



Filed at the Request of and
return to:

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D-002C

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

for

Morningside Phases II & III

(Known as Sycamore at Morningside - Spokane, Washington)

ptn 55303.1515 W 1/2 30-25-45

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THIS DECLARATION is made on the date hereinafter set forth by DAHM DEVELOPMENT, INC., a Washington corporation ("Declarant"), who is the owner of certain land situated in the State of Washington, County of Spokane, known or to be known as **Morningside Phases II & III**, which is more particularly described on Exhibit "A" attached hereto and incorporated herein. In order to ensure preservation of the gracious residential environment at **Morningside Phases II & III**, Declarant agrees and covenants that all land and improvements now existing or hereafter constructed thereon will be held, sold, conveyed subject to, and burdened by the following covenants, conditions, restrictions, reservations, limitations, liens and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of such lands for the benefit of all of such lands and the owners thereof and their heirs, successors, grantees and assigns. All provisions of this Declaration shall be binding upon all parties having or acquiring any right, title or interest in such lands or any portion thereof and shall inure to the benefit of each Owner thereof and to the benefit of the Declarant, its



assignees, and **Morningside Phases II & III** Homeowner's Association and shall otherwise in all respects be regarded as covenants running with the land.

ARTICLE I
DEFINITIONS

For purposes of the Declaration and the Articles of Incorporation and the By-Laws of the **Morningside Phases II & III** Homeowner's Association, certain words and phrases shall have particular meanings as follows:

Section 1. Association shall mean and refer to the **Morningside Phases II & III** HOMEOWNER'S ASSOCIATION, its successors and assigns.

Section 2. Board shall mean and refer to the Board of Directors of the Association, as provided for in Article X and XI. For purposes of exercising the powers and duties assigned in this Declaration to the Board, this term shall also mean the "Temporary Board" or "Declarant" as provided in Article IV unless the language or context clearly indicates otherwise.

Section 3. Properties shall mean and refer to the real property described with particularity in Exhibit "A" and such additions to that property which may hereafter be brought within the jurisdiction of the Association, to initially include Morningside Phases II & III.

Section 4. Common Maintenance or Easement Areas shall mean those portions of all real property (including the improvements thereto) maintained by the Association for the benefit of other members of the Association. The areas to be maintained by the Association at the time of recording this Declaration are shown on the face of the plat and/or described as follows:

1. **Tract "A"** Common Areas - Phases II and III.
2. **Tract "B"** Private Roads - Phase II
3. **Tract "B"** Open Space Common Areas - Phase III.
3. **Tract "C"** Private Roads - Phase III.

Section 5. Lot shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

Section 6. Declarant shall mean and refer to Dahm Development, Inc., a Washington corporation, its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.



Section 7. Architectural Control Committee shall mean and refer to the duly appointed or elected committee of the Board of Directors as outlined in Article XV of this Declaration, hereinafter referred to as the "Committee".

Section 8. Development Period shall mean and refer to that period of time defined in Article IV of this Declaration.

Section 9. Other Parcels shall mean those parcels of land selected by the Declarant which may be added to the Properties by Declarant in accordance with Article III.

Section 10. Plat shall mean and refer to the Plat of **Morningside Phases II & III**, initially as recorded in Volume _____ of Plats, Pages _____ through _____, Records of Spokane County, State of Washington, under Recording No. Plat not recorded.

Section 11. Residence shall mean and refer to dwelling buildings occupying any Lot.

Section 12. Common Area shall mean any real property which is owned by the Association for the common use and enjoyment of the members of the Association. **THE COMMON AREA SHALL ALWAYS BE SUBSERVIENT AS DEFINED BY SPOKANE COUNTY AND SHALL NOT BE SOLD, TRANSFERRED OR CONVEYED BY THE ASSOCIATION. IT SHALL REMAIN A NON-TAXABLE PARCEL(S), IF POSSIBLE, ACCORDING TO COUNTY REQUIREMENTS.**

ARTICLE II

PRE-EXISTING RESTRICTIONS

The Properties covered by this Declaration, to the extent that the Properties may be already affected by previous covenants, conditions, encumbrances and restrictions, to the extent that such restrictions are valid, said restrictions are hereby revoked to the extent within the Declarant's power as to the property subject to this Declaration.

ARTICLE III

OTHER PARCELS

Section 1. Declarant reserves the absolute and unfettered right, but is not obliged, to add Other Parcels to the Properties. Declarant reserves the absolute and unfettered right to determine the number and location of any Lots within the Other Parcels. The use of the word "Declarant" in this section shall also equally apply to any assigns of Declarant of Declarants rights hereunder.

If any Other Parcels are added to the Properties, all of the



Other Parcels shall be governed by this Declaration if Declarant so elects. The character of the improvements which may be later added to the Properties on Other Parcels shall be compatible with improvements already existing on the Properties; Provided, However, that Declarant may develop the Other Parcels for any lawful purpose that is allowed by applicable land use laws and regulations. All easements for ingress, egress, utilities and use of facilities, unless otherwise specifically limited, shall exist in favor of all Lot Owners in the Other Parcels.

Section 2. The addition of any Other Parcels to the Properties shall occur when the Declarant files for record a Declaration of Annexation to this Declaration, legally describing the Other Parcels and stating that the Other Parcels are annexed to the Properties and subject to the provisions of this Declaration. Upon expiration of the Development Period, Other Parcels may be added to the Properties with the consent of two-thirds of the members of the Association. If Other Parcels are added to the Properties, the Association shall file for record a Declaration of Annexation to this Declaration legally describing the Other Parcels and stating that the Other Parcels are added to the Properties and subject to the provisions of this Declaration.

Section 3. The voting rights of the existing Lot Owners shall be adjusted at the time Other Parcels are added to the Properties only to the extent that the total number of votes is increased by the number of Lots added, and the percentage which one vote bears to the total is thus diminished. If Other Parcels are added prior to the expiration of the Development Period, such Other Parcels shall initially be managed by the Declarant subject to the provisions of Article IV.

ARTICLE IV

DEVELOPMENT PERIOD; MANAGEMENT RIGHTS OF DECLARANT DURING DEVELOPMENT

Section 1. Management by Declarant. Development Period shall mean that period of time from the date of recording the Declaration until: (1) the thirtieth (30th) day after transfer of title to consumer home purchasers of Lots representing one hundred percent (100%) of the total voting power of all Lot Owners as then constituted, including any annexed property, or (2) the date on which Declarant elects to permanently relinquish all of Declarant's authority under this Article IV by written notice to all Owners, or (3) a date not more than thirty (30) years from the date of recording this Declaration, whichever of the preceding date is first to occur. Until termination of the Development Period, either upon the sale of the required number of Lots, the expiration of the stated time period, or at the election of the



Declarant, the Property shall be managed and the Association organized at the sole discretion of the Declarant.

Section 2. Notices to Owners. Not less than ten (10) nor more than thirty (30) days prior to the termination of the Development Period, the Declarant shall give written notice of the termination of the Development Period to the Owner of each Lot. Said notice shall specify the date when the Development Period will terminate and shall further notify the Owners of the date, place and time when a meeting of the Association will be held. The notice shall specify that the purpose of the Association meeting is to appoint new Officers and Directors of the Association from the Owners. At this meeting, the Declarant shall appoint new directors and officers for the Association for an irrevocable period of one (1) year, which shall be the transition year from Declarant control to homeowner control. Notwithstanding any provision of the Articles or By-Laws of the Association to the contrary, for the purpose of this meeting, the presence, either in person or by proxy, of the Owners of five Lots shall constitute a quorum.

Section 3. Declarant may in its sole discretion, and at such times as the Declarant deems appropriate, appoint three persons who may be Lot Owners, or are representatives of corporate entities or other entities which are Lot Owners, and which may include Declarant or an agent thereof, as a Temporary Board. This Temporary Board shall have full authority and all rights, responsibilities, privileges and duties to manage the Properties under this Declaration and shall be subject to all provisions of this Declaration, the Articles and the By-Laws, provided that after selecting a Temporary Board, the Declarant, in the exercise of its sole discretion, may at any time terminate the Temporary Board and reassume its management authority under Article IV or select a new Temporary Board under this section of IV.

Section 4. So long as no Temporary Board is managing the Properties or until such time as the first permanent Board is appointed, should Declarant choose not to appoint a Temporary Board, Declarant or a managing agent selected by the Declarant shall have the power and authority to exercise all the rights, duties and functions of the Board and generally exercise all powers necessary to carry out the provisions of this Declaration, including but not limited to enacting reasonable administrative rules, contracting for required services, obtaining property and liability insurance, and collecting and expending all assessments and Association funds. Any such managing agent or the Declarant shall have the exclusive right to contract for all goods and services, payment for which is to be made from any monies collected from assessments.



Section 5. These requirements and covenants are made to ensure that the Properties will be adequately administered in the initial stages of development and to ensure an orderly transition to Association operations. Acceptance of an interest in a Lot evidences acceptance of this management authority in Declarant.

ARTICLE V
DEED AND DEDICATION OF EASEMENTS

Section 1. Declarant shall transfer and convey to the Association for the common use and enjoyment of the Association and the Owners all Common Area defined herein and easements created hereby in Common Maintenance or Easement Areas for the purpose of open space enjoyment, utilities and access, including all private roads, if any, as laid out on the Plat, reserving, however, to Declarant for the benefit of Declarant, his successors and assigns, an equal right to utilize all easements. The Declarant's and Association's right to utilize such easements are subject to the right of the public to use rights-of-way which may have been dedicated as public roads and are open to public access, including emergency vehicle access.

Section 2. Initial Drainage Construction. The Declarant, or any one or any entity who assumes the responsibility of the Declarant, will be responsible for installation of streets, curbs and sidewalks, as required by Spokane County. These features will be constructed so as to comply with any surface water drainage plan approved by Spokane County. Once so constructed, the Declarant or it's assigns shall be relieved of any responsibility to reconstruct any of the surface water drainage features, or streets, curbs or sidewalks, in the event the same are altered or damaged by the homeowners, their builders or the Association.

There will also be storm water management facilities located on the platted property, or adjacent or nearby lands, for stormwater runoff and containment. The homeowners Association for the Subdivision as a whole shall participate with the homeowners Association for Viewmont at Morningside in the costs of repair, maintenance and replacement concerning the easement(s) and stormwater management improvements thereto jointly used with Viewmont at Morningside on a per lot benefitted basis between the two subdivisions, in accordance with a map of all lots using the drainage facility. The map shall be prepared by an Engineer for the Declarant and approved by Spokane County, then filed of record or presented to the subdivision Associations by the Declarant. Once the allocations of costs are made between the Boards of Morningside Phases II & III and Viewmont at Morningside, the costs allocated to Morningside Phases II & III shall be subject to the lien rights set forth above, just as other Association expenses



are subject to lien rights against the non-paying lots in favor of the Association when not timely paid.

Section 3. Compliance with drainage plan. All purchasers of Lots within the Plat as to those Lots and the Association as to the common and landscape areas, will be expected and obligated to comply with the above referenced surface water drainage plan, as may be approved and amended by Spokane County, when doing any earth work themselves or their contractors on their Lot or the common/landscape areas. Such Lot owners and the Association will also be expected and obligated to take into consideration the topographical features of adjoining Lots in performing any such earth work. Continuous maintenance of the Storm Drainage Facilities shall be performed as specified by the Operation and Maintenance Manual prepared for the Declarant which will be recorded with Spokane County Auditor's Office. Failure of any Lot owner or the Association to comply with these provisions shall entitle the Declarant, or the Association if the Declarant so desires, to enter upon the violating Lot owner's Lot or the common/landscape area and make the necessary corrections, which shall be at the sole expense of the violating Lot owner or the Association, as the case may be. All lien rights granted in this Declaration shall likewise apply to the obligations created herein.

ARTICLE VI

ADMINISTRATION AND USE OF AND COMMON MAINTENANCE

OR EASEMENT AREAS

Section 1. Dumping in Common Maintenance or Easement Areas. No trash, plant or grass clippings or other debris of any kind shall be dumped, deposited or placed on the Common Maintenance or Easement Areas or Common Areas.

Section 2. Landscaping and Fencing. No structures or landscaping of any kind, including fences, walls or shrubs, may be built or placed within any rights-of-way or easements as delineated on the Plat except as deemed appropriate by the Committee. This prohibition shall not apply to cul-de-sac planters, if any, and the median planter island, if any, at the entrance.

Section 3. Other Parcels. If Other Parcels are added to the Properties, the Owners of Other Parcels shall share in the expense of maintaining Common Maintenance or Easement Areas and Common Area.



ARTICLE VII

MAINTENANCE OF THE COMMON AREAS AND SITES

DELEGATION OF MANAGEMENT

Section 1. Responsibility for Maintaining Common Maintenance or Easement Areas. The Association is responsible for maintaining and preserving the character of areas designated on the face of the Plat as Common Maintenance, Easement Areas, or Common Areas (including storm water management facilities described in Article V above). Common Maintenance or Easement Areas or Common Areas have been set aside for landscaping and community identification purposes.

Section 2. Repair of Common Maintenance or Easement Areas. Any damage to Common Maintenance or Easement Areas or improvements thereon, including landscape plantings, sprinkler systems, fences, berms, etc., by the Owners or their children shall be repaired within one week by the Owner who caused the area to be damaged. If such repairs are not made timely, the Association shall execute the repair and the Owner will be obliged to immediately remit funds for the repair. If the Owner fails to promptly make payment for such repairs, the Owner will be charged interest at the rate of twelve percent (12%) per annum and all unpaid charges shall be liens on the non-paying Owner's lot(s), as well s personal obligations, and shall be subject to all lien foreclosure rights and procedures set forth in this Declaration.

Section 3. Maintenance of Landscaping. It shall be the responsibility of the Association to maintain any Declarant installed landscaping on common areas or Spokane County Road Right-of-Way's, if any, within the Plat and any other applicable Common Area or Common Maintenance or Easement Area, owned or controlled by Spokane County, the adjoining Lot Owners or the Association. Any changes of the use and maintenance of these areas shall be up to the Association, and the Association shall be responsible for obtaining any County approvals that may be necessary before implementing said changes. If any damage or non-permitted change to these areas are effected by any Lot Owner, or child, guest or agent thereof, that Lot Owner shall be responsible for all costs of the Declarant, the Association or Spokane County in restoring said damaged or changed areas to return them to compliance with Spokane County requirements or their previous condition, and said amounts shall be subject to enforcement and collection, as is set forth in Section 2 above.

Section 4. Management. Each Owner expressly covenants that the Board and the Declarant, during the Development Period, may delegate all or any portion of their management authority to a



managing agent, manager or officer of the Association and may enter into such management contracts or other service contracts to provide for maintenance and the operation of Common Areas and any portion thereof. The term of any such contract shall not exceed three (3) years, renewable by agreement of the parties for successive three (3) year periods or less. Each Owner is bound to observe the terms and conditions of any such management agreement or employment contract, all of which shall be made available for inspection by any Owner on request. Any fees or salaries applicable to any such management, employment or service agreement shall be assessed to each Owner.

Section 5. Park Maintenance. **Morningside Phases II & III** Association shall participate and/or be a member in a master association being formed to govern and allocate the costs of maintaining the general use **Morningside** park. Park maintenance, repair and improvement costs shall be as decided by the master association being formed and allocated to each of the various subdivisions who are permitted to use the park, base on the number of applicable lots involved. Amounts allocated to **Morningside Phases II & III** shall form a part of the operating costs for **Morningside Phases II & III** and be assessed to each lot owner as other operating costs for the subdivision, as is more fully described in Article VIII, Section 4 (B) below.

ARTICLE VIII

ASSESSMENTS

Section 1. Each Owner of any Lot, by acceptance of a deed therefor, whether it shall be so expressed in each deed, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges for operating expenses and (2) special assessments for capital improvements. If the Owner fails to timely pay assessments within thirty (30) days of the date specified by the Association, the annual and special assessments, together with any interest, costs and any reasonable attorneys fees incurred to collect such assessments, shall be a continuing lien upon the property against which such assessment is made and not paid. Each such assessment, together with any interest, costs and reasonable attorneys fees incurred in attempting to collect the assessment, shall also be the personal obligation of the person(s) who is/are the Owner(s) of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. The Association shall record such liens in the office of the Spokane County Auditor.



Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and for the improvement and maintenance of the Common Areas, the Common Maintenance of Easement Areas and the maintenance, repair and improvement of the common Park, as provided for above.

Section 3. Annual Assessment. The annual assessment shall initially be \$260.00 per Lot, to be paid at the closing of the sale of any lot from Declarant to any builder and/or consumer buyer **(no prorations will be made - each said builder or purchaser from Declarant shall pay a full calendar year's dues at the time of closing, regardless of the date of closing on the lot);** A reasonable fee which shall be allocated and paid to the Declarant for Plat management services provided by the Declarant to the Association or by a professional management firm. Such allocation of funds to the Declarant shall cease when the Development Period expires and the Association assumes collection costs, bookkeeping, and other management responsibilities which are described with particularity in the By-Laws of the Association.

The annual assessment may be increased during the Development Period to reflect increased (1) maintenance costs, (2) repair costs, or (3) plat management costs. All increases in the annual assessment during the Development Period must directly reflect increases in the above recited costs. Thereafter:

(a) After the Development Period expires, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum annual assessment for the previous year without a vote of the membership.

(b) After the Development Period expires, the maximum annual assessment may be increased by more than ten percent (10%) only if two-thirds of the members of the Association, who are voting in person or by proxy at a meeting duly called for this purpose, consent to such an increase.

(c) After the Development Period expires, **but not later than eight years from the date of recording this Declaration,** in addition to the above, there shall be set up through the Association a reserve account for accumulating funds, prorated to all of the Lot owners, in an amount sufficient to pay for replacement and/or maintenance of the commonly owned aspects of the Plat. **The private roadways, curbs, sidewalks and other common improvements installed by the Declarant in completing**



the Plat infrastructure will be owned by the Association upon the filing of the Plat, and shall include a limited warranty from the Declarant for one (1) year from the date of completion of each said improvement. Thereafter said improvements shall be the full responsibility of the Association for maintenance, repair and replacement, as and if needed. The Association is encouraged to establish reasonable reserves after the "development period" to defray any anticipated expenses in conjunction with said common areas.

(d) After the Development Period expires, the Board of Directors shall fix the annual assessment in accord with the above recited standards.

Section 4. Special Assessments for Capital Improvement/Park.

A). Special Assessments: In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special common assessment, 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 Maintenance or Easement Areas or any improvements upon the Common Areas not prohibited by this Declaration, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the members of the Association who are voting in person or by proxy at a meeting duly called for this purpose

B). Morningside Park: There will be a Park in the **Morningside** area, which may evolve into an "active" rather than "passive" type of park. All owners in **Morningside Phases II & III** who have purchased Lots from the Declarant or it's successor, (or builders who have purchased directly from the Declarant or it's successor), shall have the right to use the park and the improvements thereto. A Master Park Association will be created and said Association may utilize the Special Assessment for Capital Improvement authority described above, to assess the costs of improving and maintaining the Park to all consumer owned lots entitled to use the Park, on a prorata basis, so that the park can be maintained and/or improved to that level requested by the lots entitled to use the Park in a voting procedure setforth in Section 5 below. At such time as five (5) or more lots in any phase of **Morningside Phases II & III** are occupied by consumer homeowners, all lots in that phase shall be responsible for paying their prorata share of the Morningside Park expenses and/or improvements. These prorated expense and/or improvement costs shall be collected by the **Morningside Phases II & III** association and paid to the developer, or the Master Park Association, when



established.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Except as pertains to the Development Period as provided herein above and below, written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 of this Article shall be sent to all members not less than ten (10) and not more than thirty (30) days in advance of the meeting. All meetings shall be held during normal business hours. At the first meeting called after expiration of the Development Period, the presence of sixty percent (60%) of the members of the Association entitled to vote or of proxies entitled to cast sixty percent (60%) of the votes of Members entitled to vote the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement; the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. A majority of any valid quorum shall be able to conduct business and make decisions. **During the Development Period, the Declarant vote shall constitute the sole vote and a quorum for all voting aspects.**

Section 6. Uniform Rate of Assessment. Annual, Reserve and Special assessments must be fixed at a uniform rate for all Lots (except as is provided in Article I, Section 4 and as otherwise stated hereinabove and below) and must be collected on an annual basis, Provided, However, that any unimproved Lot (ie. Lot owned by the Declarant) shall not be subject to any assessment or charge herein described.

Section 7. Date of Commencement of Annual Assessment; Due Dates. The annual assessments described in this Article shall commence on the date of the first sale of a lot in the subdivision. The first annual assessment shall be paid at closing for the full calendar year in which the closing date occurs. Thereafter payments shall be made on January 1 of each year for that coming year. After the Development Period expires, the Board of Directors shall fix the annual assessment. Written notice of the annual assessment shall be sent to every Owner subject to such assessments. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has 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 Non-Payment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum. Each Owner hereby expressly vests in the



Association or its agents the right and power to bring all actions against such Owner personally for the collection of such assessments as debts and to enforce lien rights of the Association by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in like manner as a mortgage of real property. Such Owner hereby expressly grants to the Association the power of sale in connection with such liens. The liens provided for in this section shall be in favor of the Association and shall be for the benefit of the Association. The Association shall have the power to bid in an interest at foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Owner is responsible for payment of all attorneys fees incurred in collecting past due assessments or enforcing the terms of assessment liens (see Article XVI, Section 4). No Owner may waive or otherwise escape liability for the assessments provided herein by non-use of their Common Areas or abandonment of their Lot.

The Association shall have the right to suspend the voting rights of an Owner for any period during which any assessment against the Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of the terms of either this Declaration, the Article or the By-Laws of the Association.

Section 9. Subordination of the Lien to Mortgage. The lien for assessments, provided for in this Article, shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien except as to the first mortgage. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien created pursuant to this Article as to payments which become due prior to such sale or transfer. No sale or transfer, however, shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All property dedicated to and accepted by local public authority shall be exempt from the assessments provided for in this Article. Property owned by Declarant shall also be exempt from such assessment.

Section 11. Management by Declarant During the Development Period. As soon as practical after this Declaration is filed of record, Declarant will establish the Association, a bank account for the Association and a set of books in which to record the income and expenses of the Association. The Declarant shall exclusively manage the Association, it's books and records during the Development Period and until the Association is turned over to the property owners in the subdivision, as is described in Article IV above.



ARTICLE IX

MAINTENANCE OF LOTS

Section 1. Exterior Maintenance by Owner. Each Lot and Residence shall be maintained by the Owner in a neat, clean and sightly condition at all times and shall be kept free of accumulations of litter, junk, containers, equipment, building materials, and other debris. All refuse shall be kept in sanitary containers sealed from the view of any Lot; the containers shall regularly be emptied and the contents disposed of off the Properties. No grass cuttings, leaves, limbs, branches, and other debris from vegetation shall be dumped or allowed to accumulate on any part of the Properties, except that a regularly tended compost device shall not be prohibited. No storage of goods, vehicles, boats, trailers, trucks, campers, recreational vehicles, or any other equipment or device shall be permitted in open view from any Lot or right-of-way (Vehicles, boats, trailers, trucks, campers, and recreational vehicles shall be referred to as "Vehicles"). This provision shall not exclude temporary (less than forty-eight (48) hours) parking of Vehicles on the designated driveway areas adjacent to garages on the Lots. This paragraph is not meant to disallow permanent (more than forth-eight (48) hours) parking or storage of Vehicles on the Lots, but if stored, Vehicles shall be adequately screened from the view of adjacent rights-of-way and Lots. Screening of such Vehicles must have the approval of the Committee. Upon forty-eight (48) hours notice to the Owner of an improperly parked Vehicle, the Board has the authority to have towed, at the Owner's expense, any Vehicles visible from the right-of-way or other lots for more than forty-eight (48) hours.

Notwithstanding the foregoing, Owners who have visiting guests intending to stay in such a Vehicle may secure written permission from the Board for such guests to park the Vehicle upon the Lot owned by the Owner for a maximum period of one week. Such a privilege shall only exist, however, after the written permission has been obtained from the Board.

Section 2. Easement For Enforcement Purposes. Owners hereby grant to the Association an express easement for purposes of going upon the Lots of Owners for the purpose of removing Vehicles or other similar objects which are parked or stored in violation of the terms of this Declaration.

Section 3. Lot Maintenance by the Association. In the event that an Owner shall fail to maintain the exterior of his premises and the improvements situated thereon in a manner consistent with maintenance standards of the **Morningside Phases II & III** community, the Board shall, upon receipt of written complaint of



any Owner, and subsequent investigation which verifies that complaint, have the right through its agents and employees to enter upon the offending Owner's Lot and repair, maintain and restore the Lot and exterior of the improvements on that Lot if the Owner shall fail to respond in a manner satisfactory to the Board within forty-five (45) days after mailing of adequate notice by certified mail to the last known address of the Owner. The cost of such repair, maintenance or restoration shall be assessed against the Lot, and the Board shall have the right to cause to be recorded a notice of lien for labor and materials furnished, which lien may be enforced in the manner provided by law. In the event that the estimated cost of such repair should exceed one percent of the assessed value of the Lot, or two (2) percent of the cost of the improvements on that Lot, the Board shall be required to have the assent of two-thirds of the Members before undertaking such repairs.

Section 4. Enforcement During the Development Period. During the Development Period, the Declarant may elect to exercise and perform the functions of the Board. If the Declarant elects not to perform this function or any time elects to no longer perform this function, itself or through the board, the Declarant shall appoint the Temporary Board to function as provided hereinabove.

ARTICLE X

HOMEOWNER'S ASSOCIATION

Section 1. Non-Profit Corporation. The Association shall be a non-profit corporation under the laws of the State of Washington.

Section 2. Membership. Every person or entity which is an Owner of any Lot shall become a member of the Association. Membership shall be appurtenant to the Lot and may not be separated from ownership of any Lot and shall not be assigned or conveyed in any way except upon the transfer of title to said Lot and then only to the transferee of title to the Lot. All Owners shall have the rights and duties specified in this Declaration, the Articles and the By-Laws of this Association.

Section 3. Voting Rights. Owners, including the Declarant, shall be entitled to one vote for each Lot owned. When more than one person or entity owns an interest in any Lot, the vote for that Lot shall be exercised as the Owners decide to exercise that vote but, in no event, shall more than one vote be cast with respect to any Lot nor shall any vote be divided. The voting rights of any Owner may be suspended as provided for in this Declaration, the Articles and the By-Laws of the Association.



Section 4. Meetings. Meetings shall be conducted in accord with the specifications set forth in the By-Laws of the **Morningside Phases II & III** Homeowner's Association.

ARTICLE XI

MANAGEMENT BY BOARD

Section 1. Expiration of the Development Period. Upon expiration of the Declarant's management authority under Article IV, all administrative power and authority shall rest in a Board of three directors who need not be members of the Association. The Association, by amendment of the By-Laws, may increase the number of directors. All Board positions shall be open for election at the second annual meeting after termination of the Development Period under Article IV.

Section 2. Terms. The terms of the Board are defined in the By-Laws.

Section 3. Powers of the Board. All powers of the Board must be exercised in accord with the specifications which are set forth in the By-Laws. The Board, for the benefit of all the Properties and the Lot Owners, shall enforce the provisions of this Declaration and the By-Laws. In addition to the duties and powers imposed by the By-Laws and any resolution of the Association that may be hereafter adopted, the Board shall have the power and be responsible for the following, in way of explanation but not limitation:

- (a) Insurance. Obtain policies of general liability insurance.
- (b) Legal and Accounting Services. Obtain legal and accounting services if necessary to the administration of Association affairs, administration of the Common Areas, or the enforcement of this Declaration.
- (c) Maintenance. Pay all costs of maintaining the Common Areas and Common Maintenance or Easement Areas.
- (d) Maintenance of Lots. If necessary, maintain any Lot if such maintenance is reasonably necessary in the judgment of the Board to (1) protect Common Areas and Common Maintenance or Easement Areas or (2) to preserve the appearance and value of the Properties or Lot. The Board may authorize such maintenance activities if the Owner or Owners of the Lot have failed or refused to perform maintenance within a reasonable time after written notice of the necessity of such maintenance has

been delivered by the Board to the Owner or Owners of such Lot, provided that the Board shall levy a special assessment against the Owner or Owners of such Lot for the cost of such maintenance.

(e) Discharge of Liens. The Board may also pay any amount necessary to discharge any lien or encumbrance levied against the entire Properties or any part thereof which is claimed or may, in the opinion of the Board, constitute a lien against the Properties or against the Common Areas rather than merely against the interest therein of particular Owners. Where one or more Owners are responsible for the existence of such liens, they shall be jointly and severally liable for the cost of discharging it and any costs or expenses including reasonable attorneys fees and costs of title search incurred by the Board by reasons of such lien or liens. Such fees and costs shall be assessed against the Owner or Owners and the Lot responsible to the extent of their responsibility.

(f) Utilities. Pay all utility charges attributable to Common Areas and Common Maintenance or Easement Areas.

(g) Security. Pay all costs deemed appropriate by the Board to ensure adequate security for the Lots and Common Areas constituting the residential community created on the Properties.

(h) Right to Contract. Have the exclusive right to contract for all goods, services, maintenance, and capital improvements Provided, However, that such right of contract shall be subject to Association approval.

(i) Improvement of Common Areas. Improve the Common Areas with capital improvements to such Common Areas; provided that for those capital improvements exceeding \$10,000.00, sixty percent (60%) of the Owners must approve the addition of such capital improvements to the Common Area.

(j) Right of Entry. Enter any Lot, when reasonably necessary and with the consent of the particular homeowner, except in the event of emergencies or in connection with any maintenance, landscaping or construction for which the Board is responsible. Where consent is required, such consent shall not be unreasonably withheld. Except in cases of emergencies, the Board, its agents or employees shall attempt to give notice to the Owner of any Lot twenty-four (24)



hours prior to the requested entry. Such entry must be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Board if the entry was due to an emergency (unless the emergency was caused by the Owner of the Lot entered, in which case the cost shall be specially assessed to the Lot). If the repairs or maintenance activities were necessitated by the Owner's neglect of the Lot, the cost of such repair or maintenance activity shall be specially assessed to that Lot. If the emergency or the need for maintenance or repair was caused by another Owner of another Lot, the cost thereof shall be specially assessed against the Owner of the other Lot.

(k) Promulgation of Rules. Adopt and publish rules and regulations governing the members and their guests and establish penalties for any infraction thereof.

(l) Declaration of Vacancies. Declare the office of a member of the Board to be vacant in the event that a member of the Board is absent from three consecutive regular meetings of the Board.

(m) Employment of Manager. Employ a manager, an independent contractor, or such other employees as the Board deems necessary and describe the duties of such employees.

(n) Payment for Goods and Services. Pay for all goods and services required for the proper functioning of the Common Area and Common Maintenance or Easement Areas.

(o) Impose Assessments. Impose annual and special assessments.

(p) Bank Account. Open a bank account on behalf of the Association and designate the signatories required.

(q) Exercise of Powers, Duties and Authority. Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of the By-Laws, Articles of Incorporation, or this Declaration. The Board shall have all powers and authority permitted to it under this Declaration and the By-Laws. However, nothing herein contained shall be construed to give the Board authority to conduct a business for profit on behalf of all the Owners or any of them.



ARTICLE XII

LAND USE RESTRICTIONS

Section 1. Residential use - Size All Lots within the Properties shall be used solely for private single family residential purposes and no part of the Properties shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other such non-residential purposes; PROVIDED HOWEVER THE FOLLOWING SHALL APPLY:

(1) Grantor, its successor or assigns, may use any portion of the Properties for a model home site and/or display a sales office during the construction and/or sale period;

(2) Incidental use of the residence by a licensed professional for his or her non-primary work place may be allowed if there is no outward appearance of a business at the dwelling and no zoning laws are violated; and

(3) One or more single family structures may, at the sole and unfettered discretion of the Association or Declarant, if the Declarant is still in control of the Association, approve the use thereof as a day-care facility(s), depending on the needs of the surrounding community. It is acknowledged that there is becoming a need for localized day-care facilities in residential communities. The Association and/or Declarant are to be in charge of assessing the needs of the local community based on the facts presented, and to determine the need and number of small day-care facilities needed. In no event shall any such approved day-care facility violate any Spokane County rules, regulations or laws, and said facility(s) shall always maintain the appearance from the street as a single family residence.

Single family residences shall consist of no less than one Lot. No residence shall be constructed which exceeds three stories in height, inclusive of basement. Each residence must have a garage for not less than three (3) cars. No single structure shall be altered to provide residence for more than one family.

Dwelling size provisions for all lots in **Morningside Phases II & III:** Ranch type residences (residences consisting of a basement and one story or residences consisting of a single story) shall contain a minimum of 1,500 square feet. Two story residences (residences consisting of a basement and two stories or residences consisting of two stories) shall contain a minimum of 1,800 square feet on the top two floors. Split level residences shall contain a minimum of 1,350 square feet, under roof, for the combined top two (2) levels. In computing the total square footage of a residence, the basement shall not be included.



Section 2. Quiet Enjoyment. No Lot shall be used in a fashion which unreasonably interferes with the other Owners right to use and enjoy their respective Lots or Common Areas. The Board, the Committee designated by it, or the Declarant during the Development Period, shall determine whether any given use of a Site unreasonably interferes with those rights; such determinations shall be conclusive.

Section 3. Nuisances. No noxious or offensive activity shall be conducted on any Lot or Common Area nor shall anything be done or maintained on the Properties which may be or become an activity or condition which unreasonably interferes with the right of Other Owners to use and enjoy any part of the Properties. No activity or condition shall be conducted or maintained on any part of the Properties which detracts from the value of the Properties as a residential community. No untidy or unsightly condition shall be maintained on any property. Untidy conditions shall include, but are not limited to, publicly visible storage of wood, boats, trailers, recreational vehicles and disabled vehicles of any kind whatsoever.

Section 4. Fences. Fences, walls or shrubs are permitted to delineate the Lot lines of each Lot, subject to (1) the approval of the Committee and (2) determination whether such fences, walls or shrubs would interfere with utility easements reflected on the face of the Plat and other easements elsewhere recorded. No barbed wire or corrugated fiberglass fences shall be erected on any Lot. Vinyl coated chain link fences will be permitted (galvanized chain link will not be permitted), provided that the color and quality are approved in writing by the Committee. All fences shall be stained or painted within ninety (90) days of installation. All fences, including the color and materials, whether open or solid, are to meet the standards set by the Committee and must be approved by the Committee in writing prior to construction or installation.

Section 5. Temporary Structures/Vehicles. No structure of a temporary character or trailer, recreational vehicle, basement, tent, shack, garage, barn, or other out buildings shall be used on any Lot at any time as a residence, either temporarily or permanently. No vehicles parked in public rights-of-way may be used temporarily or permanently for residential purposes.

Section 6. Mining. No oil drilling, oil development operations, oil refining, quarrying, or mining operation of any kind shall be permitted on or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted on or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. Oil storage for residential heating purposes is permissible if the storage tank is buried.



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Page: 21 of 33

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Section 7. Building Setbacks. The minimum front and side yard setbacks requirement for all residences in the Plat shall be as per the requirements of the Spokane County Building Department and the Architectural Control Committee of **Morningside Phases II & III** shall have review and approval rights on each dwelling or detached garage, if permitted, so as to determine, in its sole discretion, whether such proposed construction will have any unreasonable adverse impacts on adjoining or nearby lots. No dwelling shall be located on any Lot nearer than thirty (30) feet to the rear Lot line. For the purpose of this Covenant, eaves, steps, chimney and open porches shall not be considered as part of the dwelling; Provided, However, that this shall not be construed to permit any portion of a dwelling on a Lot to encroach upon another Lot or upon any easement indicated on the face of the Plat or as otherwise recorded or upon Common Area. All exterior decks, porches, patios, etc., must be approved in writing by the Architectural Control Committee prior to construction.

Section 8. Signs. No signs, billboards, or other advertising structure or device shall be displayed to the public view on any Lot except one sign not to exceed five (5) square feet in area may be placed on a Lot to offer the property for sale or rent. Larger signs also may be used by the Declarant or a builder to advertise the Property during the construction and sale period. Political yard signs, not more than five (5) square feet, of a temporary nature will be allowed during campaign periods on Lots. Within five (5) days of the occurrence of the election, such signs must be removed from Lots. The Board may cause any sign placed on Properties in violation of this provision to be removed and destroyed with the cost thereof to be assessed to that Lot Owner.

Section 9. Animals. No animals other than dogs, cats, caged birds, tanked fish, and other conventional small household pets may be kept on Lots. Dogs or cats shall not be allowed to run at large. Leashed animals are permitted within rights-of-way. All efforts should be made by the person accompanying the animal to remove animal waste deposited on lawns and rights-of-way. All pens and enclosures must be approved by the Committee prior to construction and shall be kept clean and odor free at all times. If the investigation of the Board indicates that animals are kept in violation of this section, the Board will give the Lot Owner written notice of the violation. Such violations must be remedied by the Owner within ten (10) days of receipt thereof or posting of service of the notice to the residential structure, except animal droppings, which must be cleaned up within twenty-four (24) hours of notice. Failure to comply with the written notice will result in a fine of \$25.00 per day **plus** all actual costs of the Declarant or the Association incurred in correcting the violation or for cleaning up the animal droppings. The Declarant or Association



shall be entitled to recover the attorneys fees for any action taken to issue said notices and to collect such fines.

Section 10. Delegation of Use and Responsibilities. Any Owner may delegate, in accord with the By-Laws of the **Morningside Phases II & III** Homeowner's Association, his right of enjoyment of Common Areas to members of his family, his tenants, or contract purchasers who reside on the property. In the event an Owner rents or leases his property, a copy of this Declaration as well as any rules and regulations that may be adopted by the Association shall be made available by the Owner to the prospective renter at the time of commitment to the rental agreement. Each Owner shall also be responsible for informing guests and service personnel of the contents of this Declaration, as well as any rules and regulations that may be adopted by the Association as they may relate to appropriate community behavior.

ARTICLE XIII

BUILDING RESTRICTIONS

Section 1. Building Materials. All homes constructed on each Lot shall be built of new materials including any landscape timbers. The Committee will consider whether the material harmonizes with the aesthetic character of the **Morningside Phases II & III** development and whether the material would add to the attractive development of the subdivision. All roofs, including the colors and materials, are to meet the standards set by the Committee. All siding and trim are to be of products approved by the Committee. All visible masonry shall be stone, brick or stucco type finishes, with the color thereof to be approved in writing by the Architectural Control Committee prior to construction. All exterior paint colors shall be approved in writing by the Architectural Control Committee prior to installation.

If inferior materials are utilized, the Committee will require that such materials be replaced. The: (1) grade of materials, and (2) price of materials shall be relevant considerations in determining whether the materials are of the above described quality.

Section 2. Construction Clean Up. At all times during construction of a home or other building on a lot, the Lot Owner shall see that construction debris is promptly removed from the lot within fourteen (14) days of completion of that aspect of construction, ie. for example, when framing is completed, the framing debris shall be removed within 14 days of completion of framing. In the event that any Lot Owner, or agent thereof, shall fail to comply with this section, the Declarant or the Association if delegated to the Association by the Declarant, may contract for



removal of said debris and the applicable Lot and Lot Owner shall be responsible for all costs incurred to remove said debris, including all legal fees incurred to collect said amounts. Unpaid costs shall be a lien on the Lot, as well, and be foreclosable as setforth in this Declaration. At no time shall any Lot Owner or agent thereof cause any construction debris to be placed on any other Lot Owner's Lot, without immediate removal thereof.

Section 3. Permits. No construction or exterior addition or change or alteration of any structure may be started on any portion of the Properties without the Owner first obtaining a building permit and other necessary permits from the proper local governmental authority and written approval of such permits from the Board, Committee or the Declarant. The Committee must approve the plans for all construction or alteration proposals.

Section 4. Codes. All construction shall conform to the requirements of the State of Washington's Rules and Regulations for Installing Electric Wires and Equipment, and Uniform Codes (building, mechanical, plumbing), in force at the commencement of the construction, including the latest revisions thereof.

Section 5. Time of Completion. The exterior of any structure, including painting or other suitable finish and initial landscaping of front and side yards, shall be completed within twelve (12) months of the beginning of construction so as to present a finished appearance when viewed from any curbside angle. The construction area shall be kept reasonably clean during the construction period.

Section 6. Entry for Inspection. Any agent, officer or member of the Board, Committee, or the Declarant may, at any reasonable predetermined hour, upon twenty-four (24) hours notice during construction or exterior remodeling, enter and inspect the structure to determine if there has been compliance with the provisions of this Declaration. The above recited individuals shall not be deemed guilty of trespass for such entry or inspection. There is created an easement over, upon and across the residential lots for the purpose of making and carrying out such inspections.

ARTICLE XIV

UTILITIES

Section 1. Wiring. The wiring of accessory buildings of any kind shall be underground.

Section 2. Antennae. Radio or television antennae, transmitters or parabolic reflectors (satellite dish antennae)



shall not be permitted unless the Architectural Control Committee approves use thereof in writing, prior to installation thereof. In developing the Antennae policy, the Architectural Control Committee may take into account changes in the technology then present, and the overall needs and desires of the homeowners in the subdivision. The decision of the Architectural Control Committee shall be final and binding and it shall state its policy in writing so there will be equal treatment. It is the intent of this section to prohibit exterior types of antennae of today's technology in all but the most in-obtrusive styles, so as to prevent unsightly outward appearances, yet acknowledging that new technology may be created to minimize unsightliness of exterior antennae. The Committee's discretion shall take into consideration that cable television will be available in this subdivision and homeowners are encouraged utilize this service rather than erect their own unsightly reception devices.

Section 3 . Street lights. The Declarant and/or utility company may install the necessary street lights in the project. If necessary, the cost of maintenance, repair and usage of the street lights shall be the responsibility of the Homeowner's Association, with said costs to be passed on as other common area expenses, or shall be billed direct by utility providers as part of each lot's monthly fee.

ARTICLE XV

ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee ("Committee"). Upon termination of the Development Period, the Board shall appoint a Committee. The Committee shall consist of not less than three (3) and not more than five (5) members. It is not a requirement that members of the Committee be (1) Owners or (2) members of the Association.

During the Development Period, the Declarant may elect to exercise and perform the functions of the Committee. If the Declarant elects not to perform this function, or at any time elects to no longer perform this function, the Declarant or the Board shall appoint the Committee to function as herein provided. After termination of the Development Period, the functions of the Committee shall be performed by the Board until such time as the Board shall appoint and designate the Committee. The Committee shall be appointed within one (1) month of the appointment of the Board following the termination of the Development Period.

Section 2. Jurisdiction and Purpose. The Committee or the Declarant shall review proposed plans, plot plans and specifications for Residences, accessory structures (e.g., garden sheds, tool sheds, doll houses, and playground equipment), and



landscaping fences, landscaping walls, appurtenant recreational facilities (e.g., hot tubs, spas, basketball courts, basketball hoops, tennis courts, swimming pools, and bath houses), or other exterior structures to be placed upon the Properties. No exterior addition or structural alteration may be made until plans and specifications showing the nature, kind, shape, height, materials and location of the proposed structure or alteration have been submitted to and approved, in writing, by the Committee. The Committee shall also review proposals to change the exterior color of homes in the Plat. The Committee shall determine whether the exterior design and location of the proposed structure, alteration, or color change harmonizes with the (1) surrounding structures, (2) surrounding natural and built environment, and (3) aesthetic character of other homes in the Plat.

Section 3. Landscaping. In addition to all other provisions regarding landscaping on individual lots as is stated elsewhere herein, the following provisions shall apply:

A). At the time each home is to be constructed, the builder and/or Owner shall submit a landscaping plan to the Architectural Control Committee stating the details of the landscaping contemplated.

B). Each Lot's landscaping plan shall contain a minimum of the following:

- (1) Drawing showing location of landscaping, and type and sizes of plants and materials to be completed for the front and side yards.
- (2) Description of all materials and plants to be used, with enough detail to adequately demonstrate that the intended landscaping to be installed is in conformance with the minimum standards set forth by the Architectural Control Committee. Each lot shall be expected to conform with the Landscape Standards to be established by the Architectural Control Committee.

C). Each home shall be required to install two (2) deciduous street trees behind the curb, between the curb and the sidewalk. These street trees shall be part of the landscape plan for each lot. The trees shall have a trunk size of not less than one and one-half (1½) inches in diameter and shall be not less than seven (7) feet in height.

D). In reviewing the landscaping plans submitted, the Architectural Control Committee shall reasonably attempt to insure that the requested approval for landscaping and materials is



consistent with the quality, quantity and attractiveness of landscaping and materials generally found in similar upper end type housing developments like **Morningside Phases II & III**.

E). The Architectural Control Committee is authorized but not required to establish certain minimum criteria for approval of landscaping and hardscaping plans if desired, but it is a fundamental requirement that "Landscaping", as used hereinabove, shall apply to and require more than just grass and a sprinkler system, and shall require usage of shrubbery, trees, bark, rock and other similar materials commonly used in above average residential landscaping. "Hardscaping" shall apply to and shall include brick planters, driveways and driving surfaces, as well as brick/stone light posts, and photocell address lights on the lightposts, which are MANDATORY REQUIREMENTS by the Committee and by this Declaration. The term "landscaping" as used hereinafter shall include "hardscaping" unless stated to the contrary.

F). The Declarant, while the Declarant runs the Homeowners Association, and the Architectural Control Committee thereafter, shall have the sole and exclusive authority to approve the landscaping components for the initial landscaping of the front and side yards of all homes in **Morningside Phases II & III**.

The Declarant, at it's sole discretion, may require additional hardscaping and landscaping, as described above, than that proposed by the applicant.

The purpose of this section is to insure a well coordinated blending of brick, trees, shrubs, grass, etc, to obtain an attractive street and curb appeal for the entire **Morningside Phases II & III** development.

G). All front and rear yard landscaping must be completed as per the Lot owner's landscape plan within six (6) months of occupancy of any home. The Committee shall have the authority to reject any landscape plans submitted to it that fail to meet the customs and standards of the landscape industry in Spokane. In the event landscaping is not completed, the home owner association, or the Declarant at it's sole discretion, may go upon the lot and complete the landscaping and charge the lot owner for the cost of any work and/or materials performed or supplied. A lien may be filed for any such charges remaining unpaid after ten (10) days notice by Declarant, which lien may be foreclosed as provided in this Declaration for lien foreclosure, including all legal fee costs incurred by Declarant.

Section 4. Membership. The Committee shall be designated by the Board. An election to fill either a newly created position on



the Committee or a vacancy on the Committee requires the vote of the majority of the entire Board. However, the Board is not obliged to fill a vacancy on the Committee unless the membership of the Committee numbers less than three (3) persons, except during the time the board and committee are controlled by the Declarant, as specified in this Declaration.

Section 5. Designation of a Representative. The Committee may unanimously designate one or more of its members or a third party to act on behalf of the Committee with respect to both ministerial matters and discretionary judgments. The decisions of such individuals are subject to review by the entire Committee at the request of any member of the Committee.

Section 6. Donation of Time. No member of the Committee shall be entitled to any compensation for services performed on behalf of the Committee. Committee members and association officers and Board members (including the Declarant during the Development Period) shall have no financial liability resulting from such Committee or Board actions within the scope of their authority, and the Association shall indemnify and hold all such committee members, officers and Board Members harmless from any liability arising from serving on the Committee/Board and fulfilling Committee/Board functions, including the providing of a legal defense if any action is brought including such a Committee member, officer or Board member.

Section 7. Address of the Committee. The address of the Committee shall be at the registered office address of the Association.

Section 8. Voting. Committee decisions shall be determined by a majority vote by the members of the Committee.

Section 9. Submission of Plans. All plans and specifications required to be submitted to the Committee shall be submitted by mail to the address of the Committee in duplicate. Any plans or parts thereof not submitted for review, shall not be deemed approved in any manner whatsoever. The failure of the Committee to may any one owner comply with any requirements of these CC&R's shall not constitute consent of any other owners not to comply. It is the intent hereof that the Committee shall have the sole and complete discretion in these matters to approve or disapprove owners' construction plans with a view on the entire package and not one particular element, for appropriateness in general within the subdivision. The written submission shall contain the name and address of the Owner submitting the plans and specifications, identify the Lot involved, and the following information about the proposed structures:



- (a) The location of the structure upon the Lot;
- (b) The elevation of the structure with reference to the existing and finished Lot grade, as well as curb;
- (c) Plot Plan showing location of the building, building sizes and set backs from the lot boundaries;
- (d) The general design;
- (e) The interior layout, with finished and unfinished square footages clearly depicted;
- (f) The exterior design, size, color and finish materials, including but not limited to: roof pitch and materials to be used for roofing (including manufacturer, warranty, etc) , siding, paint, masonry, stone, brick, windows and fencing;
- (g) The landscape plan; and
- (h) Other information which may be required in order to determine whether the structure conforms to the standards articulated in this Declaration and the standards employed by the Committee in evaluating development proposals.

Section 10. Evaluating Development Proposals. The Committee shall have the authority to establish aesthetic standards for evaluating development proposals. In addition to such standards, in evaluating development proposals, the Committee shall determine whether the external design, color, building materials, appearance, height, configuration, and landscaping of the proposed structure harmonize with: (1) the various features of the natural and built environment; (2) the aesthetic character of the other homes in **Morningside Phases II & III**; and (3) any other factors which affect the desirability or suitability of a proposed structure or alteration. The Committee shall decline to approve any design which: (1) fails to meet the above recited standards and any other aesthetic standards promulgated the Committee; (2) impacts adversely on nearby Properties and Common Areas; (3) in the opinion of the Committee, impairs the view of nearby Properties; or (4) is of a temporary or non-permanent nature. Committee determinations may be amended by a majority vote of Committee members.

Section 11. Approval Procedures. Within fourteen (14) days after the receipt of plans and specifications, the Committee shall approve or disapprove the proposed structure. The Committee may decline to approve plans and specifications which, in its opinion,



do not conform to restrictions articulated in this Declaration or to its aesthetic standards. The Committee shall indicate its approval or disapproval on one of the copies of the plan and specifications provided by the applicant and shall return the plans and specifications to the address shown on the plan and specifications. In the event that no disapproval of such plans and specifications is given within fourteen (14) days of submission, copies of plans and specifications shall be delivered to the Owners of adjacent Lots within the Properties together with a statement to the effect that: (1) the plans and specifications have been submitted to the Committee; (2) fourteen (14) days have passed since the date of the submission and no action has been taken on the plans and specifications by the Committee; and (3) unless a legal action by the Owners to enjoin the construction pursuant to the submitted plans and specifications is filed within ten (10) days after receipt of the delivered copies, construction will be commenced pursuant to the plans and specifications. If no legal action to enjoin the construction is commenced within ten (1) days of delivery of the copies of the submitted plans and specifications to adjacent property Owners, the plans and specifications shall be deemed to be approved by the Committee and construction pursuant to the plans and specifications may be commenced.

Section 12. Compliance with Codes. In all cases, ultimate responsibility for satisfying all local building codes and requirements rests with the Owner and contractor employed by the Owner. The Committee has no responsibility for ensuring that plans and specifications which it reviews comply with local building codes and requirements. The Committee shall be held harmless in the event that a structure which it authorizes fails to comply with relevant building and zoning requirements. No person or the Declarant on the Committee or acting on behalf of the Committee shall be held responsible for any defect in any plans or specifications which are approved by the Committee nor shall any member of the Committee or any person acting on behalf of the Committee be held responsible for any defect in a structure which was built pursuant to plans and specifications approved by the Committee.

Section 13. Variation. The Committee shall have the authority to approve plans and specifications which do not conform to these restrictions in order to: (1) overcome practical difficulties; or (2) prevent undue hardship from being imposed on an Owner as a result of applying these restrictions. However, such variations may only be approved in the event that the variation will not, in the Committee's sole opinion: (1) detrimentally impact on the overall appearance of the development; (2) impair the attractive development of the subdivision; or (3) adversely affect the character of nearby Lots or Common Areas. Granting such a variation shall not constitute a waiver of the restrictions



articulated in this Declaration. Variation shall only be granted if the Committee determines that the variation would further the purposes and intent of these restrictions. Violations shall only be granted in extraordinary circumstances, and at the discretion of the Committee.

Section 14. Enforcement. In any judicial action to enforce a determination of the Committee, the losing party shall pay the prevailing party's attorneys fees, expert witness fees, and other costs incurred in connection with such a legal action or appeal (see Article XVI, Section 4).

ARTICLE XVI

GENERAL PROVISIONS

Section 1. Covenants Running With The Land. These covenants are to run with the land and be binding on all parties and persons claiming under them for a period of thirty (30) years from the date these covenants are recorded, after which time the covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the individuals then owning Lots has been recorded which reflects their intent to amend the covenants in whole or in part.

Section 2. Amendment. This Declaration and the By-Laws may be amended during the initial thirty (30) year period if seventy-five percent (75%) of the members vote to amend particular provisions of either instrument, Provided However, this Declaration may be amended during the Development Period by an instrument signed by the Declarant. The provisions expressly referring to the Declarant may not be amended without the Declarant's approval. All amendments must be filed with the office of the Spokane County Auditor.

Section 3. Enforcement. The Association, the Board, or any Owner shall have the right to enforce, by any legal proceeding, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration.

Section 4. Attorneys Fees. In the event that it is necessary to seek the services of an attorney in order to enforce any: (1) provision of this Declaration; or (2) lien created pursuant to the authority of this Declaration, the individual against whom enforcement is sought shall be obliged to pay any attorneys fees incurred. If the Owner fails to pay such fees within sixty (60) days, such fees shall become a lien against the Owner's Lot.

In any legal action commenced in order to enforce the provisions of this Declaration, the prevailing party shall be



entitled to recover all reasonable attorneys fees and expert witness fees incurred in order to enforce the provisions of this Declaration. The prevailing party shall also be entitled to recover all costs.

Section 5. Successors and Assigns. The covenants, restrictions and conditions articulated in this Declaration shall run with the land and shall accordingly be binding on and inure to all successors and assigns.

Section 6. Severability. The invalidity of any one or more phrases, clauses, sentences, paragraphs or sections hereof shall not affect the remaining portions of this Declaration or any part thereof. In the event that one or more of the phrases, clauses, sentences paragraphs or sections contained herein should be invalid, this Declaration shall be construed as if the invalid phrase, clause, sentence, paragraph or section had not been inserted.

Section 7. Rule Against Perpetuities. In the event that any provision or provisions of this Declaration violate the rule against perpetuities, such provision or provisions shall be construed as being void and of no effect as of twenty-one (21) years after the death of the last surviving incorporator of the Association or twenty-one (21) years after the death of the last survivor of all of the incorporators' children and grandchildren who shall be living at the time this instrument is executed, whichever is later.

IN WITNESS WHEREOF the undersigned, being the Declarant herein, have hereunto set its hand and seal this 24th day of July, 2002.

DAHM DEVELOPMENT, INC.
By: Richard T. Dahm
RICHARD T. DAHM, President



STATE OF WASHINGTON)
) ss.
County of Spokane)

On this 24th day of July, 2002, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared RICHARD T. DAHM, to me known to be the President of DAHM DEVELOPMENT, INC., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes mentioned, and on oath stated that he was authorized to execute the said instrument.

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



Sandra J. Butler
Notary Public in and for the State
of Washington, residing in Spokane
My Commission Expires: 9-1-2005

CONSENT TO RECORDATION OF DECLARATION

Washington Trust Bank Bank and the other undersigned parties, which are the holders of a First Mortgage and/or construction mortgages and second Deed of Trust, respectively, covering the Properties described in the foregoing Declaration, hereby acknowledges that they have read and approve the above and foregoing Declaration, and each entity and individual signing below agrees that the lien of said Deeds of Trust and/or Mortgages shall be subject to the Declaration to the same extent as though the Declaration were executed and recorded prior to the Deed of Trust(s)/Mortgage(s).

DATED this 24th day of July, 2002.

WASHINGTON TRUST BANK BANK

By: Constance M. Buschhoff
It's R.S.V.P.

By: _____
It's _____



EXHIBIT "A"

MORNINGSIDE PHASE II, being a parcel of land in the West 1/2 of Section 30, T.25 N., R. 45 E., W.M., in Spokane County, State of Washington, described as follows:

Beginning at the most Easterly corner of the Plat of Morningside, Phase 1 as per Plat thereof recorded in Volume 22 of plats, pages 88 and 89, Spokane County, Washington; thence, S.56°35'42"W., along said Plat Boundary 177.09 feet; thence S.17°26'23"W., 43.33 feet to the beginning of curve to the right, the radius of which bears S.55°02'57"W., a distance of 482.50 feet; thence along said curve to the right, through a central angle of 08°31'39", an arc distance of 71.81 feet to the beginning of a curve to the right, the radius of which bears S.63°34'36"W., a distance of 20.00 feet; thence along said curve to the right, through a central angle of 108°38'01", an arc distance of 37.92 feet; thence S.25°04'00"E., 36.65 feet to the beginning of a curve to the right, the radius of which bears S.07°47'23"E., a distance of 20.00 feet; thence along said curve to the right, through a central angle of 80°47'46", an arc distance of 28.20 feet to the beginning of a curve to the right, the radius of which bears S.73°00'23"W., a distance of 475.00 feet; thence along said curve to the right through a central angle of 09°12'14", an arc distance of 76.30 feet, thence S.07°47'23"E., 84.72 feet to the beginning of a curve to the right, the radius of which bears S.82°12'37"W., a distance of 20.00 feet; thence along said curve to the right, through a central angle of 90°00'00", an arc distance of 31.42 feet; thence N.82°12'37"E., 165.71 feet to the beginning of a curve to the left, the radius of which bears N.07°47'23"W., a distance of 1150.00 feet; thence along said curve to the left, through a central angle of 25°12'53", an arc distance of 506.09 feet; thence N.38°37'13"W., 358.12 feet; thence S.86°16'49"W., 320.00 feet to the Point of Beginning.

MORNINGSIDE PHASE III, being a parcel of land in the West 1/2 of Section 30, T.25 N., R.45 E., W.M., and the East 1/2 of Section 25, T.25 N., R. 44 E., W.M., in Spokane County, State of Washington, described as follows:

Beginning at the Northeastly corner of Lot 15, Block 4 of the Plat of Morningside Phase 1 as per plat recorded in Volume 22 of plats, pages 88 and 89, Spokane County, Washington; thence along said plat boundary line, the following 6 courses:

1. S.46°08'55" W., 157.11
2. N.48°37'23" W., 497.89
3. S.43°24'35" W., 203.63
4. S.17°39'04" W., 37.48
5. S.44°17'05" W., 286.48
6. S.65°14'27" E., 386.08

to the Northwest corner of Lot 1, Block 3 of the Plat of Viewmont at Morningside (PUD) as per plat recorded in Book 24, Page 48, Spokane County, Washington; thence S.46°37'52"E., along the Northeastly line of said Lot 1, 157.65 feet to the Northerly right of way line of Chapman Road and the beginning of a curve to the right the radius of which bears S.35°02'27"E., a distance of 530.00 feet; thence along said curve to the right, through a central angle of 27°15'04", an arc distance of 252.08 feet; thence N.82°12'37"E., 212.04 feet to the beginning of a curve to the left the radius of which bears N.07°47'23"W., a distance of 20.00 feet; thence along said curve to the left, through a central angle of 90°00'00", an arc distance of 31.42 feet; thence N.07°47'23" W., 84.72 feet to the beginning of a curve to the left the radius of which bears S.82°12'37"W., a distance of 475.00 feet; thence along said curve to the left, through a central angle of 09°12'14", an arc distance of 76.30 feet to the beginning of a curve to the left the radius of which bears S.73°00'23"W., a distance of 20.00 feet; thence along said curve to the left, through a central angle of 80°47'46", an arc distance of 28.20 feet; thence N.25°04'00"W., 36.65 feet to the beginning of a curve to the left the radius of which bears N.07°47'23" W., a distance of 20.00 feet; thence along said curve to the left, through a central angle of 108°38'01", an arc distance of 37.92 feet to the beginning of a curve to the left the radius of which bears S.63°34'36" W., a distance of 482.50 feet; thence along said curve to the left, through a central angle of 08°31'39", an arc distance of 71.81 feet to the Point of Beginning.