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SMITH, COV $35.00

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Document Title:

DECLARATION ESTABLISHING COVENANTS, CONDITIONS, AND RESTRICTIONS FOR UPPER TERRACE ESTATES

Grantor(s):

1. Upper Terrace, L.L.C.

Grantee(s):

1.

Legal Description: 29-27-43 COM at the NW Cor of SD S ● ½ N½ N½ NE¼ Sec 29 TH N

Parcel Numbers: 37291.9117

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DECLARATION ESTABLISHING COVENANTS, CONDITIONS, AND RESTRICTIONS FOR UPPER TERRACE ESTATES

This declaration is made this _____ day of May 2002, by Upper Terrace Estates, L.L.C., a Washington limited liability company, referred to as "Declarant."

ARTICLE I: GENERAL PROVISIONS

1.1 Real Property Description. Declarant is the developer and owner of that real property located in Spokane County, Washington, as described on Exhibits "A" and "B" attached hereto, sometimes referred to below as the "Property."

1.2 Development. Declarant intends to develop and market the Property as separate Building Lots for single family home purposes. Upon Recordation of this Declaration, Declarant submits and subject the Property, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto (all of which constitute a part of The Property as hereinafter defined), to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained herein, all of which shall run with the land.

1.3 Conditions. Any purchaser of a Lot within the Property acknowledges that said Lot is subject to zoning and subdivision ordinances and regulations and such other governmental ordinances and regulations, and approvals hereunder as may be in effect or as may from time to time be imposed. It is solely the purchaser's obligation to become familiar and comply with the same.

ARTICLE II: DECLARATION

Declarant hereby declares that the Property, and each Lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale thereof, and to enhance the value, desirability and attractiveness thereof. The terms, covenants, conditions, easements and restrictions set forth herein shall run with the land, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in said real property or any Lot, parcel or portion

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thereof; shall inure to the benefit of and be binding upon Declarant, Declarant's successors in interest and each grantee or owner and such grantee's or owner's respective successors in interest, and may be enforced by Declarant, by any owner or such owner's successors in interest, against any other owner, tenant or occupant of said real property.

Notwithstanding the foregoing, no provision of this Declaration shall be construed so as to prevent or limit Declarant's right to complete development of the Property and to construct improvements thereon, nor Declarant's right to maintain model homes, construction, sales or leasing offices or similar facilities (temporary or otherwise) on any portion thereof, nor Declarant's right to post signs incidental to construction, sales or leasing.

ARTICLE III: DEFINITIONS

3.1 "Architectural Committee" shall mean the committee created by the Declarant or an Association pursuant to Article X hereof, and may be referred to herein as the "Committee."

3.2 "Articles" shall mean the Articles of Incorporation of the Association or other organizational or charter documents of the Association.

3.3 "Assessments" shall mean those payments required of Owners or Association Members, including Regular, Special and Limited Assessments of the Association as further defined in this Declaration.

3.4 "Association" shall mean the Upper Terrace Estates Owners Association, a Washington non-profit corporation, its successors and assigns, established by Declarant to exercise the powers and to carry out the duties set forth in this Declaration or any Supplemental Declaration.

3.5 "Board" shall mean the Board of Directors or other governing board or individual, if applicable, of the Association.

3.6 "Building Lot" shall mean one or more lots within a Parcel as specified or shown on any Plat and/or by any Supplemental Declaration, upon which improvements may be constructed. With respect to Association voting rights, Building Lot shall also mean a lot so specified on any final plat or on any preliminary plat of the Property. For purposes of this Declaration, the real property legally described on Exhibit "B" attached hereto, together with easement rights reserved with such property over the Natural Conservation Area, shall be considered a single Building Lot entitling the owner thereof to membership within the Association, notwithstanding the fact that such lot is not included within the plat of Upper Terrace Estates filed or being filed with the Spokane County, Washington Auditor.

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3.7 "Common Area" shall mean all real property in which the Association holds an interest or which is held or maintained, permanently or temporarily, for the common use, enjoyment and benefit of the Owners. Every Owner has a right and easement of enjoyment to the Common Area that is appurtenant to the title to their Building Lot. Common Area may include easement and/or license rights.

3.8 "Declarant" shall mean Upper Terrace, L.L.C., a Washington limited liability company, the owner of the Property as of the date of execution of this Declaration. The term "Declarant" shall also include the successors in interest of the Declarant, so long as such successor is expressly designated as the successor Declarant by the immediately preceding Declarant.

3.9 "Declaration" shall mean this Declaration as it may be amended from time to time.

3.10 "Limited Assessment" shall mean a charge against a particular Owner and such Owner's Building Lot, directly attributable to the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration or any Supplemental Declaration, including interest thereon as provided in this Declaration or a Supplemental Declaration.

3.11 "Member" shall mean each person or entity holding a membership in the Association.

3.12 "Owner" shall mean the person or other legal entity, including Declarant, which acquires fee simple interest of record to a Building Lot which is covered by this Declaration, as well as purchasers under real estate contracts.

3.13 "Plat" shall mean any subdivision plat covering any portion of the Property as recorded at the office of the County Auditor, Spokane County, Washington, as the same may be amended by duly recorded amendments thereof.

3.14 "Regular Assessment" shall mean the portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in Regular Assessments which are authorized and to be paid by each Owner to the Association, pursuant to the terms hereof or the terms of this Declaration or a Supplemental Declaration.

3.15 "Special Assessment" shall mean the portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in Regular Assessments which are authorized and to be paid by each Owner to the Association, pursuant to the provisions of this Declaration or a Supplemental Declaration.

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ARTICLE IV: USE AND CONSTRUCTION RESTRICTIONS

4.1 Use of Individual Building Lots. No lot or dwelling shall he constructed, occupied or used except for new, site constructed single family residences of not less than the following number of square feet of finished living area above basement grade (i.e. basement areas); one story home - 1,100 square feet; split-entry style home - 1,100 square feet on the main level; 3 or 4 level home - 1,400 square feet finished and no less than 700 square feet on each floor; 2 story home - 1,800 square feet total with no less than 1,100 square feet on the main floor. No trade, business, profession, commercial or manufacturing enterprise or activity (other than home occupation) shall be conducted therein. As used in this paragraph the term "home occupation" shall mean only an occupation, profession or craft, carried on within a dwelling by the owner, which activity does not change the residential character of the dwelling, is conducted in such a manner as to not create any outward appearance of a business in the ordinary meaning of the term, as may be further defined by Spokane County Regulations.

Provided, however, nothing in this Section shall prevent the Declarant or a Builder from using a residence within the development to conduct business and sell lots or homes, on a temporary basis only until the last lot or house is sold.

No building shall be located nearer than 20 feet to the front line of the Building Lot, nor 20 feet to any side street line, nor 10 feet from the rear lot line. Further, no building shall be located nearer than five feet to any interior lot line. For purposes of this provision, eaves, steps, and open porches shall not be considered part of such building; provided no building on any Building Lot shall be permitted to encroach on any other Building Lot or portion of any Common Area. In the event any setback requirements established on the face of the plat of the Property or by any building, zoning or other similar regulations impose a more stringent setback, the more stringent setback requirement shall control.

4.2 Nuisances. No noxious, illegal or offensive activities shall be carried on within any Building Lot, or in any part of the Property, nor shall anything he done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the owners of his respective Building Lot, or which shall in any way increase any rate of insurance for any owner within the Property, or cause any insurance policy to be canceled or to cause a refusal to renew the same or otherwise conflict with the spirit of this Declaration in establishing a peaceful, residential community within the Property.

4.3 Vehicle and Equipment Restrictions. No vehicles shall be regularly parked on streets or roads serving more than one Building Lot. Rather, passenger vehicles will be regularly parked in garages or on driveways on the Building Lots. Travel trailers, campers, motor homes, recreational vehicles, boats, trailers,

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commercial vehicles, buses, or trucks, and similar vehicles and equipment may only be stored or kept behind fences or vegetation which screens such items so that they are not visible from outside the Building Lot on which they are kept. Provided, this provision shall not prohibit temporary placement of such items in other areas upon a Building Lot while being loaded or unloaded, or while actually in use. No inoperable automobile, and no vehicle which is in an extreme state of disrepair, shall be permitted to remain on any Building Lot, dedicated street or other area within the Property, other than temporarily for emergency repairs, unless placed or maintained within an enclosed garage. Commercial vehicles shall not be considered to include sedans, service vans or standard size pickup trucks which are used for both business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be reasonably unobtrusive and inoffensive. No noisy or smoky vehicle shall be operated on the Property. No off-road unlicensed motor vehicle shall be maintained or operated within the Property, except as reasonably necessary to the execution and the rights and duties of the Declarant under this Declaration. No goods, equipment, material, supplies or vehicles used in connection with any trade, service, or business whenever conducted, shall be kept parked, stared, dismantled, or repaired outdoors on any lot, or any dedicated street within the Property.

4.4 Signs. No owner shall display or permit the display to the public view on any Building Lots or on any portion of the Property. Provided, signs advertising such lot "For Sale" or "For Rent" shall be permitted, and signs required by law to be displayed by builders during construction of improvements will be permitted. Further, the Architectural Committee shall have the authority to erect one or more development or entry signs advertising Upper Terrace Estates on any of the Building Lots, provided such signs are erected prior to sale of such Building Lot(s) to a third party purchaser. The area around and adjacent to any such signs shall be landscaped and maintained by the Owner or Owners of the Building Lot or Lots on which they are situated, in a manner which will not obscure or obstruct the visibility of such sign(s).

4.5 Animals. No animals, livestock, poultry or birds of any kind shall be raised, bred or kept in any lot or dwelling, or on any portion of the Property; except that no more than two (2) usual and ordinary household pets, such as dogs, cats, or birds may be kept outdoors, provided that they are not kept, bred or maintained for any commercial purposes, and that they are kept under reasonable control at all times.

4.6 Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from each lot at each owner's expense, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not he kept except in sanitary containers. All equipment, garbage cans, wood piles, or storage piles shall be kept screened and concealed from view from the dedicated streets.

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4.7 Front Yard Landscaping. Landscaping shall include an automatic sprinkler system and shall be subsequently maintained in a condition consistent with other landscaped areas within the Property. Front yard landscaping on each Building Lot shall be completed within six months of the date of completion of the dwelling on such Building Lot.

4.8 Roofs. All roofs shall be constructed of asphalt composition of good quality or tile or comparable alternate product.

4.9 Garages. All dwellings shall have enclosed attached or detached garages of at least 20 feet by 22 feet in size, with fully improved driveways to the street; with said driveways to be of a hard surface material, such as exposed aggregate, asphalt, or concrete.

4.10 Mail Boxes, etc. Mail boxes and newspaper receptacles shall be placed as required by the U.S. Postal Service.

4.11 Accessory Buildings. All accessory buildings shall be placed within the rear or interior side yard area of each lot and shall not be constructed of a material inconsistent with the architecture, materials or color scheme of the dwelling on that Building Lot.

4.12 Fences, Walls. No fence, wall, hedge or mass planting, other than foundation planting, may extend nearer to a street than the minimum setback line of the dwelling as constructed. However, nothing in this subparagraph shall prevent the erection of a necessary retaining wall. No wire, cyclone or metal fencing of any kind shall he placed so as to be visible from any streets or private roads serving more than one Building Lot. Notwithstanding the foregoing, the existing cyclone fence adjoining the Natural Conservation Area shall not be considered to violate these Covenants, and may be maintained, repaired, reconstructed or replaced by the owner of the property legally described on Exhibit "B" attached hereto.

4.13 Antenna. No radio, citizens band, or other communication antenna shall be erected upon any Building Lot or dwelling except for standard television antennas which are reasonably unobtrusive and inoffensive. No television antenna or other receiving unit required to be permitted in a residential development pursuant to applicable federal or state laws or regulations, including Federal Communications Commission regulations, shall be considered forbidden by this provision.

4.14 Temporary Structures. No trailer, basement, tent, shack, garage, barn, camper or other outbuilding or any structure of a temporary character erected or placed on any lot shall at any time be used as a residence.

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4.15 Exterior Lighting. All exterior lighting shall be low intensity and shall be limited to landscaping or structural accent lighting.

4.16 Completion Time. Any dwelling or other structure erected or placed on any Building Lot shall be completed as to external appearance, including finished painting and front and side yard landscaping pursuant to plans and specifications within eight months from the date of commencement of construction. Provided, such period for completion may be extended in the discretion of the Architectural Committee to compensate for unavoidable delays caused by acts of God, strikes, embargoes, seizures, orders of governmental authorities, or other interruptions beyond the reasonable control of the Owner. The Owner of each Building Lot shall, as soon as reasonably possible after occupying the dwelling, but not to exceed three years, continue landscaping rear yard areas, in substantial conformity with other Building Lots within the Property.

4.17 Building Lots to be Kept in Good Repair. Each Owner shall keep their Building Lot, and all improvements thereon, in good order and repair, including but not limited to the seeding, watering and mowing of all lawns, pruning and necessary cutting of all trees and shrubbery, painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management practices. Garage interiors shall be maintained in a clean and orderly manner, so as to avoid the danger of fire.

ARTICLE V: UPPER TERRACE ESTATES OWNERS ASSOCIATION

5.1 Organization of Upper Terrace Estates Owners Association. Upper Terrace Estates Homeowner's Association, the "Association", shall be initially organized by Declarant as a Washington non-profit corporation under the provisions of Washington law relating to general non-profit corporations and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration.

5.2 Membership. Each Owner, by virtue of being an Owner and for so long as such ownership is maintained, shall be a Member of the Association and no Owner shall have more than one membership in the Association. Memberships in the Association, shall be appurtenant to the Building Lot owned by such Owner. The memberships in the Association shall not be transferred, pledged, assigned or alienated in any way except upon the transfer of Owner's title and then only to the transferee of such title. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Association.

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5.3 Voting. Voting in the Association shall be carried out by Members, including Declarant, who shall cast the votes attributable to the Building Lots which they own. The number of votes such Member may cast on any issue is determined by the number of Building Lots which the Member owns. Each owner, including the Declarant, shall have one vote for each Building Lot owned. When more than one person holds an interest in any Building Lot, all such persons shall share the vote attributable to the Building Lot, but fractional will not be allowed. The right to vote may not be severed or separated from the ownership of the Building Lot to which it is appurtenant, except that any Owner may give a revocable proxy to any person. Any sale, transfer of conveyance of such Building Lot to a new Owner shall operate automatically to transfer the appurtenant voting right to the new Owner.

5.4 Power and Duties of the Association. The Association shall have the powers of a corporation organized under the corporation laws of the State of Washington applicable to non-profit corporations, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws, and this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under Washington law and under this Declaration, and the Articles and Bylaws, and to do and perform any and all acts which may be necessary to, proper for, or incidental to the proper management and operation of the Common Area and the Association's other assets, and the affairs and the performance of the other responsibilities herein assigned, including without limitation:

5.4.1 Assessments. The power to levy Assessments on any Owner or any portion of the Property and to force payment of such Assessments, all in accordance with the provisions of this Declaration.

5.4.2 Right of Enforcement. The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner who consents thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or the Articles or the Bylaws, including the Association Rules adopted pursuant to this Declaration, and to enforce by injunction or otherwise, all provisions hereof.

5.4.3 Delegation of Powers. The authority to delegate its power and duties to committees, provided any such committee shall contain at lease two Directors of the Association; and to contract for the maintenance, repair, replacement and operation of the Common Area.

5.4.4 Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements and rights-of-way in, on or under the Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment of

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the Common Area, and for the preservation of the health, safety, convenience and the welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:

5.4.4.1 Lines, cables, wires, conduits or other devices for the transmission or provision of electricity or electronic signals for lighting, heating, power, telephone, television, communications or other purposes;

5.4.4.2 Sewers, storm drains, underground irrigation pipes, water drains and pipes, water supply systems, sprinkling systems, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; and

5.4.4.3 Mailboxes and sidewalk abutments around such mailboxes or any service facility, berm, fencing and landscaping abutting common areas, public and private streets or land conveyed for any public or quasi-public purpose including, but not limited to, bicycle pathways.

The right to grant such licenses, easements and rights-of-way are hereby expressly reserved to the Association and may be granted at any time prior to twenty-one (21) years following execution of this Declaration.

5.4.5 Operation and Maintenance of Common Area. Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of the Common Area, including the repair and replacement of all improvements within any portion of the Common Area.

5.4.6 Reserve Account. Establish and fund a reserve account with a reputable banking institution or savings and loan association, which reserve account shall be dedicated to the costs of repair, replacement, maintenance and improvement of the Common Area.

5.4.7 Taxes and Assessments. Pay all real and personal property taxes and Assessments separately levied against the Common Area or against the Association and/or any other property owned by the Association. Such taxes and Assessments may be contested or compromised by the Association, in its discretion.

5.4.8 Water and Other Utilities. Acquire, provide and/or pay for water, garbage disposal, refuse and rubbish collection, electrical, telephone and gas and other necessary services for the Common Area,

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and to manage all domestic, irrigation and amenity water rights and rights to receive water held by the Association, whether such rights are evidenced by license, permit, claim, stock ownership or otherwise.

5.4.9 Insurance. Obtain insurance from reputable insurance companies authorized to do business in the State of Washington, and maintain in effect any insurance policy the Board, in its discretion, deems necessary or advisable, including, without limitation fire and casualty insurance, public liability insurance, directors' and officers' liability insurance, and such other insurance, including motor vehicle insurance and Worker's Compensation insurance, to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonest of any employee or other person charged with the management or possession of any Association funds or other property.

5.4.10 Architectural Committee. Appoint and remove members of the Architectural Committee, subject to the provisions of this Declaration, provided, at lease two Directors of the Association shall serve at all times on this Committee.

5.4.11 Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably advisable or necessary to enforce any of the provisions of the Declaration, or of the Articles or Bylaws, including, without limitation, the recordation of any claim of lien with the Spokane County Auditor, as more fully provided herein.

5.5 Personal Liability. To the fullest extent permitted by law, no Member of the Board, member of any committee of the Association, officer of the Association, the Declarant, nor the manager, if any, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the released persons, provided that such person, upon the basis of such information as may be possessed by such person, has acted in good faith without willful or intentional misconduct. If a released person has so acted, the Association shall indemnify and hold harmless said person from any damage, loss or prejudice aforesaid, including actual defense costs and attorney's fees.

ARTICLE VI: COMMON AREA

6.1 Use of Common Area. Every Owner shall have a right to use the

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Common Area (except the Natural Conservation Area described below which no person is to use), which right shall be appurtenant to and shall pass with the title to every Building Lot. The Common Area cannot be mortgaged or conveyed without the consent of the Owners of at least two-thirds (2/3) of the Building Lots plus the owner of the property legally described on Exhibit "B" attached hereto. Further, the Natural Conservation Area shall never be mortgaged or conveyed. If ingress or egress to any residence is through the Common Area, any conveyance or encumbrance of such portion of the Common Area will be subject to such Building Lot Owner's easement. In furtherance of the development plan for the Property, the Declarant and the Association shall have the right to create easements and construct improvements on the Common Area (other than the Natural Conservation Area), including but not limited to providing utility and private drainfield or drainfield access, private streets, crossings, walkways, trails, open space, and other improvements deemed desirable by the Association and/or Declarant.

6.2 Designation of Common Area. Common Area is that area designated as Common Area as shown on the plat filed or to be filed covering the property legally described on Exhibit "A." The Common Area shall not include the area within the plat lying east of the existing cyclone fence and shown as a "Restricted Common Area" or "Natural Conservation Area," nor the existing cyclone fence encircling such area.

6.3 Maintenance of Common Area. The Association shall maintain improvements within the Common Areas in good condition and repair. Provided, Common Area improvements damaged beyond reasonable repair, or in a manner that would not be economically reasonable to repair or restore caused by Acts of God or catastrophic events need not be restored, repaired or further maintained.

At the time of execution of this Declaration, it is anticipated that one or more entry signs may be created by Declarant within the Property on one or more Building Lots. Once created, such entry way signs shall be part of the Common Area.

The Common Area will also include the private roadway shown on the Plat as Upper Terrace Lane, a community sewer pump, street lights servicing Upper Terrace Lane, and ancillary structures related to said road, pump or lighting. The Association shall maintain these portions of the Common Area in good and safe condition and repair, including performing routine maintenance function on the private roadway such as repairing the surface, providing necessary grading and snow removal, filling and patching holes, replacing portions of such roads as reasonably necessary, and similar items.

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Common Area shall also include a storm water disposal system which includes grass percolation and storm water retention areas and dry wells. All components of this storm water disposal system are to be constructed by Declarant and then maintained by the Association, all in compliance with plans approved by Spokane County. Each Building Lot Owner shall be responsible for maintaining any portions of grass percolation areas within their Building Lots, including any such portion of any percolation or retention area that falls on any part of the County road right-of-way adjacent to such lot. For purposes of this provision, proper maintenance means maintaining such area with a live cover of regularly cut grass, maintaining the required size, shape and elevation of the structure for such area as depicted in approved plans on file with the Spokane County Engineering Department. Spokane County and the Association shall have the right to monitor the operation and maintenance of the storm water disposal system. Further, in the event any Owner fails to perform his or her obligations as required, Spokane County and/or the Association, or the designated agent of either of them, shall have the right to perform such operation and maintenance as required. All costs incurred by Spokane County or the Association shall be reimbursed by the obligated Owner who failed to perform his or her responsibilities hereunder. An easement granting the right of ingress and egress over all portions of the storm water disposal system is hereby conveyed and preserved in favor of Spokane County and the Association for purposes of inspecting, maintaining, repairing and reconstructing any portions of the storm water disposal system within the Property.

6.4 Natural Conservation Area. A portion of the Property is designated on the plat as a Restricted Common Area or Natural Conservation Area (the "Natural Conservation Area.") Neither the Natural Conservation Area nor the cyclone fence adjoining it shall be considered part of the Common Area of the Property. Rather, this area shall be covered by an exclusive easement for the benefit of the owners of the real property legally described on Exhibit "B." The owner of said property legally described on Exhibit "B" shall be solely responsible for payment of all property taxes and assessments payable in connection with the tax parcel(s) within the property of which the Natural Conservation Area is a part. The owner of said Parcel "B" shall also maintain the existing cyclone fence in good condition and repair. The Natural Conservation Area shall not be entered or utilized by any persons, including members of the Association, it being the intent of this Declaration that such area be kept in a completely natural and unaltered state. Provided, the owner of the real property legally described on Exhibit "B" shall, if reasonably necessary, enter the Common Area to clear, remove and dispose of dead, diseased and unhealthy plants and conditions which may be found to exist within said Natural Conservation Area. Further, no portion of the Natural Conservation Area may be mortgaged or encumbered by any owner of any portion of the Property, including the owners of all Building Lots as well as the

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Association. Finally, all owners acquiring any interest in any lots within the portion of the Property legally described on Exhibit "A" acknowledge by accepting an ownership interest in their Building Lot that neither they nor any family members, guests or invitees have any right to enter into or upon the Natural Conservation Area and that any person doing so shall be considered a trespasser. Accordingly, the owner of the real property legally described on Exhibit "B" shall have no liability or responsibility for any injury or damage sustained by any person trespassing within said Natural Conservation Area. This is specifically acknowledged to include any bodily injuries or damages which could be sustained or incurred in or around the existing pond within the Natural Conservation Area.

ARTICLE VII: ASSESSMENTS

7.1 Covenant to Pay Assessments. By acceptance of a deed or real estate contract to any property in Upper Terrace Estates, each Owner of such property hereby covenants and agrees to pay when due all Assessments or charges made by the Association, including all Regular, Special and Limited Assessments and charges made against such Owner pursuant to the provisions of this Declaration or other applicable instrument.

7.1.1 Assessment Constitutes Lien. Such Assessments and charges together with interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment or charge is made.

7.1.2 Assessment is Personal Obligation. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such property beginning with the time when the Assessment falls due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them but shall remain such Owner's personal obligation regardless of whether he or she remains an Owner.

7.2 Regular Assessments. All Owners, not including the Declarant, are obligated to pay Regular Assessments to the treasurer of the Association on a schedule of payments established by the Board.

7.2.1 Purpose of Regular Assessments. The proceeds from Regular Assessments are to be used to pay for all costs and expenses incurred by the Association, including legal and attorneys' fees and other professional fees, for the conduct of its affairs, including without

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limitation the costs and expenses of construction, improvement, protection, maintenance, repair, management and operation of the Common Areas, including all improvements located on such areas owned and/or managed and maintained by the Association, and an amount allocated to an adequate reserve fund to be used for repairs, replacement, maintenance and improvement of those elements for the Common Area, or other property of the Association that must be replaced and maintained on a regular basis (collectively "Expense").

7.2.2 Computation of Regular Assessments. The regular assessment for calendar years 2002 and 2003 shall be as established in a budget adopted by the Association. During those years only, Declarant shall pay any shortfall in meeting actual amounts required in connection with obligations to be paid by regular assessments, without provision for any reserve fund accumulation. Thereafter, the Association shall compute the amount of its expenses on an annual basis. The computation of Regular Assessments for 2004 and thereafter shall take place not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of the Association.

7.2.3 Amounts Paid by Owners. The Board can require, in its discretion or as provided in the Articles or Bylaws, payment of Regular Assessments in semi-annual or annual installments. The Regular Assessment to be paid by any particular Owner, for any given fiscal year after 2003 shall be computed as follows: Each Owner, other than the Declarant, shall be assessed and shall pay an amount computed by multiplying the Association's total advance estimate of expenses by the fraction produced by dividing the finally platted Building Lots attributable to such Owner by the total number of finally platted Building Lots in the Property.

7.3 Special Assessments.

7.3.1 Purpose and Procedure. Pursuant to the obligation of Declarant in Section 7.2.2 to cover assessment requirements above the amount specified for Owners, there shall be no special assessments required of any Owners through the end of 2003. In the event that the Board shall determine that its respective Regular Assessment for a given calendar year after 2003 is or will be inadequate to meet the expenses of the Association for any reason, including but not limited to costs of construction, reconstruction, unexpected repairs or replacement of improvements upon the Common Area, attorneys' fees and/or litigation costs, other professional fees, or for any other reason, the Board shall determine the approximate amount necessary to defray such expenses and levy a Special Assessment against the Property which shall be

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computed in the same manner as Regular Assessments. No Special Assessment shall be levied which exceeds twenty percent (20%) of the budgeted gross expenses of the association for the fiscal year, without the vote or written assent of the Owners representing a majority of the votes of the Members of the Association. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid.

7.3.2 Consistent Basis of Assessment. Every Special Assessment levied by and for the Association shall be levied and paid upon the same basis as that prescribed for the levying and payment of Regular Assessments for the Association.

7.4 Limited Assessments. Notwithstanding the above provisions with respect to Regular and Special Assessments, the Board may levy a Limited Assessment against a Member as a remedy to reimburse the Association for costs incurred in bringing the Member and/or such Member's Building Lot into compliance with the provisions of the governing instruments for Upper Terrace Estates, including any actual costs, consultant charges and attorneys' fees. This shall expressly include the authority to levy assessments against any Building Lot Owner in violation of any of the requirements imposed on such Building Lot Owner under this Declaration. Such assessment may be made in an amount up to fifty dollars ($50.00) per day (or its equivalent value as compared with January 1, 2002 dollars, as adjusted periodically by the Board in its reasonable discretion), for each violation which remains uncorrected after thirty (30) days' written notice given to such Owner from the Association. Notwithstanding anything above to the contrary, a limited assessment may be assessed against an Owner for damage to any Building Lot or portion of the Common Area within the Property caused by reason of the negligence or willful misconduct of such Owner, such Owner's resident tenant, or such Owner's family and guests, both minor and adult; provided such liability shall not be absolute but shall be an obligation recoverable from such Owner's available insurance and shall constitute a lien against such Owner's Building Lot only.

7.5 Uniform Rate of Assessment. Unless otherwise specifically provided herein, Regular and Special Assessments shall be fixed at a uniform rate per Building Lot for all members of the Association.

7.6 Assessment Period. Unless otherwise provided in the Articles or Bylaws, the Assessment period, the "fiscal year", shall commence on January 1 of each year and terminate December 31 of such year. The first Assessment shall be pro-rated according to the number of months remaining in the fiscal year and shall be payable in advance.

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7.7 Notice and Assessment Due Date. Ten (10) days prior written notice of Regular and Special Assessments shall be sent to the Owner of every Building Lot subject thereto, and to any person in possession of such Building Lot. The due dates for installment payment of Regular Assessments and Special Assessments shall be the first day of each month unless some other due date is established by the Board. Each monthly installment of the Regular Assessment or Special Assessment shall become delinquent if not paid within ten (10) days after the levy thereof. There shall accrue with each delinquent installment payment a late charge equal to ten percent (10%) of the delinquent installment. In addition, each installment payment which is delinquent for more than twenty (20) days shall accrue interest at twelve percent (12%) per annum calculated the date of delinquency to and including the date full payment is received by the Association. The Association may bring an action against the delinquent Owner and may foreclose the lien against such Owner's Building Lot as more fully provided herein. Each Owner is personally liable for Assessments, together with all interest, costs and attorneys' fees, and no Owner may exempt such Owner from such liability by a waiver of the use and enjoyment of the Common Areas, or by lease or abandonment of such Owner's Building Lot.

7.8 Estoppel Certificate. The Association, upon at least five (5) days prior written request, shall execute, acknowledge and deliver to the party making such request, a statement in writing stating whether or not, to the knowledge of the Association, a particular Building Lot is in default under the provisions of this Declaration, and further stating the dates to which any Assessments have been paid by the owner. Any such certificate delivered pursuant to this paragraph may be relied upon by any prospective purchaser or mortgagee of the Owner's Building Lot.

ARTICLE VIII: ENFORCEMENT OF ASSESSMENTS; LIENS; PROCEEDINGS

8.1 Right to Enforce. The Association has the right to collect and enforce its Assessments pursuant to the provisions hereof. Each Owner of a Building Lot, upon becoming an Owner of such Building Lot, shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorney's fees in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative may enforce the obligations of the Owners to pay such assessments by commencement and maintenance of a suit pursuant to paragraph 8.3 to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

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SMITH, COV $35.00

8.2 Assessment Liens.

8.2.1 Creation. There is hereby created a claim of lien with power of sale on each and every Building Lot to secure payment of any and all Assessments levied against such Building Lot pursuant to this Declaration together with interest thereon at the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Association making the Assessment in connection therewith, including costs and reasonable attorney's fees incurred. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on such respective Building Lots upon recordation of a claim of lien with the Spokane County Auditor. Such lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the notice of delinquency and claim of lien except for tax liens for real property taxes on any Building Lot and Assessments on any Building Lot in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.

8.2.2 Claim of Lien. Upon default of any Owner in the payment of any Regular, Special or Limited Assessment issued hereunder, the Association may cause to be recorded in the office of the Spokane County Auditor a claim of lien. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the Building Lot(s) against which the same have been assessed, and the name of the record Owner thereof. Each delinquency shall constitute a separate basis for a notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction or relief of such delinquent sums and charges. The Association may demand and receive the cost of preparing and recording such release before recording the same.

8.3 Method of Foreclosure. Such lien may be foreclosed by appropriate action in court or by sale by the Association establishing the Assessment, its attorney or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of the Washington Code applicable to the exercise of powers of sale permitted by law, as though the Association were a beneficiary designated under a deed of trust executed on Deed of Trust form LPB #22, as in effect as of the date of recording this Declaration. The Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in Washington as trustee for the purpose of conducting such sale or foreclosure.

8.4 Required Notice. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of the notice of delinquency and claim of lien, whether judicially, by power of sale or

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otherwise, until the expiration of thirty (30) days after the following have been completed: a copy of such claim of lien has been deposited in the United States mail, certified or registered, postage prepaid to the Owner of the Building Lot(s) described in such notice of delinquency and claim of lien; and to the person in possession of such Building Lot(s), and a copy thereof is recorded by the Association in the Office of the Spokane County Auditor.

8.5 Subordination to Certain Trust Deeds and Mortgages. The lien for the Assessments provided for herein in connection with a given Building Lot shall be subordinate to the lien of a deed of trust or mortgage that is of record as an encumbrance against an Owner's Building Lot prior to the recordation of a claim of lien for any Assessments. Except as provided in this paragraph with respect to a trustee or mortgagee who acquires title to or a security interest in a Building Lot, the sale or transfer of any Building Lot shall not affect the Assessment lien provided for herein, nor the creation thereof by the recordation of a claim of lien, on account of the Assessments becoming due whether before, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration. No mortgagee or beneficiary under a deed of trust will be required to collect assessments. Nothing in this Declaration makes failure to pay any assessment a default under any mortgage.

ARTICLE IX: ARCHITECTURAL COMMITTEE

9.1 Creation. While the Declarant continues to own any Lot within Upper Terrace Estates, the Declarant shall have all right and authority to appoint all members of the Architectural Committee and to perform all functions of the Architectural Committee hereunder, unless the Declarant shall sooner relinquish such authority to the Association in a written document signed by an authorized representative of the Declarant. Thereafter, the Association shall have an Architectural Committee consisting of that number of persons, no fewer than three nor more than five individuals, specified from time to time by resolution of the Board, at least two (2) of whom shall also be members of the Board.

9.2 Review of Proposed Construction. The Architectural Committee shall consider and act upon any and all proposals or plans and specifications submitted for its approval pursuant to this Declaration, and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the Architectural Committee. The Board shall have the power to determine, by rule or other written designation consistent with this Declaration, which types of improvements shall be submitted for Architectural Committee review and approval.

9.3 Architectural Committee Decisions. Decisions of the Architectural Committee and the reasons therefor shall be transmitted by the Architectural

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Committee to the Applicant at the address set forth in the application for approval within thirty (30) calendar days after filing all materials required by the Architectural Committee, failing which, the application shall be considered approved.

9.4 No Waiver of Future Approvals. The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent. The decision of the Architectural Committee shall be final.

ARTICLE X: ANNEXATION OF ADDITIONAL PROPERTIES

10.1 In the event there is ever a separate class of membership held by the Declarant, such as a "Class B" membership, then notwithstanding anything in this Declaration to the contrary, annexation of additional properties, dedication of Common Area, and amendment of this Declaration will require prior approval of the United States Department of Housing and Urban Development and the Veterans Administration.

ARTICLE XI: EASEMENTS

11.1 Easements of Encroachment: There shall be reciprocal appurtenant easements of encroachment as between each Building Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Building Lots due to minor unintentional wrongful placement or settling or shifting of the improvements including but not limited to structures, walkways, paths, sidewalks and driveways constructed, reconstructed or altered thereon in accordance with the terms of this Declaration. Easements of encroachment shall be valid only so long as they exist, and the rights and obligations of Owners shall not be altered in any way because of encroachments, settling or shifting of the improvements. Provided, however, in no event shall a valid easement for encroachment occur due to the willful act or acts of an Owner. In the event a structure on any Building Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Building Lot agree that minor encroachments over adjoining Building Lots that existed prior to the encroachment may be reconstructed pursuant to the easement granted by this paragraph.

11.2 Easements of Access: All Owners of Building Lots will have a perpetual easement for access, ingress and egress over the Common Area, including but not limited to any private streets, cul-de-sacs and walkways. This easement shall run with the land. Such easements may be used by the Declarant, and by all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for

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pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Building Lot or Common Area. A private drive easement shown on the plat, and running from the turnaround at the eastern end of Upper Terrace Lane and running through the common area easterly of said turnaround to the real property legally described on Exhibit "B" is established as a perpetual private easement for ingress, egress, drainage and utilities from Upper Terrace Lane to the real property described on Exhibit "B." The owner of said real property legally described on Exhibit "B" shall have the right to enter within said easement area for ingress and egress, utilities, drainage, and to inspect, maintain, repair, construct and reconstruct a private roadway, utilities, and related equipment and apparatus as reasonable or appropriate for the full use and enjoyment of said easement area.

11.3 Drainage and Utility Easements. Declarant expressly reserves for the benefit of all the Property reciprocal easements of access, ingress and egress for all Owners to and from their respective Building Lots for installation and repair of utility services, for drainage of water over, across and upon adjacent Building Lots, and Common Areas, resulting from the normal use of adjoining Building Lots or Common Areas, and for necessary maintenance and repair of any improvement including fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees and landscaping. Notwithstanding anything expressly or impliedly contained herein to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Declarant for the installation and maintenance of utilities and drainage facilities that are required for the development of the Property. In addition, Declarant hereby reserves for the benefit of the Association the right to grant additional easements and rights-of-way over the Property, as appropriate, to utility companies and public agencies as necessary or expedient for the proper development of the Property until close of escrow for the sale of the last Building Lot in the Property to an Owner.

11.3.1 Improvement of Drainage and Utility Easement Areas. The Owners of Building Lots are hereby restricted and enjoined from constructing any improvements upon any drainage or utility easement areas as shown on the Plat of Upper Terrace Estates or otherwise designated in any recorded document which would interfere with or prevent the easement from being used for such purpose. Provided, however that the Owner of such Building Lots and the Declarant, the Association or designated entity with regard to the landscaping easement described in this Article, shall be entitled to install and maintain landscaping on such easement areas, and also shall be entitled to build and maintain fencing on such easement areas subject to approval by the Architectural Committee, so long as the same would not interfere with or prevent the easement areas from being used for their intended purposes. Provided further, that any damage sustained to improvements on the easement areas as a result of legitimate use of the easement area shall be the sole and exclusive obligation of the Owner of the Building Lot whose improvements

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were so damaged.

11.4 Well. The owner of the real property legally described on Exhibit "B" shall have and maintain an easement surrounding the existing well within the Common Area east of and adjacent to Lot 12 within the Plat which easement shall run ten feet around said well in all directions and continue as a ten foot wide strip of property the center line of which is the existing water pipeline running from said well to the real property legally described on Exhibit "B." This easement is created and reserved for the benefit of the owner of Parcel "B," for the purpose of operating the existing well, transporting water, and inspecting, maintaining, repairing, constructing, and reconstructing the well, water line, and all related equipment and apparatus. Provided, in the event the well is ever abandoned and/or the water line is ever connected to a public or community water delivery system, this easement shall be construed to run for the benefit of any utility or other water provider, and to continue to run with regard to the water line and any extensions of said water line to connect to such community or public system.

11.5 Private Drive. A private drive shall be constructed for the benefit of the owners of Building Lots 13 and 14, Block 1, within the Plat, within the private drive twenty 20 foot easement depicted on the plat running across a portion of the southeast corner of Building Lot 12 and the southern 20 feet of Building Lot 13 of said Block 1. The easement and driveway are reserved to provide access for ingress and egress for both lots to and from Upper Terrace Lane. The owners of said Building Lots 13 and 14 shall equally share all costs and charges for the maintenance, repair, replacement, reconstruction and clearing, as the same may be necessary, of such driveway and all reasonable ancillary structures thereto, with the Owners of each such parcel to be responsible for an equal share of such costs and charges.

Maintenance shall include all reasonable costs and charges for cleaning, resurfacing, patching, sanding, graveling, abating dust, removing of snow, and similar items customary for the maintenance of a driveway and its ancillary structures.

Except expenses required by any public authority, all owners of any of any part of said Building Lots 13 and 14 shall be consulted prior to the expenditure of funds for any of the functions referred to in said Section 11.5. It being understood that consultation and consent may occur in advance with respect to anticipated or reoccurring items or expenses.

After consultation, the written agreement of the owners of a majority of the parcels within said Building Lots 13 and 14 shall be binding on all owners of such parcels. If required by a Public Authority, consent of the owners shall not be required in order to establish their obligation to pay their proportionate share of such required items or expenses incurred or to be incurred.

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If practicable, all owners of parcels within said Building Lots 13 and 14 shall contribute their proportionate share of the cost of all items and expenses at or prior to the date due to be paid. The owners may cooperate to create one or more bank accounts and periodic contributions for this purpose. If insufficient funds are available for such items or expenses, any of such owners may pay for the cost of same and receive reimbursement from any non-contributing owner or owners.

Any proper obligation not paid by an owner of a parcel said Building Lots 13 and 14 within fifteen (15) days of the date written request for payment for a proper charge is delivered to such owner, or within eighteen (18) days of the date such written request is sent to such owner's address by certified mail, return receipt requested, shall be delinquent. All delinquent obligations shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum until fully paid. Such obligations and all interest, costs, expenses and reasonable attorneys' fees incurred in connection with establishing or collecting such delinquency shall be a personal obligation of the owner of such parcel, and shall be a lien against such parcel. Any such delinquent obligation may be enforced in like fashion as a mortgage obligation against such property, including the right to judicially foreclose such lien as a mortgage.

Notwithstanding the foregoing, any lender, mortgagee, deed of trust beneficiary, or contract vendor who acquires any interest in any parcel prior to the recording of a lis pendens filed in connection with the foreclosure of such a lien shall acquire their interest with priority over any lien arising out of any of the obligations or delinquencies arising prior to the recording of the instrument evidencing such loan, mortgage, deed of trust, or contract.

11.6 Private Driveway. A private driveway may be constructed by the owner of the Building Lot which includes the property legally described on Exhibit "B" (the "Exhibit 'B' Building Lot") for the benefit of said Exhibit "B" Building Lot within the private drive 14 foot easement depicted on the Plat. Said easement is reserved to provide perpetual access for ingress and egress for the Exhibit "B" Building Lot to and from Upper Terrace Lane. The owner of the Exhibit "B" Building Lot shall be solely responsible for all costs and charges for the maintenance, repair, replacement, reconstruction and clearing, as the same may be necessary, of such driveway and all ancillary structures thereto.

ARTICLE XII: MISCELLANEOUS

12.1 Term. The easements created hereunder shall be perpetual, subject only to extinguishment by the holders of such easements as provided by law. The covenants, conditions, restrictions land equitable servitudes of this Declaration shall run for a term of twenty (20) years from the date this Declaration is recorded, unless amended as herein provided. Thereafter, such covenants, conditions and restrictions

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shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by members holding at least three-fourths (3/4) of the voting power of the Association and such written instrument is recorded with the Spokane County Auditor.

12.2 Amendment. Except where a greater percentage is required by express provision in this Declaration, the provisions of this Declaration may be amended by an instrument in writing signed and acknowledged by the president and secretary of the Association certifying and attesting that such amendment has been approved by the vote or written consent of Owners representing more than two-thirds (2/3) of the votes of Owners of Building Lots, excluding the Declarant, and such amendment shall be effective upon its recordation with the Spokane County Auditor. Notwithstanding anything in this Declaration to the contrary, the provisions in Sections 6.4 and 11.6 shall not be amended or modified without the written consent of the owner of the Exhibit "B" Building Lot nor shall Section 11.5 be modified without the written consent of the owners of both Building Lots 13 and 14, Block 1.

12.3 Notices. Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association, as provided in this paragraph.

12.4 Enforcement and Non-Waiver.

12.4.1 Right of Enforcement. Each Owner of any Building Lot, the Declarant, and the Association shall each have the right to enforce any or all of the provisions hereof against any property within the Property and Owners thereof.

12.4.2 Violations and Nuisances. The failure of any Owner of a Building Lot to comply with any provision hereof, or with any provision of the Articles or Bylaws of the Association, is hereby declared a nuisance and will give rise to a cause of action by the Declarant, the Association or any Owner of a Building Lot(s) within the Property for recovery of damages or for negative or affirmative injunctive relief or both. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Board, or a duly authorized agent of any of them, may enforce by self-help any of the provisions hereof only if such self-help is preceded by reasonable notice to the Owner.

12.4.3 Violation of Law. Any violation of any state, municipal or

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local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration and any or all enforcement procedures in law or equity.

12.4.4 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

12.4.5 Non-Waiver. The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the right to enforce any such provision.

12.5 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property. This Declaration shall be construed and governed under the laws of the State of Washington.

12.6 Restrictions Severable. Notwithstanding the provisions of the foregoing paragraph, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 10th day of June 2002.

DECLARANT:

UPPER TERRACE, L.L.C.

By: _____
Edgar V. Smith, Member

By: _____
Hanni Nimri, Member

By: _____
Frank F. Burger, Jr., Member

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STATE OF WASHINGTON)
)ss.
COUNTY OF SPOKANE)

On this 10th day of June 2002 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Edgar V. Smith, to me known to be a Member of Upper Terrace, L.L.C., a Washington limited liability company, the limited liability company that executed the foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of the limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

COLLEEN A. KRUSE Commission Expires NOTARY PUBLIC MARCH 1, 2005 STATE OF WASHINGTON

Colleen A. Kruse
NOTARY PUBLIC in and for the State of Washington, residing at Spokane
My commission expires: 3-1-05.
Colleen A. Kruse
Printed Name

STATE OF WASHINGTON)
)ss.
COUNTY OF SPOKANE)

On this 10th day of June 2002 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Hanni Nimri, to me known to be a Member of Upper Terrace, L.L.C., a Washington limited liability company, the limited liability company that executed the foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of the limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

COLLEEN A. KRUSE Commission Expires NOTARY PUBLIC MARCH 1, 2005 STATE OF WASHINGTON

Colleen A. Kruse
NOTARY PUBLIC in and for the State of Washington, residing at Spokane.
My commission expires: 3-1-05.
Colleen A. Kruse
Printed Name

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STATE OF WASHINGTON)
)ss.
COUNTY OF SPOKANE)

On this 10th day of June 2002 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Frank Burger, Jr. to me known to be a Member of Upper Terrace, L.L.C., a Washington limited liability company, the limited liability company that executed the foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of the limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

COLLEEN A. KRUSE
Commission Expires
NOTARY
PUBLIC
MARCH 1, 2005
STATE OF WASHINGTON

Colleen A. Kruse
NOTARY PUBLIC in and for the State of Washington, residing at Spokane.
My commission expires: 3-1-05.
Colleen A. Kruse
Printed Name

Unofficial Document