



AFTER RECORDING RETURN TO:
Lukins & Annis, P.S.
717 W. Sprague Avenue, Suite 1600
Spokane, WA 99201
Attention: Tyler J. Black, Esq.

Courtesy Recording

COVER SHEET FOR: Master Declaration of Covenants, Conditions and Restrictions for Kendall Yards Business District

DECLARANT: North Gorge Commercial Partners, LLC

PARTIES BOUND: Declarant, Mortgagees and Owners of the Project

ABBREVIATED LEGAL: **A portion of the Southwest Quarter of Section 18, Township 25N., Range 43E., W.M. in the City of Spokane, Spokane County, Washington**

FULL LEGAL ON PAGE: Exhibit A (Phasing and Annexation)

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**MASTER DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
KENDALL YARDS BUSINESS DISTRICT
SPOKANE COUNTY, WASHINGTON**

**MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
KENDALL YARDS BUSINESS DISTRICT**

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<u>EXHIBIT B</u> –	LEGAL DESCRIPTION OF PROPERTY SUBJECT TO POTENTIAL ANNEXATION

**MASTER DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

**KENDALL YARDS BUSINESS DISTRICT
SPOKANE COUNTY, WASHINGTON**

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Master Declaration"), is made on the date hereinafter set forth, by NORTH GORGE COMMERCIAL PARTNERS, LLC, a Washington limited liability company ("Declarant"), with reference to the following facts:

A. Declarant is the owner of that certain real property located along the north side of the Spokane River, generally between Monroe Street and Maple Street, in the City of Spokane, Spokane County, Washington, which property is more particularly described on Exhibit A attached hereto and incorporated herein by this reference ("Phase One").

B. Declarant is holding the Project for development as a coordinated business district which will include residential, commercial, office, and retail improvements uses and appurtenant common areas.

C. Declarant may acquire and/or contribute additional property adjacent to or otherwise in the vicinity of the Project, including, without limitation, the property described on Exhibit B, which as of the date of this Master Declaration, is owned by the Declarant but not subject to this Master Declaration. This Master Declaration will only encumber the Project described on Exhibit A (Phase One), unless and until additional property is annexed to and made a part of the Project by the recordation of one or more Declarations of Annexation, according to the annexation procedures set forth herein.

D. The development (Phase One and any property that may be later annexed thereto) shall be hereinafter referred to as the "Project." The Owner of each Lot or Unit in the Project shall receive title to such Lot or Unit and rights of membership in Kendall Yards Business District Association, Inc., a Washington nonprofit corporation formed to operate and maintain those areas and facilities as may be designated as Common Areas in the Project Documents, and otherwise to manage the Project.

E. Declarant intends by this document to impose upon the Project mutually beneficial restrictions under a general plan of operation for the benefit of all of the said Lots and Units and the Owners thereof.

Declarant hereby declares that the Project shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Project, and every part thereof, in accordance with the plan for the establishment of the Project as a mixed use commercial development. All of the declarations, limitations, covenants, conditions, restrictions, and easements shall constitute covenants and encumbrances which shall run with the land and shall be perpetually binding upon Declarant, all Mortgagees, and their successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in or to any part of the Project.

ARTICLE I. **DEFINITIONS**

Unless otherwise expressly provided, the following words and phrases, when used in this Master Declaration and in the Project Documents, shall have the following meanings:

- 1.1 “Architectural and Design Guidelines” is defined in Section 5.4.
- 1.2 “Articles” means the articles of incorporation of the Association, as restated or amended from time to time.
- 1.3 “Assessment” means that portion of the cost of maintaining, improving, repairing, operating, insuring, and managing the Common Area (or otherwise needed for the administration or management of the Project) and the promotion of the business district which is to be paid by the Lot and Unit Owners as determined by the Association under this Master Declaration. Assessments may be designated as Regular Assessments, Extraordinary Assessments, or Special Assessments, as those terms are more specifically defined in ARTICLE VII of this Master Declaration.
- 1.4 “Association” means Kendall Yards Business District Association, Inc., a Washington nonprofit corporation formed by Declarant in conjunction with the creation of the Project, the Members of which will be the Owners of Lots and Units in the Project as provided herein.
- 1.5 “Board of Directors” means the governing body of the Association.
- 1.6 “Bylaws” means the bylaws of the Association as restated or amended from time to time.
- 1.7 “Committee” is defined in Section 5.1.
- 1.8 “Common Area” means the easements, areas and facilities owned, operated, and/or maintained by the Association for the benefit of all Lots and Units and their Owners (and also, in many cases, for the benefit of the public). The Common Area within the first Phase of the Project shall include private drives and shared Parking Areas within the Project; park and greenbelt areas within or adjacent to the Project; ; public right-of-way landscaping; the storm water management system; the pedestrian and bicycle trails and amenities (including the portion of the Centennial Trail traversing through the Project); public plazas; the community lighting system along the public right-of-way through the Project, community shared parking facilities, whether owned by the Association or leased to the Association (including parking lot landscaping, lighting and pathways), and other shared areas and amenities as may be designated as Common Area by the Declarant or by the Board of Directors. Future Phases may include additional Common Area.
- 1.9 “Common Expenses” means the actual and estimated expenses of maintenance, improvement, repair, operation, insurance, monitoring and management of the Common Area and of administering the Association and the Project, business district marketing and promotion, management of business community events and any reasonable reserve for such purposes as determined by the Board of Directors, and all sums designated as Common Expenses by, or pursuant to, the Project Documents.
- 1.10 “Declarant” means North Gorge Commercial Partners, LLC, a Washington limited liability company, and its successors-in-interest and assigns with respect to the entire Project, but excluding independent third parties purchasing Lots or Units.

1.11 “Developer” means a single Person acquiring one (1) or more Lots for purposes of constructing improvements thereon.

1.12 “Director” means a member of the Board of Directors of the Association.

1.13 “Eligible Holder” is defined in Section 14.1.

1.14 “Entity” means any general partnership, limited partnership, limited liability partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, unincorporated organization, government or any agency or political subdivision thereof, joint stock company or other business organization, including, without limitation, any foreign trust or foreign business organization.

1.15 “Extraordinary Assessment” is defined in Section 7.4.

1.16 “Lot” means any separately numbered parcel of land shown on the Plat as a buildable parcel, intended for sale to and use and enjoyment by an Owner (excluding areas designated on the Plat or by the Declarant as Common Area). If, however, a Lot is developed and improved as a condominium, then for purposes of this Master Declaration and the remaining Project Documents (e.g., voting rights and assessment obligations), the Lot shall be considered as a collection of Units rather than merely as a Lot.

1.17 “Master Declaration” means this Master Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time.

1.18 “Member” means a Person entitled to membership in the Association as provided herein.

1.19 “Mortgage” includes a recorded mortgage, deed of trust, real estate contract, or other instrument creating a security interest in any Lot or Unit.

1.20 “Mortgagee” includes a mortgagee, beneficiary, or holder of a deed of trust, real estate contract vendor, or other holder of a Mortgage (including Declarant or Declarant’s assignee with respect to any purchase-money security interest retained by Declarant on the sale of any Lot or Unit).

1.21 “Owner” or “Owners” means the record holder or holders of title to a Lot or Unit in the Project, which will include any Person having a fee simple title to any Lot or Unit, but will exclude Persons or entities having any interest merely as security for the performance of any obligation. Further, if a Lot or Unit is sold under a recorded contract of sale to a purchaser, the purchaser, rather than the fee owner, shall be considered the “Owner” for purposes of this Master Declaration.

1.22 “Parking Area” means the area or areas within the Project set aside by the Declarant for the parking, related maneuvering and passage of passenger motor vehicles and for passage of pedestrians. Such Parking Areas may be owned by the Association or leased to the Association.

1.23 “Person” means any individual or Entity.

1.24 “Phase” means any parcel of land that is subjected to the terms of this Master Declaration. The real property described in Recital A above constitutes Phase One of the Project. Subsequent Phases may be brought within the coverage of this Master Declaration by the recordation of one or more Declarations of Annexation pursuant to this Master Declaration. Notwithstanding the foregoing, except for Phase One, no property shall be encumbered by this Master Declaration unless and until it is formally annexed to the Project by recordation of such a Declaration of Annexation.

1.25 "Phase One" is defined in Recital A to this Master Declaration.

1.26 "Plat" means the recorded final subdivision plat (or plats) or binding site plan of the Project, as amended, expanded, or supplemented from time to time by the annexation of additional Phases. The Plat shall identify each Lot in the Project and show its relative location and dimensions.

1.27 "Project" means the land described in Recital A in this Master Declaration, together with all buildings, improvements, or structures thereon, and every easement or right appurtenant thereto, and all personal property intended for use in connection therewith or for the use, benefit, or enjoyment of the Owners. The Project may be expanded in the future by the annexation of additional Phases pursuant to this Master Declaration.

1.28 "Project Documents" means this Master Declaration, the Plat, the Articles, the Bylaws and the Rules and Regulations of the Association, as each may be restated or amended from time to time.

1.29 "Regular Assessment" is defined in Section 7.3.

1.30 "Rules and Regulations" means such rules and regulations governing the improvement, development and maintenance of Lots and Units within the Project, as adopted by the Board of Directors of the Association from time to time.

1.31 "Special Assessment" is defined in Section 7.4.

1.32 "Unit" means any separately numbered unit in a condominium development that becomes part of the Project, which is shown on the subject condominium plat and which is intended for sale to and use and enjoyment by an Owner.

ARTICLE II. **PURPOSE**

In order to establish a general plan for the improvement and development of the Project, Declarant desires to impose on it mutual, beneficial covenants, conditions and restrictions for the benefit of all of the Lots and Units in the Project, and for the benefit of Declarant and the future Owners of those Lots and Units. It is the intent that this Master Declaration will ensure that the Project will be developed by Developers and marketed and maintained by the Association as an attractive, quality business and recreational center.

In order to insure the proper development and use of the Project and to provide a mechanism for the establishment, management and maintenance of any landscaped common areas and street medians, private streets, street lighting, shared Parking Areas and other Common Area within the Project, Declarant has formed the Association.

Declarant hereby declares that the Project shall be subject to this Master Declaration for the benefit of all property within the Project. Each Lot and Unit within the Project shall be held, improved and conveyed subject to these covenants which shall be enforceable in accordance with this Master Declaration.

ARTICLE III.
ASSOCIATION, ADMINISTRATION, MEMBERSHIP,
AND VOTING RIGHTS

3.1 Organization of Association. The Association is or shall be incorporated under the name of Kendall Yards business District Association, Inc., as a nonprofit corporation under the Washington Nonprofit Corporation Act.

3.2 Duties and Powers. The duties and powers of the Association are those set forth in this Master Declaration, and in the Articles and Bylaws, together with its general and implied powers as a nonprofit corporation, which include doing any and all things that a nonprofit corporation organized under the laws of the State of Washington may lawfully do and which are necessary or proper in operating the Project for the peace, health, comfort, safety, and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in this Master Declaration, the Articles, and Bylaws.

3.3 Membership. The Owner of a Lot or Unit shall automatically, upon becoming the Owner of that Lot or Unit, be a Member of the Association, and shall remain a Member thereof until such time as its ownership ceases for any reason, at which time its membership in the Association shall automatically cease. Membership shall be in accordance with this Master Declaration and the Articles and Bylaws of the Association.

3.4 Transferred Membership. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of a Lot or Unit to which membership is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot or Unit fails or refuses to transfer the membership registered in its name to the purchaser of such Lot or Unit, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

3.5 Classes of Membership. The Association shall have the following two (2) classes of voting membership:

(a) Class A Membership. Class A membership shall include all Owners of Lots and Units other than the Declarant. Within Class A membership, voting power shall be allocated as follows:

(1) Vote Based on Lot Size. Each Lot Owner will receive one (1) vote for each two thousand five hundred (2,500) square feet of such Lot. In no event will a Lot Owner receive less than one (1) vote, with partial votes being rounded to the nearest one-quarter (1/4) vote. For condominium projects on a Lot, the total votes for the condominium Lot shall be allocated among the Units based upon a fraction, the numerator of which is the square footage of each Unit's vertical improvements, and the denominator of which is the total square footage of all Units' vertical improvements on such Lot; provided however, that the effect of either rounding or allocating votes based on Lot size may not result in condominium project Owners obtaining a greater vote than is provided by the square footage of the corresponding Lot.

(2) Vote Based on Vertical Improvements Constructed. Each Lot or Unit Owner will receive one (1) vote for each two thousand five hundred (2,500) square feet

of vertical improvements constructed on such Lot, with such square footage to be determined according to the "BOMA" standard method for measuring mixed use properties (2011). Provided that vertical improvements are completed, in no event will a Lot or Unit Owner receive less than one (1) vote. Partial votes based on square footage must be rounded to the nearest one-quarter (1/4) vote.

(b) Class B Membership: Class B membership shall be held by the Declarant, which membership shall control and be superior to all voting power otherwise allocated to the Lot or Unit Owners according to Section 3.5(a), above. Class B membership shall cease and be converted to Class A membership upon the date that no less than eighty percent (80%) of the square footage of the real property delineated in Exhibit B (which includes the real property delineated in Exhibit A) is annexed to the Project by Declarant in additional Phases.

3.6 Voting Requirements. Except where otherwise expressly provided in this Master Declaration, the Articles, or the Bylaws, any action by the Association which must have the approval of the Association membership before being undertaken shall require the vote or written assent of a simple majority of the total voting power of the Association (both classes of membership combined).

3.7 Membership Meetings. Regular and special meetings of Members of the Association shall be held with the frequency, at the time and place, and in accordance with the provisions of the Bylaws of the Association.

3.8 Board of Directors. The affairs of the Association shall be managed by a Board of Directors, which will be established and which will conduct regular and special meetings according to the provisions of the Bylaws of the Association. The number of Directors shall be established, and the Board of Directors shall be elected by the Members, according to the Bylaws; provided that, for so long as the Declarant retains a substantial ownership interest in the real property described in Exhibit B and the Project (as described in Section 3.5(b) of this Master Declaration), the Declarant shall reserve the right to control the Board of Directors by appointing a majority of the Directors.

3.9 Use of Agent. The Board of Directors, on behalf of the Association, may contract with a professional management agent for the management and oversight of maintenance and repair of the Common Area, and for conducting other activities on behalf of the Association, as may be determined by the Board of Directors. Any contract for professional management services must contain term and termination provisions, and must allow termination without penalty, on advance notice of not more than ninety (90) days, and shall otherwise be subject to such limitations as may be set forth in the Bylaws.

ARTICLE IV. **RIGHTS IN COMMON AREA**

4.1 Common Area. The Common Area for Phase One of the Project shall include those areas, systems, and facilities described in Section 1.8, above, and any other areas and facilities designated by the Declarant or the Board of Directors as Common Area, including, without limitation, areas over which the Association is granted an easement, Common Area in any future Phase as identified (i) in the appropriate Declaration of Annexation; (ii) by the Declarant or other sponsor of such future Phase; or (iii) by the Board of Directors. Each Lot and Unit Owner shall have a nonexclusive right to the use and benefit of all Common Area in accordance with the purposes for which it is intended without hindering the exercise of or encroaching upon the lawful rights of any other Lot or Unit Owners, subject to Rules and Regulations enacted by authority of the Board of Directors as provided herein.

4.2 No Separate Conveyance of Rights. The right of each Owner to use the Common Area shall be appurtenant to such Owner's Lot or Unit, as the case may be, and may not be assigned or conveyed except with such Lot or Unit. The Common Area shall (i) be dedicated to the exclusive use and enjoyment of the Owners of Lots and Units within the Project (and their guests and invitees); (ii) have no independent value; and (iii) not be converted to any use other than as Common Area, or sold, transferred, or encumbered without the amendment of this Master Declaration and the prior written consent of the City of Spokane, if required by applicable law. To the extent possible, the Declarant and the Association shall take all reasonable measures to assure that the Common Area is not separately assessed for real estate tax purposes, but that the value of the use and enjoyment of the Common Area shall be reflected in the assessments of the individual Lots and Units within the Project.

4.3 Regulation of Common Area Use. The rights and easements of use and enjoyment of the Common Area created by this Master Declaration shall be subject to such Rules and Regulations as may be adopted by the Board of Directors from time to time.

4.4 Damage to Common Area by a Member. Each Owner shall be liable to the Association for any damage to the Common Area not fully reimbursed to the Association by insurance, if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper use of such Common Area by the Owner or any family member, guest, tenant, employee, customer, client, or invitee of the Member. Notwithstanding the foregoing, the Association, acting through the Board of Directors, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association. The cost of correcting the damage, to the extent not reimbursed to the Association by insurance, shall be a Special Assessment against the Lot or Unit and may be enforced as provided hereby for the enforcement of other Assessments.

ARTICLE V. ARCHITECTURAL CONTROL

5.1 Prohibition of Alteration and Improvement. Subject to the exemption of Declarant hereunder, no building, sign, fence, wall, landscaping, or other improvement or structure of any kind, which would be visible from a public right of way or any other area outside of any Lot or Unit itself, shall be constructed, installed, painted, or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto unless and until the same has been approved in writing by the Architectural Control Committee (the "Committee") appointed as provided in this ARTICLE V.

5.2 Plans and Approval. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of any such improvements or alterations, shall be submitted to the Committee for approval as to quality of workmanship and design. The plans for any landscaping and parking areas located on any lot in the Project shall be submitted to the Committee for approval. Any application submitted to the Committee pursuant to this ARTICLE V shall be deemed approved, unless written disapproval or a request for additional information or materials by the Committee shall have been transmitted to the applicant within thirty (30) days after the date of receipt by the Committee of all required materials.

5.3 Architectural Control Committee. Until the Declarant, in its discretion and in writing, turns over the function of architectural control to the Board of Directors (which may then act as the Committee or appoint such Committee), all functions of the Committee described in this ARTICLE V shall be undertaken by the Declarant (or agents of the Declarant appointed for such purpose). Once turned over to the Board of Directors, such functions shall be undertaken by the Board of Directors, unless and until the Board of Directors determines to appoint an independent Committee. If a Committee

is thereafter appointed, all members thereof shall be appointed by the Board of Directors from the membership of the Association. There shall be not less than three (3) nor more than five (5) members of the Committee, as determined by the Board of Directors. As used in the Project Documents, the term "Committee" shall first refer to the Declarant, then to the Board of Directors if the Declarant delegates such duties to the Board of Directors, and then to the independent Committee, if organized under the direction of the Board of Directors, whichever shall at such time have the jurisdiction over architectural issues under this ARTICLE V.

The members of the Committee shall receive no compensation for services rendered, other than reimbursement for authorized expenses incurred by them in the performance of their duties hereunder. Neither the Committee nor any member of the Committee shall be liable in damages or otherwise for decisions made in good faith pursuant to the authority granted in this ARTICLE V.

5.4 Architectural and Design Guidelines. It is the intent of this Master Declaration to avoid a mixture of architecture which would create disharmony of design and appearance as determined by the Committee. In addition it is the intent of this Master Declaration to ensure that adequate parking is provided within the Project in a manner consistent with the PUD Approval. In furtherance of these objectives, the Committee shall have the authority to adopt "Architectural and Design Guidelines," which will refer to the quality and character specifications required to be followed by an Developer within the Project, and to augment, amend, or otherwise modify such guidelines from time to time; provided that they shall at all times be consistent with the remaining Project Documents. The Architectural and Design Guidelines shall be maintained by the Committee and made available to Developers and other Owners upon request.

5.5 Construction Completion Requirements. Any structure erected or placed on any Lot shall be completed as to external appearance, including finished painting and landscaping, pursuant to approved plans and specifications, as soon as reasonably practicable, and in any case within fifteen (15) months from the date of commencement of construction.

ARTICLE VI. **REPAIR AND MAINTENANCE**

6.1 Repair and Maintenance Rights and Duties of Association. Subject to the provisions in this Master Declaration pertaining to eminent domain and destruction of improvements, the Association shall maintain, repair, and replace the Common Area and all elements thereof, or shall contract for such maintenance, repair, and replacement thereof, with all Common Area to be kept in good condition, reasonable wear and tear excepted. This obligation shall not apply to maintenance of common areas that may be established in connection with the development of individual Lots (e.g., condominium common areas), which shall be the responsibility of the Lot Owners set up for such purpose with respect to a specific Lot or Lots.

However, in the event an Owner fails to maintain its Lot or Unit in a manner which the Board of Directors deems necessary to preserve the appearance and value of the Project, the Board of Directors may notify the Owner of the work required and request that the work be done within sixty (60) days from the giving of such notice. In the event the Owner fails to carry out such maintenance within such period, the Board of Directors may cause such work to be done and may specially assess the cost thereof to such Owner, and, if necessary, lien the appropriate Lots and/or Units for the amount thereof.

For purposes of performing the maintenance, repair, or replacement of the Common Area as authorized by this ARTICLE VI, or for purposes of making emergency repairs necessary to prevent

damage to the Common Area or to any Lots or Units, or for any other purpose reasonably related to the performance by the Board of Directors of its rights or responsibilities under this Master Declaration, the Board of Directors (and its agents and employees) shall have the irrevocable right, after reasonable notice to the Owner, and at reasonable hours, to enter upon any Lot or Unit.

6.2 Repair and Maintenance Rights and Duties of Owners. Except for those portions of the Project which the Association is required or elects to maintain and repair, each Lot and Unit Owner shall, at its sole cost and expense, maintain and repair its Lot or Unit and all improvements thereon, keeping the same in good condition. This obligation shall include the responsibility for the maintenance, repair, and replacement of utility service lines (e.g., sewer and water lines) that are located on or service only such Lot or Unit.

ARTICLE VII.

ASSOCIATION MANAGEMENT AND MAINTENANCE FUNDS AND ASSESSMENTS

7.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot and Unit owned within the Project, hereby covenants, and each Owner of any Lot or Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following Assessments, which shall be established and collected as provided herein:

- (a) Regular Assessments;
- (b) Extraordinary Assessments; and
- (c) Special Assessments.

All Assessments, together with interest, costs, penalties and actual attorneys' fees, shall be a charge and a continuing lien upon the Lot or Unit against which each Assessment is made, the lien to become effective upon recordation of a "Notice of Assessment Lien" by the Board of Directors. Each such Assessment, together with interest, costs, penalties, and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot or Unit at the time when the Assessment came due. No Owner of a Lot or Unit may exempt itself from liability for its contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or any other part of the Project, or by the abandonment of its Lot or Unit.

7.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to (i) promote the health, safety, and welfare of all Owners of Lots and Units in the entire Project, (ii) operate, maintain, improve, repair, and replace so much of the Common Area for the common good of the Project, (iii) pay insurance premiums on the Common Area, (iv) enforce this Master Declaration against Owners of Lots and Units within the Project, (v) engage in common business marketing and business district marketing events and activities, and (vi) manage and administer the Association. The Regular Assessments shall include an adequate reserve fund for maintenance, repair, and replacement of those elements of the Common Area which must be replaced on a periodic basis. The reserve fund shall be maintained as a segregated fund, separate from the other funds of the Association.

7.3 Regular Assessments. Until a new assessment shall be established according to this Master Declaration, immediately following the closing of the sale of the first Lot or Unit in the Project, the annual maximum "Regular Assessment" per Lot or Unit shall be such amount as is set forth in the Project budget prepared by Declarant, payable in installments as determined by the Board of Directors.

Each Lot's and Unit's share for the first year shall be prorated based on the number of months remaining in that fiscal year. Thereafter, the Board of Directors shall determine and fix the amount of the maximum annual Regular Assessment against each Lot and Unit, on a yearly basis, at least sixty (60) days in advance of the effective date of the new assessment; provided, however, that the maximum annual Regular Assessment may not be increased by more than twenty percent (20%) above the maximum annual Regular Assessment for the immediately preceding year, without the vote or written assent of a simple majority of the total voting power of the Association.

7.4 Extraordinary Assessments. In addition to the Regular Assessments authorized above, the Board of Directors may levy in any fiscal year an "Extraordinary Assessment" applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement element of the Common Area, including fixtures and personal property related thereto, or to defray any unanticipated or underestimated Regular Assessment; provided, however, that the aggregate Extraordinary Assessments for any fiscal year shall not exceed ten percent (10%) of the budgeted gross expenses of the Association (excluding reserves) for that fiscal year, without the vote or written assent of a simple majority of the total voting power of the Association.

7.5 Special Assessments. In addition to the Regular and Extraordinary Assessments authorized above, the Board of Directors may levy "Special Assessments" (without limitation as to amount or frequency) against an individual Lot or Unit and its Owner to (i) reimburse the Association for costs incurred in bringing that Owner and its Lot or Unit into compliance with the provisions of the Project Documents, including interest, penalties, and actual attorneys' fees and costs, or (ii) defray, in whole or in part, the costs incurred by the Association as a result of functions performed, costs incurred, or benefits conferred upon, only a particular group of Lot Owners or Unit Owners within the Association, including, without limitation, costs incurred by the Association with respect to shared Parking Areas and associated facilities whether owned by or leased to the Association. Lot Owners or Unit Owners.

7.6 Allocation of Assessments; Due Dates. Each Lot and Unit, including Lots and Units owned by the Declarant, shall bear such share of each aggregate Regular Assessment and Extraordinary Assessment as corresponds to the voting power attributable to such Lot or Unit pursuant to the Articles and Section 3.5 of this Master Declaration (but without regard to the special voting power allocated to Class B membership); provided that the Declarant shall have the right to defer the commencement of Assessments against Lots and Units owned by the Declarant or any Developer as provided in Section 7.7, below.

Due dates of Assessments shall be the first day of every calendar month, or otherwise as ordered by the Board of Directors. No notice of such Assessment shall be required other than an annual notice setting forth the amount and frequency of the Assessment for the following year.

7.7 Date of Commencement of Regular Assessments. The Regular Assessments provided for herein shall commence with respect to each Lot or Unit in the Project on the first day of the month following closing of the sale of such Lot or Unit by Declarant to a third party who is not identified by the Declarant as a Developer.

The Regular Assessments shall commence with respect to each Lot or Unit in the Project still owned by the Declarant or a Developer on the earlier of: (i) the occupancy of the improvements on such Lot or Unit, as the case may be; or (ii) fifteen (15) months from the date of commencement of the building improvements on the Lot. This special deferral, however, shall be available only for so long as the Declarant and/or the Developers subsidize all actual maintenance and repair of the Common Area to

the extent such maintenance and repair is not covered by Assessments against Lots and Units not owned by the Declarant or Developers.

7.8 Transfer of Lot or Unit by Sale or Foreclosure. The sale or transfer of any Lot or Unit shall not affect any Assessment lien, or relieve the Lot or Unit from any liability therefor, whether the lien pertains to payments becoming due prior or subsequent to such sale or transfer. Notwithstanding the foregoing, the sale or transfer of any Lot or Unit pursuant to foreclosure or by deed in lieu of foreclosure of a recorded first Mortgage given in good faith and for value shall extinguish the lien of all such Assessments as to payments which became due prior to such sale or transfer. Sale or transfer pursuant to Mortgage foreclosure shall not, however, affect the personal liability of the Owner for unpaid Assessments. Any Assessments for which the liens are extinguished pursuant to this Section 7.8 shall be deemed to be Common Expenses collectible from all of the Lots and Units including the Lot or Unit for which the lien was extinguished. In a voluntary conveyance of a Lot or Unit, the grantee of the same shall be jointly and severally liable with the grantor for all unpaid Assessments by the Association against the latter for its share of the Common Expenses (and for its obligation for individual Special Assessments) up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Board of Directors, setting forth the amount of the unpaid Assessments due the Association, and such grantee shall not be liable for, nor shall the Lot or Unit conveyed be subject to a lien for, any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any such Assessment becoming due after the date of any such statement.

7.9 Enforcement of Assessment Obligation; Priorities; Discipline. If any part of any Assessment is not paid and received by the Association or its designated agent within ten (10) days after the due date, an automatic late charge equal to ten percent (10%) of the Assessment (and in no event less than Ten Dollars (\$10.00)) shall be added to and collected with the Assessment. Additionally, if any part of any Assessment is not paid and received by the Association or its designated agent within thirty (30) days after the due date, the total unpaid Assessment (including the late charge) shall thereafter bear interest at the rate of eighteen percent (18%) per annum until paid. Each unpaid Assessment (whether regular, extraordinary, or special) shall constitute a lien on each respective Lot and Unit, prior and superior to all other liens recorded subsequent to the recordation of the Notice of Assessment Lien, except (1) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto; and (2) labor or materialmen's liens arising under Washington law (timely and duly filed) if the legal effective date is prior to the recording of the Notice of Assessment Lien. Such lien, when delinquent, may be enforced by sale by the Association acting through the Board of Directors, its attorney or other person authorized by this Master Declaration or by law to make the sale, after failure of the Owner to pay such Assessment, in accordance with the provisions of Washington law applicable to the exercise of powers of sale in deeds of trust (with the Board of Directors having the right and authority to appoint an independent trustee), or by judicial foreclosure as a mortgage, or in any other manner permitted by law. The Association, acting on behalf of the Owners, shall have the power to bid for the Lot or Unit at the foreclosure sale, and to acquire and hold, lease, encumber, and convey the same. The foreclosing party shall have the right to reduce or eliminate any redemption rights of the defaulting Owner as allowed by law. Suit to recover a money judgment for unpaid Assessments, rent, interest, costs, penalties, and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. The Board of Directors may impose reasonable monetary penalties including reasonable attorneys' fees and costs and may temporarily suspend the Association membership rights of a Lot or Unit Owner who is in default in payment of any Assessment, after notice and hearing according to the Bylaws.

7.10 Payment of Taxes Assessed Against Common Area or Personal Property of Association. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Lots and Units, said taxes shall be included in the Assessments made under the provisions of this ARTICLE VII, and, if necessary, an Extraordinary Assessment may be levied against the Lots in an amount equal to said taxes (regardless of the limitation on Extraordinary Assessments set forth in Section 7.4, above).

ARTICLE VIII. EASEMENTS AND UTILITIES

8.1 Common Area Easements. Declarant expressly reserves for the benefit of the Board of Directors and all agents, officers, and employees of the Association, nonexclusive easements as necessary to maintain and repair the Common Area, and to perform all other tasks in accordance with the provisions of this Master Declaration. Each Owner shall likewise have a perpetual non-exclusive easement for the use and enjoyment of the Common Area, consistent with the intended purpose of the Common Area, subject to the power of the Board of Directors to enact reasonable Rules and Regulations governing such use.

8.2 Encroachment and Utility Easements. Each Lot and Unit within the Project is hereby declared to have an easement over all adjoining Lots and Units for the purpose of accommodating any encroachment due to engineering errors, errors in original construction or reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

Declarant also expressly reserves for the benefit of itself and its successors-in-interest and assigns, including the Association, easements over and under the entire Project (together with the right to grant and transfer the same) for the installation, repair, and maintenance of sanitary sewer, water, electric, gas, telephone, television, and other utility lines and services, as may be deemed appropriate to service the Project.

8.3 Utility Services. Each Owner shall make all arrangements for and pay directly for all utilities and services furnished to or used by such Owner, including, without limitation, water, sewer, gas, electricity, garbage collection, telephone service, and television receiving.

ARTICLE IX. USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the Project and each Lot and Unit therein is subject to the following:

9.1 Residential Lots and Units. All lots are permitted for residential uses or as part of mixed use buildings including both commercial and residential uses.

9.2 Commercial Lots and Units. No Lot or Unit designated by Declarant as a commercial Lot or Unit shall be occupied and used except for business or commercial purposes consistent with the then current zoning for the Lot or Unit and in compliance with all requirements of any governmental or quasi-governmental agency having jurisdiction over the Project. Additionally, commercial uses may be

limited according to special provisions set forth in any restrictive covenant recorded with respect to a particular Lot, or in a Declaration of Annexation for a future Phase of the Project. (same comment here..all lots allow mixed use)

9.3 Temporary Structures. No trailer, tent, shack, camper, or other outbuilding or structure of a temporary nature shall be used on the Project for any purpose, except as follows: (i) for fifteen (15) months during construction of an approved structure (for which a building permit shall have been issued); (ii) temporary food truck and stands may be permitted by the Committee; and (iii) only in instances where the temporary structure has been approved by the Committee.

9.4 Further Subdivision Prohibited. No Lot shall be further subdivided, except: (i) in connection with the creation of a condominium regime if allowed by the Declarant; or (ii) by a Developer where the further subdivision is contemplated by the Declarant and permitted in the conveyance to the Developer or in a Declaration of Annexation pertaining to the Developer's Lot. No Owner shall bring any action for partition or division of any Lot or Unit. Judicial partition by sale of a single Lot or Unit owned by two (2) or more Persons and division of the sale proceeds is not prohibited hereby (but physical partition of a single Lot or Unit is prohibited).

9.5 Lot and Unit Maintenance. Each Lot and Unit, and all improvements and landscaping thereon shall be maintained in a clean, neat, and orderly condition and in good repair at all times. All rubbish, trash, and garbage shall be regularly removed from the Project and shall not be allowed to accumulate thereon. Trash, garbage, and other waste shall not be kept except in sanitary containers which shall be kept screened and concealed from the view of other Lots and Units and the public right of way.

9.6 Nuisances. No noxious, illegal, or offensive activities shall be carried on in any Lot or Unit, or in any part of the Project, 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 their respective Lot or Unit.

9.7 Signs. Signs advertising Lots and Units for sale or rent may be displayed on the Project without prior approval of the Board of Directors provided that such signs shall be of reasonable and customary size. Except as expressly permitted by this Section 9.7, no signs shall be displayed to the public view on any Lots or Units or on any portion of the Project unless first approved by the Committee and in compliance with the Architectural and Design Guidelines.

9.8 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants contained in this ARTICLE IX or elsewhere in this Master Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Unit in the Project in reliance on one (1) or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and, by acquiring such Lot or Unit, agrees to defend and hold Declarant harmless therefrom.

ARTICLE X. **PARKING AREAS**

10.1 Designation of Parking Areas – the Project. The Declarant is obligated to provide Parking Areas for the Project such that the Project is in compliance with its previously approved planned unit development which requires one parking space for each one thousand square feet of commercial space in the Project., The Declarant may contract with an affiliate to construct Parking Areas and lease

the same to the Association to satisfy such planned unit development requirements. The Declarant shall have the right to determine the portion(s) and locations within the Project that shall be designated as a Parking Area and the Declarant shall have the right to move or relocate the Parking areas within the project from time to time.. No such relocation or reconfiguration shall be made which would obligate any Owner of a Lot or Unit to move from or alter their Lot or Unit without the consent of such Owner.

10.2 Designation of Parking Areas – Lot Owners. The Owner of each Lot within the Project shall generally have the right to determine the portion(s) of such Lot to be designated as parking area and the right to change such designation from time to time, provided that (i) the design and location of the parking has been approved by the Committee including internal and perimeter landscaping and lighting, (ii) at all times following the completion of construction of any building or Unit on a Lot, the Owner thereof shall maintain or cause to be maintained thereof its paved parking area or paved parking areas in a manner that is consistent with the integrity of the Project, and (iii) the provision of such parking area, whether exclusive to the Owner of such Lot and its successors, assigns, mortgagees, lessees, sublessees, employees, agents, customers, licensees or business invitees, or shared, will not exempt the Owner from Assessments with respect to shared Parking Areas provided by the Declarant and operated and maintained by the Association. Notwithstanding subsection (iii) in the preceding sentence, if in connection with the development of its Lot an Owner provides exclusive parking within the confines of its Lot sufficient to meet the full parking needs of its successors, assigns, mortgagees, lessees, sublessees, employees, agents, customers, licensees or business invitees, the Association may, in its sole and absolute discretion, exempt such Owner from Assessments levied against the Owner with respect to the Parking Areas, provided that such Owner provides parking areas on its Lot that comply with the number of parking spaces required under the City of Spokane's Municipal Code, and all other applicable laws for such Lot and that the Committee has certified in its sole discretion that the onsite parking provided by the Lot Owner is sufficient to meet the full parking needs of that use. If the use of the lots changes over time the Committee must re-certify that the parking provided is sufficient to meet the full parking needs of the new use.

10.3 Use of Parking Areas. All Parking Areas shall be available for the purpose of common use thereof by the Owners and their successors, assigns, mortgagees, lessees, sublessees, employees, agents, customers, licensees and business invitees for parking, related maneuvering and passage of passenger motor vehicles and for passage of pedestrians, subject to the time restrictions, use restrictions and fee schedules established by the Association. No portion of the parking areas on Lots shall be used for storage of goods or storage of any motor vehicle left for service, repair or sale. Use of shared Parking Areas shall be consistent with rules and regulations established by the Committee.

10.4 Parking Area Maintenance. All driving aisles, parking aisles, driveways, parking spaces and parking structures contained within the Parking Areas, whether owned by the Association or leased to the Association, or on a Lot Owner's parking areas, shall be properly graded, leveled and paved with concrete or asphalt and shall also be properly marked with painted lines for the orderly flow of traffic and the parking of motor vehicles, except as provided herein or by the Association. All parking areas shall be provided with appropriate access to driving aisles and driveways of adequate width.

10.5 Changes in Parking Areas. Changes in the sizes, location and arrangement of the Parking Areas and the traffic circulation and flow pattern thereon may be made from time to time in a reasonable manner by the Declarant and/or the Association, so long as the required number of parking spaces is at all times maintained within the Project, as provided in Section 10.1. Furthermore, changes in the sizes, location and arrangement of those portions of each Lot used for parking area may be made by each Lot Owner, so long as the required number of parking spaces is at all times maintained on such Lot, as

required under the City of Spokane's Municipal Code, and all other applicable laws for such Lot and subject to approval of the Committee.

10.6 Rules, Regulations and Enforcement. The Association, in cooperation with Declarant, may make reasonable rules and regulations governing the use of all Parking Areas within the Project, provided however, that all Parking Areas will be Common Areas for the benefit of Lot and Unit Owners, their successors, assigns, mortgagees, lessees, sublessees, employees, agents, customers, licensees and business invitees. No Owner may use any portion of the Parking Areas in a manner which unreasonably interferes with the use and enjoyment of any other Owner's Lot or the Project. Enforcement of the rules and regulations governing the use of the Parking Areas shall lie with the Association, which may implement such policies and procedures, including the levying of parking fees and parking time restrictions, to enforce such rules and regulations as it reasonably deems necessary.

ARTICLE XI. **INSURANCE**

11.1 Duty to Obtain Insurance; Types. The Association shall obtain and maintain the following policies of insurance:

(a) Hazard Insurance. With respect to the Common Area, a policy of hazard insurance covering loss or damage to all parts of the Common Area in the amount of the full replacement value thereof, providing protection against all direct causes of loss. The policy shall name the Association (for the use and benefit of the individual Owners), as the named insured and shall contain the standard mortgage clause.

(b) Liability Insurance. With respect to the Common Area, a comprehensive general liability insurance policy, with policy limits and endorsements deemed appropriate by the Board of Directors (but having a combined single limit of liability of not less than \$4,000,000.00), covering all occurrences relating to the operation of the Common Area.

(c) Fidelity Bonds. If required by any first Mortgagee, blanket fidelity bonds for anyone who either handles or is responsible for funds which are held or administered by the Association, regardless of whether they receive compensation for such services.

11.2 Waiver of Claim Against Association. As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board of Directors, and the Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said Persons.

11.3 Right and Duty of Owners to Insure. It is the responsibility of each Owner to directly provide insurance on all improvements and personal property located on its Lot or Unit. Nothing herein shall preclude any Owner from carrying any public liability insurance as it deems desirable to cover its individual liability for damage to Persons or property occurring on its individual Lot or Unit or elsewhere upon the Project. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board of Directors upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur, and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by it

to the Association to the extent of such reduction, for application by the Board of Directors to the same purposes as the reduced proceeds are to be applied.

11.4 Notice of Expiration Requirements. If available, all of the policies of insurance maintained by the Association shall contain a provision that said policy or policies shall not be canceled, terminated, or expired by their terms, without thirty (30) days' prior written notice to the Board of Directors and the Declarant (so long as the Declarant owns any Lots or Units), and also to any Owners and first Mortgagees who shall have filed written requests with the carrier for such notice.

11.5 Insurance Premiums. Insurance premiums for any policies carried by the Association shall be a Common Expense to be included in the Regular Assessments levied by the Association and collected from the Owners. The portion of the Regular Assessments necessary for the required insurance premiums shall be separately accounted for by the Association in the reserve fund to be used solely for the payment of premiums of required insurance as such premiums become due.

11.6 Trustee for Policies. The Association, acting through the Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Section 11.1 above, shall be paid to the Board of Directors as trustee.

ARTICLE XII. **DESTRUCTION OF IMPROVEMENTS**

12.1 Damage to Common Area. In the event of any destruction of any element of the Common Area, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to ARTICLE XI hereof shall be used for such purpose, unless otherwise provided herein.

It shall be presumed that the Association is authorized to levy an Extraordinary Assessment to collect any expense of restoration and repair not covered by insurance, and to proceed forthwith with the restoration and repair. However, within thirty (30) days of the date of destruction, by the vote or written consent of not less than seventy-five percent (75%) of the total voting power of the Association, together with the approval of at least seventy-five percent (75%) of the first Mortgagees of record, the Owners may decide to proceed in a manner other than by restoring and repairing the Common Area.

12.2 Damage to Lots or Units. Restoration and repair of any damage to the improvements on any individual Lot or Unit shall be made by and at the individual expense of the Owner of the Lot or Unit so damaged. Such repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Committee as provided herein.

ARTICLE XIII. **EMINENT DOMAIN**

13.1 Taking of Lots or Units. In the event of any taking of any Lot or Unit in the Project by eminent domain (including actual condemnation or sale under threat of condemnation), the Owner of such Lot or Unit shall be entitled to receive the award for such taking (subject to the rights of any Mortgagee thereof), and after acceptance thereof, such Owner and the Mortgagee(s) of the Lot or Unit shall be divested of all interest in the Project if such Owner vacates the Lot or Unit as a result of such taking. The

remaining portion of the Project shall be resurveyed, if necessary, and this Master Declaration shall be amended to reflect such taking and to re-adjust the interests of the remaining Owners in the Project.

13.2 Taking of Common Area. In the event of any taking of all or any portion of the Common Area by eminent domain (including actual condemnation or sale under threat of condemnation), the Association shall be entitled to receive the award for such taking. The proceeds of the condemnation shall be used to restore and repair the Common Area as necessitated by the taking. However, within thirty (30) days of the date of the taking, by the vote or written consent of not less than seventy-five percent (75%) of the total voting power of the Association, together with the approval of at least seventy-five percent (75%) of the first Mortgagees of record, the Owners may decide to proceed in a manner other than by restoring and repairing the Common Area.

ARTICLE XIV. RIGHTS OF MORTGAGEES

14.1 In General. This ARTICLE XIV is included in this Master Declaration in order to induce various lenders and lending agencies to participate in the financing of the sale and improvement of Lots and Units within the Project. To the extent these added provisions, pertaining to the rights of such lenders and lending agencies, conflict with any other provisions of this Master Declaration or any other of the Project Documents, these added restrictions shall control. For purposes of this ARTICLE XIV, the term "Eligible Holder" shall refer to a holder, insurer, or guarantor of any first Mortgage on a Lot or Unit, who has provided a written request to the Association, to be notified of any proposed action requiring the consent of a specified percentage of such holders, insurers, or guarantors.

14.2 Right of Mortgagee Paramount. Notwithstanding any other provision of the Project Documents, no amendment or violation of the Project Documents shall operate to defeat or render invalid the rights of any Mortgagee of a Lot or Unit made in good faith and for value, provided that after the foreclosure of any such Mortgage, such Lot or Unit shall remain subject to the Project Documents.

14.3 No Responsibility for Certain Delinquent Assessments. Each first Mortgagee of a Mortgage encumbering any Lot or Unit, which obtains title to such Lot or Unit pursuant to judicial foreclosure or the powers provided in such Mortgage, shall take title to such Lot or Unit free and clear of any claims for unpaid Assessments or charges against such Lot or Unit which accrued after the time such Mortgagee recorded its Mortgage and prior to the time such Mortgagee acquires title to such Lot or Unit.

14.4 Right to Information. First Mortgagees, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours; (2) require from the Association the submission of financial reports and other financial data; (3) receive written notice of all meetings of the Owners; and (4) designate, in writing, a representative to attend all such meetings. Each Owner hereby authorizes the first Mortgagee of a first Mortgage on its Lot or Unit to furnish information to the Board of Directors concerning the status of the first Mortgage and the loan which it secures.

14.5 Right to Participate in Amendments to Project Documents. Lot and Unit Owners shall have the right to amend the Project Documents in accordance with ARTICLE XV, below, subject to the rights of Eligible Holders to participate in the amendment process as provided in this Section 14.5. Amendments of a material nature shall be agreed to by (i) the Declarant (so long as the Declarant owns any Lot or Unit in the Project); (ii) Lot and Unit Owners representing at least sixty-seven percent (67%) of the total allocated votes in the Association (excluding votes held by the Declarant); and (iii) Eligible Holders representing at least fifty-one percent (51%) of the votes of Lots and Units that are subject to

Mortgages held by Eligible Holders. A change to any of the provisions governing the following would be considered as “material”:

- (a) Voting rights;
- (b) Responsibility for maintenance and repairs;
- (c) Reallocation of rights in the Common Area;
- (d) Convertibility of Lots into Common Area or vice-versa;
- (e) Hazard or fidelity insurance requirements;
- (f) Imposition of any restrictions on the leasing of Lots or Units;
- (g) Imposition of any restrictions on a Lot or Unit Owner’s right to sell or transfer his or her Lot or Unit;
- (h) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Project Documents; and
- (i) Any provisions that expressly benefit Mortgage holders, insurers, or guarantors.

14.6 Action to Terminate the Project. Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs shall be agreed to by: (i) the Declarant (so long as the Declarant owns any Lot or Unit in the Project); (ii) Lot and Unit Owners representing at least sixty-seven percent (67%) of the total allocated votes in the Association (excluding votes held by the Declarant); and (iii) Eligible Holders representing at least fifty-one percent (51%) of the votes of Lots and Units that are subject to Mortgages held by Eligible Holders. When Owners are considering termination of the legal status of the Project for reasons other than substantial destruction or condemnation, approval must be obtained from Eligible Holders representing at least sixty-seven percent (67%) of the votes of Lots and Units that are subject to Mortgages held by Eligible Holders.

14.7 Implied Approval of Certain Actions. Implied approval of an Eligible Holder under Section 14.5(e) or 14.5(f) may be assumed when the Eligible Holder fails to submit a response to any written proposal for an amendment or for termination of the legal status of the Project, within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a “return receipt” requested.

14.8 Right to Notice. Each Eligible Holder and each eligible insurer or guarantor, upon written request therefor, is entitled to timely written notice of the following:

- (a) Any condemnation or casualty loss that affects either a material portion of the Project or the Lot or Unit securing its Mortgage;
- (b) Any sixty (60) day delinquency in the payment of Assessments or other charges owed by the Owner of any Lot or Unit on which it holds the Mortgage;
- (c) A lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

(d) Any proposed action that requires the consent of a specified percentage of Eligible Holders.

14.9 Authority to Enter into Certain Contracts. In addition to the foregoing, the Board of Directors shall have the power and authority, without the vote of the Association, to enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of commercial or residential lenders so as to allow for the purchase, guaranty, or insurance, as the case may be, by such Entities of first Mortgages encumbering Lots or Units. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential mortgage borrowers and potential sellers of their residential Lots and Units, if such agencies approve the Project as a qualifying Project under their respective policies, rules and regulations, as adopted from time to time.

ARTICLE XV. DURATION AND AMENDMENT

15.1 Duration. This Master Declaration shall continue in full force for a term of fifty (50) years from the date of its recording, after which time this Master Declaration shall be automatically extended for successive periods of ten (10) years, unless a declaration of termination is recorded, meeting the requirements of a material amendment to this Master Declaration as set forth in Section 15.2.

15.2 Amendment Procedures. Notice of the subject matter of a proposed amendment to this Master Declaration, in reasonably detailed form, shall be included in the notice of any meeting of the Association at which the proposed amendment is to be considered. A resolution adopting a proposed amendment may be proposed by an Owner at a meeting of the Members of the Association. The resolution shall be adopted by the vote, in person or by proxy, or written consent of Members representing not less than sixty-seven percent (67%) of the total voting power of the Association.

Notwithstanding the foregoing, the following special voting provisions shall apply:

(a) Amendments of a material nature shall be enacted in compliance with the provisions of ARTICLE XIV;

(b) The specified percentage of the voting power necessary to amend a specified provision of this Master Declaration shall be not less than the percentage of affirmative votes prescribed for action to be taken under that provision; and

(c) The Declarant shall have the right to amend this Declaration, without the vote or consent of the membership, where required by an agreement for the benefit of one or more Project lenders, as contemplated under ARTICLE XIV.

A certificate, signed and sworn to by two (2) officers of the Association, that the record Owners of the required number of Lots (and the required number of Eligible Holders, where applicable) have either voted for or consented in writing to any amendment adopted as provided above, when recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years.

ARTICLE XVI.
DECLARANT'S RIGHTS AND RESERVATIONS

16.1 Withdrawal of Land. Declarant may, but shall have no obligation to, withdraw at any time of from time to time, portions of the Project described in Exhibit A, provided only that the withdrawal of Lots shall not, without the joinder or consent of a simple majority of the Members of the Association, materially increase the pro rata share of expenses of the Association payable by the Owners remaining within the Project after such withdrawal. The withdrawal of Lots as shall be made and evidenced by filing in the public records of Spokane County, Washington, a supplementary declaration with respect to the Lots to be withdrawn.

16.2 Platting and Subdivision. With respect to real property owned by the Declarant within the Project, the Declarant shall be entitled at any time and from time to time, to plat and/or re-plat all or any part of the Project, and to file subdivision, or binding site plan restrictions and/or amendments thereto with respect to any undeveloped portion or portions of the Project.

16.3 Public Roads; Easements. With respect to real property owned by the Declarant within the Project, the Declarant reserves the right from time to time hereafter to delineate, plat, grant or reserve within the Project such public streets, roads, sidewalks, ways and appurtenances thereto, and such easements for drainage and public utilities, as it may deem necessary or desirable for the development of the Project (and from time to time change the location of the same) free and clear of this Master Declaration and to dedicate the same to public use or to grant the same to any governing municipal or regulatory authority, including any appropriate public utility corporations.

16.4 Delegation of Work. Declarant hereby expressly delegates to each Owner of a Lot or Unit within the Project the task of undertaking the work to construct and establish a mixed use development project on the Project. The completion of that work and the sale, rental, and other disposal of the Lots is essential to the establishment and welfare of the Project as a mixed use project. In order that said work may be completed and said Project be established as a fully occupied project as rapidly as possible, nothing in this Master Declaration shall be understood or construed to:

(a) Prevent any Developer, or their respective contractors or subcontractors from doing on the Project or within any Lot, whatever is reasonably necessary or advisable in connection with the completion of the work;

(b) Prevent the Declarant from designating particular Lots or Units as being for a residential or commercial purpose, and making such special provisions relating to the operation of the Lots and Units as the Declarant may deem appropriate, including the imposition of special conditions on the Lots or Units, and/or exempting certain Lots or Units from certain provisions of this Master Declaration;

(c) Prevent any Developer or their representatives from erecting, constructing, and maintaining on any part or parts of the Project, such structures as may be reasonable and necessary for the conduct of their business of completing said work and establishing said Project as a mixed use development project, and disposing of the Lots by sale, lease or otherwise; or

(d) Prevent Declarant or any Developer from maintaining such sign or signs on any of the Project as may be necessary for the sale, lease, or disposition thereof.

So long as Declarant, its successors-in-interest, and assigns owns one or more of the Lots or Units, and except as otherwise specifically provided herein, Declarant, its successors, and assigns shall be subject to the provisions of this Master Declaration.

In the event Declarant shall convey all of its right, title, and interest in and to the Project to any third Person, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such third Person shall be obligated to perform all such duties and obligations of the Declarant.

ARTICLE XVII.
ANNEXATION OF ADDITIONAL PROPERTY

Additional property may be annexed to the Project and become subject to this Master Declaration upon the vote or written assent of Declarant (while Declarant has any interest in the Project), and of fifty-one percent (51%) of the total voting power of the Association (other than the Declarant). The owner of any property adjacent (including being across any public right of way) to the Project who desires to add such property to the scheme of this Master Declaration and to subject it to the jurisdiction of the Association, may record a Declaration of Annexation covering the property to be annexed. Said Declaration shall incorporate this Master Declaration by reference and may contain such complementary additions and modifications of the covenants and restrictions contained herein as may be necessary to reflect the different character, if any, of the added property, provided that such additions and modifications are not inconsistent with the general scheme of this Master Declaration.

Upon annexation of additional property as described above, the annexed Phase shall become subject to this Master Declaration without the necessity of amending individual sections hereof. The Owners of the Lots and Units in the original Project will continue to have the same easements, rights, and interests therein and will acquire similar easements, rights, and interests in the annexed Phase. Owners of Lots in the annexed portion of the Project will likewise acquire similar easements, rights, and interest in all portions of the Project and will become members of the Association.

ARTICLE XVIII.
GENERAL PROVISIONS

18.1 Enforcement. The Association (acting through the Board of Directors), any Owner, and any governmental or quasi-governmental agency or municipality having jurisdiction over the Project shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by this Master Declaration, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the court. Any such action by the Association shall be taken on behalf of two (2) or more Lot and/or Unit Owners, as their respective interests may appear, with respect to any cause of action relating to the Common Area or more than one Lot or Unit. Failure by any such Person to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

18.2 Invalidity of Any Provision. Should any provision of this Master Declaration be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the offending provision shall be deemed stricken and the validity of all other provisions shall remain unaffected and in full force and effect.

18.3 Conflict of Project Documents. If there is any conflict among or between the Project Documents, priority shall be given to the Project Documents in the following order: this Master

Declaration, the Plat; Articles; Bylaws; and Rules and Regulations of the Association. Notwithstanding the foregoing, any provision in any of the Project Documents which is for the protection of Mortgagees shall have priority over any inconsistent provision in that document or in any other Project Document.

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EXHIBIT A
LEGAL DESCRIPTION OF THE PROJECT

KENDALL YARDS BUSINESS DISTRICT

A portion of the Southwest Quarter of Section 18, Township 25N., Range 43E., W.M. in the City of Spokane, Spokane County, Washington more particularly described as follows:

BEGINNING at the Northeast corner of Lot 1, Block 3 of the Final Plat of Kendall Yards 1st Addition, recorded in Book 36 of Plats, Pages 39 thru 42; thence N89°25'59"E a distance of 272.33 feet; thence S00°34'01"E a distance of 171.33 feet; thence N82°15'00"W a distance of 125.87 feet; thence N68°55'18"W a distance of 159.00 feet to the Southeasterly corner of said Lot 1; thence along the boundary of said Lot 1 the following (4) four courses:

- 1) S82°25'59"W a distance of 90.23 feet;
- 2) N66°57'10"W a distance of 32.06 feet;
- 3) N00°34'01"W a distance of 92.63 feet to the Northwest corner of said Lot 1;
- 4) N89°25'59"E along the North line of said Lot 1 a distance of 118.93 feet to the POINT OF BEGINNING.

Containing 1.15 acres more or less



EXHIBIT B
LEGAL DESCRIPTION OF PROPERTY SUBJECT TO POTENTIAL ANNEXATION

KENDALL YARDS BUSINESS DISTRICT

A portion of the Southwest Quarter of Section 18, Township 25N., Range 43E., W.M. in the City of Spokane, Spokane County, Washington more particularly described as follows:

BEGINNING at the Northwest corner of Parcel 2A as shown on the Record of Survey, recorded in Book 107 of Surveys, Pages 9 through 16, said point also being on the Southerly Right of Way line of College Avenue; thence N88°54'04"E along said Southerly Right of Way line a distance of 752.97 feet to a point of cusp with a curve concave to the Southeast and having a radius of 20.00 feet (from which point a line to the radius point bears S00°52'01"E), said point being the Northwest corner of the Spokane County property (Auditors Parcel Number 35183.0093) as shown on said Record of Survey; thence along the Westerly and Southerly lines of said Spokane County property the following (8) eight courses:

- 1.) Southwesterly along said curve through a central angle of 90°12'49" an arc distance of 31.49 feet (Record 31.40 feet);
- 2.) thence S01°02'54"E a distance of 205.68 feet to the beginning of a tangent curve concave to Northeast and have a radius of 20.00 feet;
- 3.) thence Southeasterly along said curve through a central angle of 89°18'00" an arc distance of 31.17 feet;
- 4.) thence N89°39'06"E a distance of 267.20 feet to the beginning of a tangent curve concave to the Northwest and having a radius 300.00 feet;
- 5.) thence Northeasterly along said curve through a central angle of 23°12'44" an arc distance of 121.54 feet to the beginning of a reverse curve concave to the Southeast and having a radius of 350.00 feet;
- 6.) thence Northeasterly along said curve through a central angle of 22°30'31" an arc distance of 137.50 feet;
- 7.) thence N00°53'33"W a distance of 25.00 feet;
- 8.) thence N88°56'54"E a distance of 135.80 feet (Record 136.3 feet) to the intersection with the Westerly Right of Way line of Monroe Street; thence S01°08'23"E along said Westerly Right of Way line a distance of 487.14 feet; thence S42°46'34"W a distance of 138.51 feet; thence S46°11'02"W a distance of 72.19 feet to the beginning of a tangent curve concave to the Northwest and having a radius of 60.00 feet; thence Westerly along said curve through a central angle of 49°54'30" an arc distance of 52.26 feet; thence N83°54'27"W a distance of 142.97 feet to the beginning of a tangent curve concave to the South and having a radius of 400.00 feet; thence Westerly along said curve through a central angle of 07°35'02" an arc distance of 52.94 feet; thence S88°30'31"W a distance of 405.25 feet to the beginning of a curve concave to the North and having a radius of 200.00 feet; thence Westerly along said curve through a central angle of 07°10'08" an arc distance of 25.02 feet; thence N84°19'21"W a distance of 147.92 feet; thence N56°39'21"W a distance of 3.97 feet; thence N82°15'00"W a distance of 141.73 feet; thence N68°55'18"W a distance of 159.00 feet to the Southeasterly corner of Lot 1, Block 3 of the Final Plat of Kendall Yards 1st Addition, recorded in Book 36 of Plats, pages 39 thru 42; thence along the boundary of said Lot 1 the following (3) three courses:

- 1) S82°25'59"W a distance of 90.23 feet;

- 2) N66°57'10"W a distance of 32.06 feet;
- 3) N00°34'01"W a distance of 92.63 feet to the Northeast corner of Tract L of said Final Plat of Kendall Yards 1st Addition; thence S89°25'59"W along the North line of said Tract L a distance of 36.32 feet; thence N00°34'54"W a distance of 98.56 feet; to the intersection with the Northerly Right of Way line of Ide Avenue; thence N89°39'10"E along said Northerly Right of Way line a distance of 279.92 feet to the South corner of a parcel of land per deed in volume 558 of Deeds, Page 1252, recorded under Spokane County Auditors number 8107220100; thence N00°34'54"W along the East line of said parcel of land a distance of 185.00 feet to the Northeast corner; thence S89°39'10"W along the North line of said parcel of land a distance of 279.92 feet to the Northwest corner of said parcel of land and the intersection with the Easterly Right of Way line of Cedar Street; thence N00°34'54"W along said Easterly Right of Way line a distance of 325.80 feet to the POINT OF BEGINNING.

Containing 20.50 acres more or less

