

2006



After Recording, Return To:

Hayden Homes, LLC
Attention: Tammy Harty
2464 SW Glacier Place, Suite 110
Redmond, Oregon 97756

4812

FRONTIER TITLE CO.

Document Title:

Declaration of Covenants, Conditions, Easements and Restrictions for Orchard Park North

Reference Number(s):

Grantor(s):

Te Amo Rapido, LLC, a Washington limited liability company, and Hayden Homes, LLC, an Oregon limited liability company

Grantee(s):

Te Amo Rapido, LLC, a Washington limited liability company, and Hayden Homes, LLC, an Oregon limited liability company

Abbreviated Legal Description:

Lots 1 through 21, as shown on the plat of *Orchard Park North*, recorded as Instrument No. 2010-037675 in the Plat Records for Benton County, Washington

Assessor's Property Tax Parcel/Account Number(s):

1-0589-102-0013-001 and 1-0589-114-0001-000

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS FOR ORCHARD PARK NORTH**

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR ORCHARD PARK NORTH (this "Declaration") is executed as of the ___ day of _____, 2011, by HAYDEN HOMES, LLC, an Oregon limited liability company ("Declarant"), with the consent of TE AMO RAPIDO, LLC, an Washington limited liability company ("Property Owner").

RECITALS:

A. Property Owner is the owner of the following described real property located in the City of Kennewick, Benton County, Washington (the "Property"):

Lots 1 through 21, as shown on the plat of *Orchard Park North*, recorded as Instrument No. 2010-037675 in the Plat Records for Benton County, Washington; and

B. Declarant and Property Owner desires to create a residential planned community known as *Orchard Park North* and to subject the community to the terms of this Declaration, as more particularly set forth below.

NOW, THEREFORE, Declarant, with the consent of Property Owner, hereby declares that the Property shall be held, sold, hypothecated, and conveyed subject to the covenants, conditions, easements and restrictions declared below, which shall be deemed to be covenants and easements running with the land and imposed on and intended to benefit and burden each lot and other portions of the Property in order to maintain within the Property a community of high standards. Such covenants, conditions, easements and restrictions shall be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1 - DEFINITIONS

1.1 "Additional Property"

"Additional Property" shall mean and refer any land, whether or not owned by Declarant or Property Owner, which is made subject to this Declaration as provided in Article 7.

1.2 "ARC"

"ARC" shall mean the architectural review committee established in Article 3.

1.3 "City"

"City" shall mean the City of Kennewick.

1.4 **“County”**

“County” shall mean Benton County.

1.5 **“Declarant”**

“Declarant” shall mean the entity identified as such in the introductory paragraph of this Declaration and its successors and assigns, who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by any such successor or assign.

1.6 **“Declarant Control Period”**

“Declarant Control Period” shall mean the earlier of (i) the date at which one hundred percent (100%) of the total Lots anticipated to be created within the Subdivision have been conveyed to Owners other than Declarant or Property Owner; (ii) ten (10) years after conveyance of the first Lot to an Owner other than Declarant or Property Owner; or (iii) upon election in writing by Declarant.

1.7 **“Declaration”**

“Declaration” shall mean this Declaration of Covenants, Conditions, Easements and Restrictions for Orchard Park North and any amendments and supplements thereto made in accordance with its terms.

1.8 **“Dwelling Unit”**

“Dwelling Unit” shall mean any portion of a Lot, as improved, intended for use and occupancy as a residence by one household.

1.9 **“Improvement”**

“Improvement” shall mean every structure or improvement of any kind, including, but not limited to, a Dwelling Unit, landscaping, fences, wall, driveways, fixtures, shelters, or other product of construction efforts (including exterior painting, alterations, and reconstruction).

1.10 **“Lot”**

“Lot” shall mean any of the plots of land indicated upon the Plat creating single-family home sites, as well as any of the plots of land indicated on any other platted land which has been subjected to this Declaration by the recording of a Supplemental Declaration.

1.11 **“Owner”**

“Owner” shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

1.12 **“Plat”**

“Plat” shall mean the plat of *Orchard Park North*, recorded as Instrument No. 2010-037675 in the Plat Records for Benton County, Washington, as well as any additional platted land that is made subject to the terms of this Declaration.

1.13 **“Property”**

“Property” shall mean the land described in the first recital, together with such additional land as may be subjected to this Declaration by the recording of a Supplemental Declaration and Supplemental Plat including, but not limited to, the Additional Property.

1.14 **“Property Owner”**

“Property Owner” shall mean the entity identified as such in the introductory paragraph of this Declaration and its successors or assigns (other than Declarant and an Owner who acquires a Lot and Dwelling Unit as a personal residence or second home).

1.15 **“Subdivision”**

“Subdivision” shall mean and refer to *Orchard Park North*, as the same may be expanded as provided in this Declaration.

1.16 **“Supplemental Declaration”**

“Supplemental Declaration” shall mean and refer to an amendment or supplement to this Declaration which subjects additional property to the Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the real property described therein.

ARTICLE 2- EASEMENTS

2.1 **Plat Easements.**

The Property shall be subject to all easements delineated on the Plat. Declarant shall have the right to dedicate any roadways, sidewalks, walking paths or utility lines within the Subdivision to the City, County or any other municipal authority or utility service provider. Upon acceptance of such roadways, sidewalks, walking paths or utility lines by the City, County or other municipal authority, the covenants, restrictions and other terms of this Declaration shall no longer be binding on such areas.

2.2 Easements for Utilities, Etc.

2.2.1 Declarant reserves for itself, so long as Declarant owns any part of the Property or Additional Property, and grants to all utility providers, perpetual, nonexclusive blanket easements upon, across, over and under the Property for purposes of ingress, egress, installation, maintenance, repair and replacement of utilities and infrastructure; cable and other systems for sending and receiving data and/or other electronic signals; security and similar systems; walkways, pathways and trails; stormwater drainage systems; irrigation systems; sanitary sewer systems; street lights; signage; and entry features; provided, however, that the exercise of these easements does not unreasonably interfere with the use of any Lot.

2.2.2 Declarant also reserves for itself the nonexclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of the Property or Additional Property. The Owner of any Lot to be burdened by any easement granted pursuant to this subsection shall be given advance written notice of the grant, and the location of the easement on such Lot shall be subject to the written approval of the Owner (which approval shall not be unreasonably withheld, delayed or conditioned); provided, however, that an Owner's approval shall not be required where a specific easement is granted by Declarant within any of the utility easements shown on the Plat.

2.2.3 All work associated with the exercise of the easements described in this Section 2.2 shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to commencement of the work. The exercise of these easements shall not extend to permitting entry into any Dwelling Unit without the Owner's consent, nor shall it unreasonably interfere with the use of any Lot by the Owner thereof. Except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

2.3 Special Declarant Easements.

2.3.1 Declarant hereby reserves for itself and its duly authorized agents, successors and assigns perpetual, nonexclusive easements over all roadways, sidewalks and walking paths for purposes of enjoyment, use, access and development of the Additional Property, whether or not such property is made subject to this Declaration.

2.3.2 Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign and correct any structure, improvement or condition (including drainage and grading issues) which may exist on any portion of the Property (including Lots), and a perpetual, nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise such right. Except in an emergency situation, entry onto a Lot shall only be during reasonable hours and after notice to the Owner; provided, however, that no entry into a Dwelling Unit is permitted without the consent of the Owner. The person exercising these easements shall promptly repair any resulting damage.

2.3.3 Declarant reserves for itself and its duly authorized agents, successors and assigns, for the Declarant Control Period, perpetual, nonexclusive easements on, over and across the Property (except for Lots not owned by Declarant) for purposes of (a) constructing and maintaining such facilities and activities as Declarant, in its sole discretion, deems necessary or convenient to the sale of Lots and Dwelling Units, including, but not limited to, business offices, signs, model units and sales offices; and (b) storing materials and making such other use thereof as Declarant, in its sole discretion, deems necessary or convenient to the construction of Dwelling Units and other improvements on the Property (provided that no such storage or other use shall unreasonably interfere with access to, or the use, occupancy and enjoyment of, any Lot not owned by Declarant). Declarant shall also have easements for access to and use of such facilities at no charge.

2.3.4 All Lots shall be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing and completion of Dwelling Units and landscaping upon adjacent Lots; provided, however, that such easement shall terminate as to a Lot twenty-four (24) months after such Lot is conveyed to an Owner other than Declarant or a successor declarant.

2.3.5 An easement is hereby declared for the benefit of the Declarant, its employees, subcontractors, successors and assigns as may be expedient or necessary for the installation, maintenance, repair and replacement of fencing on Lots along the perimeter of the Property. Declarant, however, is not obligated to construct any perimeter fencing.

2.4 Easement for City.

Declarant hereby grants to the City easements over the Property to inspect and maintain (at the discretion of the City) all roads, sidewalks, landscaping, natural drainage channels, drainage ditches and water quality swales.

ARTICLE 3 - ARCHITECTURAL REVIEW

3.1 Architectural Review Committee.

3.1.1 A committee to be known as the Architectural Review Committee (the "ARC") shall be established consisting of three (3) members; provided, however, that the ARC may consist of a single member during the Declarant Control Period.

3.1.2 The members of the ARC shall be appointed by Declarant during the Declarant Control Period, and Declarant shall also have the right during the Declarant Control Period to replace any member of the ARC so appointed (with or without cause). Members of the ARC need not be Owners during the Declarant Control Period.

3.1.3 After the Declarant Control Period, the member(s) of the ARC appointed by Declarant shall resign and the Owners shall have the right to elect, replace and remove (with or without cause) ARC members by written ballot submitted to all Owners pursuant to Section 6 – Declaration of Covenants, Conditions, Easements and Restrictions for Orchard Park North
PDX/111513/153678/RSB/6679870.3

3.7 below. At the first election for ARC membership, the Owners shall elect one ARC member for a term of one year and two ARC members for a term of two years. Thereafter, the Owners shall elect on an annual basis the number of ARC members equal to the number whose terms are then expiring, each to serve a term of two years. ARC members must be Owners after the Declarant Control Period, provided that no more than one Owner of a particular Lot may serve on the ARC at the same time. Any ARC member may serve more than one term.

3.1.4 The purpose of the ARC is to enforce the architectural standards of the community and to approve or disapprove plans for Dwelling Units and other improvements proposed for the Lots.

3.1.5 The members of the ARC shall appoint a secretary from among its members to take minutes at its meetings and to hold annual elections for ARC membership, special elections to replace ARC members who resign or who were removed from office, and special votes to remove ARC members.

3.2 Design Guidelines

The ARC may adopt, and from time to time, amend modify, or revise design guidelines for the Subdivision. No such adoption, amendment, modification, or revision shall affect any prior ARC approval.

3.3 Scope of Review

No Improvement may be erected, altered or repaired on any Lot until the plans and specifications therefore are approved by the ARC pursuant to this Article 3; provided, however, that any Improvements erected, altered or repaired by Declarant are exempt from this requirement.

3.4 Submission of Plans

Before the initiation of construction activity on a Lot, the Owner thereof shall first submit to the ARC a complete set of plans and specifications for the proposed improvements, including site plans, grading plans, landscape plans, floor plans depicting room sizes and layouts, exterior elevations, specifications of materials and exterior colors, and any other information deemed reasonably necessary by the ARC.

3.5 Plan Review

Upon receipt by the ARC of all of the information required by this Article 3, it shall have thirty (30) days in which to review said plans. The proposed improvements will be approved if, in the sole opinion of the ARC: (i) the improvements will be of an architectural style and material that are compatible with the other structures in the Property; (ii) the improvements will not violate any restrictive covenant or encroach upon any easement or cross building set back lines; and (iii) the improvements will not result in the reduction in property value, use or enjoyment of any of the Property. If the ARC fails to issue its written approval, or rejection,

within thirty (30) days of its receipt of the last of the materials or documents required to complete the Owner's submission, the ARC's approval shall be deemed to have been granted without further action. In the event that no ARC exists at the time an Owner desires to construct Improvements, then such Owner shall send a written notice to all Owners indicating that (a) the Owner intends to construct Improvements, (b) no ARC presently exists and (c) if members are not elected to the ARC within seventy-five days after the date the notice is sent, then the ARC shall be deemed to have approved the Owner's plans for the Improvements.

3.6 Non-conforming Structures

If there shall be a material deviation from the approved plans in the completed improvements, such improvements shall be in violation of this Article to the same extent as if erected without prior approval of the ARC.

3.7 Voting by Mail or Electronic Ballot

3.7.1 All votes to elect, replace and remove members of the ARC shall be submitted to the Owners by regular mail, electronic mail or facsimile in accordance with the procedures outlined below. For purposes of this Section, "written ballot" shall include any ballot distributed by electronic mail or facsimile.

3.7.2 Owners are entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Owners, but the vote for such Lot shall be exercised as they among themselves determine, and in no event shall more than one vote be cast with respect to any Lot. If the co-Owners of a Lot cannot agree upon the vote, then the vote of the Lot shall be disregarded in determining the particular matter at issue.

3.7.3 Voting for ARC members shall not be cumulative and the Owner receiving the most votes for a particular ARC membership position shall be elected to that position. No minimum vote or quorum is required to elect a member of the ARC, but the procedures outlined in this Section 3.7 must be followed to ensure fairness. The vote of at least twenty percent of the outstanding votes of the Owners is required to remove an ARC member before the expiration of his or her term.

3.7.4 In the case of an election of ARC members by written ballot, then the following procedures must be followed:

(a) the existing ARC members must advise the secretary in writing of the names of proposed ARC members sufficient to constitute a full committee and of a date at least fifty days after such advice is given by which all votes are to be received;

(b) the secretary, within five days after such advice is given, must give written notice to all Owners of the number of ARC members to be elected and of the names of the nominees;

(c) the notice must state that any Owner may nominate an additional candidate or candidates, not to exceed the number of ARC members to be elected, by giving written notice of such nomination to the secretary on or before a specified date which must be fifteen days from the date after the notice was given by the secretary;

(d) within five days after such specified date, the secretary must give written notice to all Owners, stating the number of ARC members to be elected, stating the names of all persons nominated for ARC membership, stating that each Owner may cast a vote by mail and stating the deadline established by the ARC by which such votes must be received by the secretary at the address of the principal office of the ARC (which must be specified in the notice) and that votes received after that date will not be effective; and

(e) within five days after the deadline specified for receipt of votes, the secretary shall tabulate the votes for each open ARC membership position and notify all Owners in writing of the results of the election and the person elected to each open ARC membership position.

3.7.5 In the case of removal of ARC members by written ballot, then the following procedures must be followed:

(a) Within ten days after receiving a written petition from Owners representing at least ten percent of the votes of the Owners seeking removal of ARC members (which petition must be accompanied by a written justification for seeking removal of the ARC members, and the secretary must forward such written justification to all Owners with the notice required under this subsection), the secretary must notify all Owners in writing of (i) the names of the ARC members facing removal, (ii) the date by which the ARC members facing removal or any other Owners may submit written materials to the ARC for or against the requested removals (which date must be at least fifteen days after the notice is given by the secretary); and (iii) the date by which all votes for removal of the ARC members are to be received (which date must be at least fifty days after such notice is given by the secretary) at the address of the principal office of the ARC (which must be specified in the notice) and that votes received after that date will not be effective;

(b) ARC members facing removal and any other Owners may send written materials to the ARC for or against the requested removals prior to the deadline established by the secretary, and the secretary shall forward such materials to all Owners within ten days after the established deadline for receipt of such materials; and

(c) within five days after the deadline specified for receipt of votes to remove ARC members, the secretary shall determine if sufficient votes were received to remove each ARC member subject to removal and notify all Owners of the results of the vote.

3.7.6 If at any time the ARC fails to exist, any Owner may seek the election of members to the ARC by assuming the role of secretary under Section 3.7.4 and sending out written ballots to all Owners pursuant to the terms of said Section 3.7.4, except that such Owner

may substitute his or her choices for proposed ARC members in the initial notice sent to all Owners.

ARTICLE 4— MAINTENANCE

4.1 Maintenance of Lots, Dwelling Units and Other Areas.

4.1.1 Each Owner shall at all times keep his or her Lot (including all Improvements, trees, landscaping and lawn areas located thereon) and Dwelling Unit in a neat, attractive and well-kept condition consistent with the remainder of the Lots within the Subdivision and all applicable covenants.

4.1.2 Each Owner, at its expense, shall also maintain (a) the trees, landscaping and lawn areas within the planter strip situated in the public right-of-way adjacent to its Lot; (b) all natural drainage channels, drainage ditches and water quality swales located on its Lot, and any other drainage channels, drainage ditches and water quality swales situated in the public right-of-way adjacent to its Lot, with a permanent ground cover such a live native-type dryland grass or lawn turf as specified in the currently accepted plans on file with the engineer for the City; and (c) all sides of the perimeter fence, if any, located on or immediately adjacent to its Lot. No structures, including fences, shall be constructed directly over or within a natural drainage channel, drainage ditch or water quality swale without the express written consent of the engineer for the City.

4.1.3 Responsibility for maintenance shall include responsibility for watering of trees, lawns and other landscaping as needed to maintain it in a healthy condition, and keeping areas free of debris. It shall also include responsibility for removal and replacement of diseased or dead trees, shrubs and other landscaping, subject to applicable governmental ordinances regarding permits and the replacement trees, shrubs and other landscaping removed by an Owner.

4.2 Maintenance During Construction.

During construction it shall be the responsibility of each Owner to insure that his or her Lot and adjacent areas are kept free of unsightly accumulation of rubbish and scrap materials, and that construction materials, trailers, shacks and the like are kept in a neat and orderly manner. No burning of any trash and no accumulation or storage of litter or trash of any kind shall be permitted on any Lot or the Common Areas. This Section shall not be applicable to Declarant.

ARTICLE 5- USE RESTRICTIONS

5.1 Residential Use.

Lots shall only be used for residential purposes. No trade, craft, business, profession, commercial, or similar activity of any kind shall be conducted on any Lot, and no goods, equipment, vehicles, materials, or supplies used in connection with any trade, service, or
10 – Declaration of Covenants, Conditions, Easements and Restrictions for Orchard Park North
PDX/111513/153678/RSB/6679870.3

business shall be kept or stored on any Lot. Nothing in this Section shall be deemed to prohibit (a) activities relating to the sale of residences, (b) the right of Declarant or any contractor or homebuilder to construct residences on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any residence as a sales office or model home for purposes of sales in the Subdivision, (c) the right of the Owner of a Lot to maintain such Owner's personal business or professional library, keep such Owner's personal business or professional records or accounts, handle such Owner's personal business or professional telephone calls, or confer with business or professional associates, clients, or customers in such Owner's residence, (d) residential day care facilities, or (e) garage sales, provided that no Owner may conduct more than three (3) garage sales in any twelve (12) month period and no individual garage sale may exceed three (3) days in length.

5.2 Rental Restrictions. An Owner shall be entitled to rent or lease his or her Dwelling Unit, subject to the following:

5.2.1 Written Rental Agreements. A written rental or lease agreement is required, specifying that: (i) the tenant shall be subject to all provisions of the Declaration, and (ii) failure to comply with any provision of the Declaration shall constitute a default under the rental agreement.

5.2.2 Minimum Rental Period. The period of the rental or lease is not less than thirty (30) days; and

5.2.3 Tenant Must Be Given Documents. The Owner gives each tenant a copy of the Declaration.

5.2.4 Owner Responsibility. Owner shall be responsible for any violations by tenants and shall be solely responsible for either correcting or eliminating such violations, or getting tenant to do the same.

5.3 Air Conditioning Units.

No Owner shall install, or permit to be installed or maintained, air conditioning units through exterior modifications of its Dwelling Unit or through window openings. The only air conditioning units that will be permitted are those units which are considered central in nature and installed on a slab in the rear yard of a Lot outside of and adjacent to the Dwelling Unit.

5.4 Nuisances

No noxious or offensive activity shall be carried out upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

5.5 Temporary Structures

No structure of a temporary character, including, without limiting the generality thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, and no

prefabricated or relocated structure shall be used on any Lot at any time as a residence, either temporarily or permanently. This restriction shall not be interpreted to limit the right of Declarant to use trailers or outbuildings as sales offices, construction offices, material storage facilities, or sanitation facilities.

5.6 Signs

No sign, banner or billboard of any kind may be kept or placed on any Lot or mounted, painted or attached to any Dwelling Unit, fence or other improvement so as to be visible from public view in the Subdivision or adjacent public street or carried by any person or by any other means displayed within the Subdivision except as provided below:

5.6.1 "For Sale" Signs

An Owner may erect one (1) sign not exceeding two (2) feet by three (3) feet in dimension, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of the ground advertising the property for sale.

5.6.2 "For Rent" Signs

An Owner may erect one (1) sign not exceeding three (3) square feet in area advertising the property for rent. Such signs shall be visible from the front of the Dwelling Unit only, and shall be displayed from within the Dwelling Unit. No such sign shall be erected within a lawn or landscape area on any Lot, or attached to the outside of the Dwelling Unit.

5.6.3 Declarant's Signs

Signs, banners and billboards may be erected by the Declarant and are exempt from the provisions of this Section.

5.6.4 Political Signs

Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and are removed within fifteen (15) days after the election.

5.6.5 Subdivision Identification Signs

Signs may be erected by the Declarant to identify the Subdivision, with approval from the local jurisdictional authority, if applicable.

5.6.6 Flags

The foregoing restrictions shall not be deemed to prohibit the display of the flag of the United States by an Owner or occupant of a Lot if the flag is displayed in a manner consistent with federal flag display law, 4 U.S.C. § 1 et seq, and RCW 64.38.055.

5.7 Parking

The Owner of each Lot shall maintain off-street parking on its Lot (inclusive of its garage and driveway) able to accommodate at least two (2) automobiles.

5.8 Campers, Boats, Recreational Vehicles and other Non-Passenger Vehicles

Campers, boats, boat trailers, recreational vehicles, commercial vehicles, or other types of non-passenger vehicles, equipment, implements, or accessories may not be kept or stored on any public street within the Subdivision or on any Lot, except as provided below:

(a) Campers, boats, boat trailers, recreational vehicles, recreational trailers, and other non-passenger vehicles, equipment, implements, or accessories may be stored or kept within an enclosed garage, or on the side of the Dwelling Unit, provided that it is fully screened from view by a screening structure or fencing approved by the ARC.

(b) Campers, boats, boat trailers, recreational vehicles, recreational trailers, and other non-passenger vehicles, equipment, implements, or accessories may be temporarily kept on the public streets within the Subdivision or on a paved driveway located on a Lot for a period not to exceed forty-eight (48) hours and only for purposes of cleaning, preparation for use and unloading.

5.9 Commercial Vehicles.

No vehicles bearing commercial insignia or names may be parked on the public streets within the Subdivision or on any Lot, except for commercial vehicles that are temporarily parked on such areas for the sole purpose of serving an Owner, or those that are parked within a enclosed garage. The ARC, however, shall have the absolute authority to grant approval for storing or keeping a commercial vehicle on the driveway of a Lot. Notwithstanding the foregoing, the ARC shall not unreasonably withhold consent to keep a commercial vehicle bearing insignia or names where such vehicle is driven by an Owner pursuant to Owner's primary job. Any Owner wishing to keep a commercial vehicle on the driveway of any Lot shall apply for approval to the ARC, and shall provide such information as the ARC, in its sole authority, may require. The ARC may from time to time in its sole discretion review the approval to keep a commercial vehicle on the driveway of any Lot to determine if the vehicle complies with the intent of the original approval. Upon an adverse determination by the ARC, any commercial vehicle shall be removed and/or otherwise brought into compliance with the requirements of this Section.

5.10 Disabled Vehicles or Vehicles in Disrepair.

No Owner shall permit any vehicle that is in an extreme state of disrepair to be abandoned or to remain parked on any street within the Subdivision or on any Lot for a period in excess of twenty-four (24) hours.

5.11 Maintenance or Repair of Vehicles.

Any maintenance or repair of vehicles or other machinery or equipment must take place entirely within the enclosed garage of an Owner.

5.12 Pets, Livestock and Poultry

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except for cats, dogs or other generally recognized household pets of a reasonable number, provided that they are not kept, bred, or maintained for any commercial purpose; and provided further, than no more than three (3) adult animals may be kept on a single Lot. All such animals shall be kept in strict accordance with all local laws and ordinances (including leash laws). Owners shall be responsible for cleaning up after their pets' waste. No animal shall be allowed to run at large, and all animals shall be kept within enclosed areas for pets which must be clean, sanitary, and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the ARC, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Subdivision.

5.13 Garbage and Refuse Disposal

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept, or disposed of, on any Lot except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble, debris, or recyclable materials shall be stored, kept, placed or maintained on any Lot where visible from any street except solely on a day designated for removal of garbage, rubbish, or recyclable materials, and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal, but shall be removed from view before the following day.

5.14 Detached Buildings

No detached accessory buildings, including, but not limited to, detached garages and storage buildings, shall be erected, placed or constructed upon any Lot without the prior written approval of the ARC. Every outbuilding, inclusive of such structures as storage buildings, greenhouses, doghouses, or children's playhouses, shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition.

5.15 Fences and Hedges

Fences, walls or hedges may be erected or maintained on any Lot subject to local laws regarding height and setback and approval by the ARC. No fencing shall be constructed in the front yard of any Lot. Fences may be erected along the property line in the side and rear yards of a Lot, provided said fencing is not located closer to the street than the front of the Dwelling Unit, does not exceed six feet (6') in height and is a so-called good neighbor fence. The ARC shall permit vinyl fences and wood fences, but any wood fences shall be painted or stained (with a color approved by the ARC) or sealed to protect against decay. No chain-link, metal cloth or agricultural fences may be built or maintained on any Lot, except as required by governmental authority; provided however, that chain link fences may be installed for domestic pet runs with the prior approval of the ARC. Notwithstanding the foregoing, the ARC shall have the right and authority to approve variances for reasonable cause or to alleviate hardship as determined in the sole judgment of the ARC; provided however, the ARC may not approve a variance which contradicts the zoning and/or subdivision ordinances of the local governmental jurisdictional authority unless the jurisdictional authority has previously approved the variance. Unless otherwise agreed between Owners, side and rear yard fences that separate adjacent lots shall be owned and maintained by the Owner on whose Lot the fence exists, or if the location is indefinite, such fence will be maintained by the Owners whose Lots are involved jointly, with expenses being shared equally. Declarant hereby grants to each Owner whose Lot contains a fence (and to any Owner where the location of the fence in relation to its property line is indefinite) an easement over those portions of the adjacent Owner's Lot as is reasonably necessary to maintain the fence, subject to reasonable advance notice to the adjacent Lot Owner. The provisions of this Section shall not apply to Declarant.

5.16 General Landscaping.

Decorative ground cover consisting of bark dust/mulch or rock may be installed on portions of the front, side and rear yards, as approved by the ARC. The remainder of the yard area not covered by improvements shall be lawn or sod.

5.17 Antennae and Satellite Dishes.

Except as otherwise provided by law or this Section, no exterior antennas, satellite dishes, microwave, aerial, tower, or other devices for the transmission or reception of television, radio, or other forms of sound or electromagnetic radiation shall be erected, constructed, or placed on any Lot. With prior written consent from the ARC, exterior satellite dishes or antennas with a surface diameter of one meter (39") or less and antennas designed to receive television broadcast signals only may be placed on any Lot if they are not visible from any street and are screened from neighboring Lots. The ARC may adopt reasonable rules and regulations governing the installation, safety, placement, and screening of such antennas, satellite dishes, and other transmission devices. Such rules shall not unreasonably delay or increase the cost of installation, maintenance, or use or preclude reception of a signal of acceptable quality (the ARC, in its sole discretion, may determine what constitutes a signal of acceptable quality). Such rules and regulations may prohibit installation of exterior satellite dishes or antennas if signals of

acceptable quality can be received by placing antennas inside a Unit without causing an unreasonable delay or cost increase.

5.18 Solar Energy Panels.

Except as otherwise provided by applicable law or this Section 5.18, no Solar Energy Panel (as defined below) may be erected, constructed, or placed on any Lot or Dwelling Unit. With the prior written consent of the ARC, an Owner may install a ground-mounted or roof-mounted Solar Energy Panel on its Lot provided that all of the following conditions are satisfied:

(a) If ground-mounted, then the Solar Energy Panel may only be located in the rear yard of a Lot and must be screened from public view by a fence or landscaping approved by the ARC, unless the screening materially effects the economic installation of the Solar Energy Panel (as determined by the ARC in its reasonable discretion) or degrades the operational performance quality of the Solar Energy Panel by more than ten percent (10%);

(b) If roof-mounted, then (i) no part of the Solar Energy Panel may extend above the roof line of the Dwelling Unit on which it is installed, (ii) no Solar Energy Panel may be installed on any roof facing a street unless the Solar Energy Panel conforms to the slope of the roof and the top edge of the Solar Energy Panel is parallel to the roof ridge, and (iii) the Solar Energy Panel frame, support brackets and visible piping and wiring are painted to coordinate with the roofing materials; and

(c) The Solar Energy Panel meets applicable health and safety standards and requirements imposed by state and local permitting authorities.

The ARC may adopt additional rules and regulations governing the installation, safety, placement, and screening of a Solar Energy Panel, provided that such rules and regulations do not conflict with RCW 64.38.055 or other applicable laws. For purposes of this Section, "Solar Energy Panel" means a panel device or system or combination of panel devices or systems that relies on direct sunlight as an energy source, including a panel device or system or combination of panel devices or systems that collects sunlight for use in the heating or cooling of a structure or building, the heating or pumping of water, and the generation of electricity.

5.19 Clothes Hanging Devices

Clothes hanging devices exterior to a Dwelling Unit shall be temporary, unaffixed structures not to exceed six (6) feet in height and shall not be placed nearer to any street abutting the Lot than the side yard setback line or the back of the Dwelling Unit constructed on the Lot. Clothes hanging devices shall be screened from public view by a fence approved by the ARC.

5.20 Window Treatment

Aluminum foil, reflective film, newspapers or similar treatments shall not be placed on windows or glass doors.

5.21 Oil and Mining Operations

No oil drilling, oil development operations, oil refining, quarrying or mining operation 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. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

5.22 Garages

Garages may be used as Declarant's sales offices before permanent occupancy of the main structure; however, sales offices must be converted to garages before permanent occupancy. With the exception of periods when garages are used by the Declarant as sales offices, a garage shall be maintained solely for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation, nor may any garage door be removed except when necessary to repair or replace a garage door with the same type of garage door.

5.23 Setback Lines

All buildings or other structures (including fences), permanent or temporary, habitable or uninhabitable, must be constructed, placed and maintained in conformity with setback standards imposed by the local governmental jurisdictional authority.

5.24 Athletic and Recreational Facilities

Outdoor athletic and recreational facilities such as basketball hoops, swing sets and sport courts of a permanent nature shall not be placed on any Lot in the Subdivision between the street and the front of a Dwelling Unit; placement of these facilities of a permanent nature elsewhere on the Lot must be approved in advance by the ARC. Temporary facilities including outdoor athletic and recreational facilities such as basketball hoops may be placed on any Lot between the street and front of a Dwelling Unit, provided that such facilities are removed from view when not in use but not later than at the end of each day. Temporary facilities including outdoor athletic and recreational facilities such as basketball hoops, hockey goals, etc. shall not be placed on any street within the Subdivision.

5.25 Water and Sewage Systems

No individual water supply system or sewage disposal system shall be permitted on any Lot, including but not limited to water wells, cesspools or septic tanks.

5.26 Exterior Holiday Decorations

Lights or decorations may be erected on the exterior of Dwelling Units in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners by

illuminating bedrooms, creating noise or attracting sight-seers. Holiday decorations or lights for any publicly observed holiday between December 1 and December 31 of any year, may not be displayed before November 15th of any year. For other holidays, decorations or lights may not be displayed more than two (2) weeks in advance of the holiday.

All lights and decorations that are not permanent fixtures of the Dwelling Unit which are part of the original construction or have been properly approved as permanent improvements by the ARC shall be removed within thirty (30) days after the holiday has ended.

5.27 Retaining Walls

Retaining walls may be constructed on a Lot only if in compliance with any adopted design guidelines and only if approved in advance by the ARC. Retaining walls may extend into the required front, side or rear setback lines of a Lot. The ARC may require any retaining wall which exceeds two (2) feet in height be designed by a qualified professional engineer licensed to practice engineering in the state of Washington. Retaining walls constructed by Declarant shall be exempt from this Section.

5.28 Prohibited Plants

Owners shall be prohibited from planting the following species of plants on the Lots:

- (a) *Cystisus scoparius*, commonly known as Scotch broom;
- (b) *Hedera helix*, commonly known as English ivy;
- (c) *Lythrum salicaria*, commonly known as purple loosestrife;
- (d) *Phalaris arundinacea*, commonly known as reed canarygrass; and
- (e) *Rubus discolor*, commonly known as Himalayan blackberry.

5.29 Rezoning Prohibited

No Owner may apply to the local zoning authority to rezone a Lot to any classification allowing commercial, institutional or other non-residential use.

5.30 Lot Consolidation and Division

No Lot may be consolidated with another Lot and no Lot may be further subdivided.

5.31 Drainage Alteration Prohibited; Maintenance of Drainage Systems

The surface water drainage contours of each Lot shall conform to the approved grading plan established for the Subdivision. No Owner shall fill or alter any natural drainage channels, drainage ditches and water quality swales established for the Subdivision, nor shall any Owner install landscaping or other improvements that divert surface water runoff from the drainage

patterns, channels, ditches, swales and easements established by and for the Subdivision without the prior written approval of the ARC.

ARTICLE 6- INSURANCE AND CASUALTY

6.2 Owner Insurance

Each Owner shall maintain special form ("all risk") property insurance covering the Dwelling Unit and all other insurable improvements located on its Lot for the full replacement value thereof (exclusive of excavation and foundations). Such insurance shall be issued by a reputable insurance company licensed to do business in the state of Washington and contain a waiver of subrogation naming the other Owners. Each Owner is also encouraged to maintain property insurance covering its personal property and chattels.

6.3 Casualty

If all or any portion of a Dwelling Unit or any other improvements located on an Owner's Lot is/are damaged by fire or other casualty, the Owner thereof shall either (a) restore the damaged improvements or (b) remove all damaged improvements, including foundations, and leave the Lot in a clean and safe condition. All repair, reconstruction, or rebuilding shall begin within four (4) months following the damage or destruction, and shall be diligently pursued to completion within twelve (12) months following the damage or destruction, unless work is delayed by causes beyond the reasonable control of the Owner.

ARTICLE 7- ANNEXATION

7.1 Annexation by Declarant.

Declarant may from time to time and in its sole discretion annex to the Subdivision as Additional Property any real property now or hereafter acquired by it, and may also from time to time in its sole discretion permit other holders of real property to annex the real property owned by them to the Subdivision. The rights reserved unto Declarant to subject additional real property to the Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional real property to this Declaration or any obligation, if subjected, to build improvements of any kind. The annexation of such real property shall be accomplished as follows:

(a) The owner or owners of such real property shall record a Supplemental Declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration in the Deed Records for Benton County, Washington.

(b) The property included in any such annexation shall thereby become a part of the Subdivision and this Declaration, and Declarant shall have and shall accept and exercise administration of this Declaration with respect to such Additional Property.

(c) Notwithstanding any provision apparently to the contrary, a Supplemental Declaration with respect to any Additional Property may:

(i) establish such new land classifications and such limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of the Additional Property; and

(ii) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of such Additional Property;

(d) There is no limitation on the number of Lots which Declarant may create or annex to the Subdivision, except as may be established by applicable ordinances of the local governmental authority.

(e) No consent or joinder of any Owner or other party except the record owner of the land being annexed shall be necessary to effect any annexation made pursuant to this Section.

7.2 Annexation by Action of Owners. At any time the Owners may annex additional property into the Subdivision to be subject to all of the terms of this Declaration to the same extent as if originally included herein by recording a Supplemental Declaration signed by at least seventy-five percent (75%) of the Owners (and the consent of the Declarant during the Declarant Control Period). Any property that is contiguous to existing property subject to this Declaration may be annexed hereto according to the foregoing requirements; provided, however, that no such annexation shall be effective without the consent and joinder of the owners of the property to be annexed.

ARTICLE 8- GENERAL

8.1 Remedies.

If any default by any Owner under the provisions of the Declaration shall occur, any other Owner shall have each and all of the rights and remedies which may be provided for in this Declaration and those which may be available at law or in equity, and may prosecute any action or other proceedings against such defaulting Owner and/or others for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief, but in all cases subject to the limitations and requirements of Washington law. Failure by any Owner to enforce the terms of this Declaration shall in no event be deemed a waiver of the right that Owner or any other Owner to enforce such terms in the future. No remedies herein provided or available at law or in equity shall be deemed

20 – Declaration of Covenants, Conditions, Easements and Restrictions for Orchard Park North
PDX/111513/153678/RSB/6679870.3

mutually exclusive of any other such remedy. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by any Owner. In the event suit or action is commenced to enforce the terms of this Declaration, the prevailing party shall be entitled to its attorney fees and costs in such suit or action to be fixed by the trial or appellate court.

8.2 Term and Amendments

8.2.1 The covenants, easements and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless a notice of termination of this Declaration is signed by at least seventy-five percent (75%) of the Owners (and contains the consent of the Declarant during the Declarant Control Period) and properly recorded in the Deed Records of Benton County, Washington.

8.2.2 This Declaration may be amended at any time by an amendment signed by at least seventy-five percent (75%) of the Owners (and with the consent of the Declarant during the Declarant Control Period) and properly recorded in the Deed Records of Benton County, Washington. In no event shall an amendment to the Declaration pursuant to this Section create, limit, or diminish Declarant's special rights without Declarant's written consent.

8.2.3 Notwithstanding the provisions of Section, until the expiration or termination of the Declarant Control Period, Declarant shall have the right to amend this Declaration in order to comply with the requirements of any applicable statute, ordinance, regulation or guideline of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the state of Washington, or any corporation wholly owned, directly or indirectly, by the United States or the state of Washington that insures, guarantees or provides financing for a planned community or lots in a planned community or to comply with the Washington law.

8.3 Severability

Invalidation of any one of these covenants, easements or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

8.4 Rights and Obligations

The provisions of this Declaration and the rights and obligations established thereby shall be deemed to be covenants and easements running with the land and shall inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration, whether or not mention thereof is made in said deed.

8.5 Personal Pronouns

All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa.

8.6 Headings

The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

8.7 Partial Invalidity

The invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

[Signatures begin on the following page]

IN WITNESS WHEREOF, Declarant, with the consent of Property Owner, has executed and delivered this Declaration as of the day and year first above written.

DECLARANT:

HAYDEN HOMES, LLC,
an Oregon limited liability company

By: Brett Wilson
Name: Brett Wilson
Its: Director of Finance

ACKNOWLEDGMENT

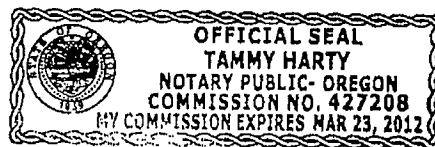
STATE OF OREGON)
) ss.
COUNTY OF DESCHUTES)

I certify that I know or have satisfactory evidence that Brett Wilson is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Dir of Finance of HAYDEN HOMES, LLC, an Oregon limited liability company, the company that executed the within and foregoing instrument, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 28th day of Dec, 2010

Tammy Harty
Print Name: Tammy Harty
Notary Public in and for the State of Oregon
My Commission expires: Mar 23, 2012

[Consent of Property Owner appears on the following page]



0400

After Recording, Return To:

Hayden Homes, LLC
Attention: Tammy Harty
2464 SW Glacier Place, Suite 110
Redmond, Oregon 97756

FRONTIER TITLE CO.

4821

Document Title: Consent to Declaration of Covenants, Conditions, Easements and Restrictions for Orchard Park North
Reference Number(s):
Grantor(s): M&T Bank, National Association, d/b/a M&T Bank
Grantee(s): Te Amo Rapido, LLC, a Washington limited liability company
Abbreviated Legal Description: Lots 1 through 21, as shown on the plat of <i>Orchard Park North</i> , recorded as Instrument No. 2010-037675 in the Plat Records for Benton County, Washington
Assessor's Property Tax Parcel/Account Number(s): 1-0589-102-0013-001 and 1-0589-114-0001-000
<small>The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.</small>

Consent to Declaration of Covenants, Conditions, Easements and Restrictions for Orchard Park North
PDX/111513/153678/RSB/6682960.2

**CONSENT TO DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS FOR ORCHARD PARK NORTH**

THIS CONSENT TO DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR ORCHARD PARK NORTH (the "Consent") is made as of the 3rd day of January, 2011, by M&T BANK, NATIONAL ASSOCIATION, d/b/a M&T Bank ("Lender"), for the benefit of TE AMO RAPIDO, LLC, a Washington limited liability company ("Te Amo").

RECITALS:

A. Te Amo is the owner of the following described real property located in the City of Kennewick, Benton County, Washington (the "Property"):

Lots 1 through 21, as shown on the plat of *Orchard Park North*, recorded as Instrument No. 2010-037675 in the Plat Records for Benton County, Washington.

B. Hayden Homes, LLC, an Oregon limited liability company, with the consent of Te Amo, created a residential subdivision known as *Orchard Park North* by subjecting the Property to the following instruments: (a) Declaration of Covenants, Conditions, Easements and Restrictions for Orchard Park North as Auditor's Record Number _____, Benton in the Deed Records for Benton County, Washington (the "Declaration"); and (b) plat of *Orchard Park North*, as Instrument No. 2010-037675 in Plats Records for Benton County, Washington (the "Plat").

C. Lender made a loan to Te Amo that is secured by a Construction Deed of Trust from Te Amo to Benton Franklin Title Company for the benefit of Lender, dated September 22, 2010 and recorded on October 18, 2010, as Auditor's Record Number 2010-030424 (the "Deed of Trust"). The Deed of Trust is a lien on the Property.

D. Te Amo has asked Lender to consent to the Declaration and Plat and agree that the Deed of Trust is subordinate to the Declaration and Plat, and Lender has agreed, as more particularly set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender hereby consents to the terms of the, and subordinates the lien of the Deed of Trust to, the Declaration and Plat. Lender agrees that in the event of a foreclosure of the Deed of Trust by court ordered judicial sale or by trustee's sale pursuant to the power of sale granted in the Deed of Trust, the Declaration and Plat shall survive and will not be affected by such foreclosure action and shall continue in full force and effect.

[Signature appears on the following page]

IN WITNESS WHEREOF, Lender has executed and delivered this Consent as of the day and year first above written.

LENDER:

M&T BANK, NATIONAL
ASSOCIATION, d/b/a M&T Bank

By: [Signature]
Name: James Collins
Title Vice President

ACKNOWLEDGMENT

STATE OF OR)
County of Clackamas) ss.

I certify that I know or have satisfactory evidence that James T Collins is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the VP of M&T BANK, NATIONAL ASSOCIATION, d/b/a M&T Bank, the bank that executed the within and foregoing instrument, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 3 day of January 2011.

[Signature]
Print Name: Dominique Young
Notary Public in and for the State of OR
My Commission expires: 7.22.2014

