

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND  
RESTRICTIONS FOR WEST LYNDEN BUSINESS PARK**

THIS DECLARATION by WINDWARD CONSULTING, LLC (hereinafter the “Declarant”) concerns all of the real property described on Exhibit A, which is annexed hereto and by this reference incorporated herein. That property is herein subject to the limitations, restrictions, easements, covenants, conditions, liens and charges as set forth in this Declaration. Each and all of these limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land and shall apply to and benefit and bind any and all heirs, assigns, successors in interest and lessees of the Declarant.

**I. STATEMENT OF PURPOSE**

The purpose of this Declaration is to insure the proper use of all property that constitutes West Lynden Business Park in order to protect the Owner of each parcel against improper development and encourage the erection of attractive improvements in an appropriate fashion, to avoid the random development of the property in a way that will harm the members of the Association and Owners of property within West Lynden Business Park and to ensure maintenance of Common Properties.

**II. DEFINITIONS**

**2.1 Parcel.** Each legal lot of record now or hereafter created within West Lynden Business Park created by the filing of the specific binding site plan approved by the City of Lynden, shall include the real property within West Lynden Business Park retained by Declarant of the Declarant’s successors.

**2.2 Person.** Any individual, firm, corporation, partnership, association, limited liability company, unincorporated association or other legal entity.

**2.3 Owner.** Any person holding fee title or a vendee’s interest in a real estate contract to a Parcel within West Lynden Business Park.

**2.4 Common Properties.** The beneficial use of the easements set forth in Article V below, including easements created at later dates.

**2.5 Improvements.** Included, without limitation, roadways, poles, lighting, parking areas, fencing, retaining walls, landscaping, utilities and infrastructure within the easements described herein.

**2.6 Association.** The West Lynden Business Park Association, a Non-profit Corporation, created pursuant to Article VIII of this Declaration.

### III. USE RESTRICTIONS AND REQUIREMENTS

The following general restrictions also apply to Owners and Parcels within West Lynden Business Park:

**3.1 Nuisances.** No obnoxious or offensive trade or activity shall be carried out upon any parcel or any part of West Lynden Business Park. All noises, sounds, odors and vibrations shall be appropriately modified or muffled in such a manner so as not to be objectionable. A nuisance includes the escape or discharge of fumes, odors, gases, vapors, acids or other substances into the atmosphere if such escape or discharge shall be detrimental to the health, safety or welfare of persons within the vicinity.

**3.2 Storage and Loading.** No materials, supplies or equipment including trucks or motor vehicles shall be stored in any area on any site except as inside a closed building or behind a visual barrier screening such areas so that their visibility from the neighboring properties, pedestrians, streets or paths is limited. These requirements shall not apply to neatly maintained retail trade display.

**3.3 Drainage.** There shall be no interference with drainage over any portion of the real property.

**3.4 Antennas.** No television, radio or other electronic antenna or device of any type shall be erected, constructed or placed on any of the building structures or other improvements unless and until the same shall have been approved in writing by the Architectural Review Committee.

**3.5 Refuse.** All rubbish, garbage and other waste shall be regularly removed from each Parcel and adjoining common areas.

**3.6 Exterior Illumination.** All exterior illumination must conform to plans approved in writing by the Architectural Review Committee.

**3.7 Temporary Structures and Vehicles.** No structure of a temporary character, camper, boat, mobile home, trailer or similar vehicle shall be permitted to remain upon any Parcel for a period longer than thirty (30) days except within a closed building or behind a visual barrier screening so that the visibility from the neighboring properties, pedestrians, streets, or paths is limited without the prior written approval of the Architectural Review Committee.

**3.8 Maintenance.** The grounds and exterior of all improvements of each Parcel shall be regularly maintained, painted and repaired in a good and well kept order. Any Owner or lessee before undertaking any alteration or maintenance of the exterior area or improvement of each Parcel shall submit plans and specifications for such work to the Architectural Review Committee and obtain its written approval is required if the

color and quality of the paint remains the same as the original.

**3.9 Signs.** Except for signs erected or constructed by or on behalf of Declarant or as authorized by the Architectural Review Committee, no exterior advertising sign shall be permitted other than those identifying the name, business and products that the person or firm occupying the Parcel and those offering a Parcel for sale or for lease. All signs must conform to prescribed setback lines, regulations, laws and/or agreements imposed by the City of Lynden, Washington.

**3.10 Clean-up and Restoration after Fire/Casualty Losses.** Damage after any and all casualty losses, including but not limited to those by fire, windstorm, rain and/or other natural or man made causes, shall be repaired and restored as soon as possible.

**3.11 Dumping of Hazardous, Dangerous and/or Polluting Substances.** There shall be absolutely no dumping discharge of any hazardous, damaging or polluting materials upon the surface of the land and Common Properties of the West Lynden Business Park or into the sewer systems on or adjoining the West Lynden 'Business Park. All hazardous, dangerous or polluting materials shall be disposed of according to State and Federal regulations and laws.

**3.12 Common Property Protection.** The Owners shall not in any way cause or permit obstruction to or hindrance of the free flow of traffic upon interior roads and easements within West Lynden Business Park. Owners shall not cause or allow damage to Common Properties by their agents, employees or customers, and will take reasonable steps to prevent damage to the Common Properties.

#### IV. GENERAL USE RESTRICTIONS

**4.1 General Use Restrictions.** The following general use restrictions are prohibited within the entire West Lynden Business Park property:

- a) Kennels;
- b) Mobile home parks;
- c) Animal auction barn or other auction facilities;
- d) Adult bookstores;
- e) Onsite hazardous waste treatment and storage facilities;

**4.2 Limited Use Restrictions.** In addition to the uses set forth in Section 4.1, the following additional uses are prohibited within the area identified in Section 4.3:

- a) Industrial assembly of goods;
- b) Industrial uses in general;
- c) Industrial parks;
- d) Equipment open storage not completely enclosed;

Lynden Business Park LLP  
Covenants, Conditions, Easements and Restrictions

- e) Car washes;
- f) Service stations;
- g) Liquefied petroleum storage stations;
- h) Truck and trailer sales and repair;
- i) Processing plants;
- j) Motor and recreational vehicle sales;
- k) Lumber yard wholesale;
- l) Large machinery rental;
- m) Manufacturing, fabrication, assembly of products, woodworking shops.
- n) Commercial garages and auto body shops.

**4.3 Applicability.** The use restrictions set forth in Section 4.2 are prohibited within an area 300 feet east and 300 feet south of the property acquired by PeaceHealth (said 300 feet shall be measured from the east or south line of the roads adjoining PeaceHealth property if the road lies between the PeaceHealth property and the property encumbered by the use restrictions listed in Section 4.2 herein). PeaceHealth property more specifically described as Lots 1 and 2 of the “West Lynden Business Park Specific Binding Site Plan No. 1”, as per the map thereof, recorded under Auditor’s File No. 2071000873 in the Auditor’s Office of Whatcom County, Washington.

**4.4 Building Setbacks.** There shall be a 30-foot building setback on the property line abutting any real property owned by PeaceHealth.

**4.5 Fencing.** Approved fencing may be installed on the side and rear yard property lines of any lot, and no fencing shall be between the building and frontage street of any particular lot. Fencing shall be required to be on the property line except if part of said property line is utilized for common access or parking between lots. Fencing, if installed, shall not be located on the front yard of any lot, except if a variance is granted by the Architectural Review Committee.

**4.6 PeaceHealth.** Concrete tilt up construction will not be required for structures located on real property owned by PeaceHealth.

**4.7 Parking.**

- (i) For every 5 surface parking spaces, 1 tree shall be planted around the facility perimeter. These trees may be grouped or spread in early.
- (ii) Parking space separation areas as required shall be landscaped.
- (iii) Areas between the parking facility and adjacent property shall be landscaped if the adjacent property is of the same general use type. If the adjacent property is of a Residential General use type, said area shall be screened.

**4.8 Signage Standards.**

- (i) All signage must be an integral coordinated part of a sign design plan for the entire complex.
- (ii) Roof signs are prohibited.
- (iii) No signs shall be located in vision clearance triangles.

**4.9 Lighting Standards.** Lighting plans must be included in all development applications involving building and/or circulation improvements and will be approved on a project by project basis. Plans must include the following elements for consideration:

- (i) A photometric site plan, drawn to scale, showing proposed buildings and/or parking areas, mounting and pole height and including all proposed exterior lighting fixtures and footcandle spread.
- (ii) Design specifications for all proposed lighting fixtures to include photometric data, cutoff fixtures, bulb wattage/type, and other descriptive information.
- (iii) Outside parking lot lighting shall not be less than 0.5 footcandles per IES minimum lighting standards at the property line and shall be designed to minimize glare and spillover into adjacent properties.
- (iv) Wall packs on buildings may be used at entrances to a building to light unsafe areas. Wall packs are not intended to draw attention to the building or provide general building or site lighting. Wall packs must be fully shielded to direct the light downward with maximum bulb wattage limited to 100 watts.
- (v) Building and aesthetic lighting must be shielded to prevent direct glare and/or light trespass in excess of 0.5 footcandles. The lighting must also be, as much as physically possible, contained to the site area.

**V. EASEMENTS**

**5.1** Certain Easements for the benefit of all properties as now or hereafter set forth on the site plan for the site in the discretion of the Declarant.

**5.2** The Declarant reserves the right to create further easements within West Lynden Business Park for landscaping, utility and ingress and egress by subsequent specific binding site plans approved by the City of Lynden, all of which easements shall become Common Properties when created. All easements, except easements exclusive to a particular property or person, shall become common properties when created.

## **VI. ARCHITECTURAL CONTROL**

**6.1** Architectural control shall be accomplished by an Architectural Review Committee whose initial members shall be Dick Vandenberg, Don Munro and any representative of PeaceHealth. Don Munro and Dick Vandenberg shall have the right to appoint two successors to the Committee until all of the property within West Lynden Business Park has been sold. Subsequently, the West Lynden Business Park Association shall have the right to appoint successors to the Committee, except for the third position, which shall always be held by a representative of PeaceHealth or successor entity while PeaceHealth owns any real property encumbered by these covenants.

**6.2** Decisions of the Architectural Review Committee shall be made by a vote of two of the three members except any variances requests from the covenants or design requirements set forth herein shall require an unanimous vote of the three members.

**6.3** It is the Declarant's intention that architectural concrete tilt slab or other quality construction that the Design Review Board finds to be in conformance with the spirit and intent of these Covenants be generally required for all structures except as set forth in Section 4.6 herein. Decisions of the Architectural Review Committee shall be granted based on the nature and character of the business of the Applicant and the quality of workmanship, materials, harmony to external design of existing and other structures on the site.

**6.4** No structure, addition to a structure, landscaping or other improvement shall be constructed or placed on any Parcel until the plans and specifications shall have been approved by the Architectural Review Committee. The extent of the review fully encompass quality of workmanship, materials, harmony, external design of existing structures and location with respect to finished grade elevations.

**6.5** The Architectural Review Committee shall approve or disapprove plans, specifications and details within twenty-eight (28) days of the receipt thereof or shall notify the person submitting them that an additional period of time not to exceed ten (10) days is required. The plan, specifications and details not approved within the time limits set forth in this paragraph shall be deemed approved as submitted. Any communication between the parties shall be in writing. The decision of the Architectural Review Committee shall be final.

**6.6** Any approval by the Architectural Review Committee may be conditioned upon compliance by the applicant with any reasonable conditions which the Architectural Review Committee may deem appropriate, including but not limited to the posting of bonds or other acceptable security to insure performance by the applicant in accordance with the plans and specifications approved.

**6.7** No person who acts as a member of the Architectural Review Committee

shall be liable to any party for any action or any failure to act under or pursuant to the provisions of this Declaration, provided only that committee members shall have proceeded hereunder in good faith and without malice.

**6.8 Design Criteria.**

The following design criteria shall be used by the Architectural Review Committee in its review of proposed projects. The criteria will be used to measure a proposed project's fulfillment of reasonable and appropriate compatibility and quality expectations.

- A. Use and Function  
The nature of activities, functional relationships, timing of operations, peak periods, and support needs
- B. Density and Scale  
Amount of building, scale, massing, facade lines and heights, setbacks
- C. Architectural Character  
Design character, materials, color, textures, finishes, articulation
- D. Outdoor Activities  
Including materials storage, fabrication, displays, and other related activities
- E. Vehicular Access and Parking  
Driveway location, number, size, on-site circulation, parking characteristics
- F. Loading/Services/Delivery  
Location of loading docks and service areas, support buildings, short-term parking, levels of activity
- G. Pedestrian Amenities  
Design features and quality that contribute to a campus environment
- H. Landscape and Open Space  
System organization, connections, places, screening, plant materials, and cumulative effects
- I. Lighting  
Illumination levels and types, color, safety, potential glare

Lynden Business Park LLP  
Covenants, Conditions, Easements and Restrictions

- J. Signage  
Scale, orientation, informational/directional/identification function
- K. Sustainability  
Resource utilization, energy efficiency, environmental impact, waste management, wellness health factors

**6.9** Each application to the Architectural Review Committee shall be accompanied by \$500.00 design review fee and two copies of the plan, provided however, minor adjustments or modifications to property expected to cost less than \$10,000.00, the fee shall be reduced to \$100.00. The application fee may be revised upon a majority vote of the Architectural Review Committee.

## **VII. COMMON PROPERTIES TRANSFER**

The Declarant shall, free of all liens or encumbrances grant and convey Common Properties to the Association.

## **VIII. ESTABLISHMENT, DUTIES AND POWERS OF WEST LYNDEN BUSINESS PARK ASSOCIATION**

The Declarant shall form an Owners Association to include as its members all Owners of Parcels within West Lynden Business Park. The Association shall be a non-profit corporation organized pursuant to Title 24 of the Revised Code of Washington, and shall be known as the West Lynden Business Park Association.

**8.1 Purpose.** The purpose of the Association shall include, without limitation, the furtherance and promotion of the common welfare of the Owners of any Parcel within West Lynden Business Park; the regulation, use, care, operation, maintenance, repair and preservation of the Common Properties; the administration and collection of assessments for the purpose of managing the Association and maintaining, protecting and preserving the Common Properties; and for the purpose of enforcing the covenants, conditions and restrictions set forth in this Declaration.

**8.2 Creation and Transfer of Control.** The Association shall be organized at the instance of the Declarant, and each Owner shall be a member of the Association. The Declarant shall designate and appoint the Board until such time as the Declarant has sold one hundred (100%) percent of the Parcels within the Park. When all Parcels owned by the Declarant have been sold, the control of the Association shall be turned over to the members, and the members may elect form their number the Board as required by the Articles of Incorporation and Bylaws of the Association. The Declarant at its sole and exclusive option may elect at any time prior to sale of one hundred (100%) percent of the Parcels within West Lynden Business Park, to transfer control of the Association to the members.



Lynden Business Park LLP  
Covenants, Conditions, Easements and Restrictions

**8.3 Voting.** The Association shall have one hundred (100) votes. Each Owner shall be allocated a number of votes equal to the percentage interest that the Owner's Parcel represents in the entire Park based upon square footage. Such percentage interest shall be rounded to the nearest whole percentage point. (i.e. an owner with a Parcel that represents 25% of the square footage of West Lynden Business Park shall be entitled to 25 votes).

**8.4 Association Duty.** At such times as the Declarant conveys the Common Properties to the Association and at all times subsequent thereto, the Association shall be responsible for the maintenance and upkeep of the Common Properties at its sole and exclusive expense. The Association shall repair and replace any property, such as parking lots, which may be damaged in the course of the maintenance of the Easements described herein.

(a) **Authority.** The Association shall be empowered to establish and collect dues and assessments upon Parcels within West Lynden Business Park for the common benefit of all Parcels within the Park.

(b) **Purpose.** The purpose for which dues and assessments may be asserted and collected include the maintenance, repair, construction and reconstruction of improvements and facilities within Common Properties; liability insurance; Common Properties' taxes; Association management and enforcement of this Declaration.

(c) **Personal Obligation and Lien Enclosure.** Assessments shall constitute an obligation of any Owner or Record, and shall also constitute a lien on the Parcel assessed. Such lien shall arise upon filing with the Auditor of Whatcom County by the Association. Such lien shall be enforced by the Association in the same form and manner of procedure as foreclosure of real property mortgages under the laws of the State of Washington.

(d) **Costs of Collection.** The delinquent Owner shall pay the costs of collection if collection of the assessment is referred to an attorney. Costs shall include title examination, title insurance, attorney's fees incurred by the Association and other court costs, as well as all other costs reasonably and necessarily incurred in the foreclosure action.

(e) **Interest.** Delinquent assessments shall also accrue interest at the rate of twelve (12%) percent per annum simple interest from the date they are due.

(f) **Manner of Assessment.** The Association shall prepare an annual budget for the Association for the following year. The budget shall be adopted by a majority vote of the Association Members at a regular or special meeting called for that purpose. Approval shall be by majority vote. The total annual budget amount shall be allocated to Parcels in the percentage established pursuant to Article 8.3 of this

Declaration. Assessments shall be billed to Owners on a periodic basis as determined by the Association.

(g) **Application of Assessments.** Assessments received by the Association shall be applied exclusively to fulfillment of those purposes described in Section 8.4(b) of the Article.

## **IX. PROTECTION OF MORTGAGE OR DEED OF TRUST HOLDER**

No violation or breach of any covenant, condition or restriction contained in this Declaration or in any supplement thereto and no action to enforce the same, shall defeat, render invalid or impair the lien of any mortgage or deed of trust taken in good faith and for value against any title or interest in any Parcel which is subject to an action arising from violation or breach of this Declaration.

## **X. ENFORCEMENT**

The Association, Declarant and any Owner shall have the right to enforce by any proceeding in law or in equity of all covenants, conditions, restrictions, reservations, liens and charges now or hereafter imposed by this Declaration. The failure of the Association, the Declarant or any Owner to enforce any rights hereunder, shall not be deemed to constitute a waiver of the right to do so thereafter. The prevailing party in any litigation involving the enforcement of any provision of this Declaration, shall be entitled to a judgment for reasonable attorney's fees and costs incurred in such litigation by the prevailing party.

## **XI. GRANTEE'S ACCEPTANCE**

The grantee of any Parcel subject to this Declaration shall by acceptance of the deed or real estate contract conveying title thereto, accept all terms and conditions of this Declaration and agrees to keep, observe, comply with and perform all obligations of the Owners set forth herein.

## **XII. AMENDMENT**

**12.1** The name "West Lynden Business Park" may not be changed without the written consent of Declarant.

**12.2** The beneficial use of the easements set forth herein and in Article X may not be changed or limited without the written consent of all Owners of West Lynden Business Park.

**12.3** Except as set forth in (a) and (b) above, until one-half of the total square footage located within West Lynden Business Park is sold to third parties by Declarant or its successors, this Declaration may be amended only with the agreement of the Owners

