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**WASHINGTON STATE RECORDER'S COVER SHEET (RCW 65.04)**

<p><b>DOCUMENT TITLE(S)</b> (or transactions contained therein):</p> <p>Declaration of Covenants, Conditions and Restrictions for the Burbank Business Park</p>
<p><b>REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:</b></p> <p>N/A</p> <p><input type="checkbox"/> Additional reference #s on page ___ of document(s)</p>
<p><b>GRANTOR(S)</b> (Last name first, then first name and initials)</p> <p>PORT OF WALLA WALLA, a Washington municipal corporation</p> <p><input type="checkbox"/> Additional names on page ___ of document</p>
<p><b>GRANTEE(S)</b> (Last name first, then first name and initials)</p> <p>PORT OF WALLA WALLA, a Washington municipal corporation</p> <p><input type="checkbox"/> Additional names on page ___ of document</p>
<p><b>LEGAL DESCRIPTION</b> (abbreviated: i.e., lot, block, plat or section, township, range)</p> <p><b>[insert legal description]</b></p> <p><input checked="" type="checkbox"/> Additional legal is on <u>Exhibit A</u> of document</p>
<p><b>ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER</b></p> <p>300802140001, 300801510076, 300801510073, 300801510074</p> <p><input type="checkbox"/> Assessor Tax # not yet assigned</p>

## TABLE OF CONTENTS

1.	DEFINITIONS.....	2
2.	OWNERS' ASSOCIATION.....	4
	2.1 Function and Form of Association.....	4
	2.2 Ownership by Association .....	4
	2.3 Business Park Signage .....	4
	2.4 Board of Directors.....	4
	2.5 Qualification for Membership.....	5
	2.6 Voting Rights .....	5
	2.7 Voting .....	5
	2.8 Annual and Special Meetings .....	6
	2.9 Books and Records .....	6
	2.10 Transition Date.....	6
3.	AUTHORITY OF THE BOARD .....	7
	3.1 Adoption of Rules and Regulations .....	7
	3.2 Enforcement of Declaration, Rules and Regulations .....	7
	3.3 Goods and Services.....	7
	3.4 Maintenance and Protection by the Association.....	7
	3.5 Limitation of Liability.....	7
	3.6 Indemnification .....	8
	3.7 Insurance .....	8
4.	BUDGET AND ASSESSMENTS .....	8
	4.1 Fiscal Year; Preparation of Budget.....	8
	4.2 Certificate of Unpaid Assessments .....	10
	4.3 Initial Contribution, Annual Assessments .....	11
5.	DESIGN REVIEW COMMITTEE; CONSTRUCTION REQUIREMENTS.....	11
	5.1 Design Review Committee .....	11
	5.2 Construction Requirements.....	12
	5.3 Alterations.....	16
6.	DESIGN STANDARDS.....	17
	6.1 Guidelines and Standards in General.....	17
	6.2 Building Design .....	17
	6.3 Exterior Wall Materials.....	18
	6.4 Colors.....	19
	6.5 Mechanical Equipment .....	19
	6.6 Exterior Fire Stairs.....	19
	6.7 Garbage, Trash Collection, Loading Dock, and Other Services Areas .....	19
	6.8 Temporary Structures.....	20
	6.9 Access Points/Roads, Sidewalks and Plaza Materials .....	20
	6.10 Utilities and Stormwater Facilities.....	21
	6.11 Landscaping, Parking, Storage and Exterior Lighting Standards.....	22
	6.12 Sign Standards .....	25

7.	MAINTENANCE AND REPAIR .....	30
7.1	General Maintenance .....	30
7.2	Grounds.....	31
7.3	Buildings.....	31
7.4	Utilities.....	31
7.5	Parking Lots and Drive Aisles .....	32
7.6	Exterior Lighting.....	32
7.7.	Landscaping .....	32
7.8	Signs.....	33
7.9	Stormwater Facilities .....	33
7.10	Sidewalks .....	33
7.11	Insurance .....	33
7.12	Indemnity .....	34
7.13	Taxes and Assessments.....	34
7.14	Liens.....	35
7.15	Casualty and Condemnation .....	35
7.16	Common Areas and Business Park Signage Maintenance .....	36
8.	REGULATIONS GOVERNING USES .....	36
8.1	Uses.....	36
8.2	Temporary Structures.....	38
8.3	Water and Sewer .....	38
9.	MISCELLANEOUS .....	38
9.1	Default.....	38
9.2	Interest.....	40
9.3	Subjecting Additional Property to this Declaration .....	40
9.4	Easements .....	40
9.5	Conveyances and Leases Subordinated .....	41
9.6	Notices .....	41
9.7	Declaration .....	41
9.8	Assignment of Declarant’s Rights .....	42
9.9	Approval and Consent Rights .....	42
9.10	Condemnation.....	42
9.11	Binding Effect.....	42
9.12	Singular and Plural.....	43
9.13	Negation of Partnership .....	43
9.14	Waiver.....	43
9.15	Severance .....	43
9.16	Term.....	43
9.17	Amendment.....	43

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE BURBANK BUSINESS PARK (the “Declaration”) is made by the PORT OF WALLA WALLA, a Washington municipal corporation (“Declarant”).

WITNESSETH

WHEREAS, the Burbank Business Park, hereinafter referred to as the “Park” and as further described on Exhibit A attached hereto and made a part hereof, is presently owned by Declarant and was purchased to provide land for economic development purposes that integrates commercial and light industrial uses; and

WHEREAS, these protective covenants, conditions and restrictions will govern the development, as well as the occupancy, operation and maintenance, of the Park and are intended to provide a positive incentive for prospective Owners and Occupants (each as hereinafter defined); and

WHEREAS, these protective covenants, conditions and restrictions are intended to support creative and visually appealing site and building design in an interrelated environment that encourages architectural variation and synergy in the structures to be built in the Park, and to achieve the following purposes and objectives:

- i. Provide economic development opportunities for the Owners and Occupants and the community at large;
- ii. Provide adequate natural light, clean air, and safety from fire and other dangers;
- iii. Provide for long-term economic protection and enhancement of the value of land and improvements through well-managed development and maintenance practices;
- iv. Minimize congestion and enhance vehicular and pedestrian circulation;
- v. Preserve and enhance aesthetic values of the structures and improvements; and
- vi. Promote public health, safety, comfort, convenience and general welfare;

NOW, THEREFORE, Declarant declares that the Park shall be held, transferred, sold, conveyed, leased, used and occupied subject to the covenants, conditions, restrictions, easements, assessments, and liens hereinafter set forth which are for the purpose of protecting the value and desirability of, and which shall touch and concern and run with title to the Park, and which shall be binding on all parties having any right, title, or interest in the Park or any portion thereof, and their respective legal representatives, heirs, successors and assigns, and shall inure to the benefit of each owner thereof for the term set forth below.

## 1. DEFINITIONS

- 1.1. **Additional Property:** Any real property, other than the initial property described in Exhibit A, made subject to these protective covenants pursuant to Section 9.3.
- 1.2. **Association:** The Burbank Business Park Owners' Association, a Washington nonprofit corporation, its successors and assigns.
- 1.3. **Association Maintenance Costs:** All costs assessed against the Owners attributable to the Common Areas and the Business Park Signage, including expenses of administration, maintenance, repair or replacement of the Common Areas and the Business Park Signage, and respective facilities.
- 1.4. **Board:** The Board of Directors of the Association.
- 1.5. **Building Area:** shall mean the areas within which buildings (which, for the purpose of this Declaration, shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions, as well as attached trash compactors and utility transformers) are constructed, placed or located on a Parcel. The Building Area on a Parcel may be modified if an Owner alters or remodels its buildings, so long as such alterations are done in compliance with the terms of this Declaration. Once the alteration is complete, the new area within the buildings shall constitute the Building Area on a Parcel.
- 1.6. **Business Park Signage:** Any monument, directional or other signage constructed by the Declarant or the Association in the Park.
- 1.7. **Code:** Walla Walla County Code. Copies of referenced provisions of the Code shall be available for review at the Association's office.
- 1.8. **Common Areas:** Portions of the Park that are dedicated in the future to the Association for the use of all Owners, or to serve the Parcels, and which are maintained by the Association, including the Business Park Signage.
- 1.9. **Design Review Committee or DRC:** Design Review Committee, a committee of the Association, shall be the review and approval authority for all development and construction activities within the Park, as described in Section 5.1.
- 1.10. **Design Standards:** The standards and guidelines for the construction or modification of all Improvements, which are set forth in Article 6 herein, as amended from time to time by the Board.
- 1.11. **Improvements:** All structures or other improvement(s) to a Parcel of any kind whatsoever whether above or below grade, including, but not limited to, buildings, utility installations, storage, loading and parking facilities, walkways, driveways,

landscaping, signs, site lighting, fencing, site grading and earth movement related thereto.

- 1.12. **Intent of Use Statement:** The intended use of a Parcel by the Owner or parties leasing or otherwise using the Parcel, together with reasonable identification of the proposed parties charged with construction and subsequent operation.
- 1.13. **Occupant:** Any Person legally entitled to occupy and use all or any part or portion of a Parcel.
- 1.14. **Owner:** All Persons or legal entities that hold legal ownership of Parcels within the Park, which include Declarant and others who purchase Parcels from the Declarant.
- 1.15. **Parcel:** Any subdivided or otherwise approved segregated lot within the Park.
- 1.16. **Parcel Site Plan:** The Parcel Site Plan and data provided for in Section 5.2.2, the primary purpose of which is to determine compliance of the proposed Improvements with this Declaration.
- 1.17. **Park:** The real property described in Exhibit A attached hereto and made a part hereof, and any part of the Additional Property made subject to this Declaration pursuant to Section 9.3.
- 1.18. **Person:** A natural person, firm, corporation, partnership or any legal entity, public or private.
- 1.19. **Stormwater Facilities:** All facilities (above and below ground level) that serve the purpose of collecting, storing, and/or treating water runoff from the land and/or impervious surface of, buildings, parking lots, roads and/or streets.
- 1.20. **Temporary Structure:** A structure not designed or approved for permanent placement and/or use.
- 1.21. **Transition Date:** The date by which Declarant turns over control to the Association, as described in Section 2.10.
- 1.22. **Utility Provider:** Utility Provider shall have the meaning ascribed to it in Section 8.3.
- 1.23. **WSDOT Guidelines:** 2008 Washington Department of Transportation Standards for Road, Bridge and Municipal Construction. Copies of referenced provisions of the WSDOT Guidelines shall be available for review at the Association's office.

## 2. OWNERS' ASSOCIATION

- 2.1. **Function and Form of Association.** The Association is to enforce the provisions of this Declaration. The Owners shall constitute the members of the Association. The rights and duties of the members and of the Association shall continue to be governed by the provisions of this Declaration, and the Association's Articles of Incorporation and Bylaws.
- 2.2. **Ownership by Association.** It is anticipated that Declarant will convey portions of the Park to the Association, which will constitute the Common Areas. Upon such conveyance, the Association may grant easements over, under and across the Common Areas for utilities, or for any other purpose consistent with this Declaration. The Association may not abandon, partition, subdivide, sell or transfer any portion of the Common Areas to a third party without the consent of at least two-thirds of the Owners, and provided that the proceeds are applied to the Association Maintenance Costs that would otherwise be assessed to all of the Owners. Upon conveyance of any portion of the Common Areas to a third party, such property will no longer be subject to the provisions of this Declaration.
- 2.3. **Business Park Signage.**
- 2.3.1. Construction. Notwithstanding the sign standards for Owner's signage in Section 6.12, Declarant or the Association may construct and install the Business Park Signage. If constructed by the Association, then all costs (including, without limitation, architect fees, cost of permits and costs to bring utility service to the Business Park Signage) related to the design, construction and installation of the Business Park Signage shall be included within the Association Maintenance Costs. After initial construction (and upon conveyance from Declarant if constructed by Declarant), the Association shall maintain the Business Park Signage and all related improvements pursuant to Section 7.16, and the costs of such maintenance shall be assessed pursuant to Section 4.1.3.
- 2.3.2. Content of Business Park Signage. The Association shall determine which businesses may be featured on any of the Business Park Signage, including size of panel and description content and design; provided that, sign copy installed upon any of the Business Park Signage may only identify businesses located within the Park.
- 2.4. **Board of Directors.** The affairs of the Association shall be governed by the Board. The initial Board shall be as described in the Articles of Incorporation of the Association and shall serve until the Transition Date. After the first annual meeting held after the Transition Date, the duties of the Board shall be assumed by the Board elected at such meeting. After the Transition Date, the Board shall consist of such numbers of members as provided for in the Articles of Incorporation and Bylaws of the

Association. Subject to any specific requirements herein, the Board shall have authority to establish operating rules and procedures. Following the Transition Date, in the event of death or resignation of any member or members of the Board, the remaining member or members, if any, shall have full authority to appoint a successor member or members. Members of the Board shall not be entitled to any compensation for services performed as directors pursuant to this Declaration. Upon the Transition Date and without further action by any person or persons, (i) the term of the initial directors or their successors shall end, and (ii) the initial directors and their then successors shall be released from any and all liability whatsoever for claims arising out of or in connection with this Declaration, excepting only claims arising prior to the Transition Date.

- 2.5. **Qualification for Membership.** Each Owner of all or a portion of the fee interest in a Parcel (including Declarant) shall be a member of the Association. Ownership of a Parcel shall be the sole qualification for membership in the Association. Membership shall be appurtenant to and may not be separate from ownership of any Parcel, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to the Parcel and then only to the transferee of title to the Parcel. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Parcel shall operate automatically to transfer the membership in the Association to the persons constituting the new Owners.
- 2.6. **Voting Rights.** The Association shall have two (2) classes of voting membership:
- 2.6.1. Class A. Class A members shall be all Owners, with the exception of the Declarant, and, except in the case of voting for Board positions as described in Section 2.7, shall be entitled to a certain number of votes based upon the area of land located in the Owner's Parcel, divided by the total land area, excluding dedicated streets of the Park and Common Areas, if any. If a Parcel has been sold on contract, the contract purchaser shall exercise the rights of an Owner. Except with respect to contract purchasers, when more than one person holds an interest in any Parcel, all such persons shall be members.
- 2.6.2. Class B. Class B members shall be the Declarant and shall be entitled to three (3) times the number of votes that would be allocated to Declarant under the calculation for Class A membership. The Class B membership shall cease effective on the Transition Date.
- 2.7. **Voting.** If a Parcel is owned by more than one person and only one of them is present or represented at a meeting, the one who is present or represented will represent the Owner. The vote for a Parcel must be cast as a single vote, and fractional votes shall not be allowed. If joint owners are unable to agree among themselves how their vote shall be cast, they shall lose their right to vote on the matter in question. An Owner may, by written notice to the Board, designate a voting representative for the Parcel. The designated voting representative need not be an Owner. The designation may be

revoked at any time by written notice to the Board from a Person having an ownership interest in a Parcel, or by actual notice to the Board of the death or judicially declared incompetence of any Person with an ownership interest in the Parcel, except in cases in which the Person designated is a mortgagee of the Parcel. This power of designation and revocation may be exercised by the guardian of an Owner, the attorney-in-fact for the Owner under a durable power of attorney, and the administrator or executor of an Owner's estate. If no designation has been made, or if a designation has been revoked and no new designation has been made, the voting representative of each Parcel shall be the group composed of all of its Owners. Unless otherwise expressly provided in this Declaration, a quorum is present throughout any meeting of the Association if the Owners to which thirty-four percent (34%) of the votes of the Association are allocated are present in person or by proxy at the beginning of the meeting.

- 2.8. **Annual and Special Meetings.** Within one year following the Transition Date, on a date selected by the initial Board, there shall be a meeting of the members of the Association and thereafter there shall be an annual meeting of the members of the Association in the first quarter of each fiscal year at such reasonable place and time as may be designated by written notice from the Board delivered to the Owners no less than 30 days before the meeting. The initial Board, as set forth in the Articles of Incorporation of the Association, shall govern until a new Board is selected at the first annual meeting of the members of the Association following the Transition Date. At such meeting, and at each annual meeting thereafter, the Owners shall elect by majority vote individuals to serve as directors until a successor is elected at the next annual meeting. Each Parcel shall be entitled to one vote for each director and the voting for directors shall be non-cumulative. The financial statement for the preceding fiscal year (if any) and the budget the Board has adopted for the pending fiscal year shall be presented at the annual meeting for ratification by the members, as more specifically provided in Article 4. Special meetings of the members of the Association may be called at any time upon not less than 14 days prior written notice to all Owners, for the purpose of considering matters which require the approval of all or some of the Owners, or for any other reasonable purpose. Any first mortgagee of a Parcel may attend or designate a representative to attend the meetings of the Association.
- 2.9. **Books and Records.** The Board shall cause to be kept complete, detailed, and accurate books and records of the receipts and expenditures (if any) of the Association, in a form that complies with generally kept standards of similar property owners' associations. The books and records, authorizations for payment of expenditures, and all contracts, documents, papers, and other records of the Association shall be available for examination by the Owners, mortgagees, and the agents or attorneys of either of them, during normal business hours and at any other reasonable time or times.
- 2.10. **Transition Date.** The "Transition Date" shall be the date control of the Board passes from the initial Board to the newly elected Board. Prior to the Transition Date, the initial Board shall be entitled to exercise all rights and powers of the Board and the

Association. The Transition Date will be the earlier of: (i) the date designated by Declarant in a written notice to the Owners, which date may be by Declarant's election any date after this Declaration has been recorded; or (ii) the 120th day after Declarant has transferred to third party purchasers title to all Parcels in the Park (not including an assignment by Declarant under Section 9.8).

### 3. AUTHORITY OF THE BOARD

- 3.1. **Adoption of Rules and Regulations.** The Board is empowered to adopt, amend, and revoke on behalf of the Association detailed administrative rules and regulations necessary or convenient from time to time to insure compliance with the general guidelines of this Declaration to promote the use and enjoyment of the Park and to govern the operation and procedures of the Association. The rules and resolutions may, without limitation, authorize voting by proxy or mail, or both, on Association matters. The rules and regulations of the Association shall be binding upon all Owners and Occupants and all other Persons claiming any interest in the Park.
- 3.2. **Enforcement of Declaration, Rules and Regulations.** Subject to the provisions of Section 9.14, the Board shall have the power to enforce the provisions of this Declaration, and the rules and regulations of the Association for the benefit of the Association. The failure of any Owner to comply with the provisions of this Declaration, or the rules and regulations of the Association will give rise to a cause of action in the Association (acting through the Board) for recovery of damages, or injunctive relief, or both, as more particularly described in Section 9.1.
- 3.3. **Goods and Services.** The Board shall acquire and pay for all goods and services reasonably necessary or convenient for the efficient and orderly functioning of the Association and maintenance of all Common Areas that are not maintained by public utility companies or a governmental entity. The goods and services shall include (by way of illustration and not limitation) irrigation systems for landscaping maintenance, utility services, and maintenance, repair and general upkeep of the Common Areas and the Business Park Signage. The Board may hire such employees and/or contractors as it considers necessary.
- 3.4. **Maintenance and Protection by the Association.** The Board may spend such funds and take such action as it may from time to time deem necessary to preserve and maintain the Common Areas and Business Park Signage, as more particularly described in Section 7.16, and to settle claims, or otherwise act in what it considers to be the best interests of the Association.
- 3.5. **Limitation of Liability.** So long as a director, or Association member, or Declarant, acting on behalf of the Board or the Association, has acted in good faith, without willful or intentional misconduct, upon the basis of such actual information as is then possessed by such Person, then no such Person shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, or prejudice

suffered or claimed on account of any act, omission, error, or negligence of such Person; provided that this Section shall not apply to the extent the liability of such Person for such act, omission, error, or negligence is covered by any insurance actually obtained by the Board.

- 3.6. **Indemnification.** Each director, and the Declarant, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which such Person may be a party, or in which such Person may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not such Person holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by insurance actually obtained by the Board and except in such cases wherein such director or Declarant is adjudged guilty of willful misfeasance in the performance of his or her duties.
- 3.7. **Insurance.** At such times as the Board deems appropriate, the Board shall cause the Association to purchase and maintain as a common expense a policy or policies, which the Board deems necessary or desirable, to provide casualty insurance and comprehensive liability insurance, with such deductible provisions as the Board deems advisable; insurance, if available, for the protection of the Association's directors and representatives from personal liability in the management of the Association's affairs; and such other insurance as the Board deems advisable. The Board shall review the adequacy of the Association's insurance coverage at least annually.

#### **4. BUDGET AND ASSESSMENTS**

##### **4.1. Fiscal Year; Preparation of Budget.**

- 4.1.1. The Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year.
- 4.1.2. As soon as the Board in its discretion deems advisable after formation of the Association, and prior to the expiration of each fiscal year thereafter, the Board shall establish a budget for the Association. The budget proposed by the Board shall only be for costs associated with the improvement and maintenance of the Common Areas, as more particularly described in Section 7.16 (the "Association Maintenance Costs"), and for the provision of other goods and services as described in Section 3.3, including, without limitation, the amount of all taxes and assessments levied against, and the cost of liability and other insurance, on any property hereinafter owned by the Association; the cost of utilities and other services for the Common Areas; and the cost of funding all reserves established by the Board, including, when appropriate, a general operating reserve and a reserve for replacements of improvements in the

Common Areas. For the purpose of this Declaration, Association Maintenance Costs shall not include:

- 4.1.2.1. any late charges or fees;
  - 4.1.2.2. any costs to clean up or repair the Common Areas resulting from construction, maintenance or replacement of buildings on individual Parcels (such costs being borne by the individual Owner creating such need for clean up or repair);
  - 4.1.2.3. real property taxes and assessments other than those applicable to the Common Areas; and
  - 4.1.2.4. entertainment, transportation, meals and lodging of anyone.
- 4.1.3. With respect to any assessments relating to the repair and maintenance of a monument sign that is part of the Business Park Signage, but which only certain businesses are advertised pursuant to Section 2.3.2, the Board shall assess such costs separately to the Owner's so benefited. Each Owner's share of such monument sign costs shall be a sum equal to the total monument sign costs multiplied by a fraction, the numerator of which is the area of the sign copy advertising the Owner's Parcel, and the denominator of which is the total area of the sign copy for all businesses.
- 4.1.4. The Board shall mail a summary of the budget to all of the Owners. If, within thirty days from mailing of the budget by the Board, at least three or more Owners reject the budget and request a meeting, in writing to the Board, then the Board shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen nor more than sixty days after receipt of the third rejection and request for meeting. Unless at that meeting the Owners of a majority of the votes in the Association, or any larger percentage specified in the Articles of Incorporation or Bylaws, reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. In the event that the requisite number of Owners do not reject the budget and request a meeting, the budget is deemed ratified by all Owners.
- 4.1.5. Upon ratification of the budget, the Board shall then assess each Owner's share of the budget, being a sum equal to the total budget multiplied by a fraction, the numerator of which is the area of land located in an Owner's Parcel, and the denominator of which is the total area of land located in the Park, minus the areas hereinafter owned by the Association or any publicly dedicated areas.

- 4.1.6. Each Owner of a Parcel shall pay to the Association its share, on the first day of each calendar month (or other period or billing practice as the Association may determine from time to time), in installments equal to one-twelfth of the estimated budget amount. Any amount not paid to the Association within thirty days of the date due shall accrue interest in accordance with Section 9.2 until paid in full, and the Association may avail itself of such remedies as provided for in Section 9.1.
- 4.1.7. Within forty-five (45) days after the end of each calendar year, the Association shall provide all Owners with a certified statement, together with supporting material upon specific request, as to the actual amounts paid by the Association for the operation and maintenance of such Common Areas and Business Park Signage, including any costs for goods and services as provided for in Section 3.3, together with an accounting for all funds received by the Association for such purpose. If the amount paid by an Owner for such calendar year shall have exceeded its share, the Association shall refund the excess at the time such certified statement is delivered, or if the amount paid by an Owner for such calendar year is less than its share, that Owner shall pay the balance of its share to the Association within thirty (30) days after receipt of such certified statement. A separate certified statement relating to expenses for any monument signs, as described in Section 4.1.3, shall be sent simultaneously, and any shortages or overages shall be handled pursuant to this Section.
- 4.1.8. Within three (3) months after receipt of any such certified statement from the Association, an Owner shall have the right to audit the Association's books and records for the calendar year covered by such statement. In the event that such audit shall disclose any error in the determination of the costs of operating and maintaining such Common Areas or the payment of other goods and services as provided for in Section 3.3, or in calculating any Owner's share thereof, an appropriate adjustment shall be made forthwith. The cost of any such audit shall be assumed by the Owner requesting the audit unless said Owner shall be entitled to a refund in excess of five percent (5%) of the amount calculated by the Association as its share of such costs for such calendar year, in which case the Association shall pay the cost of such audit.
- 4.1.9. Notwithstanding the foregoing, the assessment process described in this Section 4.1 shall not commence until after Declarant has sold five (5) Parcels to third party purchasers. Upon the sale of the first five (5) Parcels by Declarant, then the Association shall commence the assessment process for the following fiscal year.
- 4.2. **Certificate of Unpaid Assessments.** Any failure by the Board or the Association to make the budget and assessments hereunder before the expiration of any fiscal year for

the ensuing fiscal year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owners from the obligation to pay assessments during that or any subsequent year, and the assessment amount and payment method established for the preceding fiscal year (if any) shall continue until a new assessment is established. Upon the request of any Owner, mortgagee or prospective purchaser, the Board will furnish a statement of the amount, if any, of unpaid assessments charged to the Parcel. All assessments and other receipts received by the Association shall belong to the Association.

- 4.3. **Initial Contribution, Annual Assessments.** Each Owner who purchases a Parcel directly from Declarant shall pay, at the time of purchase of its Parcel, an initial assessment equal to one percent (1%) of the purchase price for the Parcel (such payment shall be in addition to the full purchase price agreed to by the parties). At closing, the initial assessment shall be paid into the Association's capital reserves for the general business of the Association, including, but not limited to, enhancement and maintenance of the Common Areas and Business Park Signage. Any Owner thereafter who purchases a Parcel shall pay, at the time of closing on the purchase of its Parcel, an initial assessment of \$10,000 into the Association's capital reserves to be used for the purposes described herein. Thereafter, any Owner's responsibility for its pro rata share of the annual budget pursuant to Section 4.1 shall commence the following year (unless delayed pursuant to Section 4.1.9).

## 5. DESIGN REVIEW COMMITTEE; CONSTRUCTION REQUIREMENTS

### 5.1. Design Review Committee

5.1.1. Composition. Until the Transition Date, the initial Board shall serve as the DRC. After the first annual meeting and the election of a new Board after the Transition Date, the DRC shall be composed of three or more persons appointed by the Board to serve until removed by the Board. The members of the DRC need not be members of the Association.

#### 5.1.2. General Powers and Duties.

5.1.2.1. The DRC shall have the right to administer the Design Standards with respect to the construction or alteration of any and all Improvements to be erected or placed on any Parcel. Such authority shall include the review of all plans and specifications and other materials submitted in connection the construction of any Improvements on a Parcel, and to approve or disapprove of such submittals in accordance with Section 9.9.

5.1.2.2. DRC approval of plans shall not constitute a representation, warranty or guarantee, whether express or implied, that such plans and specifications comply with good engineering design or with

zoning or building ordinances, or other governmental regulations or restrictions. By approving such plans and specifications, neither the DRC, the members thereof, the Association, any members thereof, the Board nor Declarant assume any liability or responsibility therefor. Neither the DRC, any members thereof, the Association, the Board nor Declarant shall be liable to any member, Owner, Occupant or other Person for any damage, loss or prejudice suffered or claimed on account of:

5.1.2.2.1. the approval or disapproval of any plans, drawings and specifications, whether or not defective; or

5.1.2.2.2. the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications.

5.1.3. Variances. The DRC may by written determination waive or modify any of the Design Standards if the DRC finds that an extreme hardship may be imposed by a restriction, and if a waiver or modification of such restriction would not have a significant adverse effect on the Park; provided that any waiver or modification shall apply only to the specific Parcel and restriction set forth in the written determination.

## 5.2. **Construction Requirements**

5.2.1. Construction Approvals. No clearing, grading, construction or placing of any Improvements shall be commenced or executed upon on any Parcel until the information described in Section 5.2.2 shall have been submitted and approved by the Design Review Committee. In the event the DRC fails to approve or disapprove of such plans and specifications within sixty (60) days after such plans and specifications are submitted to it for approval, approval is deemed granted pursuant to Section 9.9. In the event the DRC issues a disapproval of such plans and specifications, the DRC shall provide, in reasonable detail, the reasons for such disapproval. Notwithstanding the foregoing, any and all construction of Improvements performed by Declarant or the Association shall not be subject to this provision.

5.2.2. Submittals to DRC. Prior to construction, Owner shall deliver to the Design Review Committee, in a form reasonably satisfactory to the Design Review Committee, a complete Parcel Site Plan that includes the following data, and evidence of how each complies with the Design Standards:

1. Plans and elevations of structures showing major dimensions, cross-sections, and typical wall sections, and as further described in Section 6.2.

2. Submission must include topography showing existing grades (available record information is acceptable) and proposed grades (with spot elevations as required to clarify drawings) as well as building corner elevations and floor elevations.
3. Proposed landscaping, including automatic underground or drip irrigation system plan, and as further described in Section 6.11.
4. Retaining walls.
5. Street names.
6. Locations of temporary and permanent fences.
7. Setbacks from building to property lines.
8. Easements and rights-of-way.
9. Exterior colors and materials of construction, and as further described in Section 6.3.
10. Driveways, drive aisles, parking areas, sidewalks, curbs and gutters, traffic circulation patterns, access points or roads to dedicated streets and parking lot pathway lighting, features that are included so as to be in compliance with the Americans with Disabilities Act and related state and federal rules and regulations.
11. Locations of benches, patios and exterior bike racks, if any.
12. Exterior storage and screening devices for trash, mechanical equipment and meters.
13. Light poles and transformers and other outside lighting.
14. Utility systems, including planned fire hydrants and fire protection vaults.
15. Roof projections and screening treatment.
16. Permanent and temporary sign specifications, location and layout, as further described in Section 6.12.
17. HVAC unit locations.
18. Water and sewer connection plans, including such information as may be required by the Utility Provider.

19. Surface and subsurface Stormwater Facilities plans.

20. Location of temporary parking and staging during construction.

At the time of submission of the Parcel Site Plan, the Owner shall also submit to the DRC, in writing, an Intent of Use Statement. The Intent of Use Statement should provide reasonable detail, provided, however, no proprietary information shall be required.

5.2.3. Construction Activities. Each Owner agrees that all construction activities performed by it within the Park shall be performed in compliance with any applicable laws and regulations, as well as the Design Standards or any approved variance thereto. Each Owner further agrees that its construction activities shall not:

5.2.3.1. cause any unreasonable increase in the cost of constructing Improvements upon another Owner's Parcel;

5.2.3.2. result in total or partial failure of any continual lateral and subjacent support for any other Owner's Parcel;

5.2.3.3. unreasonably interfere with construction work being performed on any other part of the Park;

5.2.3.4. unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Park by any other Owner or its Occupants; or

5.2.3.5. cause any other Owner to be in violation of any Design Standards.

5.2.4. Time Period for Initial Construction. Any Improvements constructed on any Parcel shall be completed as to external appearance within eighteen (18) months from the date construction is started, however, with good cause shown, the DRC may extend this term.

5.2.5. Construction Insurance. Prior to commencing any construction activities within the Park, each Owner shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages set forth below:

5.2.5.1. Workers' Compensation - statutory limits

5.2.5.2. Comprehensive General and Comprehensive Auto Liability as follows:

- 5.2.5.2.1. Bodily injury and property damage - \$1,000,000 per occurrence, \$2,000,000 in the aggregate;
- 5.2.5.2.2. Products/Completed Operations Coverage which shall be kept in effect for six (6) years after completion of work;
- 5.2.5.2.3. "XCU" Hazard Endorsement, if applicable;
- 5.2.5.2.4. "Broad Form" Property Damage Endorsement;
- 5.2.5.2.5. "Personal Injury" Endorsements; and
- 5.2.5.2.6. "Blanket Contractual Liability" Endorsement.

If the construction activity involves the use of another Owner's Parcel or the Common Areas, then the Owner of such other Parcel or the Association, as applicable, shall be an additional named insured, and such insurance shall provide that the same shall not be canceled without at least thirty (30) days prior written notice to the named insureds. If such insurance is canceled or expires, then the constructing Owner shall immediately stop all work on or use of another Owner's Parcel or the Common Areas until either the required insurance is reinstated or replacement insurance obtained.

Effective upon the commencement of construction of Improvements, the constructing Owner will carry or cause to be carried, fire insurance with an extended coverage endorsement with a financially responsible insurance company or companies, in an amount at least equal to eighty percent (80%) of the replacement cost (exclusive of the cost of excavation, foundations, and footings) of the Improvements, such coverage extending at least to the following perils: Loss or damage by fire, windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, aircraft, vehicle, smoke damage, and sprinkler leakage.

- 5.2.6. Indemnity. Each Owner agrees to defend, indemnify and hold harmless each other Owner, Declarant, the Association and the DRC, their respective elected officials, employees and agents, from all claims, actions, proceedings, losses, damages, expenses and costs incurred in connection therewith (including reasonable attorneys' fees and costs of suit) resulting from any accident, injury or loss or damage whatsoever occurring to any Person or to the property of any Person arising out of or resulting from the performance of any construction activities performed or authorized by such indemnifying Owner. Solely to give full force and effect to the indemnities contained herein and not for the benefit of any third party, each Owner specifically and expressly waives any immunity it may have under Washington State

Industrial Insurance Act, Title 51 RCW, and acknowledges that this waiver was reviewed and agreed to prior to purchasing a Parcel. In no event shall an Owner's obligations hereunder be limited to the extent of any insurance available to or provided by the obligated party. The indemnity provisions provided for herein shall survive termination of this Declaration.

- 5.2.7. Temporary License. Each Owner hereby grants and conveys to each other Owner and to its respective contractors, materialmen and laborers a temporary license for access and passage over and across any parking areas or drive aisles of the grantor's Parcel as shall be reasonably necessary for the grantee to construct and/or maintain Improvements upon the grantee's Parcel; provided, however, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed and provided further that the use of such license shall not be exercised so as to unreasonably interfere with the use and operation of such parking areas or drive aisles by others. Prior to exercising the rights granted herein for construction activities, the grantee shall first provide the grantor with a written statement describing the need for such license, and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by Section 5.2.5. Any Owner availing itself of the temporary license shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area and restore any damage to the areas accessed pursuant to this Section to a condition which is equal to or better than the condition which existed prior to the exercise of such license rights. Notwithstanding the foregoing, in the event a dispute exists between the contractors, laborers, suppliers and/or others connected with construction activities, each Owner and the Association shall have the right to prohibit the contractors, laborers, suppliers and/or others working for another Owner from using any portion of its Parcel, or the Common Areas, as applicable, for any purpose other than ingress and egress.
- 5.3. **Alterations**. Except as provided for herein, (i) any alteration or addition to Improvements, including, but not limited to, (A) tenant improvements, or (B) changes to water and sewer usage plans or estimates previously provided, or (ii) any changes to the Parcel Site Plan with respect to traffic circulation patterns or access points or roads to dedicated streets, must each conform to the Design Standards and each requires submission to and approval by the DRC pursuant to Section 5.2. "Normal maintenance and repair" must conform to the Design Standards, but does not require the approval of the DRC. "Normal maintenance and repair" means those usual acts to prevent a decline, lapse or cessation from a lawfully established state comparable to its original condition, including but not limited to its size, shape, configuration, location, and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to

the environment. Replacement of a structure may constitute a repair where such replacement is the common method of repair for the type of structure and the replacement structure is comparable to the original structure including but not limited to its size, shape, configuration, location and external appearance.

## **6. DESIGN STANDARDS**

- 6.1. **Guidelines and Standards in General.** The purpose and intent of this Section is to encourage the creative and innovative use of materials and methods of construction, and to prevent indiscriminate and insensitive use of materials and design in any construction undertaken on Parcels. The following guidelines and standards shall apply, unless otherwise prohibited by law, and may be amended from time to time by the Board without the necessity of amending this Declaration so long as such amendments are consistent with the restrictions in this Declaration, and do not establish standards that are more stringent than those followed for any Improvements on a Parcel or Common Area that exist at the time of such amendment.
- 6.2. **Building Design.**
- 6.2.1. Building design shall reflect consideration of site orientation and local conditions including local sunny, arid and often windy climate factors.
  - 6.2.2. Building design and orientation shall consider impacts to other adjacent Owners.
  - 6.2.3. Buildings designed to LEED standards are encouraged, but not required.
  - 6.2.4. Multiple-corners are encouraged on all principal structures. A minimum of five (5) corners on a building is required, unless otherwise exempted by the Design Review Committee.
  - 6.2.5. Multiple rooflines are encouraged. Where multiple roof lines are not proposed, the applicant shall provide justification for a singular roof line and provide other potential architectural mitigations where appropriate.
  - 6.2.6. Attractive entrances, architectural focal points, changing planes, awnings, overhangs, and amenities that provide for a “sense of arrival” and building “identity” are encouraged to add interest to plain buildings and scale down large buildings.
  - 6.2.7. Building walls are encouraged to avoid extended uninterrupted faces. Recessed faces or projected panels or variations in surface treatments are examples of “interrupted wall faces.”

- 6.2.8. At least 25% of the wall area fronting on a street should be occupied with windows, alcoves, canopies, cornices, cupolas or similar architectural features.
- 6.2.9. Large buildings should have height variations to give the appearance of distinct elements.
- 6.2.10. Rooftop or outdoor mechanical equipment, including satellite or other communication antennas or dishes, shall be screened from public view in a manner that is architecturally integrated with the structure. Screening shall be constructed to a finished standard using materials and finishes consistent with the rest of the building.
- 6.2.11. Roof-mounted equipment should be painted a compatible color with the roof screen. Solar panel installations are encouraged, provided that such installations are designed as part of the roof and are consistent with the architectural theme of the building.
- 6.2.12. Exterior building colors should be subdued. Primary colors or other bright colors should generally be used only as accents to enliven the architecture.
- 6.2.13. Reflective glass is not permitted for glazing.
- 6.2.14. Factory-built and pre-fabricated structures may be permitted, if approved by the Design Review Committee.

### **6.3. Exterior Wall Materials**

- 6.3.1. Recommended exterior finishes and architectural trims such as: stone, brick, wood trim, paint, concrete, masonry, tile, stucco, pre-finished metals, and glass.
- 6.3.2. Finish treatments and materials must be applied to all sides of a structure that are visible to the general public and occupants of the same and other structures.
- 6.3.3. At least 25% of exterior finishes and architectural trims on the front must be stone, brick or glass. No concrete block shall be used on the exterior unless approved by the Design Review Committee. The effect of a material used on a structure shall be considered in relationship to all other structures in the development and shall be compatible with other structures.

#### **6.4. Colors**

- 6.4.1. All colors shall be harmonious and compatible with colors of other structures in the Park and the natural surroundings. Concrete finishes must be painted, dyed or contain patterns or elaborate scoring.
- 6.4.2. The general overall atmosphere of color must be natural tones. Stained wood, natural stone, brick, dark aluminum finishes, etc. shall be used as background colors.

#### **6.5. Mechanical Equipment**

- 6.5.1. All mechanical equipment, utility meters and storage tanks must be located in such a manner as to be concealed from the general public.
- 6.5.2. If concealment within the structure is not possible, then screening or landscaping shall conceal such utility elements.
- 6.5.3. Penthouses and mechanical equipment screening shall be of a design and material similar to and compatible with those used in the related structures.
- 6.5.4. Mechanical equipment shall be located in such a manner that does not cause a nuisance or discomfort from noise, fumes, odors, etc.

6.6. **Exterior Fire Stairs.** All exterior fire stairs must be enclosed.

#### **6.7. Garbage, Trash Collection, Loading Dock, and Other Service Areas**

- 6.7.1. All refuse containment, loading docks, and other service areas shall be located to minimize negative visual impacts, to be inconspicuous and not cause a nuisance to the public, to other Parcels, or to Occupants of the same or adjacent structures. Trash, garbage or other waste shall be kept in sanitary containers. All containers and equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and concealed from public view.
- 6.7.2. Shared or “common” refuse and recycling areas are permitted where continuous or integrated parking fields are also shared by more than one building or Parcel.
- 6.7.3. All delivery and maintenance vehicle parking areas, truck docks and loading areas, refuse and service areas and outdoor storage areas shall be screened from public view and adjacent Parcels by means of a fence, masonry wall, landscaping, or a combination of landscaping and fencing materials that together create at least a six (6) foot tall sight-obscuring screening wall complementary to the principal structure.

6.7.4. A delivery or “drop off” zone may be permitted at the front of a building and qualify as a “loading zone” if approved by the Design Review Committee.

**6.8. Temporary Structures**

6.8.1. Temporary structures shall only be permitted during construction of permanent structures and shall be removed as soon as permanent structures are completed, unless otherwise permitted by the DRC.

6.8.2. Such temporary structures shall be placed as inconspicuously as possible and cause no inconvenience to the general public or other Owners, nor shall such temporary structures block the Business Park Signage.

**6.9. Access Points/Roads, Sidewalks and Plaza Materials**

6.9.1. Access Points and Roads.

6.9.1.1. All Parcels must either connect directly to a dedicated street within the Park, or via an internal access road to a dedicated street within the Park.

6.9.1.2. Curbs and gutters shall be provided and conform to the standards set forth in Title 12 of the Code, passed pursuant to Walla Walla County Ordinance No. 375, dated November 2, 2009.

6.9.2. Sidewalks.

6.9.2.1. Any Parcel that abuts a dedicated street or an access road to a dedicated street must provide for sidewalks along the length of such abutting portion of the Parcel, and must connect to sidewalks that are already in place on adjacent Parcels. Materials selected for sidewalks must be in conformance with the stricter of the (i) standards set forth in Title 12 of the Code, passed pursuant to Walla Walla County Ordinance No. 375, dated, November 2, 2009, or (ii) WSDOT Guidelines.

6.9.2.2. Surfaces shall contain a non-skid finish.

6.9.2.3. Layout and design shall provide maximum comfort and safety to pedestrians.

6.9.2.4. Curbs, walls, decorative fences with effective landscaping, or similar barrier devices shall be located along the perimeter of parking lots, garages, and storage areas, except at entrances and exits indicated on approved parking plans. Such barriers shall be designed and located to prevent parked vehicles from extending

beyond the property lines of parking lots and garages or into property areas where parking is prohibited and in order to control drainage from parking lots. All barrier devices shall meet the approval of the Design Review Committee.

6.9.3. Plazas.

6.9.3.1. Patterns for plaza paving should have an obvious relationship to the structures.

6.9.3.2. Surfaces shall contain a non-skid finish.

6.9.3.3. Layout and design shall provide maximum comfort and safety to pedestrians.

**6.10. Utilities and Stormwater Facilities**

6.10.1. Utilities.

6.10.1.1. All Parcel utilities shall be placed underground. No utilities shall be constructed, placed or maintained on the Parcel unless appropriately contained in conduits or structures. Utilities may include, but are not limited to; sewer, drainage, power, natural gas, telephone lines, television cables, microwave or radio signals, and the like.

6.10.1.2. With approval from the Design Review Committee, support devices that for practical reason cannot be placed underground or concealed must be screened from view to the satisfaction of the Design Review Committee.

6.10.1.3. Pad mounted equipment shall be appropriately located and screened in a manner consistent with required access and safety requirements.

6.10.2. Stormwater Facilities. Each Owner of a Parcel is responsible for designing, constructing, operating and maintaining Stormwater Facilities consistent with the State Department of Ecology's Stormwater Management Manual for Eastern Washington ("SMMEW"), as the same may be revised from time to time, or any successor document, and Title 11 of the Code, passed pursuant to Walla Walla County Ordinance No. 374, dated November 2, 2009. Notwithstanding the foregoing, the Stormwater Facilities required by this section shall meet the following standards:

6.10.2.1. Stormwater Facilities must retain and disperse stormwater on site of each Parcel.

6.10.2.2. Stormwater Facilities shall be designed so that they can be mowed and landscaping maintained in a manner that creates an aesthetic value to the Parcel. No slopes may be greater than a 4H:1V ratio.

6.10.2.3. No Owner may use or build ponds or open stormwater features (unless a joint stormwater facility is provided by Declarant or the Association), and ponding shall not occur for more than twenty-four (24) hours during a twenty-five (25)-year storm, twenty-four (24) hour event.

6.10.2.4. No Stormwater Facilities shall be located within an area encumbered by a well protection covenant.

### **6.11. Landscaping, Parking, Storage and Exterior Lighting Standards**

6.11.1. Landscaped Areas in General. Selection of appropriate landscape materials shall conform to the following guidelines:

6.11.1.1. Landscaping must, at a minimum, meet the requirements of Walla Walla County and the requirements of this Section.

6.11.1.2. A landscape design plan with plant name (Common and Botanical), key, size at installation/maturity (height, width & caliper), container type and quantity of each plant shall be submitted for approval by the Design Review Committee. All materials, such as mulch, etc., shall be clearly indicated, with description, on the plans. The plan should be at a scale and symbolized as to clearly indicate all plant locations. Necessary irrigation, exterior lighting and hardscape plans with details, sections and specifications shall be attached as needed.

6.11.1.3. All rights-of-way shall be planted according to the guidelines of Walla Walla County, or in accordance with any master plan hereinafter recorded.

6.11.1.4. For trees in landscape buffer strips, including street frontage trees, the following minimum standards shall apply:

6.11.1.5. Evergreen trees shall be a minimum height of five (5) feet at the time of planting.

6.11.1.6. Deciduous trees shall be a minimum 2 inch caliper at the time of planting.

- 6.11.1.7. All landscaped areas shall be served by an underground or drip irrigation system or shall be provided with a readily available water supply with at least one outlet located within 150 feet of all plant material requiring irrigation.
- 6.11.1.8. Landscaping in all setback areas shall consist of an effective combination of trees, ground cover, and shrubbery.
- 6.11.1.9. Five (5) shade trees must be provided for every 1,000 square feet of required landscaped area. (Required street trees may be included in this calculation.)
- 6.11.1.10. Sufficient shrubbery, hedges and ground cover must be planted to provide 50% minimum total coverage within three (3) years.
- 6.11.1.11. Any shrub area bordering any pedestrian or parking area shall not exceed three (3) feet in height for the first four (4) feet adjoining the area.
- 6.11.1.12. All unpaved areas not used for parking and storage shall be landscaped utilizing ground cover and/or shrubbery and tree material as described herein. Undeveloped areas proposed for future expansion shall be maintained in a managed condition, not conducive to fire, dust, weeds, or safety hazards.
- 6.11.1.13. The minimum width of any landscaped area is five (5) feet, if it contains a tree and three (3) feet if it is to contain shrubs or ground cover.

6.11.2. Landscaping Around Parking Areas.

- 6.11.2.1. Parking areas shall include landscape tree islands on an average of one (1) island per ten (10) stalls, provided that the maximum number of stalls between said islands should not exceed thirteen (13). An access isle in compliance with the Americans with Disabilities Act and related laws does not count as a stall in this calculation.
- 6.11.2.2. A landscape tree island shall have a minimum of five (5) feet of planting area from back of curb to back of curb, and be of equal depth to the adjacent stalls.
- 6.11.2.3. In “nose to nose” rows of parking, the require tree islands may be substituted by “Tree Diamonds” planters at twice the density. These planters are center on six (6) feet square, face of curb to

face of curb, with a five (5) foot clear dimension inside for the planting area. The tree is to be centered and the square is to be turned on corners to align with intersection of the parking stall striping so as to protect the tree from bumper damage.

6.11.2.4. Landscaped areas must be protected from damage by vehicles by use of wheel stops, curbs or other appropriate devices. The maximum vehicle overhang into a landscaped area shall not exceed 24 inches.

6.11.2.5. Plant materials shall be designed so as not to obstruct visibility of vehicles of pedestrians or around corners.

### 6.11.3. Parking Areas.

6.11.3.1. The parking area on each Parcel shall contain sufficient ground level, standard automobile size, parking spaces in order to comply with the following minimum requirements:

6.11.3.1.1. for retail uses, five (5) parking spaces for each one thousand (1,000) square feet of Building Area;

6.11.3.1.2. for each motel or hotel, one (1) parking space for each motel or hotel residential unit;

6.11.3.1.3. for each professional office or medical center, five (5) parking spaces for each one thousand (1,000) square feet of Building Area;

6.11.3.1.4. for each restaurant, ten (10) parking spaces for each one thousand (1,000) square feet of Building Area; except that the first two thousand four hundred (2,400) square feet of restaurant use located in a multi-tenanted retail building may be reduced to five (5) spaces per each one thousand (1,000) square feet of Building Area;

6.11.3.1.5. for any other use, five (5) parking spaces for each one thousand (1,000) square feet of Building Area; or

6.11.3.1.6. such amount set by local applicable laws or regulations in the event such laws or regulations require more parking than as set forth herein.

- 6.11.3.2. Multiple Owners may enter into cross access and parking agreements to use more than one Parcel to satisfy the requirements of this Section. Such agreements must be submitted to the DRC for its prior review and reasonable approval.
  - 6.11.3.3. All parking areas shall be paved with asphalt.
  - 6.11.3.4. Parking areas shall provide walkways for the safe circulation of pedestrians to/from buildings and parking areas.
  - 6.11.3.5. Parking/loading dock areas designed for truck maneuvering, parking and/or loading shall meet the requirements for perimeter landscaping only. No interior landscaping for truck parking/loading areas shall be required.
- 6.11.4. Storage Areas. All outdoor storage areas shall be visually screened from adjacent Parcels and public streets by means of sight-obscuring fences or walls of material compatible with the related structure. Additional landscaping may be an added component to such screening.

6.11.5. Exterior Lighting

- 6.11.5.1. Lighting shall be designed to conform with the WSDOT Guidelines, and shall provide safety and security for Occupants and supply reasonable illumination for areas on the Parcel such as parking, loading, shipping and pathways.
  - 6.11.5.2. Lighting shall be nondirectional lighting and shall be designed to minimize glare or objectionable effects to motorists and adjacent properties.
  - 6.11.5.3. Site lighting poles shall not exceed 20 feet in height.
  - 6.11.5.4. Lighting sources shall be shielded from adjacent properties.
  - 6.11.5.5. Lighting fixtures shall conform to and match any design features established by the DRC.
- 6.12. **Sign Standards.** The purposes of these sign standards are to (i) aid in eliminating excessive and confusing sign displays; (ii) preserve and enhance the appearance of the Park; (iii) safeguard and enhance property values; and (iv) encourage signs that by their design are integrated with and harmonious to the structures and sites they occupy, while providing for Occupants' and Owners' need for brand recognition. If any of the signage standards in this Declaration are in conflict with the Walla Walla County Code signage standards (Title 17.28, as may be amended from time to time),

the more restrictive standards shall apply. These standards shall not apply to the Business Park Signage.

6.12.1. General Standards.

- 6.12.1.1. Owners are allowed to place signage on their respective Parcels, subject to DRC approval pursuant to Section 5.2.1, and the standards set forth in this Section.
- 6.12.1.2. Unless otherwise specified herein, signs shall not exceed ten (10) square feet each.
- 6.12.1.3. Unless otherwise specified herein, signs, including the base, shall not exceed eight (8) feet in height.
- 6.12.1.4. Signs shall be constructed of materials or treated so that they are rust-inhibitive and suitable for outdoor use and complimentary to the material content and architectural style of the building.
- 6.12.1.5. Wording on signs shall not describe the products sold, prices, or any type of advertising except as part of the Occupant's or Owner's trade name or insignia.
- 6.12.1.6. Pylon or pole signs will be permitted, provided a maximum of only one (1) sign may be installed per street frontage on each Parcel.
- 6.12.1.7. No exposed conduit, tubing, or raceways will be allowed.
- 6.12.1.8. No exposed neon lighting shall be used on signs, symbols, or decorative elements.
- 6.12.1.9. All conductors, transformers, and other equipment must be concealed.
- 6.12.1.10. For illuminated signs:
  - 6.12.1.10.1. Illumination should be energy efficient and shall be arranged so that the light source is shielded from view;
  - 6.12.1.10.2. All sign illumination shall be directed to preclude glare visible from public right-of-way and neighboring Parcels;

- 6.12.1.10.3. Surface brightness or intensity of lighting shall not be beyond that necessary for visibility from the public right-of-way;
- 6.12.1.10.4. Signs shall not produce a harsh, uncomfortably bright light either through the level of illumination or a combination of illumination levels and design of the sign face; and
- 6.12.1.10.5. Signs shall not be overly bright so as to overshadow signs in the immediate vicinity, cause glare, or create an island of light.
- 6.12.1.10.6. For all permitted and exempt signs, except wall signs, the horizontal distance from the Parcel property line to the nearest edge of the sign cabinet shall be at least ten (10) feet.

6.12.2. Permitted Signs. The following signs are permitted on a Parcel:

6.12.2.1. **Identification sign:** may be free-standing single- or double-faced signs, or wall signs, naming buildings, Owners or Occupants, bay or suite numbers.

6.12.2.1.1. Free-standing sign requirements:

6.12.2.1.1.1. Only one (1) sign per Parcel is allowed.

6.12.2.1.1.2. No sign shall obstruct the driver's view entering or exiting driveways per Walla Walla County site obstruction standards.

6.12.2.1.1.3. Free-standing signs that incorporate a base structure made of stone, brick, rock, and block type materials are encouraged, especially as it relates to enhancing the architectural theme of the development of the Parcel.

6.12.2.1.1.4. Free-standing signs should be incorporate into the landscaping of the Parcel when possible.

- 6.12.2.1.2. **Wall signs:** are permitted as follows:
  - 6.12.2.1.2.1. Sign may be placed directly on building façade.
  - 6.12.2.1.2.2. No more than four (4) signs are permitted for each Parcel.
  - 6.12.2.1.2.3. Maximum size shall be twenty-four (24) square feet total.
  - 6.12.2.1.2.4. No sign face shall be perpendicular to the face of the building.
  - 6.12.2.1.2.5. No sign shall be installed on or above canopies, overhangs or roofs.
- 6.12.2.2. **Informational and directional signs:** permitted, provided that they relate to pedestrian and vehicular flows on a Parcel and shall conform, as nearly as possible, to the international symbols. Such signage shall not exceed two (2) square feet. No more than one (1) informational or directional sign is permitted for each curb cut on a Parcel.
- 6.12.2.3. **Menu reader boards for drive-through facilities:** permitted as follows:
  - 6.12.2.3.1. A maximum of two (2) are permitted per Parcel;
  - 6.12.2.3.2. Each menu board shall not exceed thirty-two (32) square feet per sign face and a maximum height of five (5) feet.
  - 6.12.2.3.3. Each menu board shall be designed and located to be viewed exclusively by patrons of the development and not plainly visible from offsite.
- 6.12.2.4. **Temporary signs:** permitted as follows:
  - 6.12.2.4.1. Banner, wall and window signs shall be the only type of temporary sign permitted. Temporary free-standing or monument signs are prohibited.
  - 6.12.2.4.2. A temporary sign shall not be placed higher than the fascia of the primary building.

- 6.12.2.4.3. The maximum sign area of a banner sign shall be sixty (60) square feet.
- 6.12.2.4.4. The vertical clearance under a banner sign shall be at least (10) feet.
- 6.12.2.4.5. Banner signs shall not be placed in or over a public right-of-way.
- 6.12.2.4.6. Banner signs shall not be attached to telephone poles, fences or trees.
- 6.12.2.4.7. Temporary signs that cover an existing permanent sign must be removed within thirty (30) days of installation.
- 6.12.2.4.8. The display of temporary signs is limited to ten (10) consecutive days and may not exceed a total of thirty (30) days per calendar year.

6.12.3. Prohibited Signs. The following types of signs are prohibited in the Park:

- 6.12.3.1. Signs that have been abandoned for longer than thirty (30) days.
- 6.12.3.2. Inflatable signs.
- 6.12.3.3. Billboards.
- 6.12.3.4. Flashing, revolving or moving signs, excepting clocks.
- 6.12.3.5. Signs which advertise a business not located on the Parcel.
- 6.12.3.6. Signs which create a safety hazard for pedestrians or vehicular traffic.
- 6.12.3.7. Signs attached to utility poles, traffic signs, and fences.
- 6.12.3.8. Portable and sandwich board signs.
- 6.12.3.9. Signs on any vehicle or trailer that is parked and visible to the public. This provision shall not prohibit signs which are painted on or magnetically attached to any vehicle operating in the normal course of business.
- 6.12.3.10. Wood signs.

- 6.12.3.11. Changing message centers.
- 6.12.3.12. Exterior signs which advertise alcohol and tobacco products.
- 6.12.3.13. Banner signs, unless placed temporarily pursuant to Section 6.12.2.4.
- 6.12.4. Exempt Signs. The following signs are exempt from the provisions of this Section, and do not require the prior approval of the DRC:
  - 6.12.4.1. Traffic and standardized public signs installed by a governmental entity.
  - 6.12.4.2. National flags, flags of a political subdivision and symbolic flags of an institution or business.
  - 6.12.4.3. Legal notices required by law.
  - 6.12.4.4. Historic site plaques and markers and gravestones.
  - 6.12.4.5. Real estate signs not exceeding seven (7) square feet.
  - 6.12.4.6. Holiday decorations or other materials temporarily displayed on traditionally accepted civic, patriotic or religious holidays.
- 6.12.5. Multi-Tenant Building Signage. Notwithstanding the foregoing provisions, in the event a Parcel contains multi-tenant Improvements, then each tenant is allowed one (1) wall sign each, to be of uniform size with the other tenants of the Improvements on that Parcel. Such size shall be determined by the DRC pursuant to the Design Standards. Only one (1) freestanding sign shall be allowed per Parcel, but all tenants of the Parcel may advertise on such freestanding sign. The tenants may allocate the cost of installation and maintenance thereof as they determine.

## **7. MAINTENANCE AND REPAIR**

- 7.1. **General Maintenance.** The following standards are intended as general guidelines to encourage maintenance practices that will contribute to a Parcel that is attractive to the community and Owners of other Parcels in the Park. These standards are supplemental to any maintenance standards contained in the Walla Walla County zoning ordinance or other local, state or federal laws and regulations. The minimum standard of maintenance for the Parcels shall be comparable to the standard of maintenance followed in other first-class commercial/industrial mixed-use developments or office parks of comparable size in Eastern Washington, and in any event in compliance with the provisions of this Declaration and any regulations

passed pursuant hereto. Any failure to comply with these requirements shall be subject to the provisions of Section 9.1.

## 7.2. **Grounds.**

- 7.2.1. Each Owner shall be responsible for the maintenance of its grounds including, but not limited to, driveways, walkways, parking areas, Stormwater Facilities, fences and other Improvements within the Parcel, in good order, condition and repair, and shall be maintained to function as originally designed.
- 7.2.2. Repairs and rehabilitation will be done with the type of material originally installed thereon or such substitute that is, in all respects, equal in quality, appearance and durability.
- 7.2.3. Snow and ice removal, the removal of debris and waste material and the washing and sweeping of paved areas is required when needed.
- 7.2.4. Trash will be collected and removed as necessary to the Parcel remains visually appealing.

## 7.3. **Buildings**

- 7.3.1. The exterior appearance of each structure erected shall be maintained in a neat and clean condition. Buildings, structures and appurtenances shall be painted or refinished at intervals comparable to the standards of other first-class commercial/industrial mixed-use developments or office parks of comparable size in Eastern Washington.
- 7.3.2. Owners shall keep the buildings, structures and appurtenances thereon in good order, condition and repair, and comply in all respects with applicable local, state and federal governmental ordinances, laws, regulations, requirements or directives.

## 7.4. **Utilities**

- 7.4.1. External utility lines for electrical, telephone or telecommunications services shall be properly maintained such that wiring is not exposed to introduce safety hazards or to threaten service interruptions due to shorting, grounding or other causes due to negligent maintenance.
- 7.4.2. Other utility infrastructure systems shall be maintained in such a manner as to not create property damage or health hazards to Occupants or other Owners.

## **7.5. Parking Lots and Drive Aisles**

- 7.5.1. Parking lots and drive aisles, including the landscaping within the general area, shall be maintained on a regular basis so as to provide safe and efficient vehicle and pedestrian usage and to ensure a satisfactory visual appearance.
- 7.5.2. Activities shall include periodic sweeping or washing of the surface; refuse removal, and painting of parking stall markers; and crack sealing, repairing pitted or damaged concrete or asphalt surfaces, and repaving when needed.
- 7.5.3. Signs or pavement markings shall also be kept clean and in good repair.
- 7.5.4. Snow and ice removal will also be required as necessary.

## **7.6. Exterior Lighting.**

- 7.6.1. All external lighting systems on buildings or structures or on lighting poles will be kept clean and relamped to promote efficiency of systems and safety. This includes lighted signs.
- 7.6.2. Once initial construction of a structure on a Parcel is completed as to external appearance, each Owner hereby covenants and agrees to keep its Parcel fully illuminated each day from dusk until at least 10:30 p.m., and further agrees to keep any exterior building security lights and internal access roadway lights on from dusk until dawn.

## **7.7. Landscaping**

- 7.7.1. All landscaped areas shall be routinely maintained including the trimming, watering and fertilization of all grass, groundcover, shrubs or trees, at such intervals as necessary to promote optimum growth.
- 7.7.2. All landscaped areas and plants required by these standards must be permanently maintained in a healthy growing condition.
- 7.7.3. Dead or diseased plants, grass, groundcover, shrubs and trees must be replaced within 30 days, or as soon as practical in inclement weather or complex situations involving removal/replacement of large trees.
- 7.7.4. All plantings must be fertilized, irrigated and pruned. All landscaped areas must be kept free of debris and weeds.
- 7.7.5. Plant material must not interfere with public utilities, restrict pedestrian or vehicular access or constitute a traffic hazard.

7.8. **Signs**

- 7.8.1. All signs shall be maintained so as to be visually appealing and readable.
- 7.8.2. Maintenance activities will include washing, painting, repairing the surface of mechanical or electrical components of the sign and any other activity required to return the sign to its original visual and functional condition.
- 7.8.3. Signs, poles, wiring, conduits and other related support features should also be maintained.

7.9. **Stormwater Facilities.** Owners shall be responsible for the operation and maintenance of Stormwater Facilities on the Parcel. Operation and maintenance of the Stormwater Facilities shall be consistent with the SMMEW and the Code, and sufficient to ensure that the Stormwater Facilities continue to mitigate adverse impacts resulting from development on the Parcel on the quality or quantity of stormwater discharges. Operation and maintenance of the Stormwater Facilities shall be sufficient to provide a pleasing aesthetic value to the Parcel including proper mowing and landscaping of the Stormwater Facilities.

7.10. **Sidewalks.** All sidewalks located on a Parcel shall be cleaned (including washing, snow removal and/or steam cleaning), maintained and repaired. Sidewalks shall be cleaned at appropriate intervals during such time as shall not interfere with the conduct of business or use of the Park by persons intending to conduct business with any Owners or Occupants.

7.11. **Insurance.** Each Owner (as to its Parcel) shall maintain or cause to be maintained in full force and effect Comprehensive Public Liability Insurance with a combined single limit of liability of not less than Three Million Dollars (\$3,000,000.00) for bodily or personal injury or death, and for property damage, arising out of any one occurrence. Such insurance shall include the following provisions:

- 7.11.1. shall provide that the policy may not be cancelled or materially reduced in amount or coverage without at least thirty (30) days prior written notice by the insurer to each insured and any additional insureds;
- 7.11.2. shall name the other Owners, the Association, the DRC and, until the Transition Date, the Declarant, as additional insureds;
- 7.11.3. shall provide for severability of interests;
- 7.11.4. shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other additional insureds of the insured, respectively; and

7.11.5. shall provide for contractual liability coverage with respect to the indemnity obligation set forth below, subject, however, to the limits of coverage set forth above.

All insurance required by Sections 7.11 and 5.2.5 shall be procured from companies licensed in the state of Washington and shall be rated by Best's Insurance Reports not less than A/X; the limits of such policies shall be reviewed by the Owners and approved as to sufficiency at least every five (5) years. The insurance may be carried under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such party, (iii) a plan of self-insurance, provided that the Owner so self-insuring has and maintains twenty-five million dollars (\$25,000,000) or more of net current assets as evidenced by such Owner's annual report that is audited by an independent certified public accountant, or (iv) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by an Owner in compliance with Section 7.11, such Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided however, that in no event shall any deductible exceed one hundred thousand dollars (\$100,000.00) unless such Owner qualifies for self-insurance pursuant to (iii) above. Each Owner agrees to furnish to any Owner requesting the same, copies of the insurance policies evidencing that the insurance required to be carried by such requested Owner is in full force and effect.

7.12. **Indemnity.** Each Owner (“Indemnitor”) covenants and agrees to indemnify, defend and hold harmless the other Owners, the Association, the DRC and the Declarant, their respective elected officials, employees and agents (collectively, the “Indemnitee”) from and against all claims, costs, expenses and liability (including reasonable attorney's fees and cost of suit incurred in connection with all claims) including any action or proceedings brought thereon, arising from or as a result of the injury to or death of any Person, or damage to the property of any Person which shall occur on the Parcel owned by such Indemnitor, except for claims caused by the negligence or willful act or omission of such Indemnitee, and its respective agents, servants, or employees. Solely to give full force and effect to the indemnities contained herein and not for the benefit of any third party, each Owner specifically and expressly waives any immunity it may have under Washington State Industrial Insurance Act, Title 51 RCW, and acknowledges that this waiver was reviewed and agreed to prior to purchasing a Parcel. In no event shall an Owner's obligations hereunder be limited to the extent of any insurance available to or provided by the obligated party. The indemnity provisions provided for herein shall survive termination of this Declaration.

### 7.13. **Taxes and Assessments.**

7.13.1. Each Owner shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Parcel, the buildings, and Improvements

located thereon and any personal property owned or leased by such Owner in the Park, provided that if the taxes or assessments or any part thereof may be paid in installments, the Owner may pay each such installment as and when the same becomes due and payable. The Association shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to the Common Areas, and Improvements located thereon, provided that if the taxes or assessments or any part thereof may be paid in installments, the Association may pay each such installment as and when the same becomes due and payable.

7.13.2. Nothing contained in this subsection shall prevent any Owner or the Association from contesting at its cost and expense any such taxes and assessments with respect to its Parcel or Common Areas in any manner such Owner or the Association elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time as such contest is concluded (allowing for appeal to the highest appellate court), the contesting Owner or the Association shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

7.14. **Liens.** In the event any mechanic's lien is filed against a Parcel or the Common Areas (the "Liened Parcel") as a result of services performed or materials furnished by or at the request of another Owner or its authorized agent (collectively, the "Lien Defaulting Party"), the Lien Defaulting Party shall cause such lien to be discharged prior to entry of final judgment (after all appeals) for the foreclosure of such lien and shall indemnify, defend, and hold harmless the Owner of the Liened Parcel against liability, loss, damage, costs or expenses (including reasonable attorneys' fees and cost of suit) on account of such claim of lien. Upon written request of the Owner of the Liened Parcel, the Lien Defaulting Party shall promptly (and in all events within thirty (30) days after such request) cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent a Lien Defaulting Party from contesting the validity thereof so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), the Lien Defaulting Party shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien.

7.15. **Casualty and Condemnation.** In the event all or any portion of any Improvements in the Park is: (i) damaged or destroyed by fire or other casualty; or (ii) taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, the Owner of such Improvements shall promptly restore or cause to be restored the remaining portion of such Improvements or, in lieu thereof, shall remove

or cause to be removed the damaged portion of such Improvements together with all rubble and debris related thereto. All areas on which Improvements are not reconstructed following a casualty or condemnation shall be graded or caused to be graded by the Owner thereof to the level of the adjoining Parcel and in such a manner as not to adversely affect the drainage of the Park or any portion thereof, shall be covered by either approved landscaping, a dust cap of rolled, crushed rock no greater than 1/2-inch minus in diameter, or a one-inch minimum asphalt dust cap and shall be kept watered, if landscaped, weed free and clean at such Owner's sole cost and expense until Improvements are reconstructed thereon.

- 7.16. **Common Areas and Business Park Signage Maintenance.** The Association shall maintain all Common Areas and the Business Park Signage, including all utilities and lighting elements, in first-class condition and state of repair comparable to the standard of maintenance followed in other first-class commercial/industrial mixed-use developments or office parks of comparable size in Eastern Washington. The Association reserves the right to construct, reconstruct, and repair such improvements in the Common Areas and the Business Park Signage as are ratified by the Owners in the annual budget. The Association may, from time to time, select a third party to maintain the Common Areas and Business Park Signage, provided that such Person is a reputable professional for the work or services to be performed. To the extent maintenance and repair costs are associated with a monument sign in which only certain businesses are advertised pursuant to Section 2.3.2, the Association shall assess such costs to the Owners being advertised pursuant to Section 4.1.3.

## 8. REGULATIONS GOVERNING USES

### 8.1. Uses.

8.1.1. In General. No part of the Park shall be used for a purpose that is in violation of applicable zoning ordinances or other applicable regulations currently in effect, and as may be amended from time to time.

8.1.2. Prohibited Uses. The following uses shall not be permitted:

- 8.1.2.1. Any refining, smelting, mining operation, or other uses of an intensity traditionally considered as heavy industrial, excluding uses typically having low impacts on the environment, such as, but not limited to, (i) limited manufacturing, assembly, warehousing and distribution operations; (ii) research and development facilities where such activities occur inside the building on otherwise screened from public view; (iii) production, assembly, finishing and/or packaging of goods from prepared materials made at another location, or raw materials, such as pre-milled wood, paper, wool, textiles, leather, cork or semiprecious

metals or stones; (iv) distilling, canning or bottling of food or beverages for human consumption; or (v) grading activities associated with site development;

- 8.1.2.2. Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);
- 8.1.2.3. Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located in the rear of any building);
- 8.1.2.4. Any fire sale, flea market, swap market, bankruptcy sale (unless pursuant to a court order) or auction house operation;
- 8.1.2.5. Any central laundry, dry cleaning plant, laundromat (excluding pickup and delivery by the ultimate consumer) or car wash; provided that the DRC may grant a variance pursuant to Section 5.1.3 if the Owner has entered into an agreement with the water and sewer utility provider that requires best management practices and limitations regarding, but not limited to, extraordinary quantity and quality of wastewater, hazardous chemicals and substances, and extraordinary water demands;
- 8.1.2.6. Large truck wash facilities;
- 8.1.2.7. Any animal raising facilities or outdoor animal kennel facilities (except that this prohibition shall not prohibit pet shops or veterinary hospitals with indoor boarding facilities);
- 8.1.2.8. Any establishment where the primary purpose is to sell or exhibit “adult” or pornographic materials;
- 8.1.2.9. Any unlawful or illegal purpose; or
- 8.1.2.10. Any use that is a public or private nuisance. Public or private nuisance shall include, but not be limited to, any of the following conditions:
  - 8.1.2.10.1. Any activity or occurrence that is not in strict compliance with applicable federal, state or local law, regulation or ordinance; or

8.1.2.10.2. The discharge of illegal contaminated water, oil, grease, detergents or other improper liquids, solid waste, or other harmful matter into the ground or the storm water system.

8.2. **Temporary Structures.** No structure of a temporary character, trailer, tent, basement, shack, garage, barn or other outbuilding shall be used on any property at any time, either temporarily or permanently, except during construction activities as described in Section 6.8, or with the permission of the Design Review Committee.

8.3. **Water and Sewer.** All Parcels must connect to the water and sewer systems operated by the Port of Walla Walla, its successors and assigns (the "Utility Provider"), so long as such systems are available and in operation. All Parcels shall be subject to the rates, fees and any other utility charges and assessments established by the Utility Provider. No individual water wells or septic systems are allowed within the Park. Nothing herein shall be deemed as a grant of any ownership interest in the Utility Provider's water right.

## 9. MISCELLANEOUS

### 9.1. Default

9.1.1. If any Owner or Occupant fails to comply with any nonmonetary provision herein ("Defaulting Owner"), then the Association may, upon thirty (30) days' prior written notice to the Defaulting Owner, proceed to cure the default (and shall have a right, but not the obligation to do so) by the payment of money or performance of some other action for the account of the Defaulting Owner. The foregoing right to cure shall not be exercised if within the thirty (30) day notice period (i) the Defaulting Owner cures the default, or (ii) if the default is curable, but cannot reasonably be cured within that time period, the Defaulting Owner begins to cure such default within such time period and diligently and continuously pursues such cure to completion. The thirty (30) day notice period shall not be required if, using reasonable judgment, the Association deems that an emergency exists which requires immediate attention. In the event of such an emergency, the Association shall give whatever notice to the Defaulting Owner as is reasonable under the circumstances. The Defaulting Owner hereby grants to the Association a non-exclusive easement over, across and under any and all parts of the Parcel(s) owned by the Defaulting Owner for all purposes reasonably necessary to enable the Association (and its agents, contractors, or subcontractors) to perform any of the terms, provisions, covenants or conditions of this Declaration that the Defaulting Owner is obligated to perform but has failed to perform after notice and the opportunity to cure pursuant to this Section 9.1.

- 9.1.2. Within ten (10) days of written demand (including providing copies of invoices reflecting costs), the Defaulting Owner shall reimburse the Association for any sum reasonably expended by the Association to cure the default, together with interest thereon. The Association shall have a lien upon the Defaulting Owner's right, title and interest in and to the Parcel(s) owned by the Defaulting Owner to secure payment of all amounts due to the Association hereunder. The Association shall have the right, but not the obligation, to record its lien, but at all times its lien pursuant to this Section shall be subject and subordinate to (i) the lien of any mortgage or deed of trust held by any institutional lender or any extension, renewal, modification or refinancing thereof, in an amount now or hereafter placed on the Defaulting Owner's interest in the Parcel(s) in question; (ii) the leasehold estate created by any lease of all or any part of Parcel(s) owned by the Defaulting Owner; (iii) any other lien of record against the Defaulting Owner's property as of the date that the Association's lien is recorded. The Defaulting Owner hereby consents to the recordation of such lien. The Defaulting Owner hereby irrevocably designates the Association as the Defaulting Owner's attorney in fact for the purpose of recording its lien pursuant to this Section. The Association shall have the right to foreclose such lien by judicial or nonjudicial procedures, and interest, costs, and reasonable attorneys' fees of any such action shall be added to the amount owed.
- 9.1.3. If any Owner fails to pay any assessment levied pursuant to this Declaration within thirty (30) days after the due date, such assessment shall bear interest from the due date at the rate set forth in Section 9.2. Such assessment, together with interests and costs incurred in the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Parcel. The Association may take such actions with respect to such lien as provided for in Section 9.1.
- 9.1.4. In the event the Association shall institute any action or proceeding against an Owner or Occupant pursuant to the provisions of this Declaration for any default hereunder by such Owner or Occupant, or to collect any amounts owing hereunder, or if an arbitration proceeding is commenced by agreement of the parties to any dispute, the unsuccessful party in such action or proceeding shall reimburse the successful party for costs and expenses incurred by the successful party in connection with such action or proceeding and any appeals therefrom, including reasonable attorneys' fees and court costs.
- 9.1.5. All remedies are cumulative and shall be deemed additional to any and all other remedies to which the Association may be entitled in law or in equity. The Association shall also have the right to restrain by injunction any

violation or threatened violation by any Owner or Occupant of any of the terms, covenants, or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate.

9.2. **Interest.** Wherever and as often as one Owner shall not have paid any sum payable hereunder to the Association within five (5) days of the due date, such delinquent Owner shall pay interest on such amount from the due date to and including the date such payment is received by the Association, at the rate of eighteen percent (18%) per annum, provided that if this interest rate is higher than the rate permitted by law, the interest rate is hereby decreased to the maximum legal interest rate permitted by law.

9.3. **Subjecting Additional Property to this Declaration.** The Declarant may acquire Additional Property from time to time. Said Additional Property may be considered part of the Park, and in some instances, be conveyed to the Association as part of the Common Areas to be maintained and owned by the Association. The Declarant may subject Additional Property to the provisions of these protective covenants by filing of record with the County Auditor of Walla Walla County, Washington, a supplement to this Declaration for each such addition, provided that such supplement makes specific reference to this Declaration and describes the Additional Property. Each supplement may contain such additions and modifications of this Declaration to be applicable solely to the Additional Property as the Declarant may choose. The Declarant is not bound to add to these protective covenants any Additional Property. The Additional Property that is added hereto by the Declarant need not, but may, be improved. Additional Property made subject to these protective covenants need not be contiguous to the property described in Exhibit A.

9.4. **Easements.**

9.4.1. Sidewalks. Declarant hereby establishes, grants and conveys for the benefit of each Owner and Occupant, for their use and for the use of their respective invitees and guests, in common with others entitled to use the same, a perpetual non-exclusive easement for ingress, egress and the passage of pedestrians over and across any sidewalks constructed on any Parcels.

9.4.2. Other Easements. Each Owner shall reasonably cooperate with other Owners in the granting of reasonable easements across their respective Parcels for ingress and egress, cross-parking, utilities and such other easements as may be requested in order to promote the orderly and efficient development of the Park. Such agreements are subject to the prior review and reasonable approval of the DRC.

9.4.3. Restrictions. No Owner shall grant any easement for the benefit of any property not within the Park; provided, however, that the foregoing shall not prohibit the granting or dedicating of utility easements by an Owner on its Parcel to governmental or quasi-governmental authorities or to public utilities.

9.5. **Conveyances and Leases Subordinated**. All conveyances and leases of any portion of the Park shall be subject to and subordinate to the terms and provisions of these protective covenants.

9.6. **Notices**. All notices, demands, statements, and requests (collectively, the "Notice") required or permitted to be given under this Declaration must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date of personal service upon the Person to whom the Notice is addressed or if such Person is not available the date such Notice is left at the address of the Person to whom it is directed, (ii) on the date the Notice is postmarked by the United States Post Office, provided it is sent prepaid, certified mail, return receipt requested, and (iii) on the date the Notice is delivered by a nationally recognized overnight courier service (including Federal Express, Express Mail or similar operation) to the addressee, provided it is sent prepaid, return receipt requested. Unless a different address is provided by written Notice to all Owners in accordance with this Section, the address of each Owner shall be the address shown on the real property tax records in Walla Walla County, Washington for the applicable Parcel. The address for both the Association and the DRC is set forth below:

Association/DRC: Burbank Business Park Owners' Association  
310 A Street  
Walla Walla Regional Airport  
Walla Walla, Washington 99362

Each Owner shall have the right from time to time and at any time, upon prior Notice thereof in accordance with the provisions herein, to change its address and to specify any other address or copy address within the United States of America to which Notices to it shall be sent; provided, however, notwithstanding anything herein contained to the contrary, no change of address Notice shall be effective unless and until actually delivered. Refusal to accept delivery of a Notice or the inability to deliver a Notice because of an address change which was not properly communicated shall not defeat or delay the giving of a Notice.

9.7. **Declaration**. Nothing contained herein shall be deemed a gift or dedication of any portion of the Park to or for the general public, nor for any public purpose whatsoever. It is the intention that this declaration shall be strictly limited to and for the purposes herein expressed.

- 9.8. **Assignment of Declarant's Rights.** Declarant may assign, and its assignees may further assign, Declarant's rights under this Declaration, provided that only one party shall hold the Declarant rights at any point in time. Such assignment is not effective until Declarant provides to the Association and all other Owners a written notice of the transfer of the Declarant's rights, together with the contact information of the assignee.
- 9.9. **Approval and Consent Rights.** Unless otherwise specifically herein provided to the contrary, whenever any approval or consent of an Owner, the Association or the DRC is required, such approval or consent shall be made or denied in writing and shall not be unreasonably withheld, conditioned or delayed by the party from whom it is sought. Unless provision is made for a specific time period, approval or consent shall be given or denied within thirty (30) days of the receipt of the request therefor. If a written disapproval is not given within the required time period, the party to whom the request was directed shall be deemed to have given its approval or consent. If an Owner, the Association or the DRC shall disapprove, the reasons therefor shall be stated in the notice of disapproval. Except with respect to an approval or consent given as a result of lapse of time, all approvals, consents and disapprovals shall be in writing.
- 9.10. **Condemnation.** In the event any portion of the Park shall be condemned, the award shall be paid to the Owner owning land or the improvement taken, except that (i) if the taking includes improvements belonging to more than one Owner and/or the Association, such as utility lines or signs, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition, and (ii) if the taking includes easement rights, the portion of the award allocable to each such easement right shall be paid to the respective grantee thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this Declaration which does not reduce or diminish the amount paid to the Owner owning the land or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof.
- 9.11. **Binding Effect.** The terms of this Declaration and all limitations, covenants, conditions, easements and restrictions contained herein shall constitute covenants running with the land and shall inure to the benefit of and be binding upon the signatories hereto, the subsequent Owners of the Parcels and their respective successors and assigns. This Declaration and all the terms, covenants and conditions contained herein shall also be enforceable as equitable servitudes in favor of each and every portion of the Park. This Declaration is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

- 9.12. **Singular and Plural.** Whenever required by the context of this Declaration, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.
- 9.13. **Negation of Partnership.** None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Owner shall be considered a separate owner, and no Owner shall have the right to act as an agent for another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.
- 9.14. **Waiver.** The failure of the Association to insist upon strict performance of any of the obligations or restrictions contained herein shall not be deemed a waiver of any rights or remedies that the Association may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the obligations or restrictions contained herein by the same or any other Person.
- 9.15. **Severance.** Invalidation of any provision of these protective covenants shall in no way affect any of the other provisions, which shall remain in full force and effect.
- 9.16. **Term.** These protective covenants and restrictions shall remain in full force and effect for 30 years from the date of recordation, after which time this Declaration shall be automatically extended for successive periods of 10 years each, unless terminated, modified or otherwise amended in writing by the Association, provided, however, that the easements granted herein are perpetual and shall continue in force and effect. Upon termination of this Declaration, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of the Declaration, except as relates to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this Declaration shall not limit or affect any remedy at law or in equity that an Owner or the Association may have against any other Owner with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination.
- 9.17. **Amendment.** This Declaration may be amended by an instrument executed by the Owners of a majority of the Parcels, and Declarant if prior to the Transition Date. Notwithstanding the foregoing, this Declaration may be amended solely by Declarant prior to the Transition Date if such amendment is necessary or desirable in the sole judgment of Declarant to correct typographical or similar errors, or as may be required by a title insurance company.



## EXHIBIT A

### LEGAL DESCRIPTION

A Tract of land located in and being a portion of Section 1, Township 8 North, Range 30 East, Willamette Meridian, Walla Walla County Washington, and being more particularly described as follows:

Commencing at the southwest corner of said Section 1; thence along the south line of said Section 1, N.89°23'20"E., 3462.04 feet; thence departing said Section line, N.00°36'13"W., 30.00 feet to a point in the easterly right-of-way of Jantz Road as shown on the Lockwood Binding Site Plan recorded in Book 10 of Surveys at Page 218, records of Walla Walla County, said point being on the northerly right-of-way for Humorist Road, said point also being the TRUE POINT OF BEGINNING; thence the following three courses along said Jantz Road, N.18°24'11" W., 154.57 feet to a point of non-tangent curve, said point having a radial bearing of S.81°30'04"W.; thence an arc distance of 351.75 feet along said non-tangent curve concave to the southwest, having a radius of 535.00 feet and a delta angle of 37°40'13" to a point of tangent line; thence along said tangent line N.46°10'09" W., 1189.94 feet to a point on the southerly line of vacated Maple Street, vacation number 05 307, recorded in Auditor File Number: 2005-15594, records of Walla Walla County; thence along said vacated Maple Street N.46°10'09" W., 64.13 feet to a point on the northerly right-of-way for Maple Street (not vacated); thence along said Maple Street S.89°16'26" W., 2027.45 feet; thence departing said Maple Street N.00°19'41" W., 302.08 feet; thence S.89°14'15" W., 299.85 feet to a point on the easterly right-of-way for Fifth Avenue; thence along said Fifth Avenue, N.00°18'28" W., 995.26 feet; thence N.00°19'07"W., 176.61 feet to a point on the Washington Department of Transportation right-of-way for the SR 12 Snake River to Humorist Road Vicinity dated September 4, 2008, said point being opposite station SR 7+47.28 and 30.00 feet easterly there from; thence the following 19 courses along said SR 12 right-of-way N.89°41'31" E., 70.00 feet (Sta- SR 7+47.28, 100' RT); thence N.00°18'29" W., 195.00 feet (Sta- SE 11+00, 100' RT); thence N.89°40'58" E., 178.28 feet (Sta- 12+78.26 P.C., 100' RT) to a point of tangent curve; thence an arc distance of 130.92 feet along said tangent curve to the left, having a radius of 510.00 feet and a delta angle of 14°42'28" to a point of tangent line (Sta- SE 13+83.51 P.T., 100' RT); thence along said tangent line N.74°58'30" E., 305.09 feet; to a point of tangent curve (Sta- SE 16+88.60 P.C., 100' RT) thence an arc distance of 509.98 feet along said tangent curve to the right, having a radius of 550.00 feet and a delta angle of 53°07'35" to a point of compound curve (Sta- SE 22+91.29, 100' RT); thence an arc distance of 289.95 feet along said tangent curve to the right, having a radius of 2900.00 feet and a delta angle of 5°43'43" to a point of tangent line (Sta- SE 25+91.30, 100' RT); thence N.43°49'48" E., 11.35 feet (Sta- LW 865+58.95' RT); thence S.46°26'56" E., 938.49 feet (Sta- LW 875+00, 180' RT); thence S.49°16'12" E., 369.72 feet (Sta- LW 879+00, 160'

RT); thence S.46°10'09" E., 2383.72 feet (Sta- H 17+61.99, 135' LT); (Sta- H 15+70.70, 135' LT); thence S.68°49'51" W., 191.52 feet (Sta- H 15+70.70, 135; LT); thence S.21°10'09" E., 35.00 feet (Sta- H15+70.70, 100' LT); to a point of non-tangent curve, said point having a radial bearing of N.21°10'09"W.; thence an arc distance of 358.94 feet along said non-tangent curve concave the northwest, having a radius of 1000.00 feet and a delta angle of 20°33'56" to a point of non-tangent line (Sta- H11+75.87, 100' LT); thence S.00°36'13" E., 70.00 feet (Sta- H 11+75.87, 30' LT) to a point on the northerly right-of-way for Humorist Road; thence along said right-of-way S.89°23'47" W., 97.95 feet to the TRUE POINT OF BEGINNING

Containing 94.2 acres more or less and being subject to all easements, right-of-ways, covenants or restrictions existing, of record or in view.

TOGETHER WITH:

A Tract of land located in and being located in and aa portion of Section 2, Township 8 North, Range 30 East, Willamette Meridian, Walla Walla County Washington, and being more particularly described as follows:

Commencing at the southeast corner of said Section 2; thence along the east line of said Section 2, N.00°19'14"W., 1987.09 feet; thence departing said Section line, S.88°38'21"W., 30.00 feet to a point on the westerly right-of-way for Fifth Avenue and the northerly right-of-way for Poplar Street, said point being the TRUE POINT OF BEGINNING; thence along said Poplar Street S.88°38'21" W., 1281.41 feet to a point on the easterly right-of-way for Second Avenue; thence along said Second Avenue, N.00°09'01" W., 1996.21 feet; thence departing said Second Avenue, N.89°39'57" E., 1241.27 feet to a point on the Washington Department of Transportation right-of-way for the SR 12 Snake River to Humorist Road Vicinity dated September 4, 2008, said point being opposite station SR 18+40.01 being 140 feet northwest there from; thence the following 10 courses along said SR 12 right of way; thence S.17°16'41" W., 46.92 feet to a point of tangent curve (Sta- SR 17+93.09 P.T. 140' LT); thence an arc distance of 395.95 feet along said tangent curve to the left, having a radius of 1290.00 feet and a delta angle of 17°35'10" to a point of tangent line (Sta-SR 14+40.11 P.C., 140'LT); thence S.00°18'29" E., 92.89 feet (Sta- SR 13+47.22, 140' LT); thence N.89°41'31" E., 40.00 feet (Sta- SR 13+47.22, 100' LT); thence S.00°18'29" E., 199.95 feet (Sta- SR 11+47.27, 100'LT); thence S.89°41'31" W., 200.00 feet (Sta- SR 11+47.27, 300' LT); thence S.00°18'29" E., 200.00 feet (Sta- SR 9+47.27, 300' LT); thence N.89°41'31" E., 200.00 feet (Sta- SR 7+47.28, 100' LT); thence S.00°18'29" E., 200.00 feet (Sta- SR 7+47.28, 100' LT); thence N.89°41'31" E., 70.00 feet (Sta- SR 7+47.28, 30' LT) to a point on the westerly right-of-way for Fifth Avenue; thence departing said SR 12 right-of-way along said Fifth Avenue, S.00°19'07" E., 176.61 feet; thence S.00°18'28"E., 669.30 feet to the TRUE POINT OF BEGINNING.

Containing 55.3 acres more or less and being subject to all easements, right-of-ways, covenants or restrictions existing, of record or in view.

Basis of bearing for this description is WSDOT RW plans "SR 12 Snake River to Humorist Road Vicinity" dated September 4, 2008.

This description was prepared from record information and without the benefit of a ground survey.

Prepared by:  
Anderson-Perry & Associates, Inc.

January 25, 2010



Dated: 1/25/2010