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PIERCE COUNTY, WASHINGTON

Name & Return Address:

Eagle Point at American Lake Homeowners' Association
9050 Eagle Point Loop Road SW
Lakewood, Washington 98498-1054

Auditor's Note:
This document or a portion of
is a photocopy, not certified,
not original signatures.
NO signatures

For reference only, not for re-sale.

Amendment to Covenants

Document Title(s) **Unsigned copy of SETTLEMENT and RELEASE AGREEMENT, executed December 20, 2002, Pierce County Superior Court Case No. 02-2-07853-8**

Grantors; AGREEMENT made by and among Eagle Point at American Lake Homeowner's Association, Kevin Byrne and Mary Byrne, husband and wife (Byrne), GTF Construction, Inc., a Washington corporation (GTF), American Lake, LLC, a Washington limited liability company (American Lake), Robert Heinz and Anna Heinz, husband and wife (Heinz), Robert Wivel and **additional Names on Page 2 of Document**

Grantee(s) **Owners of lots and tracts in the Plat of Eagle Point at American Lake in City of Lakewood, Pierce County**

Legal Description: **Plat of Eagle Point at American Lake in City of Lakewood, Pierce County.**

Auditor's Reference Number(s) **Numbers 9909035002, 9909030296, 200110100776**

Assessor's Property Tax Parcel Number(s) **Tax Parcel Numbers of 400180-001-0 through 400180-060-0**

The Auditor/Recorder will rely on the information provided on this cover sheet. The Staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party (Required for non-standard recordings only)

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SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AGREEMENT is made this _____ day of November, 2002, by and among Eagle Point at American Lake Homeowner's Association, a Washington nonprofit corporation (Homeowner's Association), Kevin Byrne and Mary Byrne, husband and wife (Byrne), GTF Construction, Inc., a Washington corporation (GTF), American Lake, LLC, a Washington limited liability company (American Lake), Robert Heinz and Anna Heinz, husband and wife (Heinz), Robert Wivel and Martha Wivel, husband and wife (Wivel), Gerald Hannah and Louella Bardsley-Hannah, husband and wife (Hannah), Pamela Wise, an unmarried woman (Wise), Charles N. Geltz and ToSun Geltz, husband and wife (Geltz), and Simon Family, L.L.C. (Simon Family).

RECITALS

1. Homeowner's Association is the Homeowner's Association for the plat of Eagle Point at American Lake.

2. The remaining parties to this Agreement are owners of or holders of security interests in lots and other parcels in the plat of Eagle Point at American Lake. All of the parties to this Agreement, except GTF and American Lake, are parties to litigation currently pending in Pierce County Superior Court entitled Eagle Point at American Lake Homeowner's Association vs. Heinz, et al.; Pierce County Cause Number 02-2-07853-8.

4. For reasons unrelated to this litigation, title to certain lots and other parcels in the plat of Eagle Point at American Lake previously owned by Byrne have been reconveyed to American Lake LLC by a rescission of previous trustees deeds, which transfers also reinstated an obligation secured by a deed of trust on such property in favor of Byrne. Subsequently, American Lake LLC filed a petition for protection in bankruptcy under Chapter 11. It is the intention of American Lake LLC to file a plan of reorganization fully implementing all aspects of this Agreement, and to obtain approval of such plan of reorganization.

3. The parties desire to specify by agreement among them certain actions to be taken and/or not taken, certain payments to be made, and to provide for a final disposition of the above referenced litigation upon the terms set forth in this written Agreement.

WHEREFORE, in consideration of the obligations stated herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. The Homeowner's Association shall cause the automatic closing mechanism for the automobile entry gate to be reprogrammed to operate as follows:
 - a. A new general entry code, for the use of the defendants, their guests and invitees shall be entered to be effective as soon as is reasonably possible. Reprogramming shall be ordered immediately upon the execution of this Agreement by all parties. Said code shall be provided to the defendants, through their counsel, no less than three (3) days.

before its effective time.

- b. Builders owning lots or constructing homes in the plat shall be supplied an entry code for each home under construction, for the use of the builder, the builder's construction workers, materialman and suppliers. Builders may also be supplied an override code which will cause the gate to remain open to accommodate deliveries of building materials, as may be reasonably necessary, except that the gate shall not left open under such circumstances earlier than 8 a.m. nor later than 4 p.m., and such override shall not be used unless the builder or a designated responsible construction worker is present on site.
 - c. The gate shall open weekends and holidays from 9:00 a.m. to 5:00 p.m., and an override code may be used to keep the gate open at other times when a builder or owner has a real estate agent "sitting" a model home or homes in the plat.
 - d. The gate key pad shall be programmed so guests and invitees may dial each homeowner's telephone for entry, and such homeowner may open the gate remotely from the homeowner's telephone.
2. The defendants shall have the lock changed and keys made for the personnel gate at the entry, and shall provide a copy of such new key to Byrne, American Lake and Homeowner's Association.
 3. The defendants may install a tasteful, professionally made sign on the community dock, not larger than two square feet, reading "Eagle Point owners, guests and invitees only".
 4. The clubhouse may be used by the defendants, their guests and invitees by prior arrangement, subject to the following:
 - a. Robert Heinz shall be, and hereby is, appointed the agent of the Homeowner's Association for management of the use of the clubhouse, and Robert Heinz hereby accepts such appointment; Provided, however, that the Homeowner's Association may, at a meeting of members in good standing elect and appoint another member of the Homeowner's Association as its agent for this purpose.
 - b. No person or entity shall be allowed access to or use of the clubhouse unless a member have previously signed and delivered to Mr. Heinz a clubhouse use agreement in the form attached, and shall have paid a deposit of not less than \$200.
 - c. All users shall at all times comply with the terms of the clubhouse use agreement.
 - d. All damage to the clubhouse shall be reported promptly to the Homeowner's Association.
 5. The Homeowner's Association (and its affiliated Architectural Control Committee) will not approve any design for a home to be constructed on lots 2A through 4A, 6A, 8A or 9A, which design includes or allows occupancy on more than two floors, or which exceed applicable height limits of the City of Lakewood. In addition, no plans shall be approved for any home, which is not designed, and to be built based upon the natural grade of the lot.

6. The monthly assessment amount to the Homeowner's Association is fixed at \$90 per month per lot commencing November 2002, and shall be reviewed and adjusted, if appropriate based upon the prior years expenditures and other relevant factors, at each annual meeting of the Homeowner's Association. As part of such review and adjustment, the Homeowner's Association and the septic maintenance contractor shall keep records, of maintenance costs of the septic system and drainfields for houses on individual drainfields, as one category, and houses on the common septic system, as a separate category, and appropriate adjustments shall be made to the assessment for houses in each category if there is a substantial difference in actual costs by category.

7. Monthly assessments for the months prior to November, 2002 shall be paid as follows:

- a. Lots with homes occupied by homeowners who are parties to this Agreement shall pay assessments at \$90 per month from the month in which the home was occupied by such homeowner. Such amount shall be paid in full on or before November 30 2002, unless the total amount of such payments exceeds \$540, in which case \$540 shall be paid on or before November 30 2002, and the balance shall be paid in monthly installments at the rate of \$90 per month, commencing January 1, 2003, without interest. This monthly payment shall be in addition to the regular monthly assessment.
- b. Lots which are vacant or upon which there are unoccupied or partially completed houses which are owned by persons not parties to this Agreement but who agree in writing to be bound by this Agreement and to pay past assessments by January 15, 2003, and lots which are vacant or upon which there are unoccupied or partially completed houses which are owned by parties to this Agreement, shall pay the sum of \$450 per lot (\$90 per month for the months of June through October, 2002). American Lake shall receive credit against this obligation for funds loaned by Byrne to homeowners association, and upon such credit, the obligation of the homeowners association to Byrne shall be reduced by the same amount.
- c. The Homeowner's Association shall take reasonable steps to collect assessments at the fully assessed rates from the date of assessment from owners of any lots who do not pay the foregoing amounts and agreed to be bound by this Agreement by December 31 2002.
- d. To implement this Agreement, the Homeowner's Association shall notify owners of lots in the plat who are not parties to this Agreement of this compromise with regard to past monthly and special assessments, and shall offer the same compromise to such owners.

8. The parties agree that the special assessment of \$1500 per lot is enforceable, and shall be paid at the rate of \$150 per month for ten months, commencing December 1st 2002, without interest. The Homeowner's Association shall offer the same payment plan to any nonparty lot owner who agrees to be bound by this Agreement by January 15, 2003. American Lake shall

receive credit against this obligation for funds loaned by Byrne to homeowners association, and upon such credit, the obligation of the homeowners association to Byrne shall be reduced by the same amount. In the event any party collects this \$1500 from a title insurance company or escrow agent, such party shall pay any remaining balance of this obligation to homeowners association within ten days after such claim is paid.

9. The parties agree that the Eagle Point at American Lake Amended Declaration of Covenants, Conditions and Restrictions dated May 1 2001 (the "Covenants") are valid and binding on all lots in the plat, and the Homeowner's Association and Byrne and American Lake agree that the Covenants will not be amended for a period of two years after the date of this Agreement, except by a vote of a majority of the lot owners.
10. As soon as is reasonably possible after the date of this Agreement, the Homeowner's Association shall install community mailboxes and provide keys to the appropriate box without charge, to each homeowner who is a party to this Agreement, and to any nonparty homeowner who agrees to be bound by this Agreement and to pay the monthly and special assessments as provided above no later than December 31-2002.
11. As soon as is reasonably possible after the date of this Agreement, the Homeowner's Association shall make available to each homeowner, upon request and at the Homeowner's Association's actual cost, a remote gate opener for operation of the entry gate.
12. The Homeowner's Association shall have an annual meeting, to be held in the clubhouse as required by its articles of incorporation and the Covenants. For the years 2003 and 2004, the Homeowners' Association shall also hold quarterly meetings. Notice of each such meeting shall be given to each homeowner in the manner provided in the articles of incorporation and bylaws of the association and the Covenants.
13. Byrne shall provide to Homeowner's Association and other parties to this Agreement an accurate accounting of all monies paid in to the Homeowner's Association, including funds loaned by Byrne and GTF to the Homeowner's Association, and the expenditure of all such funds by the Homeowner's Association, with regard to expenditures related to both the monthly and special assessments. The financial records of the Homeowner's ' Association shall be available for inspection at reasonable times and upon reasonable notice, and Byrne shall meet monthly with Mr. Heinz to review the income and expenditures for the prior month and the anticipated expenditures for the following month.
14. Byrne has paid the real property taxes for the year 2000 for the clubhouse (Tract B), The Homeowner's Association shall pay the real estate taxes for the remainder of the plat, including delinquent taxes, except real estate taxes assessed as to individual lots.

15. Byrne shall cause American Lake LLC, through a bankruptcy plan of reorganization, to:

- a. Convey to the Homeowner's Association an easement for the dock, boat launch and community beach, pursuant to the Covenants.
- b. Convey to the Homeowner's Association all other easements and deeds required by the Covenants.
- c. Convey to the Homeowner's Association tract B.

16. Byrne shall develop, or shall cause American Lake to develop, the RV parking lot by completing, the fence and gate, graveling the lot, and installing two mercury vapor lamps or similar outdoor lights on poles, and shall rent space in that lot to the parties hereto and to any other persons who agree to be bound by this Agreement by December 31, 2002, if they commit to such rental and pay the first year's rental by such date. The rent to such persons for the first two years will be at the rate of \$25 per month for boats and \$35 per month for larger RVs, which shall be paid annually in full

17. Upon execution of this Agreement, an order of dismissal shall be entered in the above referenced litigation, Eagle point at American Lake homeowners Assn. v. Heinz et al., Pierce County cause No. 02-2-07853-8, dismissing the claims of all parties without prejudice. Upon confirmation of a plan of reorganization of American Lake LLC which provides for American Lake LLC to fully implement its obligations under this agreement, an amended order of dismissal shall be entered in such litigation, dismissing the claims of all parties with prejudice.

18. Except as otherwise specifically provided herein, upon the execution of the mutual recitals, agreements and covenants contained herein, Homeowners Association, American Lake, and Byrne each hereby automatically release Heinz, Wivel, Härinah, Wise, Geltz, GTF, and Simon Family LLC, and their respective agents, employees, directors, officers, attorneys, successors, heirs, and assigns, from any and all claims, demands, sums of money, actions, or causes of action, which any of such parties had, or claims to have had, which were asserted, or could have been asserted, in relation to the above referenced litigation or against any such party with regard to the plat of Eagle Point at American Lake. It is expressly understood and agreed that this is a full and final release and complete compromise and settlement of any and all claims by the releasing parties against the released parties arising out of or relating to the above referenced litigation and/or to the plat of Eagle Point at American Lake, of every nature and kind, in release of all such claims, whether known or unknown, which relate to, or arise out of, the events giving rise to the litigation.

19. Except as otherwise specifically provided herein, upon the execution of the mutual recitals, agreements and covenants contained herein, Heinz, Wivel, Hannah, Wise, Geltz, GTF, and Simon Family LLC each hereby automatically release Homeowners Association, American Lake, and Byrne, and their respective agents, employees, directors, officers, attorneys, successors, heirs, and assigns, from any and all claims, demands, sums of money, actions, or causes of action, which any of such parties had, or claims to have had, which were asserted, or could have been asserted, in relation to the above referenced litigation or against any such party with regard to the plat of Eagle Point at American Lake, it is expressly understood and agreed that this is a full and final release and complete compromise and settlement of any and all claims by (the releasing parties against the released parties arising out of or relating to the above referenced litigation and/or to the plat of Eagle Point at American Lake, of every nature and kind, in release of all such claims, whether known or unknown, which relate to, or arise out of, the events giving rise to the litigation.
20. Except as otherwise specifically provided herein, upon the execution of the mutual recitals, agreements and covenants contained herein, American Lake, Byrne and GTF each hereby automatically release Homeowner's Association, and its agents, employees, directors, officers, attorneys, successors, heirs, and assigns, from any and all claims, demands, sums of money, actions, or causes of action, which either of such parties had, or claims to have had, which were asserted, or could have been asserted, in relation to the above referenced litigation or against such party with regard to the plat of Eagle Point at American Lake, PROVIDED, HOWEVER, that this shall not release or discharge the obligation of Homeowner's Association for repayment of funds advanced by Byrne to Homeowner's Association, if the accounting rendered and provided to Homeowner's Association as provided in paragraph 13, above. It is expressly understood and agreed that this is a full and final release and complete compromise and settlement of any and all claims by the releasing parties against the released parties arising out of or relating to the above referenced litigation and/or to the plat of Eagle Point at American Lake, of every nature and kind, in release of all such claims, whether known or unknown, which relate to, or arise out of, the events giving rise to the litigation.
21. Except as otherwise specifically provided herein, upon the execution of the mutual recitals, agreements and covenants contained herein, Homeowners Association hereby automatically releases American Lake, Byrne and GTF, and their respective agents, employees, directors, officers, attorneys, successors, heirs, and assigns, from any and all claims, demands, sums of money, actions, or causes of action, which any of such parties had, or claims to have had, which were asserted, or could have been asserted, in relation to the above referenced litigation or against any such party with regard to the plat of Eagle Point at American Lake. It is expressly understood and agreed that this is a full and final release and complete compromise and settlement of any and all claims by the releasing parties against the released parties arising out of or relating to the above referenced litigation and/or to the plat of Eagle Point at American Lake, of every nature and kind, in release of all such claims,

whether known or unknown, which relate to, or arise out of, the events giving rise to the litigation.

22. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington, without reference to its choice of law rules.
23. The parties hereby consent and submit to the jurisdiction and venue of any state or federal court located in Pierce County, Washington, having subject matter jurisdiction, in any litigation to enforce or otherwise arising out of this Agreement. All of the parties consent to the jurisdiction of any such court over them personally in any such proceeding.
24. No waiver or modification of any of the terms or conditions of this Agreement shall be enforceable unless it is in writing and signed by the party against whom it is asserted. The express terms of this Agreement may not be waived or supplemented by course of dealing.
25. If any portion of this Agreement is determined to be invalid or unenforceable for any reason, the remaining portions of this Agreement shall continue to be fully binding and enforceable.
26. This Agreement shall be binding upon and inure to the benefit of the parties, and their representative executors, administrators, personal representatives, successors, and assigns; provided that this Agreement shall terminate upon resolution of the litigation referred to in Recital paragraph 2 above.
27. Each party to this Agreement agrees to perform any further acts and execute and deliver any additional documents that may be reasonably necessary to effectuate the provisions of this Agreement.
28. Each of the parties and their respective legal counsel has had the opportunity to participate in the negotiation and preparation of this Agreement. The parties agree that the rule requiring ambiguities in an agreement to be construed against the drafting party shall not be applied to this Agreement.
29. It is not necessary that each of the parties execute the same original of this Agreement. Rather, this Agreement may be executed in separate identical counterpart originals, each of which shall be deemed and considered to be part of but one and the same Agreement.
30. Without limiting the manner by which a party otherwise effectively may communicate that party's agreement to be bound by the terms hereof, a party's transmission to the other parties of a faced copy of this agreement (or of the signature page of this Agreement) reflecting that party's execution of this Agreement shall be effective as an acceptance by that party of this Agreement.

Dated this _____ day of November 2002.

Robert G. Heinz

Anna M. Heinz

Robert D. Wivel

Martha M. Wivel

Gerald W. Hannah

Louella A. Bardsley-Hannah

Kevin Byrne

Mary Byrne

Pamela F. Wise

Charles N. Geltz

ToSun Geltz

SIMON FAMILY, LLC.

EAGLE POINT AT AMERICAN LAKE
HOMEOWNERS' ASSOCIATION

BY: Dan Simon, its Manager

By: Kevin Byrne, its President

GTF CONSTRUCTION, INC.

AMERICAN LAKE, LLC

By: Tom Folk, its President

By: Kevin Byrne, its Manager

For reference only, not for re-sale.