

AGREEMENT AND DECLARATION OF COVENANT

THIS AGREEMENT and Declaration of Covenant (hereinafter referred to as "agreement") made this 25 day of MAY, 1993, by and between TEH CORP INC hereinafter referred to as the "Developer", and Spokane County, a political subdivision of the State of Washington, hereinafter referred to as the "County", to wit:

WHEREAS, the Developer is the owner of a certain tract of land platted into lots, blocks and streets, known as WESTWOOD ESTATES NO. 2, PHASE II, hereinafter referred to as the "Subdivision: and being more particularly described as follows:

THAT PORTION of the Southwest 1/4 of Section 20, T.27 N., R.43 E., W.M. in Spokane County, Washington, described as follows:

Commencing at the South Quarter corner of said Section 20; thence N.89°59'08"W. along the south line of the Southwest 1/4 of said Section, a distance of 641.57 feet to the TRUE POINT OF BEGINNING; thence continuing N.89°59'08"W. along said south line a distance of 658.44 feet; thence N.00°00'52"E. a distance of 140.00 feet; thence N.89°59'08"W. a distance of 35.79 feet; thence N.00°00'52"E. a distance of 180.00 feet; thence N.89°59'08"W. a distance of 245.41 feet; thence N.00°12'07"W. a distance of 225.00 feet; thence N.89°46'04"E. a distance of 77.50 feet; thence N.17°49'42"E. a distance of 172.07 feet; thence N.13°31'15"E. a distance of 165.43 feet; thence S.89°59'08"E. a distance of 768.00 feet; thence S.00°12'07"E. a distance of 140.00 feet; thence N.89°59'08"W. a distance of 50.53 feet; thence S.00°00'52"W. a distance of 230.00 feet; thence S.72°39'06"E. a distance of 179.43 feet; thence S.82°41'49"E. a distance of 17.81 feet; thence S.18.57'51"W. a distance of 124.41 feet to the beginning of a non-tangent curve concave to the south having a radius of 435.00 feet (from which a radial line of said curve bears S.18°57'51"W.); thence westerly along said curve through a central angle of 07°27'23" an arc distance of 56.61 feet; thence S.16°42'25"W. a distance of 140.11 feet; thence S.00°00'52"W. a distance of 207.27 feet to the True Point of Beginning.

WHEREAS, pursuant to the provisions of RCW Chapter 36.89 and Section 9.14.220 of the Spokane County Code, the County may assume maintenance and operation responsibility of drainage facilities which lie outside the County road right-of-way, under certain conditions;

WHEREAS, a system of stormwater collection and disposal is to be installed outside the County road right-of-way in order that storm sewers shall be available to the residents of the Subdivision as they occupy the houses therein and;

WHEREAS, the single system of stormwater collection and disposal to be installed will jointly and collectively serve the plat known as WESTWOOD ESTATES NO. 2, PHASE II, and;

WHEREAS, the Developer is in need of a governmental agency to assume responsibility for the continuous and satisfactory operation and maintenance of the stormwater system and;

WHEREAS, the County is willing to assume the responsibility of operation and maintenance of the stormwater system on the terms and conditions hereafter set forth;

NOW THEREFORE, in consideration of the premises and the mutual promises and covenants hereafter set forth; the parties hereto agree as follows:

1. Construction - The Developer at his sole expense shall construct a stormwater collection system and disposal facility, together with all appurtenant facilities, to a capacity and design satisfactory to the County. The plans and specifications for this construction shall be approved by the County Engineer prior to the construction. The design shall conform to Board of County Commissioners Resolution No. 80-1952 as amended. For the purpose of this agreement, "Subdivision Stormwater System" shall be the System as indicated on the approved plans, entitled WESTWOOD ESTATES NO. 2, PHASE II Street Improvement Plans Sheets 1 through 5 on file in the County Engineers' Office and shall refer to all storm sewer lines, manholes, disposal facilities and appurtenant facilities. There shall be no cost to the County for the construction of the Subdivision Stormwater System. The Subdivision Stormwater System shall be constructed and accepted by the County for operation and maintenance no later than the 1st day of December, 1993, to the extent that the Subdivision Stormwater System is not constructed and accepted by the County for operation and maintenance by this date, the County may, at its option, without the necessity of any notice whatsoever, look to the security as provided in paragraph 15 to complete the construction of the Subdivision Stormwater System.

2. **Right of Inspection** - The County and the Developer mutually agree that the County may perform inspections of the Subdivision Stormwater System during the course of construction to determine if the System is being constructed and installed pursuant to the approved plans and specifications. All costs of said inspection shall be borne solely by the Developer. Said costs include but are not necessarily limited to labor (including all fringe benefits) and mileage. The County shall to the extent that variations from the approved plans and specifications are observed notify the Developer of any work found to be unsatisfactory and the Developer shall immediately correct the same at no cost to the County.

3. **Certification** - The County will assume no responsibility for the Subdivision Stormwater System until the System is complete and the Developer furnishes the County with a certification by a registered professional engineer that the System has been constructed in accordance with the approved construction plans and specifications therefore.

4. **Easements** - The Developer shall furnish the County with perpetual easements and/or deeds for all portions of the Subdivision Stormwater System lying outside the dedicated public rights-of-way.

5. **Warranty** - All work performed by the Developer or his agents and all facilities installed in connection with the construction of the Subdivision Stormwater System shall be guaranteed for a period of twelve months from date of acceptance as provided in paragraph 7 below. The Developer also warrants, during the one year warranty period, that the Subdivision Stormwater System is adequate to serve the Subdivision at full development which is assumed to consist of 37 dwelling units and/or lots utilizing the Subdivision Stormwater System. Developer shall not be responsible for damages caused by or arising from additions or alterations to the System, except damages caused by or arising during the one-year warranty period from additions or deletions to the System made necessary due to the Developer's breach of said warranty.

For the purpose of this agreement, costs to the Developer by virtue of this warranty shall not be considered maintenance and operation costs.

6. **Additions** - No additional service areas outside the preliminary plat boundary of WESTWOOD ESTATES NO 2. PHASE II (38 Lots) shall be connected during the life of this agreement to the Subdivision Stormwater System without the expressed written approval of the County.

7. **Acceptance** - Upon completion of any phase of the Subdivision Stormwater System and certification as provided above, the County shall make a completion inspection and upon finding a phase of the System satisfactory shall accept that phase of the System for operation and maintenance subject to the Developer warranty. Acceptance of the phase of the System for operation and maintenance by the County shall be made possible by the Developer prior to establishment of the roads and occupancy of the Subdivision. The Developer shall advise all persons, firms, or corporations employed by him who sell lots within the Subdivision of the necessity of "acceptance" of the Subdivision Stormwater System for operation and maintenance prior to the establishment of the roads and occupancy of any dwelling units and/or lots on the property serviced by the Subdivision Stormwater System.

8. **Operation and Maintenance** - The County shall provide the personnel, vehicles, additional equipment other than provided for above, and materials necessary to operate and maintain the Subdivision Stormwater System and shall keep an accurate record of the costs thereof. Such records shall be open to the inspection of the Developer.

9. **Annual Charges** - The County shall be responsible for the collection of fees in accordance with the following schedule:

<u>For each Unit and/or lot connected to the Subdivision Stormwater System</u>	<u>Annual Cost</u>
Single Family Residence	\$ <u>46</u> Per Unit

Annual service charges shall be applicable for each unit and/or lot beginning the month following the date of acceptance at the part of the System serving the units as provided above in Paragraph 7. The County shall be on a calendar year basis, except that the charge for the first year of service shall be prorated for that portion of the calendar year remaining after service charges become effective. The bill for the first calendar year, or portion thereof, shall be considered delinquent if unpaid within sixty (60) days after the billing date. For each calendar year following the calendar year in which service was commenced, annual billings shall be mailed by February 28th of each year, and shall be considered delinquent if unpaid on April 30th of the same year. All service charges collected shall be deposited in a special fund in the County Treasury to be used only for the purpose of maintaining and operating the facilities provided for herein.

10. **Revision of Annual Charges** - The above schedule of annual charges shall remain in force and effect until such time as a revised schedule of charge is approved by resolution of the Board of County Commissioners after public notice of the intention to revise charges and public hearing thereon. The effective date of revised charges shall be as provided by such resolution but no less than thirty days after the adoption of such resolution. The Developer shall be responsible for insuring that all initial occupants of any dwelling unit built on lots within the Subdivision are aware of the provisions within this paragraph concerning fees and also the provisions within paragraph 7 concerning necessity of the County's acceptance of the System prior to occupancy.
11. **Excess or Deficit Costs** - To the extent that the annual charges received from units served by the System exceed the operation and maintenance cost of the System, it is understood and agreed by the parties that said excess monies shall be rebated to each unit. If the annual charges are not sufficient to cover the operation and maintenance costs of the System, the schedule of charges shall be increased as stated in paragraph 10.
12. **Delinquent charges** - Delinquent charges shall bear interest at the rate of twelve percent (12%) per annum, computed on a monthly basis from the date of delinquency as provided in this Agreement. The County shall have a lien as provided in RCW 36.89.090 and Section 9.14.225 of the Spokane County Code.
13. **Survival of Covenants and Binding Effect** - All of the promises, covenants, terms and conditions of this agreement shall survive the conveyance hereunder, and this agreement shall extend to and bind the successors and assigns of the respective parties hereto. The terms of this agreement shall be included in the sales agreements conveying any part of the plat WESTWOOD ESTATES NO. 2, PHASE II.
14. **Term** - This agreement shall remain in full force and effect until the date of Conveyance as provided in paragraph 17 herein.
15. **Security** - The Developer shall provide the County in a form approved by the Prosecuting Attorney, Security in the amount of \$15,500. Said Security can be reduced as portions of the project are constructed and approved. Upon acceptance in accordance with paragraph 7 herein, the Security may be reduced to \$1,550. Security shall remain in effect for one year after acceptance. Said Security will insure and guarantee the faithful performance of all the terms, conditions and requirements of this agreement particularly including, but not limited to, construction and warranties.
16. **Tax** - The Developer shall be responsible for paying any and all real, personal, and other taxes as come due and are owing on the Subdivision Stormwater System or real property housing the same until the Subdivision Stormwater System is conveyed as provided for in paragraph 17 herein. In the event that any taxes are not paid when they come due and are owing, the County shall have the right to immediately terminate any of its obligations under this agreement to operate or maintain the Subdivision Stormwater System upon 30 days notice to the Developer, during which time the Developer may cure said breach, and the County reserves the right to pursue any other legal remedies available for the Developer's breach of this provision.
17. **Conveyance and Reversion** - The County is in the process of developing a Comprehensive Stormwater Management Program and Plan. It is possible that part or all of this Subdivision Stormwater System may be incorporated into this Plan. At such time as part or all of the Subdivision Stormwater System is proposed to be incorporated, the County will give the developer 30 days notice of such action. The Developer shall convey such portions of the Subdivision Stormwater System and all rights and appurtenances thereto as necessary. Conveyance shall be at not cost to the County; and shall be accomplished by a Bill of Sale for all real and personal property involved. Those facilities, if any as determined by the County Engineer, no longer necessary for the Subdivision Stormwater System shall be reconveyed and returned to the Grantor.
18. **Comprehensive Stormwater Management program** - The Developer or successor(s) in interest agree to join in any Comprehensive Stormwater Management Program and to pay such rates and charges in addition to or in lieu of those stated in paragraph 9 above as may be fixed through public hearings for service or benefit obtained by the planning, establishment or maintenance of stormwater control facilities in addition to or in lieu of the Subdivision Stormwater System.

