

MASTER DECLARATION OF WHIPPLE CREEK PROPERTIES

Declarant:	Whipple Creek Properties, L.L.C.
Beneficiary:	The Owners of Lots within Whipple Creek
Legal Description:	NW ¼ & NE ¼, Sec 22, T3N, R1E, W.M. (portion)
Assessor's Tax Parcels:	185532-000, 185422-000 & 185541-000
Related Documents:	

This *Master Declaration of Whipple Creek Properties* dated as of July 31, 2002, by Whipple Creek Properties, L.L.C., a Washington limited liability company (referred to herein as the "Declarant").

I. RECITALS

1.1. Property. Declarant is the owner of the parcel or parcels of real property described in Exhibit A annexed hereto and incorporated herein by this reference.

1.2 Master Development Plan. Declarant desires to establish a general plan for the development of the Property for the mutual benefit of present and future owners. In addition to this Master Declaration, the Property will be subject to additional covenants, conditions and restrictions governing individual phases of the Plat. The plan, in general, provides for the development of the Property in separate building lots and common areas for residential use.

NOW THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, which shall run with the Property and shall bind all parties having or acquiring any right, title or interest in the Property or any Lot or portion thereof, and shall inure to the benefit of each such Owner.

II. DEFINITIONS

2.1 Declarant. The term "Declarant" shall mean Whipple Creek Properties, L.L.C. and any equity that acquires Declarant status and voting rights under the provisions of paragraph 4.2(b) of this Master Declaration.

2.2 Common Area. The term “Common Area” shall mean all areas designated as common areas on the Plat.

2.3 Lot. The term “Lot” shall mean any portion or combination of the Property designated by the governing authorities as a separate legal lot for building purposes.

2.4 Master Association. The term “Master Association” shall mean the association formed under this Master Declaration.

2.5 Master Declaration. The term “Master Declaration” shall mean this *Master Declaration of Whipple Creek Properties*, and any amendment hereto which is duly adopted pursuant to paragraph 9.5 of this Master Declaration and filed in the records of Clark County, Washington.

2.6 Owner. The term “Owner” shall mean the record owner or owners of a fee simple interest in any Lot, including contract purchasers but excluding those holding such interest merely as a security for the performance of an obligation. The term “Owner” includes the Declarant as to any portion of the Property owned by the Declarant.

2.7 Plat. The term “Plat” shall mean the subdivision plat filed for record in Book 311 of Plats, page 6; Auditor’s File No. 3505343, records of Clark County, Washington.

2.8 Property. The term “Property” shall mean the parcel or parcels or real property described in Exhibit A annexed hereto and incorporated herein by this reference.

2.9 Sub-Associations. The terms “Sub-Association” and “Sub-Associations” shall mean homeowner associations created under Sub-Declarations governing portions of the Property.

2.10 Sub-Declarations. The terms “Sub-Declaration” and “Sub-Declarations” shall mean Declarations of Covenants, Conditions, and Restrictions governing portions of the Property.

III. MASTER PLAN

3.1 Incorporation by Reference. The following documents are incorporated by reference herein: (a) the Plat, and (b) all Sub-Declarations encumbering the Property.

3.2 Consistency. In case of any inconsistency between this Master Declaration and the Sub Declarations, this Master Declaration shall control. In case of any inconsistency between this Master Declaration or any Sub-Declaration and the Plat, the Plat shall control.

3.3 Conveyance of Common Areas. Concurrent with recording the final plat for any phase within the Property, or any phase subsequently added to this Master Declaration, the Declarant shall convey all Common Areas within such phase to the Master Association. If, at the time the final plat is recorded for any phase, the Declarant owns any of the Lots within said phase, then the Declarant shall reconvey all of said Common Areas to the Master Association immediately upon conveyance, by the Declarant, of the last Lot within said phase. As provided in paragraph 2.1 of this Master Declaration, the term “Declarant” shall be deemed to refer to any entity who has acquired Declarant status and Class “b” voting rights under paragraph 4.2(b) of this Master Declaration.

3.4 Use and Maintenance of Common Areas. Common Areas may not be further divided nor used for purposes other than private parks or parkways. The Master Association may not convey or otherwise divest itself of fee title to any Common Areas. The Master Association shall maintain the Common Areas, at all times, in a visually appealing and weed-free condition; provided, however: (a) those portions of the Common Area described in Exhibit B annexed hereto shall be used and maintained only as provided in *Conservation Covenants Running with the Land* recorded herewith, and (b) those portions of the Common Area designated on the final map as “private storm easements” shall be used and maintained only as provided in applicable sections of the Clark County Code and other governing regulations. With the exception of Common Areas described in Exhibit B, any dead or diseased vegetation shall be replaced with like vegetation as soon as reasonably practicable. Any and all signs, equipment and improvements located within Common Areas shall be repaired or replaced as necessary, and shall be, at all times, maintained in a functional, safe and aesthetically pleasing condition. A budget for maintenance of Common Areas is included in Exhibit C annexed hereto. Said budget shall not be reduced to amounts less than sufficient to perform the obligations provided in this Section 3, and in no event less than provided in Exhibit C.

3.5 Regulatory Approval. Notwithstanding anything to the contrary contained in this Master Declaration, this Section III may not be amended without written approval from the Clark County Department of Community Development, or succeeding regulatory agency. Requests for such approval shall take the form of an application for subdivision, short subdivision, plat amendment, or post decision review, as deemed appropriate by the regulatory agency.

IV. MASTER ASSOCIATION

4.1 Formation. The Declarant hereby declares the formation of a Master Association (the “Master Association”) consisting of all Owners. Upon the sale of all Lots owned by the Declarant, or at such earlier time as determined by the

Declarant, the Master Association shall succeed to all powers, rights, and responsibilities of the Declarant under this Master Declaration and, thereafter, any reference to Declarant shall be deemed to refer to the Master Association. Membership in the Master Association may not be transferred, pledged, or alienated in any way except upon the sale of a Lot, at which time the membership and voting right shall be assigned automatically to the purchaser of such Lot.

4.2 Voting Rights. The Master Association shall be comprised of two classes of voting rights, defined as follows:

(a) **Class “A”:** Each Lot shall include one (1) Class A voting right. After the expiration of all Class B voting rights, or at such earlier time as determined by the Declarant, each Owner who has paid current all assessments against all of his or her Lots shall have the right to cast one (1) vote for each Lot owned by said Owner in all matters for which a vote is called by the Master Association and, except as otherwise provided in this Master Declaration, the Master Association shall be governed upon the concurrence of sixty seven percent (67%) of the Lots within each Sub-Association. The percentage or majority vote of the Owners shall be determined as a percentage or majority of the number of Lots, regardless of any common ownership thereof. Owners may vote only through the treasurer of their respective Sub-Associations. In any case in which two or more persons share in the ownership of a Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Master Declaration shall be joint and several, and any act or consent of one or more of such persons shall constitute the act or consent of the entire ownership interest; provided however, in the event that such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, then any such person may deliver written notice of such disagreement to the Master Association, and such vote or right of consent shall be disregarded completely in determining the portion or number of votes cast in the matter for which such notice is given.

(b) **Class “B”:** The Declarant shall own one (1) Class B voting right for each Lot owned by the Declarant. Until the expiration of all Class B voting rights, all decisions of the Master Association shall be made solely by the Declarant. Each Class B voting right shall expire upon the conveyance of the Lot to which it attaches; provided, however, the Declarant may, in Declarant’s sole discretion, transfer Class B voting rights to any person or entity that acquires the Declarant’s interest in any phase of the plat. Upon any such transfer, the transferee shall be deemed the Declarant hereunder, and shall succeed to all rights and shall assume all liabilities of the Declarant pertaining to the Property, arising under this Master Declaration or otherwise.

4.3 Initial Meeting/Election of Officers. The treasurers of each Sub-Association shall meet within thirty (30) days after the last initial meeting of the Sub-Associations and, at that time, shall elect a president and secretary. The president and secretary shall serve terms of one (1) year, without compensation, but there shall be no limitation on the number of terms served. The president shall schedule and preside at

all meetings of the Master Association unless unavailable, in which case the secretary shall perform the functions of the president. The secretary shall prepare and publish written notice of all meetings of the Master Association as provided in paragraph 4.6 of this Master Declaration, and shall prepare, preserve and maintain written minutes of all actions taken by the Master Association as provided in paragraph 4.7 of this Master Declaration. The president shall deposit all funds belonging to the Master Association in interest bearing savings accounts or short-term certificates of deposit, and shall keep and maintain books of account detailing all receipts and expenditures of the Master Association, as specified in paragraph 4.7 of this Master Declaration. The funds of the Master Association shall be kept in accounts in the name of the Master Association and shall not be commingled with any other funds.

4.4 Annual Meetings. The membership of the Master Association shall meet each year on March 1 or, if such date falls upon a Sunday or Holiday, upon the next business day following. Annual meetings of the Master Association shall be open only to the officers of each Sub-Association. At each annual meeting, the president shall present a report of the financial affairs of the Master Association, including without limitation: (i) the balance of funds at the beginning of the prior year, (ii) all funds collected or received during the prior year, (iii) designation by depository institution, account number and ending balance, of all accounts into which said funds were deposited, (iv) all expenses and costs paid during the prior year, and (v) the balance of funds at the end of said year. At the close of each annual meeting, the treasurers of each Sub-Association shall elect a president and secretary from amongst themselves.

4.5 Special Meetings. Special meetings of the Master Association may be called by the treasurer of any Sub-Association. Special meetings of the Master Association shall be open only to officers of each Sub-Association.

4.6 Notice of Meetings. Not less than fourteen (14) nor more than twenty eight (28) days in advance of any meeting, the secretary shall cause notice to be hand-delivered or sent prepaid by first class United States mail to the mailing address of the officers of each Sub-Association, or to any other mailing address designated in writing by each officer. The notice of each meeting shall state the time and place of the meeting, and the business to be placed on the agenda for a vote by the treasurers of each Sub-Association, including the general nature of any proposed amendment to this Master Declaration, and any budget or changes in previously approved budgets that result in a change in assessment obligations.

4.7 Records of the Master Association. The secretary shall keep minutes of all actions taken by the Master Association, including the number of votes for or against each such action. All records of the Master Association shall be available for examination by all Owners, holders of mortgages on the Lots, and their respective authorized agents, upon advance written notice, at the reasonable times and reasonable locations within the Property. The Master Association shall not release the unlisted telephone numbers of any Owner. The Master Association may impose and collect a reasonable charge for copies and any reasonable costs incurred by the Master Association

in providing access to records. The secretary shall prepare and publish financial records, on a calendar-year basis, in sufficient detail to enable the Master Association to fully declare to each Sub-Association the true statement of its financial status. All financial and other records of the Master Association, including but not limited to checks, bank records, and invoices, in whatever form, are the property of the Master Association. Each secretary shall turn over all original books and records to the Master Association immediately upon termination of office. Secretaries shall be entitled to keep copies of Master Association records made during tenure, and all records which a past secretary has turned over to the Master Association shall be made reasonably available for the examination and copying by each new treasurer.

V. ASSESSMENTS

5.1 General Assessments. General assessments shall be used exclusively for the purpose of promoting the value and desirability of the Property for the mutual benefit of all Owners. Such assessments shall be expended by the Master Association for: (i) the maintenance of Common Areas, common personal property and fixtures, (ii) payment of premiums on comprehensive general public liability insurance covering the Declarant and all persons who now or hereafter own Lots, against all claims for personal injury, death and property damage occurring in, upon or about common areas, with coverage not less than One Million Dollars (\$1,000,000.00) per occurrence, and (iii) the enforcement of this Master Declaration. There shall be no expenditure of funds belonging to the Master Association except: (a) as provided in this Section V, or (b) upon written attestation that the treasurer of each Sub-Association has obtained concurrence of sixty seven percent (67%) of the Lots within his or her Sub-Association.

5.2 Special Assessments. In addition to regular general assessments, special assessments may be levied for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, equipment purchase, or rental as necessary for the common benefit of the Owners. Special assessments shall be levied only upon written attestation that the treasurer of each Sub-Association has obtained concurrence of sixty seven percent (67%) of all Lots, within his or her Sub-Association.

5.3 Rate of Assessments. Each Sub-Association shall assess and collect assessments from each Owner as provided in Section V of each Sub-Declaration. The obligation to pay assessments on any Lot shall commence upon the first sale of said Lot to any person or entity other than the Declarant. Initial assessments shall be as provided in Exhibit C annexed hereto. Prior to the initial meeting of each Sub-Association, as provided in paragraph 4.3 of this Master Declaration, assessments shall be paid directly to the Declarant at the address provided in paragraph 6.8. Assessments of the Master Association shall be uniform upon and among all Lots within the Master Association. On or before March 10 each year, the secretary of the Master Association shall provide written notice to the treasurer of each Sub-Association specifying the amount of assessments of the Master Association upon each Lot for the following calendar year (referred to herein as "Assessment Notices"). On or before the tenth (10th) day of each calendar quarter, the treasurers of each Sub-Association shall remit to the secretary of the

Master Association the amount of quarterly assessments specified in Assessment Notices which have been collected as of said date, together with a list of delinquent Owners and Lot numbers. Delinquent assessments shall be remitted to the Secretary of the Master Association within ten (10) days after receipt by the Sub-Associations. Assessments of the Master Association may be increased only upon written attestation that the treasurer of each Sub-Association has obtained concurrence of sixty seven percent (67%) of the Lots within his or her Sub-Association.

VI. GENERAL PROVISIONS

6.1 Binding Effect. All present and future Owners, and occupants of Lots and residences constructed thereon, shall be subject to, and shall comply with, the provisions of this Master Declaration. The acceptance of a deed or conveyance, or the entering into occupancy of any Lot or residence constructed thereon, shall constitute acceptance and ratification of the provisions of this Master Declaration by such Owner or occupant, as covenants running with the land, and shall bind any person having an interest or estate in such Lot or residence, as though such provisions were recited and stipulated at length in each and every deed, conveyance and lease of said Lot or residence.

6.2 Enforcement. The Master Association and the treasurers of each Sub-Association shall have the full power and authority, but not the obligation, to prosecute any proceedings at law or equity to prevent any violation of this Master Declaration, or to recover damages sustained by reason of thereof, or both. No such proceedings shall be instituted until the violation has continued for at least thirty (30) days after written demand for compliance is made, specifying in detail the nature of the violation or attempted violation. Failure to enforce any covenant or restriction contained herein shall not be deemed a waiver of said covenant or restriction.

6.3 Limitation of Liability. Neither the Declarant, nor any agent or employee of Declarant, shall be liable to any Owner on account of any act or failure to act in performing Declarant's obligations or pursuing Declarant's rights hereunder.

6.4 Indemnification. The Master Association shall indemnify and defend the Declarant and the treasurer of each Sub-Association from and against any and all liabilities, costs, demands, proceedings, damages, claims, judgments, deficiencies, attorney fees and costs resulting from their activities on behalf of the Master Association done in good faith, and within what they reasonably believe to be the scope of their power and authority, including, without limitation, such liabilities resulting from any error of judgment, acts or omissions, unless caused by willful or reckless misconduct.

6.5 Duration and Amendment. The covenants, conditions and restrictions of this Master Declaration shall run with and bind the land for a term of twenty (20) years from the date upon which this Master Declaration is recorded, after which time they shall automatically be extended for successive periods of ten (10) years. This Master Declaration may not be amended except upon written attestation that the

treasurer of each Sub-Association has obtained concurrence of sixty-seven percent (67%) of the Lots within his or her Sub-Association; provided, however, the Section III of this Master Declaration shall not be amended except as provided in paragraph 3.5 above. No amendment of this Master Declaration shall be effective until filed for record with the Clark County Recorder.

6.6 Attorney Fees. Should any suit or action be instituted by the Master Association or any treasurer of Sub-Association to enforce any of the reservations, conditions, agreements, covenants, restrictions contained herein, or to restrain any violation thereof, the substantially losing party shall reimburse the substantially prevailing party for all costs and reasonable attorney fees incurred in connection therewith, including any appeal.

6.7 Severability. Should any provision of this Master Declaration be unenforceable or illegal, the remainder shall enforced according to its terms.

6.8 Notices. Any notice required or permitted by this Master Declaration shall be in writing and shall be deemed to have been properly given when: (i) actually received or personally served, (ii) twenty four (24) hours after deposit with Federal Express or equivalent overnight delivery service, postage fully prepaid, or (iii) forty eight (48) hours after deposit in the United States mail, postage fully prepaid, registered or certified mail, return receipt requested; addressed as provided in the records of the County assessor for mailing tax invoices to the Owner being notified; and addressed to the Declarant as follows:

Whipple Creek Properties
8513 NE Hazel Dell Avenue, Suite 201
Vancouver, WA 98665

IN WITNESS WHEREOF, the Declarant has executed this Master Declaration as of the date first above written.

DECLARANT:
Whipple Creek Properties, L.L.C.

By: _____
Randy S. Clarno, Managing Member

STATE OF WASHINGTON)
) ss.
County of Clark)

On this 2nd day of August, 2002, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Randy S. Clarno, known to me to be the Managing Member of Whipple Creek Properties, L.L.C., that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument by the Operating Agreement of said limited liability company.

Date: August 2, 2002

By: Shannon McCredy

Notary Public in and for the State of Washington
Residing at Vancouver.