

**DECLARATION OF COVENANTS, CONDITIONS,
RESERVATIONS AND RESTRICTIONS OF THE
PLAT OF NORTHERN HEIGHTS
DIVISIONS I AND II**

A. RECITALS

This Declaration is made with reference to the following facts and conditions:

1. The undersigned Declarant is the owner in fee simple of the following described real property located in Whatcom County, Washington:

The Plat of Northern Heights, Divisions I and II, which is a portion of the South Half of the Northwest Quarter of Section 15, Township 38 North, Range 3 East of W.M., situated in the County of Whatcom, State of Washington.

(hereinafter referred to as the "Subdivision".)

2. Declarant desires to provide the means to enforce the rights, reservations, easements, liens and charges provided in this Declaration, to provide for necessary maintenance and enhancement of the Subdivision and to provide for the formation of a Community Association in the form of a nonprofit corporation which includes as its members those persons who purchase any lot within the Subdivision.

3. Declarant is also the owner of real property hereinafter identified as Northern Heights, Division III, as hereinafter defined, which real property is contiguous to the Subdivision and which real property will become a part of the total Plat of Northern Heights upon final plat approval thereof. To the extent applicable, the Declarant makes provision for the joiner of the future owners of lots within Northern Heights, Division III, into the Community Association to be formed amongst the owners of lots within the Subdivision and upon the understanding that the Declaration filed in reference to Northern Heights, Division III, will be consistent with the terms hereof.

B. DECLARATION

The Declarant hereby certifies and declares that the following covenants, conditions, reservations and restrictions shall endure and be binding upon the respective owners of each lot or parcel within the Subdivision, and the Declarant further declares that all of the property within the Subdivision described herein is held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, reservations and restrictions for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision and every part thereof. All of the following covenants, conditions, reservations and restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Subdivision or any part thereof.

1. LAND CLASSIFICATIONS AND DEFINITIONS

The following words and classifications of land shall have the following meanings under this Declaration:

1.1 **Lot**: Any parcel of real property within the boundaries of the Subdivision identified by arabic numerals and designated for the location and construction of a single-family residence.

1.2 **Tract or Parcel**: Any parcel of real property within the boundaries of the Subdivision not consisting of a lot nor of real property dedicated to Whatcom County.

1.3 **Person**: Any individual, firm, corporation, partnership, association, unincorporated association or other legal entity.

1.4 **Owner**: Any person holding either fee title or a vendee's interest under a Real Estate Contract as shown by the records of the Auditor of Whatcom County, Washington, in a lot or in a parcel.

1.5 **Declarant**: Declarant, Whatcom Land Development L.P., a Washington Limited Partnership, which limited partnership is presently engaged in land development and land sales activity in Whatcom County, Washington, together with any successor in interest thereto.

1.6 **Common Properties**: Real property owned by the Declarant, which shall hereafter be transferred to the Association or otherwise dedicated on the face of the Plat for a common use, benefit and enjoyment by the lot owners and members of the Association, including the Children's Park, Detention Facility, utility and/or drainage easements and any paths and walkways not dedicated to Whatcom County.

1.7 **Children's Park**: That certain parcel of real property, legally described on Exhibit "A", which is attached hereto and is incorporated herein by reference, which is being developed, in part, concurrent with the development of the Subdivision, which shall be deemed a portion of the Common Properties and which shall be held for the benefit, use and enjoyment of the owners of each lot within the Subdivision and the owners of each lot within Northern Heights, Division III.

1.8 **Assessable Property**: Each individual lot or parcel, together with any Common Properties, which may be assessed for taxes by the County of Whatcom or any successors thereto.

1.9 **Improvements**: Improvements shall mean and include, without limitation, any buildings, outbuildings, private roads, driveways, parking areas, fencing, retaining walls, swimming pools, screening, walls, ornamentation, signs, stairs, decks, hedges, wind breaks, plantings, planted trees, shrubs, poles, lighting, hot tubs and any other structure or landscaping

1.10 **Resident**: (1) Each person lawfully residing on or in any part of the assessable property; and (2) members of the immediate family of each such person actually living in the same household with such person.

1.11 **Board**: The Board of Directors or other governing body designated for the Association.

1.12 **Association**: The community association of all lot owners, as more fully described in paragraph 6 hereof, which is being created concurrent with the execution hereof in the form of a Washington nonprofit corporation.

1.13 **Northern Heights, Division III**: That portion of real property, legally described on Exhibit "B", which is attached hereto and is incorporated herein by reference, which real property is owned by the Declarant and which real property will or may be developed by the Declarant into a residential subdivision. Said development is contemplated to be developed in one phase, but such development may occur in more than one phase, and said development shall result in single-family residential lots, if developed in the discretion of the Declarant. In the event that the development of Northern Heights, Division III, occurs on a phased basis, then upon the acceptance and recording of the final plat as to any such portion thereof, such portion shall be deemed to be a portion of Northern Heights as hereinafter provided, as shall each additional completed phase thereafter, until the same shall be completely developed.

1.14 **Detention Facility**: That portion of real property within Northern Heights, Division I, described on the face of the Plat thereof as Parcel B", which consists of a surface water detention facility for the purpose of managing and controlling the run-off of any surface water onto contiguous properties, which shall be deemed a portion of the Common Properties.

2. **RESERVATIONS**

2.1 **Reservation of Easements**. Easements for drainage, sewers, water pipes and utilities, facilities and services (including, but not limited to, water supply, electricity, gas, telephone and television) are hereby reserved over, under, upon, in and through all roadways and walkways, and over, under, upon, in and through those certain portions of lots or parcels as shown on the final plat maps of the Subdivision in which are and/or shall be installed, laid, constructed, repaired, renewed, operated, maintained and inspected underground pipes, sewers, conduits, cables, wires and any and all necessary facilities and equipment for the purpose of serving the Subdivision, together with the right to enter upon said easement areas, lots, parcels, roads and walkways for or pertaining to the aforesaid. This reservation of easements is for the benefit of the Declarant and its successors in interest, as well as for the benefit of the County of Whatcom, Puget Sound Power and Light Company, Cascade Natural Gas Company, Pacific Northwest Bell, Nationwide Cablevision, and any other purveyors of such services as hereinbefore described, as well as any of their successors in interest.

2.2 **Reservation of Children's Park**. The Children's Park, which is being developed concurrently with the Subdivision together with the access easements thereto as are identified

on the face of the Plats, are hereby reserved in ownership by the Declarant and shall, following the completion of the improvements thereof and concurrent with the other Common Properties as specified in subparagraph 2.3 hereof, be conveyed to the Association, and the Association shall thereafter be responsible for the maintenance and upkeep of the Children's Park and the access easements thereto. It is intended that a portion of the Children's Park shall be retained in its natural state, for the use and enjoyment of the owners and the guests thereof. Whether improved or in its natural state, the Children's Park, and the features thereof, will present potential hazards to those using the same. Any resident or guest thereof utilizing the Children's Park shall do so at his or her own risk and does acknowledge, by such use, the assumption of the risks attendant thereto and does expressly waive any claim for injuries to persons or property incurred in such use as against the Declarant, the Association and any and all owners.

2.3 **Reservation of Common Properties.** The Common Properties as identified on the face of the Plats of the Subdivision shall be conveyed by the Declarant to the Association at such time as determined in the sole discretion of the Declarant, but in any event not later than the date upon which Declarant achieves the sale to owners of at least eighty (80%) percent of the lots within the Subdivision, and the Association shall thereafter be responsible for the maintenance and upkeep of the Common Properties.

2.4 **Reservation of Drainage Easement and the Right to Drain.** The Declarant hereby reserves the right to drain all roadways, walkways, easement ways and areas over and across any lot or parcel within the Subdivision where water might take a natural course after the grading of such lot or parcel. These easements shall be conveyed to the Association concurrent with the conveyance as set forth in paragraph 2.3 above, and the Association shall then be responsible for the maintenance and upkeep thereof, including regular cleaning to remove sediments, the replanting of grass and the replacement of rock as necessary to insure the effective operation thereof.

2.5 **Sales Office.** The Declarant reserves the right to maintain a sales office on a lot or parcel to be designated by the Declarant within the Subdivision for the purpose of selling and reselling lots within the Subdivision and within Northern Heights, Division III; provided, however, that the sales activity conducted in said office shall be limited to the sale or resale of lots within the Subdivision and within Northern Heights, Division III. Declarant reserves the right to place and maintain "for sale" signs on any lot within the Subdivision as may be prepared and erected by the Declarant.

3. **GENERAL USE RESTRICTIONS AND REQUIREMENTS**

3.1 **Permanent Residential Purposes.** All lots within the Subdivision shall be used exclusively for permanent residential purposes.

3.2 **Recreational Vehicles.** All boats, utility trailers, trucks of more than one-ton rating, campers, recreational vehicles, travel trailers, motor homes and similar items or vehicles maintained or kept upon any lot within the Subdivision shall at all times be enclosed within a garage or otherwise neatly stored behind the front wall line of the residence and reasonably

screened from view from the street running in front of said lot, nor shall any such items or vehicles be parked on any street within the Subdivision overnight; provided, that out-of-county resident guests of an owner may, with such owner's permission, park a recreational vehicle or travel trailer on an owner's lot for up to a maximum of eight weeks within any calendar year without being in violation of this subparagraph.

3.3. **Explosives**. No firearms or explosives shall be discharged within the boundaries of the Subdivision.

3.4. **Animals**. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes.

3.5. **Signs**. No signs or billboards shall be placed on any lot, except that one identification sign bearing the owner's name and address may be placed upon the owner's lot. Irrespective of the foregoing, the Declarant may display post signs, billboards or other advertising materials on or about any unsold lot or lots until all lots within the Subdivision have been sold by Declarant. In addition thereto, the Declarant, and any owner or such owner's agent, may subsequently advertise any lot for sale, and, furthermore, an owner may display signs of a political nature, promoting a candidate or a political proposition, during periods of political campaigns.

3.6. **Garbage/Refuse**. No owner shall deposit or permit the accumulation of any trash, ashes, garbage, or other refuse or debris on or about such owner's lot or any other property within the Subdivision, except in appropriate covered trash receptacles. Each owner shall keep such owner's lot neat and orderly in appearance and shall not cause or permit any noxious or odorous conditions to exist, nor maintain any tangible objects that are unsightly in appearance to exist, on any lot or parcel within the Subdivision.

3.7. **Vehicles**. All automobiles and all other permitted vehicles, if kept or parked on any lot or otherwise within the Subdivision, shall be in good order and in working condition. Partially wrecked vehicles, discarded vehicles, unlicensed vehicles or vehicles which are in a state of disrepair shall not be kept on any lot nor shall they be maintained within the Subdivision, unless enclosed in a garage or otherwise completely screened from view from outside the lot.

3.8. **Antennas**. No television or radio antenna of any kind which extends more than ten feet above the roof line of the residence, nor any satellite or "dish" antenna, shall be permitted on any lot, unless the same be substantially screened from view from outside the lot.

3.9. **Wire/Chain Link Fences**. All wire and/or chain link fences in excess of four (4) feet in height from the ground are prohibited.

3.10. **Protection of Views**. In order that existing and future views from individual lots may be protected to the extent practical, no trees or shrubs may be planted which are capable

of maintaining a height greater than thirty-five (35) feet upon maturity, unless planted to replace a similar tree or shrub which existed at the time of the Declarant's original conveyance of the lot on which the tree or shrub is situated.

3.11 **Surface Water Run-Off**. No lot shall be improved in such a way as to cause excess surface water run-off that may damage or inconvenience other lots or contiguous properties and the owners thereof.

3.12 **Damaged Improvements**. No improvement which has been partially or totally destroyed by fire, earthquake or any other cause shall be allowed to remain in a state of disrepair for a period in excess of four months from the date of such partial or total destruction. Corrective construction or reconstruction shall be required to commence within such four-month period and shall be completed in accordance with the provisions of Paragraph 4.1 hereof; provided, however, that said four-month period shall be extended for a reasonable period thereafter in the event that corrective construction or reconstruction has not commenced as a result of factors beyond the control of the subject owner and in the event that the subject owner has exercised and does thereafter continue to exercise due diligence in an effort to eliminate such factors causing such delay in commencement.

4. **CONSTRUCTION**

4.1 **Time For Completion**. Construction of all improvement shall be prosecuted diligently from the date of commencement of work until the exterior is completed and painted or finished and all sanitation and health requirements have been fulfilled. Furthermore, the maximum time limit for the completion of construction of an improvement shall be twelve months from the date construction commences, which is defined as the date building materials are first delivered to the lot for such purpose. Construction shall not be deemed to be completed until the improvement is finished, the lot has been cleaned of construction debris and the lot has been landscaped.

4.2 **Height Restrictions**. The height of structural improvements erected on lots shall be restricted as follows or pursuant to the terms of any applicable ordinance of Whatcom County in effect at the time of application for a building permit thereafter, whichever is more stringent: No structural improvement shall exceed thirty-five (35) feet in height measured by the vertical distance from the average finished grade of the lot on which the structural improvement is constructed to the average height of the highest gable of a pitch or hip roof.

4.3 **Subsurface Basement Construction**. As required by Whatcom County, no building with a proposed, fully-enclosed subsurface basement shall be permitted to be constructed on any lot without the prior certification of an acceptable design therefore from a licensed engineer for the purpose of assuring that adequate provisions are made in order to prevent flooding of said basement, particularly flooding caused by a high water table..

5. **DESIGN REVIEW COMMITTEE**

5.1 **General.** Construction of improvements, excluding the placement of any vegetation, hedges, trees, plantings or any other landscaping, on any lot within the Subdivision shall be subject to the prior approval of a Design Review Committee (hereinafter Committee), which shall be composed of three representatives of, and chosen by, the Declarant. No fees for participation shall be charged by the members of the Committee. No improvements shall be erected, placed or altered on any lot until the construction plans, specifications and a site plan showing the location of all proposed improvements on the lot have been approved by the Committee. The approval or disapproval of the Committee as to such construction plans, specifications and site plan shall be based upon the quality of materials to be utilized in construction, the harmony of the external design and color scheme of the proposed improvements with other existing improvements within the Subdivision and the location and bulk of the improvements with respect to topography, finished grade elevation and compliance with the provisions of Paragraph 4.2 hereof.

5.2 **Approval/Disapproval.** The Committee shall approve or disapprove the construction plans, specifications and site plan, including specified color finish, within fifteen (15) days following receipt of a complete duplicate set thereof from the submitting lot owner or prospective lot owner. Any complete submission of construction plans, specifications and site plan on which no action is taken by the Committee for fifteen (15) days following the date of receipt thereof shall be deemed approved as submitted, unless within such fifteen (15) day period the Committee has sought, in writing, clarifying information concerning the same. Two sets of construction plans, specifications (including exterior color finish detail) and site plan must be submitted to the Committee. One such complete set shall be returned to the submitting lot owner or prospective lot owner with the approval or disapproval endorsed upon such complete set by the Committee. The other complete set shall be retained by the Committee for its permanent files.

The Committee shall have the right to disapprove any construction plans, specifications and/or site plan in the event the same are not in accordance with the provisions of this Declaration, if the design or exterior color scheme of the proposed improvements is not in harmony with the general surroundings of the Subdivision or with the adjacent improvements, if the construction plans, specifications and site plan are incomplete, or if the Committee determines that the construction plans, specifications and site plan, or any portion of them, are contrary to the interest, welfare and/or rights of the owners of other lots within the Subdivision. Any decision of the Committee shall be reached by a majority vote thereof, and any such decision reached by the Committee shall be final and nonappealable to any forum, body or court.

5.3 **Conditional Approval.** Any approval given by the Committee may be conditioned upon compliance by the applicant with any reasonable condition which the Committee deems appropriate, including, without limitation, the posting of bonds or other acceptable security in order to insure performance by the applicant in accordance with the construction plans, specifications and site plan being approved.

5.4. **No Liability.** Neither the Committee, nor any member thereof nor any successor thereto, shall be liable to any person for any action taken by the Committee or for any failure

to act by it under or pursuant to the provisions of this Declaration, so long as the Committee, the members thereof and any successors thereto act in good faith and without malice.

5.5. **Expiration**. Neither the Committee nor any members appointed to it shall have any responsibility with regard to this Declaration after five years from the date hereof or upon the sale by the Declarant of the last lot owned by it, or by its successor in interest, in the subdivision, whichever event occurs later. Notwithstanding the foregoing, in the event that the Association determines by an affirmative vote of seventy-five (75%) percent of the owners thereof then or at any time thereafter that the Committee or any successor thereto shall remain in existence following the expiration of the term of the Committee as hereinbefore set forth, then the Association may constitute such Committee or successor organization as it deems necessary in order to continue the function of the Committee as set forth in this section or as then modified.

6. **COMMUNITY ASSOCIATION**

The Declarant shall form a Community Association, designated herein as the Association, to include as its members all owners of any lot within the Subdivision. This organization shall be a nonprofit corporation pursuant to Title 24 of the Revised Code of Washington and shall be known as "Northern Heights Community Association". Upon the acceptance and recording of the Plat of Northern Heights, Division III, or any portion thereof, the membership of the Association shall be expanded to include the owners of each lot within the Plat of Northern Heights, Division III, as previously defined hereinabove, irrespective of the final plat designation thereof.

6.1 **Purpose**. The purpose of the Association shall include, without limitation, the furtherance and promotion of the common welfare of the owners of any lot or parcel within the Subdivision and within Northern Heights, Division III; the regulation, use, care, construction, operation, repair, maintenance and preservation of the Common Properties within these subdivisions for which there is a private maintenance obligation to be shared in common by the Association members; the regulation, maintenance and repair of facilities thereon and such other facilities, equipment, activities, objects and purposes pertaining to the welfare, enjoyment, social well-being, protection and benefit of the members and of their lots within the Subdivision and Northern Heights Division III, including, but not limited to, the operation, maintenance and use of property held or controlled by the Association; payment of taxes, if imposed, on Common Properties and improvements; and the furnishing of protection and preservation of the interests of the lot owners for the common good.

6.2 **Creation and Transfer of Control**. The Association shall be organized at the instance of the Declarant, and each lot owner shall be a member of the Association. Upon the acceptance and recording of the plat of Northern Heights, Division III, each owner of a lot thereof shall also become a member of the Association. The Declarant shall designate and appoint a governing Board of the Association until such time as the Declarant has sold eighty (80%) percent of its lots within these Subdivisions. When eighty (80%) percent of such lots owned by the Declarant have been sold by the Declarant, the control of the Association shall be turned over to the members, and the members shall elect from their

number the governing Board of the Association, as determined by the Articles of Incorporation and By-laws of the Association . Irrespective of the foregoing, the Declarant, at its sole and exclusive option, may elect at any time prior to the sale of eighty (80%) percent of its lots within these Subdivisions to transfer control of the Association to the members thereof.

6.3 **Conveyances.** The Declarant shall transfer and convey by deed or by such other applicable instrument all Common Properties and easements as hereinbefore identified to the Association, subject to the reservations impressed upon these Common Properties and easements by this Declaration. This conveyance shall be made after the Association has been created and construction on the Common Properties and easements has been completed, specifically at the time specified in paragraph 2 hereof. At such time as the Declarant conveys the Common Properties and easements to the Association, and at all times subsequent thereto, the Association shall be responsible for the maintenance and upkeep of the Common Properties and easements at its sole and exclusive expense. Such obligation shall include, without limitation, responsibility for maintenance of all Common Properties, common improvements and easements as identified herein and on the face of the final plats of the Subdivision and on the future final plat or plats of Northern Heights, Division III. Specifically, and also without limiting the foregoing, the Association shall be (a) responsible for the operation and maintenance of the Detention Facility, (b) responsible for the operation and maintenance of, and for potential liability arising from, the Children's Park and other Common Properties, and (c) responsible to the maintenance of landscaping of the medians within the McLeod Road right-of-way within the boundaries of the Subdivision and within the boundaries of the plat or plats of Northern Heights, Division III.

6.4 **Assessments and Liens.**

(a) **Authority.** The Association shall be empowered to establish and to collect dues and assessments upon lots in the Subdivision for the common benefit of such lots, which authority shall extend to the lots within Northern Heights, Division III, upon final plat approval thereof, whether in whole or on a phased basis.

(b) **Purposes.** The purposes for which dues and assessments may be established and collected include, without limitation, making provision for the payment of charges associated with utilities, roadways, drainage, property protection, landscaping, insurance, maintenance, improvements, payment of taxes upon Common Properties, the holding of ownership or a leasehold interest therein or any other common purposes, all as determined pursuant to the Articles of Incorporation and By-laws of the Association.

(c) **Personal Obligation and Lien Foreclosure.** Dues and assessments shall constitute a personal obligation of any owner of record of a lot on the due date thereof and shall also constitute a lien on the lot assessed. Such lien may be enforced by the Association in the same form and manner of procedure as foreclosure of real property mortgages under the laws of the State of Washington.

(d) **Amounts Included.** Each owner and each party hereinafter owning or claiming an equity interest in a lot agrees that in the event of such foreclosure action involving such lot, the owner or owners thereof or other party asserting an equity interest therein will pay the Association's expenses of title examination and insurance, the cost of attorney's fees incurred by the Association and court costs, as well as all other costs reasonably and necessarily incurred in such foreclosure action. In any such action, delinquent assessments shall bear interest at the rate of 12% per annum from the date the same became due until the date of the entry of the judgment of foreclosure thereon.

(e) Other **Liens and Foreclosure Actions.** The method and manner provided for foreclosure of liens set forth in this paragraph shall pertain to all liens referred to in this Declaration. First mortgage liens placed upon any of said lots for the purpose of constructing improvements thereon or other bona fide liens provided for by the laws of the State of Washington shall be, from the date of recordation of such liens, superior to any and all charges, assessments and liens thereafter asserted pursuant to this Declaration .

6.5 **Establishment and Assessment of Charges.** For the purpose of providing funds for uses specified herein, the Board of the Association shall for each year, commencing with calendar year 1990, fix and charge a yearly assessment against assessable lots. Each lot shall be assessed an equal amount for each calendar year. ~~provided, however, that any lot retained in Declarant's initial inventory shall not be assessed until such lot is sold by Declarant or until January 1, 1994, whichever event occurs first. Upon the sale of a lot from Declarant's initial inventory, and in the event that such sale occurs prior to January 1, 1994, then such lot shall be assessed its percentage share of the total annual per lot assessment equal to percentage remaining of the calendar year during which such sale occurs.~~
(Amendment as of 18th of April, 1991.)

6.6 **Annual Statement.** As soon as shall be practical in each calendar year, the Association shall send a written statement to each owner setting forth the dollar amount of the assessment for such lot for such calendar year. The Association may, in its sole discretion, provide for payment of such assessments on a periodic basis during such calendar year, with or without a service charge.

6.7 **Penalty on Delinquent Assessments.** If an owner shall fail to pay any installment of an annual assessment within thirty (30) days from the date the same is due, then the entire annual assessment for such lot shall be delinquent and shall become immediately due and payable, shall bear interest at the rate of 12% per annum thereafter until paid and shall also bear a penalty in such amount as shall be determined by the Board of the Association .

6.8 **Delinquency For More Than Ninety Days.** If the owner of any assessable lot shall be delinquent in the payment of the annual assessment, or any installment thereof, for more than ninety (90) days following the date the same is due, then the Association shall have the right to commence legal action seeking a personal judgment against such owner and, in addition thereto, shall have the right to foreclose its lien upon such lot. The total amount due from such owner shall be such sums as provided in paragraphs 6.5 and 6.4 (d), plus any penalty imposed under paragraph 6.7 hereof.

6.9 **Rules and Procedures for Billing and Collecting Assessments.** The Board of the Association shall have the power and authority to adopt rules and procedures respecting the billing and collecting of annual assessments, which shall be binding upon all lot owners.

6.10 **Increase in Assessments.** The amount of the annual assessment against each lot shall be initially determined and may thereafter be increased or decreased for any one year period, or any such greater period, as may be determined by the affirmative vote of at least fifty-one (51%) percent of the voting members of the Association, represented in person or by proxy, at a meeting, annual or special, called for such purpose; provided, however, that any lot owner who is delinquent in the payment of assessments shall not be entitled to vote thereon.

6.11 **Application of Assessment.** The Association shall apply all funds received by it pursuant to this Declaration in the following order:

(a) Administrative costs and expenses incurred by the Association in the exercise of its powers, authority and duties described in its Articles of Incorporation and By-Laws;

(b) The promotion of the recreation, health, safety, enjoyment and welfare of the users of the Common Properties, and the enhancement of the values of the Common Properties by means of construction, repair, maintenance, operation and administration of the Common Properties, including, but not limited to, the payment of taxes and insurance premiums on the Common Properties and the payment of utility charges therefore, including, if not otherwise paid by Whatcom County, the charge for electricity supplied for street lighting within the Subdivision and Northern Heights, Division III.

(c) The service, repair, maintenance and/or replacement of any and all improvements, including, but not limited to, fences, roads, paths, drainage facilities and lighting belonging to the Association.

6.12 **Authority to Maintain Surplus.** The Association shall not be obligated to spend in any particular time period all of the sums collected or received by it during such time period or any other time period. The Association may carry forward, as surplus, any balances remaining. The Association shall not be obligated to apply any such surplus to the reduction of the amount of the annual assessment in any future year.

7. PROTECTION OF MORTGAGE OR DEED OF TRUST HOLDER

No violation or breach of any covenant, condition, reservation or restriction contained in this Declaration, or in any supplement hereto, and no action to enforce the same, shall defeat, render invalid or impair the lien of any mortgage or deed of trust taken in good faith and for value against any title or interest in any lot which is the subject of an action arising from such violation or breach. A purchaser of any such lot at a trustee's sale, Sheriff's sale or Tax Foreclosure sale shall take title to such lot free and clear of any violations or breaches which have occurred on such lot, or by the previous owner thereof, prior to such

foreclosure, but such purchaser shall nevertheless take subject to this Declaration and to any supplements hereto.

8. **ENFORCEMENT**

The Association, the Declarant and any owner shall have the right to enforce, by any proceedings at law or in equity, all covenants, conditions, restrictions, reservations, liens and charges now or hereafter imposed by this Declaration. The failure of the Association, of the Declarant or of any owner to enforce any rights hereunder shall not be deemed to constitute a waiver of the right to do so thereafter. The prevailing party in any litigation involving the enforcement of any provision of this Declaration shall be entitled to judgment for the reasonable attorney's fees and costs incurred in such litigation by such prevailing party.

9. **GRANTEE'S ACCEPTANCE**

The grantee of any lot subject to this Declaration shall, by the acceptance of a deed conveying title thereto or by the execution of any contract for the purchase thereof, whether from Declarant or any subsequent owner of such lot, accept such deed or contract upon, and subject to, each and every provision of this Declaration and the provisions contained herein, including the jurisdiction, rights and powers of Declarant, and by such acceptance shall, for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with Declarant and to and with the grantees and subsequent owners of each of the lots within the Subdivision, to keep, observe, comply with and perform all obligations set forth herein.

Each such grantee also agrees, by such acceptance, to assume, as against Declarant, its successors or assigns, all of the risks and hazards of ownership and occupancy attendant to such lot, including, but not limited to, its proximity to any Common Properties, public paths, streams or other water courses.

10. **AMENDMENT TO DECLARATION**

Each and every provision of this Declaration shall run with and bind the land and shall inure to the benefit of, and be enforced by, the Association, the Declarant, the owners of any lots subject hereto, their respective legal representatives, heirs, successors and assigns, for a period of ten (10) years from the date that this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument terminating or amending this Declaration is signed by not less than seventy-five (75%) percent of the owners of all lots within the Subdivision and, if then having been subject to final plat approval, seventy-five (75%) percent of the owners of all lots with Northern Heights, Division III, which instrument shall then be filed of record with the Whatcom County Auditor. During the first ten (10) year term hereof, this covenant may be amended by an instrument signed by not less than seventy-five (75%) percent of the owners of all lots within the Subdivision and, if then having been subject to final plat approval, seventy-five (75%) percent of the owners of all lots with Northern Heights, Division III.

Any such amendment shall take effect upon being recorded with the Whatcom County Auditor.

11. **SEVERABILITY**

In the event that any provision hereof is deemed by proper judicial decree to be invalid, then the remaining portion of this Declaration shall in no way be affected.

12. **PARAGRAPH HEADINGS**

The paragraph headings in this Declaration are for convenience only and shall not be considered in construing this Declaration.

13. **NO WAIVER**

The failure of any party entitled to enforce any provision hereof to take steps to enforce such provision shall not, in any fashion, operate or be deemed to be a waiver of any such provision or of any other provision hereof.

DATED this _____ day of August, 1990.

WHATCOM LAND DEVELOPMENT L.P.,
a Washington Limited Partnership

BY: WHATCOM LANDS, INC.,
a Washington Corporation, General Partner

President

Secretary