

DECLARATION  
OF COVENANTS, CONDITIONS and RESTRICTIONS

Of  
BRIAR CLIFF COURT, A PLANNED UNIT DEVELOPMENT

THIS DECLARATION, made on the date hereafter set forth by the owner, whose name is subscribed hereto, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Spokane, State of Washington, which is fully described in Schedule "A" attached hereto and by this reference made a part hereof, and,

WHEREAS, the Declarant desires to develop said property as a planned unit development, and

NOW, THEREFORE, Declarant hereby declares that all of the property described in Schedule "A" shall be held, sold conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title and interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

Section 1. "Association" shall mean and refer to BRIAR CLIFF COURT HOME OWNERS ASSOCIATION: its successors and assigns.

The "Association" shall be incorporated under the laws of the State of Washington as a non-profit corporation.

Section 2. "Owner" shall mean and refer to the record owner, 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 3. "Properties" shall mean and refer to that certain real property hereinbefore described, in Schedule "A" and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area is described in Schedule "B" attached hereto and by this reference made a part hereof as fully as though set forth herein. Prior to the first conveyance of a lot, the Declarant shall convey the Common Area to the Association.

Section 5. "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. All Lots are designated by a number or by a number and letter. (A Lot is a "Unit" under FNMA guidelines).

(a) a developed lot is one upon which a dwelling has been fully constructed. For the purpose of this definition, a lot will be deemed fully constructed for

the purpose herein not later than 8 months has passed from the time the foundation has been poured.

(b) all other lots will be deemed undeveloped.

Section 6. A "Unit Estate" consists of all the components of ownership held by the Owner of an individual Lot.

Section 7. "Declarant" shall mean and refer to BRIAR CLIFF COURT, a general partnership, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

## 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 and right to use the Common Area by any Owner for any period during which any fee, charge or assessment against his 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 members. (No member shall sell or transfer any interest in the Common Area separate from his unit ownership).

No dedication or transfer shall be effective unless instrument agreeing to such dedication or transfer is signed by two-thirds (2/3rds) of each class of the members.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right to enjoyment of the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

#### ARTICLE III

#### MEMBERSHIP ASSOCIATION AND BY-LAWS

Section 1. Every Owner of a Lot which is subject to assessment shall automatically upon becoming an Owner become 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. When all his ownerships cease (in case he owns more than one Lot) his 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 By-Laws 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 (Unit) shall comply with the provisions of this Declaration, the By-Laws, the rules, decisions and resolutions, 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 By-Laws 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 will be incorporated by the Declarant as a Washington non-profit corporation. The By-Laws of the Association shall conform to the non-profit corporation laws of Washington.

Section 3. Professional Management. The By-Laws of the Association may provide that the Board of Directors may employ professional management for the Association, however, such contracts may be revoked without penalty on advanced notice of sixty (60) days.

Section 4. The Association shall have two classes of voting membership.

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant and as such Declarant shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease

and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on the fifth anniversary of the date hereof.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

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

The Declarant, for each Lot owned within the Properties, hereby covenants and agrees to pay to the Association and each Owner of any Lot by acceptance of the deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association; (1) General annual assessments [for common area maintenance and liability insurance and for common services provided each lot, i.e., common area taxes, if any, common area electricity, management services and supplies and any other association service or duty for which no other provision is made], (2) Special assessments [for capital improvements and repairs to the common area including the sewer system], (3) Fire and casualty insurance assessment [for the dwelling units], (4) Reserve assessment [for fund for future maintenance to the exterior of the dwellings such as painting and roof repairs and replacement], (5) Utility charges [for various utilities]. 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 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 his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments and utility charges levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and of the yards of the homes situated upon the properties.

Section 3. Maximum Monthly Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to any Owner, the maximum monthly general assessment for developed lots shall be \$65.00 (Sixty-five Dollars) per Lot, (\$780.00 annually) and for undeveloped lots \$10.00 (Ten Dollars) per Lot (\$120.00 annually).

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the above maximum annual assessment may be increased each year not more than five percent (5%) (or a

percentage determined by the increase in the Consumers Price Index whichever is greater) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to any Owner, the maximum general annual assessment may be increased beyond the above determined percentage by a vote of two-thirds (2/3rds) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the general annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements.

The Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4.

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty

(60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the quorum at the 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 annual assessments and special assessments, except as otherwise herein provided, must be fixed at a uniform rate for all developed lots. All assessments and charges may at the option of the board be collected on a monthly basis. For all undeveloped lots, the assessment shall be also be at a uniform rate.

Utility charges are fixed as provided in Article XI.

Assessments for blanket casualty insurance on the dwelling units are provided for in Article XII.

Section 7. Date of commencement of Annual Assessments; Due Dates.

The general annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area or such later date as determined by the Board of Directors of the Association. The first general annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the general annual assessment against each Lot at least thirty (30) days in advance of

each annual assessment period. Written notice of the annual 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 from the due date at the rate of twelve percent (12%) per annum or at the Board's discretion, a late penalty of not over \$5.00 a 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 for herein by non-use of the Common Area or abandonment of his 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 first foreclosure of a first 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 or from the lien thereof.

## 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 covenant or restriction 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 judgment or court order shall in no way effect 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 Lot (Unit) Owners shall have the right to amend this Declaration and the other project documents including the legal map, Owners' Association By-Laws, and Articles of Incorporation. Amendments of a material nature must be agreed to by Unit Owners representing at least sixty-seven percent (67%) of the total allocated votes in the Association. In addition, approval must be obtained from eligible mortgage holders representing at least fifty-one

percent (51%) of the votes of Unit estates that are subject to mortgages held by eligible holders. A change to any of the following would be considered as material:

- a. voting rights;
- b. type of assessments, assessment liens, or subordination of assessment liens;
- c. reserves for maintenance, repair and replacement of Common Areas;
- d. responsibility for maintenance and repairs;
- e. reallocation of interests in the general or limited 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 his or her 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 that specified in the documents;
- n. any action to terminate the legal status of the project after substantial destruction or condemnation occurs;
- 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 sixty-seven percent (67%) 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 directors of the Association (including those appointed by Declarant) shall have the authority in 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 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 owned 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.

#### ARTICLE VI

#### PARTY 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 shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party 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 party 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 party wall is destroyed or damaged by fire or other casualty, 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 any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weather Proofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party 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 is 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 party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

## ARTICLE VII

### EXTERIOR MAINTENANCE

Section 1. Landscape, Driveways and Walks. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: care of trees, shrubs, grass, walks, patios and similarly related amenities. Such maintenance shall be paid from the general assessment fund.

Section 2. 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 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 this Declaration.

Section 3. Destructions 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 4. Periodic Long-Term Maintenance.

(a) From the reserve fund established for such purpose, the Association, when determined by the Board of the Association and ratified by 11/16 of the unit Owners, 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 the surface materials as needed and may elect to perform such other maintenance as required to support the integrity of the various structures and other preserve preserve the buildings.

(b) Emergency repairs may be authorized by the Board 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 (2/3rds) of each class of Owners.

Section 5. Easement for Maintenance. The Association and its agent or contractors selected by it for purpose of maintenance shall and is hereby granted an easement over and across the Lots within the Properties to accomplish the above purposes.

Section 6. How Assessed. The reserve fund assessment shall as to each building commence one year following the completion of such building. The share of the assessment charged to an Owner of a lot for the blanket property insurance coverage shall be in the proportion that the square footage of his Unit, as determined by the Board, bears to the square footage of the total number of Units covered by that portion of the policy pertaining to his property.

Section 7. Time of Repairs. The Board may elect to make the repairs, etc., above on any particular building or part of a building as the Board deems needed. The Board need not repair all buildings at the same time.

Section 8. 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 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 or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, 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 architectural committee shall formulate general guidelines for the Association for development within the properties.

#### ARTICLE VIII

##### USE OF PROPERTIES

The use of a Lot and improvement thereon by an Owner or other occupant shall be subject to the rules, regulations and provisions of this Declaration, the By-Laws and rules and regulations of the Board of Directors and following covenants and restrictions:

- (a) The Lot and improvements shall be maintained in good repair and overall appearance;

(b) Any Owner who mortgages his 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 the 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 his 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 the said regulations become effective. No rule shall violate the laws concerning discrimination nor restrict sale, transfer or conveyance of any Lot;

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

(g) All Lots are to be used solely for single family

residential occupancy;

(i) During the period of development and until all Lots are sold, the Declarant, its agents, employees and contractors shall be permitted to use any Lot (not sold) reasonably required, for sales purposes;

(j) No Owner shall lease or rent his Unit except by an agreement in writing and such agreement shall specifically state that the agreement and the tenants' rights are subject to the Declaration, By-Laws, rules and regulations of the Association and all documents pertaining thereto. No Unit may be leased or rented for less than thirty (30) days. No Unit may be sold under any "time sharing" plan;

(k) Unless the architectural committee 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;

(l) Except when necessitated by construction, no Owner shall permit any source from his Lot or under his ownership or control or by his guests to emit noise levels to exceed 55 decibels beyond the property line, except where allowed by State law;

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

No pets except usual and ordinary household pets

(i.e. dogs, cats, fish or birds) shall be permitted except with special 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 the Common Area (i.e. off the Owner's Lot) 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, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Properties must be either kept within an enclosure or on a leash being held by a person capable of controlling the animal. 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 his family, his tenants or his guests; and 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.

(n) No Owner shall block nor permit his guest to block or obstruct or to litter the common driveways or entry gates nor walkways or other common areas;

(o) No motor vehicle shall be allowed to remain on

blocks for more than 24 hours except within a private garage. No recreational vehicles shall be parked in any driveway area for more than one week. Recreational vehicles include snowmobiles, motorcycles, boats and/or trailers and motor homes.

(p) The provisions herein may be further expanded or 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 party 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 dispensed 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 and approved by the Declarant or thereafter approved by Declarant or 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, Declarant 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

##### BLANKET EASEMENT TO CORRECT DRAINAGE

For a period of five (5) years from the date of conveyance of the first Lot within the Properties, the Declarant reserves a blanket easement and right for themselves, their successors, and the Association on, over and under the ground within the Properties to maintain and to correct drainage or surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes, or shrubbery, make any gradings of the soil or to take any other similar action reasonably necessary, following which the Declarant, their successors or the Association shall restore the affected property to its original condition as near as practicable. Reasonable notice of intent to take such action shall be given to all affected Owners, unless an emergency appears to exist which precludes such notice.

#### ARTICLE XI

##### CHARGES FOR UTILITY SERVICES

Section 1. Direct Charges. Charges to the individual Lots for natural gas, power and electricity and solid waste disposal (garbage) will be made directly by the utility company (Washington Water Power Co.) or service company to the Lot Owner beginning with the first occupancy of the Unit placed on said Lot. First occupancy means when the first individual service is requested for an Owner or renter of the Unit. Charges for

telephone, cable television and individual security services will be similarly charged directly to Owner for the service.

Section 2. Charges To Be Paid Through the Association.

Water charges will be collected by the Association from the individual Lot Owners and paid to the entity furnishing the service. Utility charges will be imposed by the Association and create a lien upon the Lots using the service.

Section 3. Sewer Charges. Once a lot is developed and when sewer service is available, the charges will commence and continue so long as the Unit exists. The Association shall assess an equal charge to the Owner of each Lot so occupied.

If and after a Sewer District shall take over the service, each Lot upon which a Unit has been built and occupied shall pay an equal share of the sewer charges billed to the Association by the District. The Association shall report to the District periodically, as requested, the occupancy status of the project.

(a) Initially the property will be served by four septic tanks and four drain fields. Once a lot is developed by a firm plan and sewer service is available, the charge for sewer shall commence and continue so long as the dwelling unit exists. The Association shall assess an equal charge to the Owner of each developed lot. It is the duty of the Association to keep the respective septic tanks and drain fields in good condition meeting all current and state requirements at all times and to levy a special assessment if necessary to pay the costs of repairs.

(b) In the future, a Sewer District may be formed taking over the sewer service. If such district be formed, lot shall pay equally to the Association all assessments levied on or charged to the Association or to the dwelling lots within the Briar Cliff Court.

(c) A Sewer District is not responsible for sewer repair and maintenance within the Properties.

(d) Whenever sewer repair and 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 annual or special assessments as determined by the Association. Service shall include service to the individual Units.

(e) 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 Association after due examination of the evidence and due deliberation.

Section 4. Water Charges. The Whitworth Water District No. 2 is not responsible for water delivery except up to the master meters for the Property. The Whitworth Water District No. 2 is not responsible for the construction, repair or maintenance of the water lines within the Properties. The Association is responsible within the project for the individual Units.

The directors of BRIAR CLIFF COURT or any other entity or person elected hereafter by the Association shall collect fees

for water service and make the payment to the Whitworth Water District. Each developed lot shall be charged equally for water.

Section 5. If the sums to be paid for any services should appear to be unfair to any Lot Owner, the Owner, including the developer, shall have a right of review by arbitrators appointed as follows: one by each of the protagonists who shall select a third.

## ARTICLE XII

### INSURANCE

#### Section 1. Casualty Insurance on Insurable Common Area.

The Association shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association on the common areas are included in the common assessments made by the Association.

Section 2. Liability Insurance Pertaining to Common Areas.

The Association may obtain general comprehensive liability insurance insuring the Board, the Association, the Owners, Declarant and managing agent, if any, against any liability to the public or the Owners of Units and their invitees or tenants incident to the ownership of the Common Areas.

Section 3. Casualty Insurance on Dwelling Units. In addition to casualty insurance on the Common Area, the Association through the Board of Directors, must obtain and continue in effect, on behalf of all Owners of Units adequate blanket casualty and fire insurance in such form as the Board of Directors deems appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all such Units, including the structural portions and fixtures thereof, owned by such Owners. The insurance coverage with respect to the Units shall be written in the name of, and the proceeds thereof shall be payable to the Association as Trustee for such Homeowners. Each owner of a covered Unit shall be named as an additional insured.

Section 4. Replacement or Repair of Property - Common Area.

In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by

the insurance proceeds, in addition to any other common assessments made against such Lot Owner.

Section 5. Replacement and Repair of Properties - Units.

Since that the Association is maintaining blanket casualty and fire insurance on the Units on the Lots in the Properties, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the cost of repair or replacement of the property damaged or destroyed or if there be no insurance for any reason and if the Owner of a Lot whose Unit has been damaged or destroyed, refused or fails to cause said Unit to be reconstructed so that the structural integrity or appearance of adjoining Units sharing common walls is substantially affected, the Association may make a reconstruction assessment against the Owner of the Lot upon which a damaged or destroyed Unit is situated to cover the additional cost of repair and replacement not covered by the insurance proceeds, in addition to any other common assessments made against such Lot Owner. Reconstruction assessments like other assessments become liens on the Lot of an affected Owner.

Section 6. Manner of Apportioning Assessments For Insurance.

Premiums for fire and casualty coverage of Common Area property and general liability coverage insuring the Board, the Association, the Owners, Declarant and managing agent, if any, against liability incident to the ownership and management of the Common Area shall all be borne equally by all Lot Owners and thus included in the regular common assessments of the Owners as

levied by the Association. Premiums for blanket insurance coverage of any Units shall be borne by and assessed only to Lot Owners upon whose Lot a Unit is situate. The share of the assessment charged to an Owner for the blanket property insurance on his Unit shall be in the proportion that the square footage of his Unit as determined by the Board bears to the square footage of the total number of Units covered by that portion of the policy pertaining to his property.

Section 7. Mandatory Reconstruction. All 16 Units within the Complex must have adequate insurance to fully rebuild in case of fire or other disaster and the Unit Owner must agree immediately to rebuild or repair to avoid an unpleasant or unsightly situation for the other Unit Owners within the Complex. The provision of Section 5 shall apply whether or not there be blanket coverage in effect.

In case the Owner fails or refuses to comply with the above requirements, the Association may elect to restore the site to a level acceptable to the Association and levy a reconstruction assessment on the lot such as is provided in Section 5 above.

Section 8. Insurance Carriers. To reduce costs and to minimize confusion and possible litigation, all insurance placed by the Association shall be placed through a single carrier. The carrier may be changed from time to time.

Section 9. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or

replacement of the property which may have been damaged or destroyed.

### ARTICLE XIII

#### 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, By-Laws, 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 fiscal year, if one be available and if none be available, any mortgage holder may prepare one at his own expense.

### ARTICLE XIV

#### CONDEMNATION

Any condemnation proceedings shall be handled as follows:

- (a) In the event any of the property be subject to condemnation proceedings in whole or in part, the Board of the Association shall provide each Owner and each first mortgagee written notice of any such proceedings.
- (b) The Association shall represent the Unit Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning

authority. Each Unit 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 Unit Owners and their mortgages as their interests may appear.

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

IN WITNESS WHEREOF, the undersigned, being the Declarant herein has hereunto set its hand and seal this 17<sup>th</sup> day of December, 1984.

BRIAR CLIFF COURT DEVELOPMENT GROUP, a General Partnership

By W. Peter Enkema  
W. PETER ENKEMA, individually and as attorney-in-fact for GALEN A. MILLER, JOYCE M. MILLER, NELLIE B. MILLER, DAN C. SANFORD, BARBARA A. SANFORD and PATRICIA C. ENKEMA

STATE OF WASHINGTON )  
County of Spokane )

On this 17<sup>th</sup> day of December, 1984, before me personally appeared W. PETER ENKEMA to me known to be the individual described in and who executed the foregoing instrument for

himself and also as attorney-in-fact for GALEN A. MILLER, JOYCE M. MILLER, NELLIE B. MILLER, DAN C. SANFORD, BARBARA A. SANFORD and PATRICIA C. ENKEMA and acknowledged that he signed and sealed the same as his free and voluntary act and deed for himself and also as his free and voluntary act and deed as attorney-in-fact for said principal for the uses and purposes therein mentioned, and on oath stated that the Power of Attorney authorizing the execution of this instrument has not been revoked and that the said principal is now living and is not insane.

GIVEN under my hand and official seal the day and year last above written.

*Laurel D. Ham*  
NOTARY PUBLIC in and for the State of Washington, residing at Spokane.

FILED FOR RECORD

REQUEST OF *W. Peter Enkema*

Dec 19 4 17 PM '84

WILLIAM E. DONAHUE  
AUDITOR  
SPOKANE COUNTY, WASH.  
DEPUTY

*36.00*

*N 4407 Division  
Suite 903 99207*