lot Assessments against the Lot. The Lot shall not be considered current on its Lot Assessments until these additional late charges, interest, and collection/legal expenses have also been paid.

### 5.5. Lien and Foreclosure

Any sums not paid thirty (30) days following the date of the Notice of the delinquent Lot Assessment sent pursuant to Paragraph 5.1 herein, including any penalties and interest accruing on said sums, shall immediately and automatically become a lien against the Lot of the defaulting Owner(s), and the Board of Directors may, pursuant to the Bylaws of the Association, proceed to foreclose said lien in the same manner as provided for foreclosure of deeds of trust under RCW 61.24. The Declarants hereby incorporate all rights and remedies in the master form Deed of Trust, recorded under Skagit County Auditor's File No. 716277, Vol. 19, pp. 80-83, or as it may be amended or replaced, as the means of enforcement of the lien rights provided by this Paragraph. The lien for such unpaid sums shall be subordinate to tax liens on the property in favor of any assessing unit and/or special district, but to the extent permitted by applicable law shall have priority over all other liens against the Lot.



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## 5.6. Claim for Poor Service Quality

Any Owner's claim for poor service quality shall be absolutely limited to legal action against the Association to compel specific performance. Because each Owner is also a member of the Association, and shares in the responsibility for proper operation of the System, no Owner may make a claim of damages, actual, punitive, liquidated, or otherwise, against the Association for poor service quality, including but not limited to interruptions of service and of contaminated water. Each Owner hereby waives any claim to damages of any kind resulting from poor service quality.

## 6. BENEFITS AND BURDENS RUN WITH THE LAND

The Covenants contained herein shall run with the land and shall be binding upon the Property and each portion thereof and all persons or entities owning, purchasing, leasing, subleasing, or occupying any lot on the Property, and upon their respective heirs, successors, and assigns. After the date on which this Declaration has been recorded, the Association may enforce these covenants.

## 7. GENERAL PROVISIONS

### 7.1. Notice

All notices, demands, consents, elections, offers, requests, or other communications provided for in this Declaration or in any other Governing Document (each a "Notice") to Owners, prior Owners, Directors, Officers, and the Association shall be in writing and shall be sent by:

- a. Mailing to the last known address by registered or certified mail, postage prepaid, return receipt requested; or
- b. Delivery by any express/overnight delivery service that requires addressee's signature upon receipt or provides other proof of receipt; or
- c. Telecopy or other facsimile transmission that provides the sender a printed "time sent" receipt; or
- d. Personal delivery, with written acknowledgement, to the address set forth in the Company's records.

Notice sent to one of multiple Owners of a Lot shall be considered as Notice to all such Owners. Each Notice shall be deemed delivered and effective on the earlier of the date of delivery shown on the receipt, or three (3) days after the mailing in accordance with the provisions herein. Any Notice to the Association must be mailed to the President or Secretary of the Association, or to the Association's Registered Agent.



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## 7.2. Resolution of Disputes

Any dispute, claim or controversy between any two or more Owners arising out of or relating to this Declaration or any other of the Governing Documents (“**MATTER-AT-ISSUE**”) shall be resolved, if either such party seeks resolution, through binding arbitration. With five (5) days of one of the parties’ request for such, the Matter-at-Issue shall be submitted to binding arbitration. Unless the parties agree by unanimous consent on one arbitrator, each party shall appoint one arbitrator. The two arbitrators shall in turn select a third arbitrator. The Matter-at-Issue shall then be arbitrated and the arbitrator(s) decision shall be binding on all parties. Said arbitration, including rights of appeal, shall be conducted pursuant to the provisions of Chapter 7.04 RCW.

## 7.3. Compliance with Codes and Ordinances

All of the provisions of this Declaration shall be subject to compliance with the applicable municipal, county and state codes and ordinances. Where the Declaration’s provisions are more permissive than the codes or ordinances allow, the Declaration’s provisions shall yield to said codes and ordinances. Likewise, where the Declaration’s provisions are more restrictive than the codes and ordinances, the Declaration shall control.

## 7.4. Number, Gender, Entities

The singular wherever used herein shall be construed to mean the plural when applicable, and grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

## 7.5. Severability

The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this Declaration or any part hereof, all of which are inserted conditionally on their being held valid in law and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained herein should be invalid, this Declaration shall be construed as if such invalid phrase, sentence, clause, paragraph, or section had not be inserted.

## 7.6. Term

These covenants shall remain in full force and effect for perpetuity, until such time as terminated by unanimous affirmative vote of the Voting Shares.

## 7.7. Time of Essence

Time shall be of the essence in the payment of all sums and performance of all obligations under this Declaration.

## 7.8. No Counterparts

This Declaration shall be executed in only one original. Said original document shall be recorded.



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**7.9 Power of Attorney**

All Lot Owners hereby grant to the Association, upon the voting of an amendment to this Declaration, a full and complete power of attorney to take any and all actions necessary to effectuate and record said amendment, and agree that said amendment when authorized and recorded as provided in this Paragraph shall be binding upon their property and them and their respective heirs, personal representatives, successors and assigns to the same extent as if they had personally executed said amendment. All Lot Owners hereby acknowledge and agree that the power of attorney herein granted shall be deemed coupled with an interest and shall be irrevocable.

**7.10. Entire Agreement**

Except for the Articles of Incorporation and the Bylaws of the Association, there are no verbal or other agreements that modify or affect this Declaration, and the parties agree that said three documents constitute the full and complete understanding between them regarding the System.

EXECUTED the day and year first written above

**Signature Pages Follow**



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Don Farmer Insurance Agency, Inc. signature page for Declaration of Covenants for Fox Hollow Water System Association, November 15, 2002.

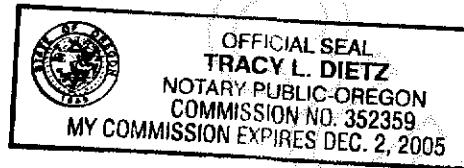
Don Farmer President  
Don Farmer, President

STATE OF OREGON )  
                          :SS  
COUNTY OF CURRY

I certify that I know or have satisfactory evidence that Don Farmer is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the President of Don Farmer Insurance Agency, Inc. an Oregon corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 25<sup>th</sup> day of November 2002.

Tracy L. Dietz  
NOTARY PUBLIC for the State of Oregon  
Printed Name: Tracy L. Dietz  
My commission expires 12-2-2005



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John Peth and Sons, Inc. signature page for Declaration of Covenants for Fox Hollow Water System Association, November 15, 2002.

*Dan Peth*  
Dan Peth, Secretary

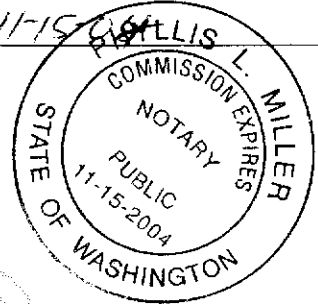
STATE OF WASHINGTON )  
                                          :SS  
COUNTY OF Skagit )

I certify that I know or have satisfactory evidence that Dan Peth is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Secretary of John Peth and Sons, Inc., a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 22nd day of November 2002.

*Phyllis L. Miller*  
NOTARY PUBLIC for the State of Washington

My commission expires 11-15-2004



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## Exhibit A Legal Descriptions

### PARCEL 3, Lot 1

Lot 1, Short Plat No. PL00-0345, approved November 13, 2001, and recorded under Auditor's File No. 200111130172, and being a portion of the Northwest  $\frac{1}{4}$  of Section 19, Township 36 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.

### PARCEL 3, Lot 2

Lot 2, Short Plat No. PL00-0345, approved November 13, 2001, and recorded under Auditor's File No. 200111130172, and being a portion of the Northwest  $\frac{1}{4}$  of Section 19, Township 36 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.

### PARCEL 3, Lot 3

Lot 3, Short Plat No. PL00-0345, approved November 13, 2001, and recorded under Auditor's File No. 200111130172, and being a portion of the Northwest  $\frac{1}{4}$  of Section 19, Township 36 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.

### PARCEL 3, Lot 4 (except Tracts B, C and Open Space East)

Lot 4, Short Plat No. PL00-0345, approved November 13, 2001, and recorded under Auditor's File No. 200111130172, and being a portion of the Northwest  $\frac{1}{4}$  of Section 19, Township 36 North, Range 4 East, W.M.

Excepting therefrom, Tract "B", Tract "C", and the following described tract:

The Open Space Future Development (East) portion as designated on the face of said Short Plat; except a strip of land 8.54 feet wide lying easterly of, adjacent to, and contiguous with the East line, and between the Easterly extensions of the North and South lines of the Buildable Area of said Lot 4.

Situate in the County of Skagit, State of Washington.



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PARCEL 4, Lot 1

Lot 1, Short Plat No. PL99-0031, approved November 19, 2001, and recorded under Auditor's File No. 200111200077, and being a portion of the Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 24, Township 36 North, Range 3 East, W.M., and portion of Government Lots 1 and 2 and the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 19, Township 36 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.

PARCEL 4, Lot 2

Lot 2, Short Plat No. PL99-0031, approved November 19, 2001, and recorded under Auditor's File No. 200111200077, and being a portion of the Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 24, Township 36 North, Range 3 East, W.M., and portion of Government Lots 1 and 2 and the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 19, Township 36 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington.



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