

AFTER RECORDING RETURN TO:

WITHERSPOON • KELLEY
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422 W. RIVERSIDE AVENUE, SUITE 1100
SPOKANE, WA 99201

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Rec Fee: \$619.00 Page 1 of 26
Covenant SIMPLIFILE LC E-RECORDING
Spokane County Washington eRecorded

Grantor: Briar Cliff Court Homeowners Association a Planned
Unit Development
Grantee: Briar Cliff Court Homeowners Association a Planned
Unit Development
Full Legal Description: See Exhibit "A" attached hereto
Abr. Legal: Replat of Short Plat SP-79-124, NE¼, SW¼, S 18, T 26
N, R 43 E
Tax Parcel Nos.: 36183.2501, 36183.2502, 36183.2503, 36183.2504,
36183.2505, 36183.2506, 36183.2507, 36183.2508,
36183.2509, 36183.2510, 36183.2511, 36183.2512,
36183.2513, 36183.2514, 36183.2515, 36183.2516,
36183.2517
Reference Nos.: 8412190218, 8502250046, 9503100194, 4915839,
5589508, 6279897

AMENDED AND RESTATED

DECLARATION

of

COVENANTS, CONDITIONS AND RESTRICTIONS

for

BRIAR CLIFF COURT, A PLANNED UNIT DEVELOPMENT

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR BRIAR CLIFF COURT, A PLANNED UNIT
DEVELOPMENT, COMPLETELY SUPERSEDES AND REPLACES ALL PRIOR
DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BRIAR

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BRIAR CLIFF COURT, A PLANNED UNIT DEVELOPMENT**

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AMENDED AND RESTATED
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COVENANTS, CONDITIONS AND RESTRICTIONS
for
BRIAR CLIFF COURT, A PLANNED UNIT DEVELOPMENT

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIAR CLIFF COURT, A PLANNED UNIT DEVELOPMENT (this "Declaration"), is made on this ___ day of December, 2018 (the "Effective Date"), by BRIAR CLIFF COURT HOMEOWNERS ASSOCIATION A PLANNED UNIT DEVELOPMENT (the "Association").

PREAMBLE

A. The Association consists of a planned unit development recorded under Spokane County Auditor File Nos. 8412190217 (the "Planned Unit Development"), and as legally described in Exhibit "A" attached hereto, and adopted herein.

B. The Association is organized pursuant to that certain Declaration of Covenants, Conditions and Restrictions of Briar Cliff Court, a Planned Unit Development recorded with the Spokane County Auditor under Auditor's File No. 8412190218, as amended by that certain Amendment recorded with the Spokane County Auditor under Auditor's File No. 8502250046, as amended, restated and superseded by that certain Declaration of Covenants, Conditions and Restrictions for Briar Cliff Court Homeowners' Association, recorded with the Spokane County Auditor File No. 9503100194, as further amended by that certain Amendment to Declaration of Covenants, Conditions and Restrictions for Briar Cliff Court, a Planned Unit Development, recorded with the Spokane County Auditor under Auditor's File No. 4915839, as further amended by that certain Amendment Declaration of Covenants, Conditions and Restrictions for Briar Cliff Court, a Planned Unit Development, recorded with the Spokane County Auditor under Auditor's File No. 5589508, and as further amended by that certain Amendment to Declaration of Covenants, Conditions and Restrictions for Briar Cliff Court, a Planned Unit Development, recorded with the Spokane County Auditor under Auditor's File No. 6279897 (collectively, the "Former Declaration").

C. The Association desires to amend and restate the Former Declaration in its entirety with certain amendments to conform with current practices, law and existing neighborhood conditions.

D. Pursuant to Section 3 of the Former Declaration, the owners of not less than two-thirds (2/3) of the total votes of the Association and fifty-one percent (51%) of the eligible mortgage holders have consented in writing to the amendment of the Former Declaration as described in this Declaration.

G. The Association declares that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, improvement and sale of the Properties or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with the Properties and shall be binding upon all persons having any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon each Owner and their respective heirs, executors and administrators; and may be enforced by the Association or by any Owner.

H. The Association intends that this Declaration will supersede the Former Declaration for the Property in total.

Article I
DEFINITIONS

Section 1. "Association" shall mean and refer to BRIAR CLIFF COURT HOMEOWNERS ASSOCIATION A PLANNED UNIT DEVELOPMENT, its successors and assigns. The "Association" is incorporated under the laws of the State of Washington as a non-profit corporation.

Section 2. "Board of Directors" shall mean five (5) Members elected, in accordance with the adopted Bylaws of the Association, to manage the affairs of the Association.

Section 3. "Common Area" shall mean all portions of the Properties other than the Units, as legally described in Exhibit "B" attached hereto and by this reference incorporated herein. The Common Area includes the Limited Common Area. Each Owner has an undivided interest in the Common Area. The expenses incurred in connection with maintaining exterior walls and of the Properties shall be assessed to all of the Units and their respective Owners in accordance with Article IV. Provided however, should an Owner elect to repair or replace an exterior window relating solely to that Owner's Unit, said Owner shall: (i) comply with Article VII of this Declaration, and (ii) have no right of contribution, set off or credit for assessment against the other Owners or the Association.

Section 4. "Declaration" shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Briar Cliff Court, a Planned Unit Development.

Section 5. "Interior Surfaces" shall mean paint, wallpaper, paneling, carpeting, tiles, finished flooring, and other such decorative or finished surface coverings. Said decorative and finished coverings, along with fixtures and other tangible personal property (including furniture, planters, mirrors, and the like) located in and used in connection with said Unit, shall be deemed a part of said Unit.

Section 6. "Limited Common Area" shall mean the following areas which are adjacent to or assigned to a Unit:

- (a) Exterior glass or windows relating to a Unit;
- (b) The balcony, patio or other like spaces, if any, which are adjacent to each Unit, the boundaries of said balcony, patio or other like spaces, being defined by the Interior Surfaces of the walls, floor, decking, ceiling, doors, windows, railings, or fence enclosing said balcony, patio or other like spaces;
- (c) The front steps and walkways, which relate to and provide access to a Unit; and
- (d) the exterior doors of any Unit.

Section 7. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Area.

Section 8. "Member" shall mean and refer to any person holding a full or partial ownership interest in any Unit. Members are entitled to participate in activities of the Association.

Section 9. "Owner" shall mean and refer to the owner of record, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 10. "Properties" or "Property" shall mean and refer to that certain real property described in Exhibit "A" to this Declaration, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 11. "Unit" shall mean a physical portion of the Properties located on a Lot (total of sixteen [16] in number) designated for separate ownership the boundaries of which are described as follows:

- (a) The Interior Surfaces of perimeter walls, floor, and ceilings are designated as boundaries of a Unit. Decorative and finished surface coverings are a part of the Unit, and all other portions of the walls, floors, or ceilings are a part of the Common Area. (See Article I, Section 5.)

(b) Except as provided in Article VI of the Declaration and subject to the provisions of that Article, if any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is part of that Unit, and any portion thereof serving more than one Unit or any portion of the Common Area is a part of the Common Area.

(c) All spaces, interior partitions, and other fixtures and improvements within the boundaries of the Unit are a part of the Unit.

(d) The Interior Surfaces of perimeter walls, floor, and ceilings of garages attached to each Unit are part of the Unit.

Section 12. "Voting Member" shall mean and refer to any Member having authorization to cast the single vote on behalf of any Unit.

Article II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable fees for the use and maintenance of the Common Area;

(b) The right of the Association to suspend the voting right and right to use the Common Area by any Owner for any period during which any fee, charge or assessment against the Owner's Lot remains unpaid, and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Voting Members. (No Owner shall sell or transfer any interest in the Common Area separate from the Owner's Unit ownership.)

No dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by two-thirds (2/3) of the Voting Members.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, the Owner's right to enjoyment of the Common Area and facilities to the members of the Owner's family, contract purchasers who reside in such Owner's Unit and tenants, if any, authorized pursuant to Article VIII of this Declaration.

Article III
ASSOCIATION MEMBERSHIP AND BYLAWS

Section 1. Membership Qualifications. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separate from ownership of any Lot which is subject to assessment. Immediately upon a Member's transfer of a Lot to another person, resulting in said Member no longer owning any Lot, said Member's membership shall automatically cease.

Section 2. General Provisions. The Owners of Lots covenant and agree that the administration of the Properties shall be in accordance with the provisions of this Declaration, the Bylaws of the Association and the laws of the State of Washington, or as any of the above be from time to time amended.

Each Owner, tenant or occupant of a Lot or Unit shall comply with the provisions of this Declaration, the Bylaws, the rules, decisions and resolutions of the Association, as lawfully amended from time to time, and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due, for damages and/or for injunctive relief.

The Bylaws may provide (and may be enforced in respect to) other rules and regulations for the use, occupancy and management of the Properties not inconsistent herewith.

The Association is incorporated as a Washington non-profit corporation. The Bylaws of the Association must conform to the non-profit corporation laws of the State of Washington.

Section 3. Professional Management. The Bylaws of the Association shall provide that the Board of Directors may employ professional management for the Association.

Article IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments and Utility Charges.

Each Owner of any Lot, by acceptance of the deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) General assessments (such as for Common Area maintenance and liability insurance and for common services provided each Lot, i.e. Common Area taxes, if any, Common Area utilities, management services and supplies and any other service or duty for which no other provision is made);

- (b) Special assessments for purposes including, but not limited to, capital improvements and repairs to the Common Area, septic/sewer system and other periodic maintenance items;
- (c) Fire and casualty insurance assessments for dwelling units;
- (d) Reserve assessments for funding future maintenance to the exterior of the dwellings, such as painting and roof repairs or replacement;
- (e) Utility charges paid on behalf of Owners by the Association.

Such assessments and charges are to be established and collected as hereinafter provided. All assessments and charges, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment and charge is made. Each such assessment and charge, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment or charge fell due. The personal obligation for delinquent assessments and charges shall not pass to successors in title unless expressly assumed by them.

All assessments paid by Owners pursuant to the provisions of this Section 1 shall become assets of the Association. In the event of disposition by an Owner of said Owner's Lot(s), the Owner's share of such assets shall not be refundable but shall be transferred to the credit of the purchaser of the Lot or Lots.

Section 2. Purpose of Assessments. The assessments and utility charges levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area. In addition, the Association shall, subject to limitations established by the Board of Directors, provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: care of trees, shrubs and lawns and snow removal from walks, driveways and roofs.

Section 3. Monthly Assessments. The Board of Directors shall establish the general monthly assessments. The Board may adjust the general monthly assessment amount from time to time as it deems necessary and appropriate. The Board may increase the general monthly assessment each year not more than six percent (6%). Any higher increase shall require a majority vote of Owners, voting either in person or by proxy at a meeting duly called for such person.

Section 4. Special Assessments for Capital Improvements. The Association may levy, in any assessment year, special assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, Unit(s) located upon the Properties or any utility serving the Properties. Any such assessment shall have the assent of two-thirds (2/3) of the votes of Voting Members who are voting in person or by proxy at a

meeting duly called for such purpose using the same procedures as set forth in Section 10 of this Article for preparation and approval of the Association's budget.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 or 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4, above, shall be sent to all Voting Members not less than thirty (30) days nor more than sixty days in advance of the meeting.

At the first such meeting called, the presence of Voting Members or of proxies entitled to cast two-thirds (2/3) of all the votes of the membership shall constitute a quorum.

If the required quorum is not present, another meeting may be called subject to the same notice requirement. The quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both general assessments and special assessments, except as otherwise herein provided, must be fixed at a uniform rate for all Lots. All assessments and charges may, at the option of the Board of Directors, be collected on a monthly basis.

Utility charges are fixed as provided in Article X.

Section 7. Date of Commencement of Assessments; Due Dates. The Board of Directors shall fix the amount of the general assessment against each Lot at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments or Charges; Remedies of the Association. Any assessment, fee or charge not paid within thirty (30) days after the due date shall bear interest at a rate of twelve percent (12%) per year or, at the discretion of the Board of Directors, a late penalty of not over ten dollars (\$10.00) per month for each delinquent payment. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Property. No Owner may waive or otherwise escape liability for the assessments or charges provided herein by nonuse of the Common Area or abandonment of the Owner's Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of all assessments and charges provided for herein shall be subordinate to the lien of any first mortgage except as otherwise herein provided. Sale or transfer of any Lot shall not affect the assessment or charge lien; however, the sale or transfer of any Lot pursuant to a first foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments and

charges as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments or charges thereafter becoming due from the lien thereof.

Section 10. Budget. Each year the Board of Directors shall prepare and adopt a pro forma operating statement (budget) containing: (i) the projected income to the Association by category; (ii) the projected common expenses and those specially allocated expenses that are subject to being budgeted, both by category; (iii) the amount of the assessments per Lot and the date the assessments are due; (iv) the current amount of regular assessments budgeted for contribution to the Association's reserve fund; (v) a general statement setting forth whether the Association has a reserve study that meets the requirements of RCW 64.90.550 (or its successor statute) and, if so, the extent to which the budget meets or deviates from the recommendations of that reserve study; (vi) the current deficiency or surplus in reserve funding expressed on a per Lot basis; and (vii) the repayment plan for any deficiency in the reserve fund.

Within thirty (30) days of the adoption of the budget, the Board of Directors shall provide a copy of the budget and the annual assessments to the Members, along with a notice setting a date for a meeting of the Owners to consider ratification of said budget not less than fourteen (14) nor more than fifty (50) days after providing the Owners the budget.

The budget and the annual assessment shall become effective unless disapproved at said Owners meeting by at least a majority of the total Association vote (regardless of whether or not a quorum is present at said meeting). Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board of Directors fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget and annual assessments in effect for the then current year shall continue for the succeeding year.

Article V GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants reservations, use regulations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendments. Except as may be limited by P.U.D. ordinances and the laws of the State of Washington, the Owners shall have the right to amend this Declaration and the other project documents including the legal map and the Association's Bylaws and Articles of Incorporation. Amendments of any of the foregoing must be made pursuant to the procedures

required by their terms or by applicable law. Notwithstanding the foregoing, amendments of this Declaration that are of a material nature must be (i) agreed to by Unit Owners representing at least two-thirds (2/3) of the total votes of the Association; and (ii) approved by eligible mortgage holders representing at least fifty-one percent (51%) of the Units that are subject to mortgages held by eligible holders.

Without limiting the foregoing, any change to any of the following shall be considered material:

- (a) Voting rights;
- (b) Assessments (other than general), assessment liens or subordination of assessment liens;
- (c) Reserves for maintenance and repairs;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in Common Areas, or rights to their use;
- (f) Boundaries of any Unit;
- (g) Convertibility of Units into Common Areas or vice versa;
- (h) Expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project;
- (i) Insurance or fidelity bonds;
- (j) Leasing of Units;
- (k) Imposition of any restrictions on a Unit Owner's right to sell or transfer the Owner's Unit;
- (l) A decision by the Association to establish self-management when professional management had been required previously by an eligible mortgage holder and no release given;
- (m) Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than specified in the documents;
- (n) Any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or
- (o) Any provisions that expressly benefit mortgage holders, insurers or guarantors.

Section 4. Eligibility. Eligible mortgage holders are those holders of first mortgages on a Lot who have requested the Association to notify them on any proposed action that requires the consent of a specified percentage of eligible mortgage holders. The term "mortgage holders" includes beneficiaries of deeds of trust.

Termination of the legal status of the project as a P.U.D. for reasons other than substantial destruction or condemnation of the Properties shall require the consent of eligible mortgage holders representing at least two-thirds (2/3) of the votes.

An addition or amendment to the documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

An eligible mortgage holder who receives a written request to approve such additions or amendments who does not deliver or pose to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

The Board of Directors of the Association shall have the authority on behalf of all Owners to authorize the President of the Association to execute an amendment to this Declaration amending these provisions for the benefit of mortgages in order to bring them within the requirements of Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), Veterans Administration (VA) or Federal Housing Administration (FHA).

The Board of Directors also shall have the authority, with the consent of all first mortgage holders, to remove or modify any provision for benefit of mortgage holders which is hereafter no longer required by or is modified by the applicable secondary mortgage lenders above, so long as no Unit Owner is materially and adversely affected thereby.

Section 5. Notice of Action. Any holder, insurer or guarantor of a mortgage on any Unit of the project who sends a written request to the Association, stating both its name and address and the Unit number or address of the Unit on which it has a mortgage, will be given by the Association timely notice of the following:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the project or any Unit on which there is a first mortgage held, insured or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;
- (b) Any delinquency in the payment of assessments or charges owed by any Owner of a Unit subject to a first mortgage held, insured or guaranteed by such eligible holder or eligible insurer or guarantor, which remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action which would require the consent of a specified percentage of eligible mortgage holders.

Section 6. Notice. Each Owner shall register from time to time with the Board of Directors such Owner's current email address, if available, and mailing address. By registering an email address with the Board of Directors, such Owner consents to receipt of any notices provided under the Declaration by email. Otherwise, all notices or demands intended to be served upon any Owner may be sent by first-class U.S. mail, postage prepaid, addressed to the Owner at its registered mailing address, or, if no address has been registered, to the Unit address of such Owner. Any notice or demand referred to in this Declaration shall be deemed given when emailed or deposited in the U.S. mail, postage prepaid.

Section 7. Application of Washington Uniform Common Interest Ownership Act. To the extent permitted by applicable law, RCW Ch. 64.90 shall not apply to the Association, this Declaration, or any term or provision of any of the governing documents of the Association.

Article VI COMMON WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots (Units) shall constitute a common wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding common walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a common wall shall be shared by the Owners who make use of the wall in proportion to such use. Some uses, such as space for electrical conduits or wiring and for water pipes or plumbing, may be solely for one Unit. The care and maintenance of such items will be the sole responsibility of the Owner using the same, unless the damage is caused in whole or in part by another Owner.

Section 3. Destruction by Fire or Other Casualty. If a common wall is destroyed or damaged by fire or other casualty that lies outside the covered perils of the blanket insurance, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts of omission.

Section 4. Weather Proofing. Notwithstanding any other provision of this Article, an Owner who by said Owner's negligent or willful act causes the common wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Roof Overhangs and Other Construction Design Elements. The roof design may be such that the roof of some Units will overhang other Units. Similar encroachments may have resulted from the original design in construction. An irrevocable easement is granted for such overhang and encroachments caused by the original construction. Any physical damage to property arising out of such encroachments is addressed in Article VII.

Section 7. Arbitration. In the event of any dispute arising concerning a common wall, or under the provisions of this Article, such dispute shall be resolved through binding arbitration, with each party choosing one arbitrator, and such arbitrators choosing one additional arbitrator. The decision of the majority of all such arbitrators shall be binding, final and conclusive on the parties to the dispute, and judgment on such award or decision rendered may be entered in any court having jurisdiction thereof.

Article VII EXTERIOR MAINTENANCE

Section 1. Normal Exterior Maintenance. All Owners shall maintain the exterior of their buildings in a neat, sanitary and attractive condition. In the event that any Owner shall permit any improvement, which is the responsibility of such Owner to maintain, to fall into disrepair or not to be so maintained so as to create a dangerous, obstructed, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Board of Directors shall have either the right to seek any remedies at law or in equity which it may have, and the right, but not the duty, after Notice and Hearing, to enter upon such Owner's Lot to make such repairs or to perform such maintenance, and the cost thereof shall be charged to the Owner. Said cost shall be an Involuntary Assessment and shall create a lien enforceable in the same manner as other assessments as set forth in Article IV of this Declaration.

Section 2. Destruction Acts. In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of another Owner, or through the willful or negligent acts of the family, guests or invitees of another Owner, the cost of such exterior maintenance or repair shall be added to and become part of the assessment to the Lot of such other Owner.

Section 3. Long-Term Maintenance. When determined by the Board of Directors and ratified by two-thirds (2/3) of the Owners, the Association may elect from time to time to replace, treat or repair the roof of any building requiring such maintenance and may elect to paint, stain and treat or replace surface materials as needed and may elect to perform such other maintenance as required to support the integrity of the various structures and otherwise preserve the buildings.

Emergency repairs may be authorized by the Board of Directors at any time without notice.

The extent of exterior maintenance provided by the Association may be expanded, reduced or modified by a vote of two-thirds (2/3) of the Owners. The Association need not repair all buildings or portions of the Properties at the same time.

Section 4. Easement for Maintenance. The Association and its agent or contractors selected by it for purpose of maintenance shall have and is hereby granted an easement over and across the Lots, the Common Area and all portions of the Properties to accomplish the above purposes.

Section 5. Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to compliance with the guidelines adopted by the Association and as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association.

In the event the Board of Directors fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

The Board of Directors shall formulate general guidelines for the Association for development within the Properties.

Article VIII
USE OF PROPERTIES

The use of a Lot and improvements thereon by an Owner or other occupant shall be subject to rules, regulations and provisions of this Declaration, the Bylaws and rules and regulations of the Association and the following covenants and restrictions:

- (a) The Lot and improvements shall be maintained in good repair and overall appearance;
- (b) Any Owner who mortgages said Owner's Lot shall notify the Board of Directors, providing the name and address of mortgagee;
- (c) The Board of Directors shall, at the request of the mortgagee of the Lot, report any delinquent assessments due from such Owner of such Lot;
- (d) No nuisances shall be allowed upon the Properties nor shall any use or practice be allowed which is a source of annoyance to Owners or which interferes with the peaceful possession and proper use of the Property by its Owners. Each Owner shall be responsible for the actions of said Owner's guests and invitees;

(e) No immoral, improper, offensive or unlawful use shall be made of the Properties, nor any part thereof, and all valid laws, zoning ordinances and the regulations of all governmental bodies having jurisdiction thereof shall be observed;

(f) Regulations promulgated by the Board of Directors concerning the use of the Properties shall be observed by the Members; provided, however, that copies of such regulations are furnished to each Member prior to the time of any infraction. No rule shall violate the laws concerning discrimination nor restrict sale, transfer or conveyance of any Lot;

(g) All assessments and charges shall be paid when due;

(h) All Lots are to be used solely for single family residential occupancy;

(i) No Owner shall lease or rent said Owner's Unit as a regular practice for business, speculative investment or other similar purposes. Any proposed lease or rental agreement shall be in writing. The agreement and the tenant shall be subject to the written approval of the Board of Directors of the Association, which approval shall not unreasonably withheld, and which must be obtained prior to the commencement of any tenancy. All such agreements shall specifically state that the agreement, and the tenants' rights thereunder, are subject to this Declaration, Bylaws, and rules and regulations of the Association and all documents pertaining thereto. No Unit may be sold under any "time sharing" plan;

(j) Unless the Board of Directors shall approve, no Owner shall permit any alteration of the exterior of any buildings, exterior painting, installation of any radio or television antennas or signal receptors or solar collectors on the exterior of the buildings or landscape changes or construction of any fence (unless otherwise permitted by RCW Ch. 64.38);

(k) Except when necessitated by construction authorized by the Board of Directors, no Owner shall permit any source from the Owner's Lot or under the Owner's ownership or control or by the Owner's guests and/or invitees guests to emit noise levels to exceed 55 decibels beyond the property line, except where allowed by State law;

(l) The keeping of pets is restricted hereby and may be further restricted by the rules of the Association.

No pets except the usual and ordinary household pets (i.e. dogs, cats, fish or birds) shall be permitted except with the written permission of the Association under rare circumstances. The number of pets kept on any Lot may be limited by the Association.

No pets shall be permitted on any Lot or the Common Area except when on a leash. The Association, acting through the Board of Directors, shall have the right to

prohibit maintenance of any animal which constitutes, in the opinion of the Board of Directors, a nuisance to any other Owner. Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or by members of the Owner's family or the Owner's tenants or guests.

It shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Common Area;

(m) No Owner shall block nor permit the Owner's guests to block or obstruct or to litter the common driveways, access roadway, walkways or other common areas;

(n) No motor vehicle shall be allowed to remain on blocks except within a private garage. No recreational vehicles, including, but not restricted to, motor homes, travel trailers, snowmobiles, motorcycles, boats, and/or utility trailers shall be parked in any driveway area or on the access street for more than forty-eight (48) hours;

(o) Except for political yard signs, as contemplated in RCW 64.38.034, no signs shall be permitted on the Properties without specific approval of the Board of Directors. Exempt from this provision shall be an Owner's posting of conventional signs to announce the availability of a Unit for sale, rent or lease, or moderately-sized "Yard Sale" or "Garage Sale" signs which are posted for a limited time and removed at the time such yard sale or garage sale is concluded; and

(p) The provisions herein may be further expanded, relaxed or modified by the rules of the Association adopted from time to time.

Article IX EASEMENTS

Section 1. Each Lot and the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs of the buildings or other improvements as designed or constructed. A valid easement for said encroachments and for the maintenance of same for so long as they stand shall and does exist.

Section 2. There is hereby created a blanket easement upon, through and across and over and under all of said Properties for ingress, egress, installation, replacing, repairing and maintaining all utilities and service lines and systems including, but not limited to water, sewer, gas, telephone, electricity and heat pump lines and a master antenna system and/or cable television system. By virtue of this easement, it shall be expressly permissible for the companies providing electrical, water, sewer, gas, master television antenna, cable television service, telephone service, alarm systems and/or heat pump lines to install, erect and maintain all necessary pipes and conduit underground and other necessary equipment at, above or below grade on said Properties and to affix and maintain electrical, cable television and/or

telephone wires, gas lines, heat pump lines, circuits and conduits on, above, across and under the roofs and exterior walls and through common walls or other buildings and to meters and shut-offs at or inside and/or outside said buildings. An easement is further granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency service to enter upon the Lots and Common Area in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter into or to cross over the Common Area and the Lots and to enter any building during reasonable hours and upon request, when occupied (except in an emergency, when request may be disposed with) to inspect and to perform the duties of maintenance and repair of the buildings or Common Area as provided herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, gas lines, heat pump lines or other utilities may be installed or relocated on said Properties except as initially programmed or thereafter approved by the Association's Board of Directors. Should any utility or organization furnishing a service covered by the general easement above request that a specific easement be provided by a separate recordable document, the Association shall have the right to grant such easement on said Properties provided it not be broader than the terms hereof. The easement provided for in this Article shall in no way affect any other recorded easement on said premises.

Article X
CHARGES FOR UTILITY SERVICE

Section 1. Direct Charges. Charges to the individual Lots for natural gas, power and electricity, sewer service and solid waste disposal (garbage) will be made directly by the utility company or service company to the Lot Owner. Charges for telephone, cable television, individual security services and property taxes will be similarly charged directly to each Owner.

Section 2. Charges to be Paid Through the Association. Domestic and irrigation water charges for all Lots and the Common Area will be paid by the Association from revenues paid to the Association by Owners as part of each Unit's monthly assessment.

Section 3. Sewer Charges. Initially the Properties will be served by four (4) septic tanks, each with its own drainfield and each tank-drainfield combination serving four (4) Units. It is the duty of the Association to contract for an annual inspection of each tank and for the pumping of any tank requiring it. Tanks and drainfields shall meet all current county and state requirements at all times.

The Board of Directors shall levy a special assessment, if necessary, to pay the costs of such maintenance or any repairs required to keep the septic system in good operating condition.

At such time as the Units shall be connected to a public sewer system:

(a) Owners shall pay equally to the Association all assessments levied on or charged to the Association;

(b) The sewer district will not be responsible for sewer repair and maintenance within the Properties;

(c) Whenever sewer repair or maintenance is required on the Properties after the initial warranty on the installation shall have expired, the costs of such service will be considered as a common expense and included within the general or special assessments as determined by the Association and will include service to foundations of the individual units;

(d) If, because of negligence, an occupant shall cause otherwise unnecessary sewer service, the Owner of the Lot shall be charged an extra utility charge (also a lien) equal to the cost of the repair. The negligence of the occupant shall be determined solely by the Board of Directors after due examination of the evidence and due deliberation.

Section 4. Water Charges. Whitworth Water District No. 2 is responsible for water delivery up to the master meters for the Properties. The Association is responsible for repair or maintenance of water lines within the Properties.

Domestic and irrigation water charges for all Lots and the Common area will be paid by the Association from revenues paid to the Association by Owners as part of each Unit's monthly assessment. Each Unit shall be charged equally for water.

Article XI INSURANCE

Section 1. In General. The Association shall maintain, to the extent reasonably available:

(a) Property insurance on the Properties insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

(b) Liability insurance, including medical payments insurance, in an amount determined by the Board of Directors but not less than One Million Dollars (\$1,000,000), for any single occurrence, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Area.

(c) Workmen's compensation insurance to the extent required by applicable laws.

(d) Fidelity bonds naming the members of the Board of Directors, and its employees and such other persons as may be designated by the Board of Directors as principals and the Association as obligee, in at least an amount equal to three months aggregate Assessments for all Units plus reserves, in the custody of the Association or Manager at any given time during the term of each bond. Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definitions of "employee" or similar expression.

(e) Insurance against loss of personal property of the Association by fire, theft and other losses with deductible provisions as the Board of Directors deems advisable.

(f) Such other insurance as the Board of Directors deems advisable (i.e. flood, boiler and machinery); provided, that notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements of similar projects established by Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Veteran's Administration, or other governmental or quasi-governmental agencies involved in the secondary mortgage market, so long as any such agency is a mortgagee of Owner of a Unit within the project, except to the extent such coverage is not available or has been waived in writing by such agency.

Section 2. Division of Responsibility. Each Unit Owner shall obtain and maintain in force at its own cost, insurance covering such Owner's Unit and Limited Common Area relating to said Unit. To the extent insurance can be so obtained, the Association shall be responsible for obtaining and maintaining in force and as a Common Expense, insurance covering the Common Area (which has not been designated as Limited Common Area relating to said Unit) in accordance with Section 1 of this Article. The Board of Directors may require Owners to provide certificates or other evidence satisfactory to the Board of Directors that the insurance required to be maintained by the Unit Owner is in force.

Section 3. Coverage Not Available. If the insurance described in Sections 1 or 2 of this Article is not reasonably available, or is modified, canceled, or not renewed, the Association promptly shall cause notice of that fact to be provided to all Owners and hand delivered or sent prepaid by first class United States mail to each eligible mortgage holder, and to each mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. The Owners may then obtain, to the extent available, the insurance not otherwise reasonably available to the Association. The Association, in any event, may carry any other insurance it deems appropriate to protect the Association or the Owners. The Association is granted the authority to (1) adjust the deductibles in any insurance policy and allocate, in a reasonable manner, the responsibility for paying said deductibles among the Units and the Owners, and assess the Units and Owners in accordance with said allocation as a special charge or special assessment; (2) make Owners responsible

for uninsured damage that is caused through their fault or by the failure of a portion of the Properties that said Owner is responsible for maintaining; (3) increase working capital or reserve fund; and (4) requiring, if reasonably available, the Owners name the Association as an additional insured on policies obtained by the Owners, providing for notice to the Board of Directors in the event of cancellation, and requiring joint endorsement of any checks or drafts issued by any insurer.

Section 4. Required Provisions. Insurance policies carried pursuant to this Article shall:

(a) Provide that the Association is the named insured and that each Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Area or membership in the Association;

(b) Provide that the insurer waives its right to subrogation under the policy as to any and all claims against the Association, the Owner of any Unit and/or their respective agents, employees or tenants, and members of their household, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured;

(c) Provide that no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, nor any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no direct control, will void the policy or be a condition to recovery under the policy;

(d) Provide that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides secondary insurance, and that the liability of the insurer thereunder shall not be affected by, and the insurer shall not claim any right of set-off, counterclaims, apportionment, proration, contribution or assessment by reason of, any other insurance obtained by or for any Owner or any eligible mortgage holders;

(e) Provide that, despite any provision giving the insurer the right to pay a cash settlement in lieu of restoring the insured Properties (whether Common Area, Limited Common Area, Units or otherwise), such option shall not be exercisable without the prior written approval of the Association, or when in conflict with the provisions of any insurance trust agreement to which the Association is a party, or any requirement of law;

(f) Contain no provision (other than insurance conditions) which will prevent eligible mortgage holders from collecting insurance proceeds; and

(g) Contain, if available, an agreed amount and inflation guard endorsement.

Section 5. Claims Adjustment. Any loss covered by the property insurance under this Article must be adjusted, settled and/or compromised with the Board of Directors, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Board of Directors on behalf of the Association, and not to any holder of a mortgage. The insurance trustee of the Association shall hold any insurance proceeds in trust for Owners and lien holders as their interests may appear. The proceeds must be disbursed first for the repair or restoration of the damaged property, and Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored.

Section 6. Owner's Additional Insurance. An insurance policy issued to the Association does not prevent an Owner from obtaining insurance for the Owner's own benefit.

Section 7. Certificate. An insurer that has issued an insurance policy under this Article shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner or holder of a mortgage. The insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of RCW 48.18 *et seq.* pertaining to the cancellation or nonrenewal of contracts of insurance. The insurer shall not modify the amount or the extent of the coverage of the policy, or cancel or refuse to renew the policy, without complying with the requirements of the Act.

Section 8. Notification on Sale of Unit. Promptly upon the conveyance of a Unit, the new Owner shall notify the Association of the date of the conveyance and the Owner's name and address. The Association shall notify each insurance company that has issued an insurance policy to the Association for the benefit of the Owners under Article XI of the name and address of the new Owner and request that the new Owner be made a named insured under such policy.

Article XII

INSPECTION OF DOCUMENTS

Section 1. Availability. The Association shall make available to Unit Owners and lenders and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration, Bylaws, other rules concerning the project and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

Section 2. Financial Statement. Any holder, insurer or guarantor of a first mortgage shall be entitled, upon written request, to an audited financial statement for the immediately preceding year, if one be available, and if none be available, any mortgage holder may have one prepared at the Owner's own expense.

Article XIII
CONDEMNATION

Any condemnation-proceedings shall be handled in the following manner:

(a) In the event any of the Properties be subject to condemnation proceedings in whole or in part, the Board of Directors of the Association shall provide each Owner and each first mortgagee written notice of any such proceedings;

(b) The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority. Each Owner does hereby appoint the Association as attorney-in-fact for such purposes;

(c) In the event of a taking or acquisition of part or all of the Properties by a condemning authority, the award or proceeds of settlement shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear;

(d) First mortgagees' first security liens shall not be disturbed by such proceedings. All Owners agree to submit to binding arbitration among themselves all matters in which, because of the proceedings, the Owners may have conflicting interests.

Article XIV
LIMITED COMMON AREA

Section 1. Limited Common Area. The Limited Common Area is reserved for the exclusive use of the Owner of the Unit to which it is adjacent or assigned.

Section 2. Expense and Repair. The expense of repair, replacement and maintenance of Limited Common Area shall be the sole responsibility of the Unit to which that Limited Common Area is assigned.

Section 3. Use, Condition and Appearance. The use, condition and appearance of the Limited Common Area may be regulated under provisions of rules adopted by the Board of Directors or this Declaration.

Section 4. Failure to Maintain Limited Common Area. Should an Owner fail to maintain a Limited Common Area as required by Section 2 above, the Board of Directors shall have the rights afforded to it under Article VII, Section 1 of this Declaration.

DECLARATION
of
COVENANTS, CONDITIONS AND RESTRICTIONS
for
BRIAR CLIFF COURT
Exhibit "A"

Legal Description of the Properties

BRIAR CLIFF COURT, a Replat of Short Plat SP-79-124 within the NE 1/4 of the SW 1/4 of Section 18, T.26N. R.43E., W.M., Spokane County, Washington.

Said plat is of record as Instrument number 8412190217; Plat number 2783, Recorded as Plat Book 17, Page 48, and is subject to the Declaration of Covenants, Conditions and Restrictions filed as instrument number 8412190218, as amended and/or restated, Spokane County, Washington.

Unofficial Document

DECLARATION
of
COVENANTS, CONDITIONS AND RESTRICTIONS
for
BRIAR CLIFF COURT

Exhibit "B"

Common Area

Lot 17 of BRIAR CLIFF COURT, a Planned Unit Development, (Lot 17 includes all of BRIAR CLIFF COURT except the 16 platted lots which are homesites).

BRIAR CLIFF COURT is a replat of Short Plat SP-79-124 within the NE 1/4 of the SW 1/4 of Section 18, T.26N., R.43E., W.M., Spokane County, Washington, filed as instrument number 8412190217, Recorded as Plat number 2783, Plat Book 17, Page 48 and subject to the Declaration of Covenants, Conditions and Restrictions filed as Instrument number 8412190218, as amended and/or restated, Spokane County, Washington.