



**RETURN ADDRESS:**

**BRIAN C. BALCH  
LAYMAN, LAYMAN, MCKINLEY & ROBINSON, PLLP  
601 S. DIVISION STREET  
SPOKANE, WA 99202-1335**

Document Title:

DECLARATION ESTABLISHING COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR WEST TERRACE THIRD ADDITION P.U.D.

Grantor(s):

1. North Division Complex, L.L.C.

Grantee(s):

1. The Public

Legal Description:

Pt. SE ¼ of 7-24-42

Complete legal description attached as Exhibit "A."

Parcel Numbers:

24074.9070



DECLARATION ESTABLISHING COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR WEST TERRACE THIRD ADDITION P.U.D.

This declaration is made this 28 day of February 2005, by NORTH DIVISION COMPLEX, L.L.C., a Washington limited liability company, referred to as "Declarant."

ARTICLE I: GENERAL PROVISIONS

1.1 Real Property Description. Declarant is the Owner of all that real property located in Spokane County, Washington, as described on Exhibit "A" attached hereto, sometimes referred to below as the "Property" and sometimes referred to below as "West Terrace Third Addition P.U.D.."

1.2 Development. Declarant intends that the Property will be developed and marketed as separate Lots for single-family home purposes. Upon Recordation of this Declaration, Declarant submits and subjects 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 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 West Terrace Third Addition P.U.D. Homeowners 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.



3.7 "Builder" shall be an Owner who acquires ownership of two or more Building Lots with the intention of improving those Building Lots with dwellings and reselling them to homeowners. Any Building Lot converted by a Builder for personal use shall not be counted in determining whether such Owner qualifies as a Builder.

3.8 "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. Declarant may establish Common Area from time to time by Declarant on any portion of the Property by describing it on a Plat, by granting or reserving it in a deed or other instrument, or by designating it pursuant to this Declaration or any Supplemental Declaration. Common Area may include easement and/or license rights.

At the time of execution of this Declaration, it is expected that Common Areas will consist of the following:

- a) Open space tracts, designated as Tracts A through G on the face of the Plat of the Property;
- b) An entry statement, which may include landscaping, monuments and other improvements near the entry to the Property;
- c) Any portions of the storm drainage system for the Property, to the extent not included with individual Building Lots to be maintained by the Owners thereof, or within public rights-of-way and to be maintained by appropriate governmental authorities.

3.9 "Declarant" shall mean North Division Complex, L.L.C., a Washington limited liability company, the owner of the Property. 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.

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

3.11 "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.



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

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

3.14 "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.

3.15 "Regular Assessment" shall mean the portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in Regular Assessments that 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.

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

#### ARTICLE IV: USE AND CONSTRUCTION RESTRICTIONS

4.1 Use of Individual Building Lots. No dwelling shall be constructed, occupied or used on any Building Lot except for new, site constructed single family residences, and not to exceed 2 stories in height above natural grade, by the owners, their tenants, and social guests. Except as provided below, all requirements shall apply equally to all Building Lots.

No dwelling on any Building Lot shall contain less than 900 square feet of living area for a single level home, or 750 square feet on the main floor for a home with more than one story. For purposes of this paragraph, living area shall exclude basement areas, patios, garages, storage areas, and similar spaces. The Architectural Committee, in its discretion, may require that dwellings exceed the minimum square footage amounts stated above in this Section 4.1.

No trade, business, profession, commercial or manufacturing enterprise or activity (other than home occupation) shall be conducted on any Building Lot or in any dwelling 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.

Nothing in this Section shall prevent the Developer or a Builder from using a residence within the development to conduct business and sell Building Lots or dwellings, on a temporary basis only until the last Building Lot or dwelling is sold.

4.2 Restrictions as to Building Materials. Covering Outside Walls. No residence or structure shall be built on any Building Lot using materials for siding or roofing that have not been approved by the Architectural Committee. Notwithstanding the generality of the foregoing, no residence or other structure may utilize aluminum siding, or siding or exterior materials commonly known as "boxed" or "sheet metal" construction.

4.3 Nuisances. No noxious, illegal or offensive activities shall be carried on in any Building Lot or dwelling, or in any part of the Property, nor shall anything be 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.

In the interest of public health and sanitation, and so that all of the Property may be benefited by a decrease in the hazards of stream pollution and by the protection of water supplies, recreation, wildlife and other public uses thereof, no Owner will use his Building Lot or Buildings Lots for any purpose that would result in the pollution of any waterway that flows through or is adjacent to such Building Lot by refuse, sewage or other material that might tend to pollute the waters of any such stream or streams, or otherwise impair the ecological balance of the Property. Any violation of this provision shall be considered a nuisance.

4.4 Vehicle and Equipment Restrictions. None of the following vehicles, whether personal or recreational, shall be allowed to be kept or stored on any Building Lot in any location that is not enclosed in a garage or otherwise screened from view outside the Building Lot, in a manner acceptable to and approved by the Architectural Committee in its sole discretion: travel trailer, camper, motor home, recreational vehicle, boat and trailer, commercial vehicle, bus, or truck (except for purposes of loading and unloading of passengers or personal property). No inoperable automobile, and no vehicle which is in an extreme state of disrepair, shall be permitted to remain upon 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 include sedans, service vans or standard size pickup trucks that 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, stored, dismantled, or repaired outdoors on any Building Lot, or any dedicated street within the Property.

In addition to the above, no vehicle of any kind, trailer, boat or similar item may be kept or parked on any portion of the Common Area, nor may any such vehicle of any kind, trailer, boat or similar item be kept or parked on other than a temporary basis on any of the streets within the Property. For purposes of this provision, parking a vehicle for a period of time longer than 48 hours shall not be considered temporary parking permitted under this section.

4.5 Signs. No signs shall be displayed to the public view on any Building Lots or on any portion of the Property. "For Sale" or "For Rent" signs shall be allowed, provided they do not exceed five (5) square feet in size.

4.6 Animals. No animals, livestock, poultry or birds of any kind shall be raised, bred or kept in any Building 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. Keeping dogs under reasonable control shall include keeping dogs contained within the Owner's Building Lot when not on a leash, either by sufficient fencing, an "invisible fence" type restraint system, or other equally effective means of containing the dog within the Building Lot. Outside an Owner's Building Lot, all dogs must be restrained on leashes.

Owners shall keep their dogs from barking excessively in any area where such barking can be heard from outside the Building Lot. Continued barking after receipt of three warnings from the Architectural Committee and/or an owner of another Building Lot who is being affected by the noise of such barking shall be considered excessive barking and a nuisance, entitling such affected owner and/or Architectural Committee to take appropriate action to assure that such excessive barking is eliminated. Barking no more than occasionally to alert the Owners of the need to let the dog into a house, to warn of strangers coming to the Building Lot, and the like shall be permitted. Leaving a dog outside the dwelling for prolonged periods while the dog is frequently barking will be also be considered excessive.

**NO PIT BULLDOGS SHALL BE PERMITTED ANYWHERE ON THE PROPERTY BY ANY PERSON FOR ANY REASON AT ANY TIME, PIT BULL being defined as the American Stafford Shire Terrier by the American Kennel Club or the Stafford Shire Bull Terrier**



by the A.K.C., or the American Pit Bull Terrier by the United Kennel Club.

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

4.8 Right to Lease. Except for a dwelling in possession of a lender following a default in a first mortgage, a foreclosure proceeding, or any deed or other arrangement in lieu of foreclosure, the respective dwellings shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than thirty (30) days, or (b) any rental if the occupants of the dwelling are provided customary hotel service such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service. Subject to the foregoing restrictions, the owners of the respective Building Lots shall have the absolute right to rent out the dwellings (but not less than entire dwelling) provided that the rental agreement is made subject to the covenants, conditions, restrictions, limitations and uses contained in this Declaration. Any failure on the part of any tenant to comply with these covenants shall constitute a default under the terms of such rental agreement.

4.9 Landscaping. At the time construction of the exterior of each residence is completed, the front yard and any side yard fronting a road or street on such Building Lot shall be completely landscaped by each Owner in substantial conformity with plans which have been approved by the Architectural Committee, in its discretion, with the goal that landscaping on each Building Lot will harmonize and be compatible with landscaping for all other Building Lots and dwellings. Thereafter, within one year of completion of the exterior of each such residence, the remaining portions of the yard shall be landscaped, likewise in conformity with plans approved by the Architectural Committee, and in conformity with the landscaping required in the front yard. In addition to other landscaping, all front and side yards abutting streets or roads within the Property may be required to incorporate trees adjacent to such streets or roads as determined by the Architectural Committee. It is anticipated that red maple or similar trees may be approved and suitable for this purpose, and will be required to be located adjacent to such streets and roads in parking strips, and will be spaced at intervals to create a uniform appearance along all streets and roads within the Property. Any landscaping plans submitted to the Architectural Committee shall show and designate all areas intended to be placed in lawn, trees, shrub and flower beds, and similar areas, with the type and location of trees and planting materials being specified.

4.10 Restriction Against Raising or Lowering Height of Grade. Neither the buyer nor any person or persons claiming under him shall or will at any time raise or lower the grade of any Building Lot or Building Lots herein conveyed above the grade established or to be established by Declarant unless approved by the Architectural



Committee.

4.11 Building Lots to be kept in Good Repair. Each owner shall keep all improvements on their Building Lots in good order and repair, including but not limited to, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, proper maintenance of septic systems, and the painting (or other appropriate external care) of all buildings, structures and other improvements; all in a manner and with such frequency as is consistent with good property management. Garage interiors shall be maintained in a clean and orderly manner so as to avoid the danger of fire and an unsightly appearance from outside the Building Lot when garage doors are open.

4.12 Single Family. No structures or buildings of any kind shall be erected, altered, placed or permitted to remain on any Building Lot other than one detached dwelling for single family occupancy, one private attached garage designed to house at least two automobiles as provided in Section 4.15, and up to two accessory buildings as permitted in Section 4.15.

4.13 Restrictions as to Roof Construction. All roofs shall be constructed of 30-year architectural composition shingles of good quality, or slate or tile or comparable alternate product, as approved by the Architectural Committee.

4.14 Garages. All dwellings shall have enclosed attached garages designed to house at least two automobiles, with fully improved driveways to the street; with said driveways to be of a hard surface material, such as exposed aggregate, asphalt, or concrete. The Architectural Committee, in its discretion, may require larger garages.

4.15 Accessory Buildings. Accessory buildings shall not be permitted without prior approval of the Architectural Committee, in its discretion. Any such accessory building shall be placed within the rear or interior side yard of the Building Lot and shall be constructed in design and material consistent with the architecture, materials, exterior appearance and color scheme of the dwelling on such Building Lot.

4.16 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; nor may any such item be installed or maintained on any Building Lot without the prior approval of the Architectural Committee. However, nothing in this subparagraph shall prevent the erection of a necessary retaining wall.

4.17 Antenna. No radio, citizens band, or other communication antenna shall be erected upon any Building Lot or dwelling except for standard television antennas that are reasonably unobtrusive and inoffensive or as may be required to be permitted by law.



4.18 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 Building Lot shall at any time be used as a residence.

4.19 Exterior Lighting. All exterior lighting shall be non-glare and approved by the Architectural Committee prior to installation. It is the goal of Declarant to minimize the impact caused by exterior lighting on views of the nighttime sky. All lighting, when approved, shall be directed downward and shielded on the top.

4.20 Completion Time. The Owner of any Building Lot other than the Declarant shall commence construction of a dwelling therein within 18 months of becoming an Owner as defined in Section 3.12 of this Declaration. The exterior of each dwelling, including the garage, shall be completed within 12 months of the commencement of construction thereon. For purposes of this provision, commencement of construction shall be considered to have started when applicable government authorities issue a building permit. Commencement of construction may be extended for either commencement of construction or completion of construction in the discretion of the Architectural Committee for up to 12 additional months for reasons shown by the Owner which the Architectural Committee determines justify such extension.

4.21 Alteration and/or Improvements to Property. With the exception of work carried out to further the completion of the Property, no residence, building, fence, wall, obstruction, balcony, screen patio, patio cover, tent, awning, carport, carport cover, improvement, or structure of any kind, shall be commenced, erected, painted or maintained within the Property, nor shall any alteration or improvement of any kind be made thereto until the color of the same has been approved in writing by the Architectural Committee, described in Article 9 below and hereinafter referred to as the "Committee." Plans and specifications showing the nature, color, materials and location of such improvements or alterations shall be submitted to the Developer or Committee for approval as to the color of the external appearance of the proposed construction. Further, no construction shall be commenced on any Building Lot until the Developer or Committee shall have approved in writing, the color of the proposed construction item on the Building Lot. No permission or approval shall be required to rebuild in accordance with the original approved colors, or to rebuild in accordance with colors previously approved by the Developer or Committee for that Building Lot.

In addition to other specific requirements for construction of the home contained herein, or which may be adopted in any Design Guidelines as provided in this Declaration, the following requirements must be met. All dwellings on other Building Lots shall utilize double wall construction on sides facing streets or roads within the Property. All dwellings shall incorporate brick, masonry, rock, or similar exterior sidings covering a minimum of ten percent (10%) of the surface area on the dwelling or permitted ancillary structures at the front of the home and in conformity



with any further requirements imposed by any Design Guidelines. Front yard lighting at or adjacent to the walkway and/or driveway for the building shall be required and be subject to approval by the Architectural Committee.

In reviewing plans and proposals for alteration and/or improvements to portions of the Property, the Architectural Committee shall have discretion to approve or deny plans submitted based on the specific provisions stated above in this Article IV, as well as the discretion to determine that alterations or changes need to be made in any proposed plans to provide for aesthetic appeal, harmony of the proposed improvements with the remainder of the Property and proposed improvements on the remainder of the property, and similar considerations. So long as the Architectural Committee operates in good faith, the Architectural Committee shall have the discretion to approve or deny any proposal that, in the subjective opinion of the member of the Architectural Committee do or do not meet the criteria stated in this paragraph.

4.22 Restriction Against Excavation and Grading. No excavation for stone, gravel, or earth shall be made on any Building Lot except as reasonably required for construction of approved dwellings and outbuilding; provided, that Declarant reserves the right at any time during the development period to excavate and grade on the conveyed Building Lots, and to remove building material from or deposit building material on any such Building Lot, in connection with the work of laying out and improving the Property. Provided further, however, Declarant may waive this privilege as to any Building Lot on which a buyer may desire to erect an approved dwelling or other outbuilding prior to that date.

4.23 Restriction Against Subdividing. No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise.

4.24 Sight Distance at Intersections. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of a street property lines extended. The same sight-line limitations shall apply on any Lot within ten feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

4.25 Restriction Against Oil and Gas Wells. No well for the production of, or from which there may be produced, oil or gas, shall be drilled or operated on the premises, nor shall any machinery, appliance, or structure be placed, operated, or maintained therein in connection with such activities.



4.26 External Lighting. All external lighting shall be non-glare and approved by the Architectural Committee prior to installation.

4.27 Governmental Regulation: Strictest Standards Control. The restrictions in this Declaration shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, rules or regulations or any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provisions of such laws, rules, regulations, deeds, leases, or provisions of this Declaration shall be taken to govern and control. Approval of any submittal by the Architectural Committee shall only be considered approval under this Declaration and it shall be the obligation of the owner of the Building Lot to determine whether any more restrictive provisions exist or apply under or within any of the items listed above in this Section.

ARTICLE V: WEST TERRACE THIRD ADDITION P.U.D.  
HOMEOWNERS ASSOCIATION

5.1 Organization of West Terrace Third Addition P.U.D. Homeowners Association. West Terrace Third Addition P.U.D. Homeowners Association, the "Association," shall be initially organized by Declarant as a Washington non-profit corporation under the provisions of the Washington Code 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 Parcel, Building Lot or other portion of the Property 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.

5.3 Voting. The period of time commencing with recordation of this Declaration and continuing so long as Declarant has the right to purchase or has purchased and owns any Building Lot within the Property shall be known as the "Initial Development Period." During the Initial Development Period, Declarant shall exercise and have all voting authority of the Association. In its discretion, Declarant may relinquish its voting control rights at any time before the Initial Development Period would otherwise terminate. Upon termination of Developer's exclusive control of voting rights for the Association, either by relinquishment or through sale of all Building Lots to third parties, voting in the Association shall be carried out by



Members, including Declarant, who shall cast the votes attributable to the Building Lots that they own. The number of votes such Member may cast on any issue is determined by the number of Building Lots that 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 least 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 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, 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. Subject to the right of Declarant to exercise total control of the development, including performing all functions of the Architectural Committee during the Initial Development Period as defined in Section 5.3 above, the Association shall appoint and remove members of the Architectural Committee. In any event, however, at least two Directors of the Association shall serve at all times on the Architectural 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: RIGHTS TO COMMON AREAS

6.1 Use of Common Area. Every Owner shall have a right to use the Common Area, 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, excluding Declarant. 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, 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 Private Roads and Drainage Facilities. The initial common areas consist of private roads and drainage facilities within common area tracts, as shown on the face of the plat. Grading, construction, pavement, landscaping, and other improvements, as applicable, to the private roads, drainage facilities, and drainage tracts within the Property (the "Common Area Improvements") have been required to be completed in conformance with plans approved by the Spokane County Engineer's Office. The Association shall be responsible for maintaining the Private Roads and Drainage Improvements, including paying the cost thereof, through assessments imposed on all Building Lots presently within or hereafter annexed into the Property. Maintenance of the Private Roads and Drainage Improvements constitutes an obligation running with all portions of the Property, including any additional real property subsequently annexed. Notwithstanding anything in this Declaration to the contrary, provisions regarding maintenance of the Private Roads and Drainage Improvements imposed hereunder, or by any separate covenants required by Spokane County, shall not be subject to amendment or modification without the approval of Spokane County. Maintenance of Drainage Improvements shall include obligations established by the Operation and Maintenance Manual ("O&M Manual") as prepared by the design engineer, Adams & Clark, Inc., on December 23, 2004 for the stormwater system within the Property as approved by Spokane County. Compliance with the O&M Manual will include establishment and accumulation of reserves for anticipated maintenance and repair obligations as provided in such Manual.

## ARTICLE VII: ASSESSMENTS

7.1 Covenant to Pay Assessments. Building Lots owned by the



Declarant, or a Builder (but only up to the time by which a Builder is required to complete construction of the exterior of the dwelling as provided in Section 4.20) will not be liable for general assessments. Otherwise, by acceptance of a deed or real estate contract for any Building Lot in West Terrace Third Addition P.U.D., each Owner of such Building Lot 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. Except as provided above in Section 7.1, all Owners are obligated to pay Regular Assessments to the treasurer of the Association on a schedule of payments established by the Declarant during the Initial Development Period and thereafter 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 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 2005 and 2006 shall be \$12.00 per



year. 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 2007 and thereafter shall take place not less than thirty (30) or 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 2006 shall be computed as follows: Each Owner, other than the Declarant and each Builder (but with regard to a Builder until the date by which completion of the exterior of the dwelling on such Building Lot is required), 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 the Owner by the total number of finally platted Building Lots in the Property subject to payment of the Assessments.

### 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 2006. In the event that the Board shall determine that its respective Regular Assessment for a given calendar year after 2006 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 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 West Terrace Third Addition P.U.D., 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, 2005 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.

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 the Board establishes some other due date. 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 prospective purchaser or mortgagee of the Owner's Building Lot may rely upon any such certificate delivered pursuant to this paragraph.

#### 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.

#### 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 Revised Code of Washington applicable to the exercise of powers of sale and/or foreclosure as 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 an attorney, title company or any other person or entity qualified to act as a Trustee in the State of 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 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. During the Initial Development Period as described in Section 5.3, 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 Approval of Plans by Architectural Committee. No building, fence, wall, or other structure shall be commenced, erected, or maintained upon the Project, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and harmony of external design and location in relation to surrounding structures and topography by the Architectural Committee. In the event the Architectural Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it or if no suit to enjoin the erection of such structures has been commenced prior to the completion thereof, approval will not be required, and this Article will be deemed to have been fully complied with.

9.3 Specification of Reasons of Disapproval. The Architectural Committee shall have the right to disapprove any plans and specifications submitted hereunder because of any of the following:

9.3.1 The failure of such plans or specifications to comply with any of



the Property restrictions;

9.3.2 Failure to include information in such plans and specifications as may have been reasonably requested;

9.3.3 Objection to the exterior design, appearance, or materials of any proposed structure;

9.3.4 Incompatibility of any proposed structure or use with existing structures or uses upon other Building Lots in the vicinity;

9.3.5 Objection to the location of any proposed structure upon any Building Lot or with reference to other Building Lots in the vicinity;

9.3.6 Objection to the grading plan for any Building Lot;

9.3.7 Objection to the color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of any proposed structure;

9.3.8 Objection to parking areas proposed for any building on the grounds of (a) incompatibility to proposed uses and structures on such Building Lots or (b) the insufficiency of the size of parking areas in relation to the proposed use of the Building Lot; or

9.3.9 Any other matter which, in the judgment of the Architectural Committee would render the proposed structure, structures, or uses inharmonious with the general plan of improvement of Property or with structures or uses located upon other Building Lots in the vicinity.

In any case where the Architectural Committee shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case, the Architectural Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

9.4 Unapproved Construction: Remedies. If any structure shall be altered, erected, placed, or maintained upon any Building Lot, or any new use commenced on any Building Lot, otherwise than in accordance with the plans and specifications approved by the Architectural Committee pursuant to the provisions of this Article 9, such alteration, erection, maintenance, or use shall be deemed to have been undertaken in violation of this Article 9 and without the approval required herein, and upon written notice from the Architectural Committee, any such structure so altered, erected, placed or maintained upon any Building Lot in violation hereof shall be



removed or realtered, and any such use shall be terminated, so as to extinguish such violation, and the cost thereof shall be a binding, personal obligation of such Owner as well as a lien (enforceable in the same manner as a mortgage) upon the Building Lot in question. The lien provided in this Section 9.4 shall not be valid as against a bona fide purchaser (or bona fide mortgagee) of the Building Lot in question unless a suit to enforce said lien shall have been filed in a court of record in Spokane County prior to the recordation among the land records of Spokane County of the deed (or mortgage) conveying the Building Lot in question to such purchaser (or subjecting the same to such mortgage).

9.5 Certificate of Compliance. Upon completion of the construction or alteration of any structure in accordance with plans and specifications approved by the Architectural Committee, the Architectural Committee shall, upon written request of the Owner thereof, issue a certificate of compliance in form suitable for recordation, identifying such structure and the Building Lot on which such structure is placed, and stating that the plans and specifications, the location of such structure and the use or uses to be conducted thereon have been approved and that such structure complies therewith. Preparation and recording of such certificate shall be at the expense of such Owners. Any certificate of compliance issued in accordance with the provision of this Section 9.5 shall be prima facie evidence of the facts therein stated, and as to any title insurer, such certificate shall be conclusive evidence that all structures on the Building Lot, and the use or uses described therein comply with all the requirements of this Article 9, and with all other requirements of this Declaration as to which the Architectural Committee exercises any discretionary or interpretive powers.

9.6 Building Location. All structures shall be placed upon each Building Lot so as to make the structures compatible with other structures or uses upon other Building Lots in the Property, as determined by the Architectural Committee in its discretion.

9.7 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 By Declarant. Declarant intends to develop the property described on Exhibit "A," and may, in Declarant's sole discretion, deem it desirable to annex additional real property to the Property covered by this Declaration. Additional real



property may be annexed to the Property and brought within the provisions of this Declaration as provided herein by Declarant, its successors or assigns, at any time, and from time to time, without the approval of any Owner or the Association. The use and development of such additional real property shall conform to all applicable land use regulations; as such regulations are modified by variances.

10.2 By the Association. In addition to the provisions concerning annexations by Declarant specified in Section 11.1 above, additional real property may be annexed to the Property, subject to the same conditions by the Association upon the exercise by Members of at least two-thirds (2/3) of the votes of the Association.

10.3 Rights and Obligations of Owners of Annexed Property. Subject to the provisions hereof, upon recording of a Supplemental Declaration as to any additional real property, all provisions contained in this Declaration shall apply to the additional real property in the same manner as if it were originally covered by this Declaration.

10.4 Method of Annexation. The addition of additional real property to the Property authorized under Sections 10.1 and 10.2 shall be made by filing of record a Supplemental Declaration or other similar instrument with respect to the annexed property, which shall be executed by Declarant or the Owner thereof and which shall annex such property to the Property.

10.5 Deannexation. Declarant may delete all or a portion of the real property described on Exhibit "A," or any previously annexed real property, from the Property and from coverage of this Declaration and jurisdiction of the Association, so long as Declarant has an interest in such property to be deleted, and provided that a Supplemental Declaration of Deletion of Property is recorded in the Office of the Spokane County Auditor in the same manner as a Supplemental Declaration of Annexation. Members other than Declarant as described above shall not be entitled to deannex all or any portion of the Property except on the favorable vote of two-thirds (2/3) of all members of the Association and written approval of Declarant so long as Declarant owns any portion of the property described on Exhibit "A" or any other real property which is then part of the Property.

10.6 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 pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Building Lot or Common 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 West Terrace Third Addition P.U.D. 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 were so damaged.

#### 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 and 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 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 two-thirds (2/3) 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, and except as provided in Section 6.2 regarding the Drainage Improvements which shall not be amended or modified without the consent of Spokane County, the provisions in 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. Any such amendment shall be effective upon its recordation with the Spokane County Auditor.

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 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.

12.6 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.

12.7 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.





EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

An unplatted portion of the SE1/4 of Section 7, Township 24 North, Range 42 East, W.M., Spokane County, Washington, described as follows:

Beginning at the northeast corner of the SE1/4 of said Section 7; thence S01°26'27"E, along the east line of said SE1/4, a distance of 793.00 feet; thence S86°25'19"W 725.51 feet to the TRUE POINT OF BEGINNING; thence continuin S86°25'19"W 195.13 feet to a point which lies 850 feet south of the north line of said SE1/4, measured at a right angle, and 920 feet west of said east line of the SE1/4 measured at a right angle; thence S01°26'27"E, along a line parellel with and 920 feet west of said east line of the SE1/4, a distance of 518.03 feet to the northeast corner of West Terrace First Addition, as per plat thereof recorded in Book 22 of plats, Pages 50 and 51; thence along the boundary of said plat the following three (3) calls:

- 1) N80°20'10"W 237.39 feet to a point on a 1170.00 foot radius nontangent curve to the right on the westerly right-of-way line of West Terrace Drive, the center of circle of which bears N80°20'10"W;
- 2) along the arc of said curve through a central angle of 2°17'43", 46.87 feet;
- 3) N78°02'27"W 147.87 feet; thence N18°40'29"E 279.51 feet; thence N23°57'45"E 295.47 feet; thence N26°42'10"E 251.35 feet; thence N19°18'33"E 279.68 feet; thence N71°49'12"W 330.10 feet; thence S74°01'49"W 342.29 feet; thence S81°34'35"W 85.64 feet; thence S89°50'28"W 490.38 feet; thence S64°35'10"W 187.44 feet, thence S37°18'43"W 167.33 feet; thence S48°05'28"W 100.89 feet; thence S53°25'05"W 133.75 feet; thence S88°17'41"W 26.66 feet; thence S01°42'21"E 830.64 feet; thence S88°17'41"W 100.00 feet to a point on the east right-of-way line of Fruitvale Road; thence along said east right-of-way line the following two (2) calls: 1) N01°42'21"W 1252.40 feet to the point of curve of a 1160.72 foot radius curve to the left; 2) along the arc of said curve through a central angle of 13°03'16", 264.46 feet to a point on the west line of said SE1/4; thence leaving said east right-of-way line, N01°42'21"W, along said west line 6.45 feet to the northwest corner of said SE1/4; thence N89°59'13"E, along the north line of said SE1/4, a distance of 2676.57 feet to a point on said westerly right-of-way line of Thomas Mallen Road; thence along said westerly right-of-way line the following two (2) courses; 1) S01°34'03"E 0.78 feet; 2) S01°26'27"E 439.36 feet; thence leaving said westerly right-of-way line, S89°59'19"W 383.85 feet; thence N82°01'17"W 192.08 feet; thence S14°40'10"W 438.86 feet to the TRUE POINT OF BEGINNING.