

*When Recorded, Return to:*

**SEASIDE KINGSTON LLC**

Attn: Eric Clarke  
12900 NE 180<sup>th</sup> St., Suite 220  
Bothell, WA 98011

**DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
SEASIDE AT KINGSTON,  
a Plat and Performance Based Development Community, including a  
Administrative Conditional Use Permit**

**Declarant:** SEASIDE KINGSTON LLC, a Washington limited liability company

**Legal Description (Abbreviated):** \_\_\_\_\_

**Reference Number(s) of  
Related Documents:** \_\_\_\_\_ (Plat / PBD Map)

**Assessor's Tax**

**Acct. Nos.:** 262702-4-079-2001; 262702-4-080-2008;  
262702-4-081-2007; and 262702-4-082-2006

## TABLE OF CONTENTS

	<u>Page</u>
SECTION 1	INTERPRETATION ..... 1
1.1.	Liberal Construction..... 1
1.2.	Terms Consistent With Act..... 1
1.3.	Covenants Running With Land..... 1
1.4.	Singular/Plural, Etc ..... 1
1.5.	Declarant Is Original Owner..... 1
1.6.	Unit and Building Boundaries ..... 1
1.7.	Exhibits ..... 1
1.8.	Inconsistency with Bylaws ..... 2
1.9.	Insignificant Failure ..... 2
1.10.	Definitions..... 2
SECTION 2	DESCRIPTION OF PROPERTY, BUILDINGS, AND UNITS..... 4
2.1.	Property Described ..... 4
2.2.	Description of the Buildings and Units ..... 4
2.3.	Other Improvements..... 4
2.4.	Designation and Boundaries of Units..... 4
2.5.	Unit Data..... 5
SECTION 3	DESCRIPTION OF COMMON ELEMENTS ..... 5
3.1.	Description of Common Elements ..... 5
SECTION 4	DESCRIPTION OF LIMITED COMMON ELEMENTS ..... 6
4.1.	Description of Limited Common Elements..... 6
4.2.	Reallocation and Incorporation..... 6
SECTION 5	PERCENTAGE INTEREST AND VOTING RIGHTS OF EACH UNIT ..... 6
5.1.	Voting Rights and Unit Percentage Interests..... 6
5.2.	Transfer of Units and Common Elements ..... 6
SECTION 6	ASSOCIATION ..... 7

6.1.	Form of Association .....	7
6.2.	Membership .....	7
6.3.	Transfer of Membership .....	7
6.4.	Number of Votes .....	7
6.5.	Voting Owner.....	7
6.6.	Pledged Votes.....	8
6.7.	Joint Owner Disputes .....	8
6.8.	Annual Meetings .....	8
6.9.	Special Meetings .....	8
6.10.	Quorum .....	8
SECTION 7	ADMINISTRATION DURING INTERIM PERIOD, ELECTION OF BOARD OF DIRECTORS AND OFFICERS, AND ADOPTION OF BYLAWS.....	8
7.1.	Adoption of Bylaws.....	8
7.2.	Board of Directors .....	9
7.3.	Directors During Declarant Control Period.....	9
7.4.	Election and Owner Representative .....	9
7.5.	Transition to Owner Controlled Board.....	9
7.6.	Term of Directors .....	9
7.7.	Removal of Directors and Vacancies .....	9
7.8.	Quorum .....	9
7.9.	Officers .....	10
7.10.	Indemnification .....	100
7.11.	No Personal Liability.....	100
7.12.	Liability for Utility Failure, Etc .....	100
SECTION 8	AUTHORITY AND DUTIES OF BOARD OF DIRECTORS.....	10
8.1	Authority of the Board of Directors. ....	10
8.2	Limitations on Board's Authority.....	14
8.3	Limitation on Liability of Directors. ....	14
8.4	Entry for Repair.....	15
8.5	Notice of Conveyances Required.....	15
8.6	Maintenance of Units and Common Elements. ....	15
8.7	Failure to Comply with Declaration.....	16
8.8	Lawsuits or Arbitration Proceedings.....	16
8.9	Notice and Opportunity to be Heard. ....	17
8.10	Financial Statements and Records. ....	18

## SECTION 9 COMMON EXPENSE ASSESSMENTS ACCORDING TO BUDGET 18

9.1.	Fiscal Year .....	18
9.2.	Preparation of Budget .....	18
9.3.	Ratification of Budget .....	18
9.4.	Supplemental Budget .....	19
9.5.	Assessments .....	19
9.6.	Common Expenses .....	19
9.7.	Specially Allocated Expenses .....	19
9.8.	Contribution to Initial Working Capital and Reserves .....	200
9.9.	Special Assessments .....	200
9.10.	Creation of Reserves; Assessments .....	211
9.11.	Notice of Assessments .....	211
9.12.	Payment of Assessments .....	211
9.13.	Reconciliation of Assessments to Actual Expenses .....	211
9.14.	Proceeds Belong to Association .....	211
9.15.	Failure to Assess .....	211
9.16.	Certificate of Unpaid Assessments .....	211
9.17.	Recalculation of Assessments .....	222

## SECTION 10 COLLECTION OF ASSESSMENTS ..... 222

10.1.	Lien Indebtedness .....	222
10.2.	Collection of Delinquent Assessments .....	22
10.3.	Attorneys' Fees, Costs and Interest .....	23
10.4.	Liability of Mortgagee .....	23
10.5.	Liability after Sale of a Unit .....	23
10.6.	Late Charges .....	24
10.7.	Collections from Tenants .....	24

## SECTION 11 REGULATION OF USES ..... 24

11.1.	Residential Use .....	24
11.2.	Facilities Required By Declarant .....	24
11.3.	Parking .....	24
11.4.	Driveways, Walkways, etc. ....	25
11.5.	Maintenance and Modification of Units and Limited Common Elements .....	25
11.6.	Exterior Appearance .....	27
11.7.	Uses Affecting Insurance .....	28

11.8.	Signs .....	28
11.9.	Animals .....	28
11.10.	Offensive Activity .....	28
11.11.	Trash Removal .....	28
11.12.	Lighting.....	28
11.13.	Construction Work - Common Elements .....	29
11.14.	Rentals .....	29
SECTION 12	INSURANCE.....	29
12.1.	Insurance Coverage .....	29
12.2.	Owner's Insurance .....	31
12.3.	Insurance Proceeds .....	31
12.4.	Additional Provisions .....	31
SECTION 13	DAMAGE OR DESTRUCTION; RECONSTRUCTION .....	31
13.1.	Initial Board of Directors' Determinations .....	32
13.2.	Notice of Damage or Destruction .....	33
13.3.	Definitions.....	33
13.4.	Restoration by Board of Directors. ....	33
13.5.	Decision Not to Restore, Disposition.....	34
SECTION 14	CONDEMNATION .....	35
14.1.	Consequences of Condemnation .....	35
14.2.	Proceeds .....	35
14.3.	Complete Taking .....	35
14.4.	Partial Taking.....	35
14.5.	Reductions of Community Upon Partial Taking .....	36
14.6.	Reconstruction and Repair.....	37
SECTION 15	MORTGAGEE PROTECTION.....	37
15.1.	Priority of Mortgages .....	37
15.2.	Abandonment of Community Status, Decision Not to Rebuild, and Insurance Proceeds .....	37
15.3.	Material Amendments .....	38
15.4.	Implied Approval .....	38
15.5.	Effect of Declaration Amendments.....	38
15.6.	Written Notice.....	39

15.7.	Insurance Policy Terms .....	39
15.8.	Inspection of Documents, Books and Records .....	40
15.9.	Obtaining Declarant's Powers .....	40
15.10.	Rights of Mortgagee of Community .....	40
15.11.	Right of Board of Directors to Cure Defaults.....	40
SECTION 16	COMPLIANCE .....	40
16.1.	Enforcement .....	40
16.2.	No Waiver of Strict Performance.....	41
SECTION 17	EASEMENTS .....	41
17.1.	In General.....	41
17.2.	Utility and Other Easements .....	41
17.3.	Association Functions .....	41
17.4.	Encroachments .....	41
17.5.	Easement for Construction, Inspection, and Repair.....	42
17.6	Utility Easement Granted by the Declarant.....	42
17.7.	Right of Entry for Inspection, Maintenance, Repairs, Emergencies or Improvements.....	42
17.7.	Emergency Ingress and Egress .....	42
SECTION 18	AMENDMENT OF DECLARATION AND MAP.....	42
18.1.	Declaration Amendment.....	42
18.2.	Map Amendment.....	43
18.3.	Amendments by Declarant .....	43
18.4.	Amendments to Conform to Construction .....	43
18.5.	Amendments to Conform to Lender Guidelines.....	43
18.6.	Corrective Amendments .....	43
SECTION 19	TERMINATION OF COMMUNITY STATUS .....	44
SECTION 20	MISCELLANEOUS.....	44
20.1.	Notice.....	44
20.2.	Notice to Mortgagee.....	44
20.3.	Remedies Not Exclusive.....	44
20.4.	Mortgagee's Acceptance. ....	44
20.5.	Severability .....	44

20.6.	Effective Date.....	45
20.7.	Reference to Map .....	45
SECTION 21	DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS .....	45
21.1.	Reserved Rights.....	45
21.2.	Right to Use Common Elements.....	46
21.3.	Reallocation of Interests .....	46
21.4.	Exercise and Termination of Development Rights .....	46
SECTION 22	DISPUTE RESOLUTION.....	47
22.1.	Policy – Mediation .....	47
22.2.	Binding Arbitration .....	47
22.3.	Hearing Procedure .....	47

**DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
SEASIDE AT KINGSTON,**

a Plat and Performance Based Development Community, including a  
Administrative Conditional Use Permit

This Declaration of Covenants, Conditions, and Restrictions (“***Declaration***”) is made the \_\_\_\_ day of \_\_\_\_\_, 2020, by Seaside Kingston, LLC, a Washington limited liability company (“***Declarant***”). Declarant makes this Declaration pursuant to the Washington Uniform Common Interest Ownership Act, Chapter 64.90 RCW, as amended from time to time (the “***Act***”). The covenants, conditions, restrictions, and reservations in this Declaration and the provisions of the Act are binding on all Owners of a Unit or of an interest in a Unit (e.g., a leasehold interest or security interest), their heirs, successors and assigns.

**SECTION 1 Interpretation**

1.1. **Liberal Construction.** The provisions of this Declaration and the Act under which this Declaration is operative, will be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of this Community under Washington law.

1.2. **Terms Consistent with Act.** The terms used in this Declaration are intended to have the meaning set forth in the Act unless the context clearly requires otherwise.

1.3. **Covenants Running With Land.** This Declaration will be operative as a set of covenants running with the land supplementing and interpreting the Act, and operating independently of the Act, should the Act be, in any respect, inapplicable.

1.4. **Singular/Plural, Etc.** The singular may include the plural, and the masculine may include the feminine, or vice versa, where the context so requires.

1.5. **Declarant is Original Owner.** The Declarant is the original Owner of all Units and will continue to be the Owner until conveyances or documents changing ownership of specifically described Units are recorded of record. Declarant will enjoy the same rights and assume the same duties as other Owners as they relate to each individual unsold Unit.

1.6. **Unit and Building Boundaries.** In interpreting the Map, the existing physical boundaries of the building and each Unit, as constructed, will be conclusively presumed to be the correct boundaries.

1.7. **Exhibits.** All exhibits referred to and attached to this Declaration are incorporated by reference as though fully set forth where such reference is made.

1.8. **Inconsistency with Bylaws.** If anything in this Declaration is inconsistent with the Bylaws, the provisions of this Declaration control unless such provisions are contrary to the Act.

1.9. **Insignificant Failure.** The title to any Unit created by this Declaration will not be affected by any insignificant failure of this Declaration or Map to comply with the Act.

1.10. **Definitions.**

1.10.1. "**Act**" means the Washington Uniform Common Interest Ownership Act, Chapter 64.90 RCW, as amended.

1.10.2. "**Allocated Interests**" means the percentage interest in the Common Elements, the Common Expense Liability, and the votes allocated among the Units according to the formula in Section 5.1.

1.10.3. "**Association**" means all of the Owners as a non-profit corporation operating according to the Bylaws and this Declaration as it is recorded, or as either may be amended.

1.10.4. "**Board of Directors**" or "**Board**" means the individuals appointed by the Declarant or elected by the Association to manage and administer the Property according to the Bylaws of the Association, this Declaration, and the Act, after the Declarant or his managing agent no longer provides management. The term "**Board of Directors**" also refers to the Declarant acting as the Board of Directors during the interim period during which the Declarant manages and administers the Property.

1.10.5. "**Bylaws**" means the Bylaws of the Association as initially promulgated by the Declarant and as amended from time to time.

1.10.6. "**Common Elements**" mean all portions of the Community other than the Units. Each Owner has a percentage interest in the Common Elements. The Common Elements include all Limited Common Elements.

1.10.7. "**Common Expenses**" mean expenditures made by or financial liabilities of the Association which are related to the maintenance, repair, and replacement of the Common Elements, including allocations to reserves, or the general operation of the Association, which are allocated to all Owners in accordance with the Common Expense Liability. The Common Expenses include management expenses applicable to all Units, such as, to the extent applicable, fees paid to any professional management company.

1.10.8. "**Common Expense Liability**" means the liability attributed to each Unit to pay Common Expenses according to the formula in Section 5.1.

1.10.9. "**Community**" means the common interest community, as defined in the Act, comprised of the Property, in which portions of the Property are defined as "Units" for

separate ownership by the Owners, and the remainder of which is designated for common ownership by the Owners, pursuant to the conditions and restrictions stated in this Declaration.

1.10.10. "**Declarant**" means the undersigned, the party developing the Community and signing this Declaration, or their heirs, successors or assigns.

1.10.11. "**Declaration**" means this document, as amended from time to time, by which the Property is submitted to provisions of the Act.

1.10.12. "**Eligible Mortgagee**" means the holder of a Mortgage on a Unit that has filed with the Secretary of the Association a written request that it be given copies of notices of any action by the Association that requires the consent of the Mortgagees.

1.10.13. "**Foreclosure**" includes a judicial and non-judicial Foreclosure, a real estate contract forfeiture, and a deed given in lieu of Foreclosure or sale.

1.10.14. "**General Common Elements**" mean those Common Elements which are not Limited Common Elements. The General Common Elements are comprised mainly of the structural elements of the building, the building enclosure, systems that serve all Units within a Building or serve all Units in the Community (e.g., storm drainage system, etc.), access features that serve all Units, any frontage improvements and landscaping maintained by the Association and any exterior lighting.

1.10.15. "**Limited Common Elements**" or "LCEs" mean those portions of the Common Elements described in Section 4.

1.10.16. "**Map**" means the survey map and the set of plans, filed in Kitsap County under the recording number shown on the cover page of this Declaration, and any amendments thereto.

1.10.17. "**Mortgage**" means a mortgage, deed of trust, or real estate contract.

1.10.18. "**Mortgagee**" includes a deed of trust beneficiary, a vendor of a real estate contract, and may be a Mortgagee of a Unit.

1.10.19. "**Mortgage of a Unit**" means the holder of a Mortgage on a Unit, which Mortgage was recorded simultaneously with or after the recordation of this Declaration.

1.10.20. "**Mortgagee of the Community**" means the holder of a Mortgage on the Property which this Declaration affects, which Mortgage was recorded prior to the recordation of this Declaration.

1.10.21. "**Person**" includes an individual, corporation, partnership, limited partnership association, trust, governmental subdivision or agency, or other legal entity.

1.10.22. "**Property**" means the Real Estate (as defined in the Act) described on attached Exhibit A which is being subjected to the Act to create the Community.

1.10.23. "***Specially Allocated Expenses***" means expenditures or liabilities which are allocated to Units on a basis other than according to Allocated Interests.

1.10.24. "***Unit***" means a physical portion of the Community designated for separate ownership, the boundaries of which are described in Section 2.4 below.

1.10.25. "***Unit Owner***" or "***Owner***" means a Declarant or other person who owns a Unit, but does not include a person who has an interest in a Unit solely as security for an obligation. "Unit Owner" or "Owner" means the vendee, not the vendor, of a Unit under a real estate contract.

## **SECTION 2 Description of Property, Buildings, and Units**

2.1. **Property Described.** The Declarant is the sole Owner of the Property legally described in the attached Exhibit A, on which the buildings and improvements are or will be located and which is being developed with Plat and Performance Based Development approval to create 140 lots, and Administrative Conditional Use Permit to construct a multi-family-style housing community. The Property described on attached Exhibit A and improvements thereon is all of the Property included in the Community on the recording of this Declaration. After the sale of all Units to Owners, the Owners will own the Property in fee simple. All Property in the Community is subject to those development rights and special declarant rights reserved in this Declaration.

2.2. **Description of the Buildings and Units.** The Property is comprised of 140 zero-lot-line parcels, housed in fourteen independent Buildings, constructed as 140 attached townhome-style residences. The Buildings and Units are described on the attached Exhibit B and shown on the Map.

2.3. **Other Improvements.** Other improvements such as open space, recreational amenities, landscaping, access roads, stormwater treatment and detention control vaults and utilities are described on Exhibit B and may be shown on the Map or disclosed in the public offering statement given as part of the first sale of a Unit.

2.4. **Designation and Boundaries of Units.** The interest granted by Declarant to an Owner in a Unit will be fee simple and the Owner will hold a single deed for each Unit owned. The boundaries of the Units are shown on the Map and are as follows:

2.4.1. The upper boundary for the Units is the inside face of stud for the ceiling;

2.4.2. The lower boundary of the Units is the finished floor exclusive of carpet;

2.4.3. The side boundary between two Units is the centerline of the demising wall; the side boundary along the building exterior is the inside face of glazing or, where there is no glazing, the inside face of such other material forming such exterior walls; the side boundary along building interior walls (e.g., walls separating the Units) is the exterior face of the studs

forming such walls; and the side boundary where there are no walls enclosing a Unit, is the outside face of the walls or other improvements enclosing or comprising such Common Elements.

A Unit does not include any of the Common Elements shown on the Map and the Association shall have an easement over the Unit to access those Common Elements as reasonably necessary for the operation, maintenance, repair and replacement of those Common Elements. The Units include all spaces, interior partitions, fixtures, betterments and improvements within the boundaries of each Unit which were installed by the Declarant or by an Owner and intended to be a permanent part of the Unit, other than Common Elements. The location of the Units is shown on the Map.

2.5. **Unit Data.** Exhibit "B" identified the Buildings A-H, J-N, and P; the number of Units in each Building, and the designated Unit numbers.

### **SECTION 3 Description of Common Elements**

3.1. **Description of Common Elements.** Ownership of the Common Elements is vested in the Owners on an undivided basis according to the Allocated Interests. Each Owner shall have the right to use the Common Elements in common with all of the other Owners. The right to use the Common Elements extends not only to each Owner, but also to the Owner's agents, servants, tenants, family members, invitees, and licensees. Each Owner has a right of access from his Unit over the Common Elements to a public street. The Board may adopt rules and regulations governing the use of the Common Elements. The Common Elements consist of all parts of the Community other than the Units. The Common Elements also include any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture which lies partially within and partially outside the designated boundaries of a Unit which serves more than one Unit or any portion of a Common Element. The Common Elements are generally described as follows:

3.1.1. **Structural Elements.** The foundations, studding, joists, beams, floor slabs, supports, walls (excluding only non-bearing interior partitions of the Units), roofs, chimneys and fireplace walls, if any, and all other structural parts of the Building.

3.1.2. **Central Services.** The wires, pumps, motors, fans, ducts and all other parts or apparatus of any central services or common utility service, such as power, light, gas, hot and cold water, heating, air conditioning, incinerators, compactors, sewer, fire control systems, and communication elements, if any, whether they are located in partitions or otherwise. The Common Elements do not include appliances and equipment exclusively serving and located inside a single Unit.

3.1.3. **Landscaped Areas.** The yards, gardens, and landscaped areas which surround the Building, and any planters built into or adjacent to the Building.

3.1.4. **Access Features.** The walkways, driveways, drive aisles, and cul-de-sacs, which shall provide access to the Units or other Common Elements from a public street.

3.1.5. **Refuse Disposal.** Any area shown on the Map reserved for containers or equipment for refuse disposal and any such equipment including dumpsters, compactors, incinerators, and recycling bins.

3.1.6. **Mail Facilities.** The mailboxes and mail center, if any, for the Community if mail is received at a common location.

3.1.7. **Common Amenities.** Certain amenities are available to the Owners and their guests and invitees by means of appurtenant easements granted pursuant to this Declaration including children's play equipment, picnic shelter, community BBQ area, two patios with seating area, habitat viewing platforms, pervious walking paths, covered bicycle parking area, street furniture (benches), and lighting.

#### **SECTION 4 Description of Limited Common Elements**

4.1. **Description of Limited Common Elements.** The Limited Common Elements are shown on the Map to the extent feasible and are described as follows:

4.1.1. Those Limited Common Elements described in RCW 64.90.210(1(b) and RCW 64.90.210(3);

4.1.2. Any deck, balcony, terrace, patio or private yard designed to be accessed by a single Unit is a Limited Common Element assigned to that Unit. The boundaries of such Limited Common Element are the railings, fences, walls or other improvements enclosing such space and those improvements are also Limited Common Elements. Any planters and plantings within or comprising the boundaries of those Limited Common Elements are also Limited Common Elements and the applicable Owner is obligated to maintain those planters and plantings. Any weather proofing membranes for those Limited Common Elements which are located above enclosed space are General Common Elements.

4.1.3. **Reallocation and Incorporation.** Declarant has reserved the absolute and exclusive right to reallocate Limited Common Elements between and among Units that are owned by Declarant, reallocate Common Elements as Limited Common Elements, incorporate Common Elements or Limited Common Elements into a Unit, and to subdivide or change the boundaries of Units owned by Declarant. Any such changes may be accomplished by an amendment to the Declaration signed only by Declarant.

4.2. **Use of Limited Common Elements.** Each Owner shall have the exclusive right to use the Limited Common Elements allocated or assigned solely to the Owner's Unit. The right to use the Limited Common Elements extends not only to each Owner, but also to the Owner's agents, servants, tenants, family members, invitees, and licensees. The Board may adopt rules and regulations governing the use of the Limited Common Elements. Limited Common Elements automatically transfer with title to the Unit regardless of whether those Limited Common Elements are mentioned in the deed.

## **SECTION 5. Percentage Interest and Voting Rights**

5.1. **Voting Rights and Unit Percentage Interests.** The formula for allocating Common Expense Liability among the Units included in the Community is an equal percentage for each Unit, to cause the allocations for all Units to equal 100.00%. Each Unit included in the Community shall be allocated one vote. The Allocated Interests shall be deemed to be conveyed with and as an encumbrance on the Units, whether or not mentioned in the instrument evidencing the encumbrance or conveyance.

5.2. **Transfer of Units and Common Elements.** All rights granted to an Owner under this Declaration, including an unrestricted right of ingress and egress such Owner's Unit, shall be perpetual and pass with the Unit upon any transfer of ownership. Any transfer of ownership of a Unit shall include a transfer of the undivided interest in the Common Elements allocated to that Unit and any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the Common Elements will be void unless the Unit to which that interest is allocated is also transferred.

## **SECTION 6. Association**

6.1. **Form of Association.** On or before the date the first Unit is conveyed, Declarant shall form a homeowners association as a non-profit corporation under the laws of the State of Washington. The name of the Association shall be the "Seaside at Kingston Homeowners Association."

6.2. **Membership.** Each of the Owners, including the Declarant, shall be a member of the Association and shall be entitled to one membership for each Unit so owned.

6.3. **Transfer of Membership.** The Association membership of each Owner (including the Declarant) shall be appurtenant to the Unit giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to said Unit and then only to the transferee of title to such Unit. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Unit shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner.

6.4. **Number of Votes.** The total voting power of all Owners shall be 140 votes. The votes are allocated to each Unit in accordance with the formula stated in Section 5.1.

6.5. **Voting Owner.** If any Unit is owned by more than one person, those Owners shall designate one representative to represent the ownership group in the Association, by written notice to the Board of Directors. A designated representative need not be an Owner of a Unit. A designation may be revoked at any time by the Owners of the Unit on written notice to the Board of Directors, and the death or judicially declared incompetence of all persons constituting the Owner of a Unit shall revoke the designation; provided, however, that such revocation shall not be effective until the Board of Directors has been notified. Where no designation is made, or where a designation has been made, but is revoked and no new designation is made, the designated representative of such Unit shall be the group comprised of all persons constituting the Owner. If

a person owns more than one Unit, he shall have a vote for each Unit owned. The Declarant shall be the voting Owner with respect to any Unit owned by it. Natural persons, partnerships, corporations, trusts or other legal entities may own or have an ownership interest in Units.

6.6. **Pledged Votes.** In the event the Owner of a Unit has pledged his vote regarding special matters to a Mortgagee, and written evidence of the pledge has been filed with the Association, only the vote of such Mortgagee will be recognized concerning the special matters for which the vote was pledged. This paragraph shall not be amended without the written consent of all the Owners and their respective Mortgagees.

6.7. **Joint Owner Disputes.** The vote for a Unit must be cast as a single vote, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. In the event more than one vote is cast for a particular Unit none of said votes shall be counted.

6.8. **Annual Meetings.** The Association shall hold its annual meeting in the first quarter of each year at such reasonable place and time as may be designated by written notice of the Board of Directors to the Owners no less than fourteen (14) days and not more than fifty (50) days prior to the date fixed for the meeting.

6.9. **Special Meetings.** A special meeting of the Association may be called by the President, a majority of the Board, or Owners holding at least twenty percent (20%) of the total voting rights in the Association. Written notice shall be given to all Owners not less than fourteen (14) days and not more than fifty (50) days prior to the date fixed for the special meeting, and must contain all information specified in the Act or the Bylaws.

6.10. **Quorum.** The quorum at an annual or special meeting of the Association shall be the presence, in person or by proxy, of Owners or their designated representative having twenty-five percent (25%) or more of the total votes in the Association. If a quorum is present at any such meeting, any action may be taken by an affirmative vote of a majority of the total votes present at the meeting, unless otherwise expressly provided herein. In the event a quorum is not present at any meeting, the Owners present, though less than a quorum, may adjourn the meeting to a later date and give notice thereof to all the Owners in accordance with the notice provisions of this Declaration and at the reconvened meeting fifty percent (50%) of the Owners represented in person or by proxy at the adjourned members meeting shall constitute a quorum for the purpose of the rescheduled meeting.

## **SECTION 7 Administration During Interim Period, Election of Board of Directors and Officers, and Adoption of Bylaws**

7.1. **Adoption of Bylaws.** The Declarant shall adopt the initial Bylaws of the Association to provide for the administration of the Community consistent with this Declaration and the Act.

7.2. **Board of Directors.** The affairs of the Association will be governed by a Board of three (3) Directors, each of whom will have one (1) vote. Each Directors will serve a term of three (3) years. At the first election of Directors, in order to provide for staggered terms, the members will elect one (1) Director for a term of one (1) year, one (1) Director for a term of two (2) years, and one (1) Director for a term of three (3) years. The Board is responsible for the affairs of the Association and will have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do or cause to be done all acts and things as are not by the Declaration, Articles or these Bylaws directed to be done and exercised exclusively by the Members generally.

7.3. **Directors During Declarant Control Period.** Prior to conveyance of the first unit in the Community, the affairs of the Association will be governed by a Board of Directors composed of at least one (1) person who will be elected by Declarant, acting in its sole discretion (the Declarant Control Period).

7.4. **Election and Owner Representative.** Not later than sixty days after conveyance of twenty-five percent of the units that may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the board must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units that may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the board must be elected by unit owners other than the declarant. Until such members are elected and take office, the existing board may continue to act on behalf of the association.

7.5. **Transition to Owner Controlled Board.** The Declarant Control Period terminates no later than the earlier of (a) 60 days after conveyance of seventy-five (75%) of the units to owners (other than Declarant); (b) 2 years after the last conveyance of a unit, except to a dealer; (c) 2 years after any right to add new units was last exercised; or (d) the day the Declarant, after giving notice in a record to unit owners, records an amendment to the Declaration voluntarily surrendering all right to appoint and remove officers and board members.

7.6. **Term of Directors.** The term of office of the directors shall be as stated in the Bylaws.

7.7. **Removal of Directors and Vacancies.** Any director may be removed, with or without cause, by the vote of Members holding a majority of the total votes, or 2/3rd of the votes cast by Members at the meeting. Upon removal of a director, a successor will then and there be elected by the Members to fill the vacancy for the remainder of the term of such director. Except for members elected by owners, the Declarant may remove members of the Declarant control board with or without cause, and appoint directors to fill the vacancies thus created without a meeting of the Association.

7.8. **Quorum.** At all Board meetings, a majority of the directors will constitute a quorum for the transaction of business, and the vote of a majority of the directors' present at a meeting at which a quorum is present will constitute the decision of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of

directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

7.9. **Officers.** The officers of the Association will be a President, Vice President, Secretary and Treasurer, to be elected from among the members of the Board.

7.10. **Indemnification.** The Association may indemnify and hold harmless to the full extent permitted by applicable law each person who was or is made a party to or is threatened to be made a party to a suit or other proceeding, whether civil, administrative or investigative, by reason of the fact that he or she is or was a director, officer, employee or agent of the Association, against all expense, liability and loss (including attorneys' fees and costs) incurred or suffered by such person in connection therewith. Such indemnification may continue as to a person who has ceased to be a director, officer, employee or agent of the Association and will inure to the benefit of his or her heirs and personal representatives.

7.11. **No Personal Liability.** Except as provided in the Act for torts which were committed by the Declarant or for which the Declarant is expressly made liable, and so long as a director, or an Association committee member, or an Association officer, or Declarant exercising the powers of the Board of Directors, has acted in good faith, without willful or intentional misconduct, then no such person shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of such person; provided, that this Section shall not apply where the consequences of such act, omission, error or negligence are covered by insurance obtained by the Board of Directors.

7.12. **Liability for Utility Failure, Etc.** Except to the extent covered by insurance obtained by the Board, none of the Association, the Board, the Manager (as defined below), or the Declarant shall be held liable for: the failure of any utility or other service obtained and paid for by the Association; any injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust, or sand which may lead or flow from outside or from any parts of the Buildings, or from any of their pipes, drains, conduits, appliances, or equipment, or from any other place; or inconvenience or discomfort resulting from any action taken to comply with any law, ordinance, or orders of a governmental authority. No diminution or abatement of Common Expense Assessments shall be claimed or allowed for any such liability or service failure, or for such injury or damage, or for such inconvenience or discomfort.

## **SECTION 8 Authority and Duties of Board of Directors**

### **8.1. Authority of the Board of Directors.**

8.1.1. **General.** The Board of Directors shall have all powers and authority permitted to the Board of Directors under the Act and this Declaration. The Association shall arrange for goods and services necessary for the proper functioning of the Community, and the cost shall be shared among the Owners in the manner provided in this Declaration. The Board of Directors shall have the exclusive right to contract for all goods and services the payment for which is to be made from the Common Expense fund.

8.1.2. **Duties.** The Board of Directors must perform those duties stated in RCW 64.90.405(1) which are:

- (a) Adopt organizational documents;
- (b) Adopt budgets as provided in RCW 64.90.525;
- (c) Impose assessments for Common Expenses and Specially Allocated Expenses on the Owners as provided in RCW 64.90.080(1) and 64.90.525;
- (d) Prepare financial statements as provided in RCW 64.90.530; and
- (e) Deposit and maintain the funds of the Association in accounts as provided in RCW 64.90.530.

8.1.3. **Powers.** The Board shall have the following powers stated in RCW 64.90.405, subject to all limitations stated in the Act or this Declaration:

- (a) Amend organizational documents and adopt and amend rules;
- (b) Amend budgets under RCW 64.90.525;
- (c) Hire and discharge managing agents and other employees, agents, and independent contractors;
- (d) Institute, defend, or intervene in litigation or in arbitration, mediation, or administrative proceedings or any other legal proceeding in its own name on behalf of itself or two or more Owners on matters affecting the Community;
- (e) Make contracts and incur liabilities subject to ratification by Owners holding a majority of the total votes in the Association pursuant to RCW 64.90.405(4);
- (f) Regulate the use, maintenance, repair, replacement, and modification of Common Elements;
- (g) Cause additional improvements to be made as a part of the Common Elements;
- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but Common Elements may be conveyed or subjected to a security interest pursuant to RCW 64.90.465 only and no conveyance or encumbrance of Common Elements shall deprive any Unit of its rights of access or support;
- (i) Grant easements, leases, licenses, and concessions through or over the Common Elements and petition for or consent to the vacation of streets and alleys;
- (j) Impose and collect any reasonable payments, fees, or charges for:
  - (i) The use, rental, or operation of the Common Elements, other than those Limited Common Elements described in RCW 64.90.210(1)(b) and (3); (ii) Services provided to Owners; and (iii) Moving in or moving out of the Units in those reasonable amounts established by the Board from time to time;

(k) Collect assessments and impose and collect reasonable charges for late payment of assessments;

(l) Enforce the governing documents and, after Notice and Opportunity to be Heard, impose and collect reasonable fines for violations of the governing documents in accordance with a previously established schedule of fines adopted by the Board of directors and furnished to the Owners;

(m) Impose and collect reasonable charges for the preparation and recordation of amendments to this Declaration, resale certificates required under RCW 64.90.640, lender questionnaires, or statements of unpaid Assessments;

(n) Provide for the indemnification of its officers and directors of the Board to the extent provided in RCW 23B.17.030;

(o) Maintain directors' and officers' liability insurance;

(p) Assign its right to future income, including the right to receive assessments, subject to ratification by Owners holding a majority of the total votes in the Association pursuant to RCW 64.90.405(4);

(q) Join in a petition for the establishment of a parking and business improvement area, participate in the ratepayers' board or other advisory body set up by the legislative authority for operation of a parking and business improvement area, and pay special assessments levied by the legislative authority on a parking and business improvement area encompassing the Community for activities and projects that benefit the Community directly or indirectly;

(r) Establish and administer a reserve account as described in RCW 64.90.535;

(s) Prepare a reserve study as described in RCW 64.90.545;

(t) Exercise any other powers conferred by this Declaration or the Articles or Bylaws;

(u) Exercise all other powers that may be exercised in this state by a non-profit corporation incorporated under Chapter 24.03 RCW;

(v) Exercise any other powers necessary and proper for the governance and operation of the Association;

(w) Comply with any binding arbitration agreement entered into by the Owners upon their purchase of Units in the Community;

(x) Require that disputes between the Association and Owners or between two or more Owners regarding the Community, other than those governed by Chapter 64.50 RCW or (w) hereof, be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding; and

(y) Suspend any right or privilege of a unit owner who fails to pay an Assessment, but may not: (i) Deny an Owner or Occupant access to the Unit; (ii) Suspend an Owner's right to vote; or (iii) Withhold services provided to a Unit or an Owner by the Association

if the effect of withholding the service would be to endanger the health, safety, or property of any person.

8.1.4. **Specific Authorized Actions of the Board.** The powers described in Section 8.1.3 authorize the Board to provide the following goods and services and perform the following actions:

- (a) Arrange for utility services for the Common Elements.
- (b) Purchase policies of insurance or bonds providing coverage for fire and other hazards, liability for personal injury and property damage, for director and officer liability and for fidelity of Association officers and other employees, to the extent the same are required hereafter.
- (c) Contract for additions or improvements to the Common Elements.
- (d) Purchase workmen's compensation insurance required by law.
- (e) Engage a Manager to manage the Community and such other personnel as are necessary in the Board's opinion for the proper operation of the Community. The Board of Directors may delegate any of its duties, powers or functions to the Manager; provided that any such delegation shall be under a written contract containing such other terms and conditions as the Board of Directors may determine. The members of the Board of Directors shall not be liable for any omission or improper exercise by the Manager of any such duty, power or function so delegated.
- (f) Engage professionals to provide the legal and accounting services necessary or proper for the operation of the Community or enforcement of this Declaration and the Bylaws and rules and regulations, and the professional services necessary for the preparation and update of a Reserve Study in accordance with the Act.
- (g) Maintain, operate, repair, enhance and replace the Common Elements.
- (h) Pay any amount necessary to discharge any lien or encumbrance levied against the Common Elements.
- (i) Maintain or repair any Unit if (1) such maintenance or repair is necessary, in the discretion of the Board of Directors, to comply with the Community standards, (2) such maintenance and repair is necessary to prevent damage to the Unit or the Common Elements, and (3) the Owner of such Unit has failed or refused to perform the maintenance or repair after Notice and an Opportunity to be Heard. The Board shall levy a special Assessment against such Unit and the Owner thereof for the cost of the maintenance or repair including a reasonable charge for administration of the repairs and the same shall be immediately due and payable to the Association.

(j) Represent the Owners in any proceedings related to the condemnation, destruction, or liquidation of all or part of the Common Elements. The Board shall have the sole authority to participate in all negotiations and enter into all related settlements or agreements on behalf of the Owners with respect to the Common Elements. The Owners hereby appoint the Association as their attorney-in-fact in all such matters. The Owners, however, may represent themselves with regard to their Units and Unit Improvements.

(k) Acquire and hold in the name of the Association, for the benefit of the Owners, tangible and intangible personal property and real property and interests therein, from common funds of the Association, and dispose of the same by sale or otherwise.

## **8.2. Limitations on Board's Authority.**

**8.2.1. Borrowing Secured by Future Assessments.** The Board may not obtain any financing secured by an assignment of the Association's right to receive future income from Assessments or otherwise, without first having that financing ratified by the Owners in accordance with RCW 64.90.405(4).

**8.2.2. Adoption or Amendment of Rules.** The Board must, before adopting, amending, or repealing any rule, give all Owners notice of its intention to adopt, amend, or repeal a rule and provide the text of the rule or the proposed change, and the date on which the Board will act on the proposed rule or amendment after considering comments from Owners. Following adoption, amendment, or repeal of a rule, the Board must give notice to the Owners of its action and provide a copy of any new or revised rule. All rules must be reasonable and must be applied on a uniform, nondiscriminatory basis. All rules must comply with those regulatory limitations stated in RCW 64.90.510. In interpreting those regulatory limitations, the Board shall be given the maximum authority and discretion allowed thereunder to limit signs, solar panels, and other displays that are visible to the general public or other Owners.

**8.2.3. No For-Profit Business.** Nothing contained herein shall be construed to give the Board of Directors authority to conduct an active business for profit on behalf of the Owners.

**8.2.4. No Structural Changes without Authorization.** The Board of Directors shall not make any structural changes to the Common Elements without the approval by a vote of the Owners holding no less than 80 percent (80%) of the total votes in the Association. No structural change which affects a Unit shall be made except with the approval of the Owner and any First Mortgagee of the Unit affected.

**8.3. Limitation on Liability of Directors.** To the extent permitted by law, the members of the Board of Directors and the Association shall not be liable for any failure of any utility or other service to be obtained and paid for by the Board of Directors hereunder, or for injury or damage to person or property caused by the elements or by another Owner or person; or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of the Building, or from any of its pipes, drains, conduits, appliances or equipment, or from any other cause or place, or resulting from loss, damage or theft of articles used or stored by Owners

on the Property or in Units. No diminution or abatement of assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the Common Elements, or from any action taken to comply with any law, ordinance or orders of a governmental authority. This Section shall not be interpreted to impose any form of liability by any implication upon the Board of Directors or upon the Association. This Section also extends to the Declarant exercising the powers of the Board of Directors during the initial period of operation of the Association and Community.

**8.4. Entry for Repair.** The Association shall have the right to enter any Unit and any Limited Common Element to effect emergency repairs, and shall have a reasonable right of entry thereupon to effect other repairs, improvements, replacements or maintenance deemed necessary. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Board of Directors at the expense of the Common Expense fund. The Board of Directors shall be provided with door keys and burglar alarm keys for each Unit to facilitate access in an emergency. The Association shall notify the affected Owner in advance whenever possible.

**8.5. Notice of Conveyances Required.** The right of Owner to sell, transfer, or otherwise convey his Unit is not subject to any right of approval, disapproval, first refusal, or similar restriction by the Association or the Board of Directors, or anyone acting on their behalf. An Owner intending to sell a Unit shall deliver a written notice to the Board of Directors, at least two weeks before closing, specifying the Unit being sold; the name and address of the purchaser, of the closing agent, and of the title insurance company insuring the purchaser's interest; and the estimated closing date. The Board of Directors shall have the right to notify the purchaser, the title insurance company, and the closing agent of the amount of unpaid assessments and charges outstanding against the Unit, whether or not such information is requested. This Section shall not apply to the Declarant when closing the first sale of any Units owned by it. Promptly upon the conveyance of a Unit, the new Owner shall notify the Association of the date of the conveyance and the Owner's name and address. The Association shall notify each insurance company that has issued an insurance policy required under this Declaration of the name and address of the new Owner and request that the new Owner be made a named insured under such policy. At the time of the first conveyance of each Unit, every Mortgage, lien or other encumbrance affecting that Unit and any other Unit or Units or real property, other than the percentage of undivided interest of that Unit in the Common Elements, shall be paid and satisfied of record, or the Unit being conveyed and its undivided interest in the Common Elements shall be released therefrom by partial release duly recorded or the purchaser of that Unit shall receive title insurance from a licensed title insurance company against such Mortgage, lien or other encumbrance.

**8.6. Maintenance of Units and Common Elements.** The Association shall maintain and repair the Common Elements in accordance with industry standards. In addition, the Association shall, through periodic inspections and institution of appropriate fines or other penalties, enforce each Owner's obligation to maintain its Unit in accordance with the maintenance standards set forth in this Declaration.

**8.7. Failure to Comply with Declaration.** The Association and any aggrieved Owner shall have a right of action against any other Owner who fails to comply with this Declaration or the decisions made by the Association. No conveyance or encumbrance of Common Elements pursuant to this Section shall deprive any Unit of its rights of access or support.

**8.8. Lawsuits or Arbitration Proceedings.**

**8.8.1. General.** The potential for material adverse consequences to the Owners of legal proceedings involving material disputes merit careful evaluation and consideration before committing the Owners to a course of action. As a result, the Association shall evaluate those consequences and receive the approval of the Owners in accordance with this Section 8 before pursuing significant legal proceedings.

**8.8.2. Initial determinations.** The Association shall make the following determinations and summarize the same in a written report (the "Litigation Report") prior to commencing any litigation, administrative proceedings, arbitration proceedings, or mediation ("Proceedings"), except as provided below for emergency filings or exempt proceedings: (i) the principal amount sought to be recovered; (ii) an estimate of the amount of attorneys' fees which will be chargeable to the Association at each stage of the Proceedings (e.g., prior to commencing litigation, prior to any arbitration hearing, mediation, or trial, those to be incurred at mediation, arbitration, or trial, those that may be incurred at any subsequent trial de novo or appeal, and in the collection of any judgment or award; (iii) whether the attorneys' fees will be charged on an hourly or contingent basis; (iv) the estimated cost of all witnesses or investigators including bookkeepers, accountants, consultants, investigators, contractors, and experts; (iv) the factual and legal basis supporting the Association's claims in the Proceedings; (v) the legal and factual basis of any defense or counterclaim against the Association or the Owners; (vii) an estimate of the amounts which the Association or Owners may be required to pay if it does not prevail in the Proceedings including the principal amount claimed and recoverable attorneys' fees and costs of litigation; (viii) a legal opinion prepared by legal counsel who is independent from the legal counsel whom the Association proposes to hire to pursue the Proceedings, and which contains a "valuation " of the Association's claims on the basis of the actual amounts in dispute, the likelihood of the Association prevailing on those claims, and the merit of the defenses to those claims; (ix) an evaluation of any negative consequences the Owners could suffer by reason of the proposed Proceedings including the impact of required disclosures on any Unit sales or refinancings while the Proceedings are pending. If the Proceedings involve an alleged breach of warranty by Declarant, the Association shall include in the Litigation Report the Association's demand to Declarant and Declarant's response pursuant to RCW 64.50.

**8.8.3. Emergency Filings.** The Association may make any filing necessary to satisfy a statute of limitations deadline prior to completing the procedures stated in this Section 8.8. Provided, however, the Association may not incur or commit itself to expending more than \$5,000 in connection with any such Proceedings prior to fulfilling the requirements of this Section 8.8. In any event, the Association shall satisfy the requirements of this Section 8.8 within ninety (90) days after making any such emergency filing.

8.8.4. **Exempt Proceedings.** If the amount involved in the Proceedings is less than \$25,000, or if the Proceedings involve enforcement of this Declaration or rules and regulations against an Owner, or if the Proceedings involve collection of delinquent assessments from an Owner, then the Association may omit from the Litigation Report the legal opinion from independent counsel concerning a valuation of the Proceedings and the Association may proceed with the Proceedings without obtaining the approval of the Owners as provided below. In determining whether the \$25,000 threshold has been exceeded, the calculation shall include the principal amount claimed by the Association, all costs of pursuing the Proceedings, and all amounts which may be recovered against the Association or Owners if the Association does not prevail. If the Association initially commences Proceedings under the reasonable belief that the amount involved is less than \$25,000, but later discovers that the \$25,000 threshold could be exceeded, then the Association shall stay the Proceedings until it has complied with all requirements of this Section 8.8.

8.8.5. **Recommendation to and Approval by the Owners.** If the amount involved in the Proceedings exceeds \$25,000, then the Association shall transmit the Litigation Report together with the Association's recommendation to each Owner. The Owners shall consider the Association's recommendation at a special meeting called for that purpose within sixty (60) days of delivery of the Litigation Report.

8.8.6. **Approval by the Owners.** The Association shall not commence the Proceedings or enter into any engagement or commitment in that regard unless that action is first approved by Owners holding sixty-seven percent (67%) of the total votes in the Association. The approval of the Owners shall not be required for the Association to settle the Proceedings. The Association shall prepare a revised Litigation Report from time to time as events occur which materially change the estimates and conclusions stated in any prior Litigation Report. Upon preparation of any revised Litigation Report, the Association shall transmit the same to the Owners together with the Association's recommendation with regard to the continuance of the Proceedings. The Association must take immediate steps to terminate the Proceedings unless the Association's recommended course of action is approved by a majority vote of those Owners present at a special meeting called for that purpose at which a quorum is present.

8.8.7. **Personal Liability.** Any officer or director of the Association shall not be personally liable for the adverse consequences of any Proceedings provided such officer or director exercised reasonable business judgment in satisfying the requirements of this Section 8.8.

8.9. **Notice and Opportunity to be Heard.** Whenever this Declaration requires that an action of the Board of Directors be taken after "Notice and Opportunity to be Heard," the following procedure shall be observed: The Board of Directors shall give written notice of the proposed action to all Owners whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing, which shall be not less than five (5) days from the date notice is delivered by the Board. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules or procedure established by the Board to assure a prompt and orderly resolution of the issues. Such

evidence shall be considered in making the decision but shall not bind the Board. The affected person shall be notified of the decision in the same manner in which notice of the hearing was given. If the affected Owner is not satisfied with the decision of the Board, the matter shall be resolved in accordance with Section 21 below.

**8.10. Financial Statements and Records.** The Association must establish and maintain its accounts and records in a manner that will enable it to credit assessments for Common Expenses and Specially Allocated Expenses, including allocations to reserves, and other income to the Association, and to charge expenditures, to the account of the appropriate Units in accordance with this Declaration. To assure that the Owners are correctly assessed for the actual expenses of the Association, the accounts of the Association must be reconciled at least annually unless the Board determines that a reconciliation would not result in a material savings to any Owner. Any surplus funds of the Association remaining after the payment of or provision for expenses and any prepayment of reserves must be paid annually to the Owners in proportion to their Common Expense Liabilities or credited to them to reduce their future Common Expense Assessments. The Association shall prepare or cause to be prepared, at least annually, a financial statement of the Association in accordance with accrual based accounting principles. The annual financial statement shall be audited annually by a certified public accountant who is not a member of the Board or an Owner; provided, however, if the annual assessments are less than \$50,000, then the Owners may waive the audit each year by a vote of a majority of the total votes in the Association which are not allocated to Units owned by the Declarant. The financial statement shall be completed in time for the Association's annual meeting and in any event within 120 days following the end of the fiscal year. The Association shall also retain those records described in RCW64.90.495.

## **SECTION 9 Common Expense Assessments According to Budget**

**9.1. Fiscal Year.** 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.

**9.2. Preparation of Budget.** Not less than 30 days before the end of the fiscal year, the Board shall prepare a budget for the Association for the coming year. In preparing its budget the Board shall estimate the Common Expenses and Specially Allocated Expenses of the Association to be paid during the year, and shall take into account any surplus or deficit carried over from the preceding year and any expected income to the Association. The budget must include the projected income of the Association by category, the projected Common Expenses and those Specially Allocated Expenses that are subject to being budgeted, both by category, the amount of the Assessments per Unit and the date the Assessments are due, the current amount of regular assessments budgeted for contribution to the reserve account, a statement of whether the Association has a reserve study that meets the requirements of RCW 64.90.550 and, if so, the extent to which the budget meets or deviates from the recommendations of that reserve study, and the current deficiency or surplus in reserve funding expressed on a per Unit basis.

**9.3. Ratification of Budget.** Within thirty (30) days after adoption of any proposed budget for the Community, the Board shall provide a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than

fourteen (14) nor more than fifty (50) days after mailing of the summary. Unless at that meeting the Owners to which a majority of the votes in the Association are allocated reject the budget, the budget shall be 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. If the Board proposes a supplemental budget during any fiscal year, then the budget shall not take effect unless ratified by the Owner in accordance with this Section.

**9.4. Supplemental Budget.** If during the year the budget proves to be inadequate for any reason, including nonpayment of assessments, the Board may prepare a supplemental budget for the remainder of the year. A supplemental budget is subject to ratification pursuant to Section 9.3 above.

**9.5. Assessments.** The amounts required by the Association for Common Expenses and Specially Allocated Expenses as reflected by the annual budget and any supplemental budgets may be divided and paid in installments over the period of time covered by the budget or supplemental budget. The Assessment for each Unit is the total of the Specially Allocated Expenses for that Unit and the Common Expenses multiplied by the Common Expense Liability for that Unit. Assessments begin accruing for all Units upon the closing of the sale of the first Unit by the Declarant; provided that the Declarant may delay the commencement of Assessments and pay all actual expenses of operating the Community with no allocations to reserves. During any period when Declarant has elected to pay the actual expenses rather than making Assessments against all Units, Declarant may require Owners of those Units which have been conveyed to reimburse Declarant for any separately metered utility costs billed to Declarant or the Association and Declarant shall be entitled to offset those actual expenses by any income from the operation of the Common Elements.

**9.6. Common Expenses.** Common Expenses will include the cost of operation, maintenance, inspection, repair and replacement of the Common Elements, the general expenses of the Association, including management and professional fees and costs, insurance and any other costs that benefit all Units. Common Expenses shall be allocated to all Owners in accordance with their Common Expense Liability.

**9.7. Specially Allocated Expenses.** Specially Allocated Expenses are those expenses which the Association specially allocates to selected Units as required by this Section. The Association shall, to the extent reasonably practicable, in a reasonable and non-discriminatory manner, specially allocate the following expenses:

**9.7.1. General.** In determining whether a Specially Allocated Expense is practicable, the Association shall consider the extent to which certain Units benefit more than other Units with regard to the Limited Common Elements involved in each particular case, whether it is possible to separately contract for the applicable service, and the amount of the liability or expense involved. The Board shall have discretion to not make any Specially Allocated Expenses and, instead, treat the particular expense as a Common Expense, if the Board determines that the administrative burden is disproportionate to the differential between the Specially Allocated Expense and the amount resulting from treating the expense as a Common Expense. The

Association may impose deposit requirements, late charges, billing procedures, and other similar measures with regard to Specially Allocated Expenses as the Association may determine is appropriate in its reasonable discretion.

9.7.2. **Limited Common Elements.** All expenses and liabilities attributable to the operation, maintenance, repair and replacement of the Limited Common Elements, if performed by the Association rather than the applicable Unit Owner, shall be specially allocated to the Unit Owner to which such Limited Common Elements are allocated. If the Association delegates the responsibility for operation, maintenance, repair and replacement of those Limited Common Elements to the applicable Owner to which the same are allocated, then those costs should be incurred directly by such Unit Owner.

9.7.3. **Special Benefits.** Any expenses benefiting fewer than all of the Units shall be allocated to those Units benefited in proportion to the benefit received to the extent reasonably practicable.

9.7.4. **Allocation of Costs and Liability Not Covered by Insurance.** Any cost or liability not covered by insurance maintained by the Owners or Association, including the cost of deductibles and any coinsurance, shall be allocated: (a) to the applicable Owner to the extent the same relates to such Owner's Unit improvements or assigned Limited Common Elements; and (b) to the Owners in accordance with their Common Expense Liability to the extent the same relates to the General Common Elements. Notwithstanding the foregoing, each Owner shall bear all of the costs and liability for claims made against such Owner to the extent caused by its negligent or wrongful acts or omissions and an Owner's responsibility for such acts or omissions shall not be directly or indirectly shifted to any other Owner through a Specially Allocated Expense under this Section. This Section is for the sole benefit of Owners and the Association and shall not affect any waivers of subrogation rights set forth herein or elsewhere.

9.7.5. **Utilities.** Any utilities which are partially or completely sub-metered shall be allocated to those metered Units in accordance with their actual usage as indicated by the sub-meter. The Association may initially base its allocations on estimates of usage provided the Association reconciles the estimates against actual usage at least annually. The balance of the utility costs shall be allocated to the un-metered Units in proportion to the Allocated Interests of those Units.

9.8. **Contribution to Initial Working Capital and Reserves.** In connection with the closing of the sale of each Unit, the first purchaser thereof shall pay to the Association, as a nonrefundable contribution to an initial working capital and reserve fund in an amount determined by the Board, which amount shall not be considered as an advance payment of regular assessments. Declarant shall not use any of the working capital fund to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits. The Board shall determine in its discretion the amount of the fund to be used for working capital and for reserves.

9.9. **Special Assessments.** To the extent that any expense is caused by the misconduct of an Owner or relates to the repair of any Unit, the Association may, after Notice and Opportunity to be Heard, levy a special Assessment for the expense against the Unit.

9.10. **Creation of Reserves; Assessments.** The Board shall create a reserve account for anticipated expenses for repairs, replacement and improvements to the Common Elements which will occur in the future. The operation of the reserve account and assessments for the reserve account shall be further governed by the Bylaws.

9.11. **Notice of Assessments.** The Board shall notify each Owner in writing of the amount of the assessments to be paid for the Owner's Unit and shall furnish copies of all budgets and a brief description of the basis for the Specially Allocated Expenses and any special assessments were calculated. The Board shall furnish the same information to an Owner's Mortgagee if so requested.

9.12. **Payment of Assessments.** Each Owner shall pay or cause to be paid to the treasurer or designated agent of the Association all assessments levied against the Unit. Any assessment not paid within ten (10) days of the due date shall be delinquent and subject to late charges, interest charges and collection procedures as prescribed by the Board.

9.13. **Reconciliation of Assessments to Actual Expenses.** The Association shall establish and maintain its accounts and records in such a manner that will enable it to credit the Assessments for Common Expenses, Specially Allocated Expenses and reserves, including Special Assessments, and other income to the Association to the account of the appropriate Units and make its expenditures from the appropriate accounts. The accounts of the Association shall be reconciled as necessary to ensure the Owners are correctly assessed for the actual expenses of the Association, and any surpluses (or deficits) in the accounts shall be credited to the benefit of or paid to (or charged to the account of or assessed against) the Owners who paid the surplus (or owe the deficit). Reconciliation shall not be necessary if the administrative cost of doing so will exceed the total adjustment likely to result from the reconciliation.

9.14. **Proceeds Belong to Association.** All assessments and other receipts received by the Association on behalf of the Community shall belong to the Association.

9.15. **Failure to Assess.** Any failure by the Board or the Association to make the budgets and assessments hereunder before the expiration of any year for the ensuing 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 assessments amounts established for the preceding year shall continue until the new assessment is established.

9.16. **Certificate of Unpaid Assessments.** Upon the request of any Owner or Mortgagee of a Unit, the Board will furnish a certificate stating the amount, if any, of unpaid assessments charged to the Unit. The certificate shall be conclusive upon the Board and the Association as to the amount of such indebtedness on the date of the certificate in favor of all purchasers and Mortgagees of the Unit who rely on the certificate in good faith. The Board may establish a reasonable fee to be charged to reimburse it for the cost of preparing the certificate. In addition, the Board shall furnish resale certificates to the extent required by RCW 64.90.640, and shall provide such other information as may be reasonably requested by an Owner or its Mortgagee including an estoppel certificate confirming the identity of the Owner, its voting representative,

amount and status of payment of Assessments, any significant anticipated expenses which are not reflected in the budget or for which adequate reserves are not maintained, a summary of any pending or threatened litigation, whether the Owner or its Occupants and Invitees are in compliance with this Declaration and any rules and regulations adopted by the Board, and any other information reasonably requested. The estoppel certificate shall be based on the actual knowledge of the Directors then serving on the Board and a reasonable review of the books and records available to them.

9.17. **Recalculation of Assessments.** If Allocated Interests are changed, then Assessments for Common Expenses and Specially Allocated Expenses and any installment thereof not yet due shall be recalculated in accordance with the changed Allocated Interests.

## **SECTION 10 Collection of Assessments**

10.1. **Lien Indebtedness.** Unpaid Assessments shall be the separate, joint and several personal debts of the Owner or purchaser by voluntary conveyance of Units for which the same are assessed. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving the lien securing same. The Association has a statutory lien on each Unit for any unpaid assessment against that Unit from the time such assessment is due. The Association's lien has priority over all other liens and encumbrances on a Unit except for: (i) liens and encumbrances recorded before this Declaration is recorded; (ii) mortgages and other security interests recorded before the due date of the unpaid assessment except as provided below in this Section; and (iii) liens for real estate taxes and other state or local governmental assessments or changes against the Unit. If the Association gives the holder of those security interests described in (ii) of this Section not less than 60 day prior written notice of delinquent assessments that complies with RCW 64.90.485(3)(a)(iii), then the Association's lien shall have priority over such security interests for those Common Expense Assessments, including special Assessments, but excluding any amounts for capital improvements, which would have become due in the absence of acceleration during the six months immediately preceding the institution of proceedings to foreclose either the Association's lien or such security interest, together with costs of foreclosure and attorneys' fees to the extent allowed by RCW 64.90.485. This limited lien priority over such security interests shall not be available if the Association forecloses its lien non-judicially. A Mortgagee of a Unit that obtains possession through a mortgage foreclosure or deed of trust sale, or by taking a deed in lieu of foreclosure or sale, or a purchaser at a foreclosure sale, shall take the Unit free of any claims for the share of assessments by the Association chargeable to the Unit which became due before such possession, but will be liable for the assessments and other authorized expenses accruing after such possession.

10.2. **Collection of Delinquent Assessments.** The Board of Directors shall enforce collection of any delinquent assessment in the following manner, or in any other manner permitted by law:

10.2.1. **Acceleration of Assessments.** If an Owner is delinquent in the payment of any assessment for more than sixty (60) days, and the Owner fails to cure the delinquency within fifteen (15) days after written notice from the Association stating the consequences of failing to cure the delinquency, then the Association may accelerate and demand immediate payment of all

assessments coming due during the twelve (12) month period following the Association's notice. The Association may reasonably estimate any Specially Allocated Expenses or special assessments in calculating the accelerated balance.

10.2.2. **Action to Foreclose.** The Board of Directors may commence an action to foreclose a lien judicially pursuant to RCW 61.12 for assessments and in any such action shall be entitled to recover attorneys' fees and costs pursuant to Section 10.3, and shall further be entitled to seek the appointment of a receiver as provided in the Act. The judgment in the action foreclosing the lien shall be for an amount equal to all delinquent assessments and advances, plus all costs and expenses in connection with such action and any receivership, including a reasonable sum as attorneys' fees and for the cost, if any, of obtaining a title report.

10.2.3. **Non-judicial Foreclosure.** The Board of Directors may commence an action to foreclose a lien for assessments non-judicially pursuant to RCW 61.24 as permitted by RCW 64.90.485(13)(b), and in such foreclosure may recover its reasonable attorneys' fees and all costs and expenses reasonably incurred in the preparation or prosecution of such foreclosure. For the purposes of permitting such non-judicial foreclosure: (a) the Community is granted in trust to First American Title Insurance Company (herein the "Trustee") to secure the Owners' respective obligations to pay assessments when due; (b) the Trustee is granted the power to sell the individual Units; (c) the Units are not used principally for agricultural or farming purposes; and (d) the foregoing power of sale shall be operative with respect to any Unit if the Owner of that Unit fails to pay assessments with respect to any Unit when due including any accelerated assessments due.

10.2.4. **Other Remedies.** The Board shall have all other remedies for collection of delinquent Assessments not prohibited by law.

10.3. **Attorneys' Fees, Costs and Interest.** The Association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. The Association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment. Until a different rate is set by the Association, delinquent assessments shall bear interest from the date of delinquency at the lesser of twelve percent (12%) per annum or the maximum rate permitted by law.

10.4. **Liability of Mortgagee.** In the event a Mortgagee obtains title to any Unit as a result of the Foreclosure of the Mortgage or deed in lieu of Foreclosure, the Mortgagee shall be liable for the Assessments for such Unit for the period after such Mortgagee acquires title to such Unit.

10.5. **Liability after Sale of a Unit.** The lien for unpaid Assessments shall not be affected by the sale or transfer of a Unit, and the buyer of the Unit shall be jointly and severally liable with the seller of the Unit for all unpaid Assessments up to the time of the sale without prejudice to the buyer's right to recover from the seller the amounts paid for such delinquent Assessments. Provided, however, the buyer is not liable for any Assessments delinquent at the time a resale certificate was provided to the buyer pursuant to RCW 64.90.640 to the extent such delinquent Assessments were not shown in the resale certificate.

10.6. **Late Charges.** The Association may establish reasonable late charges and assess them against those Owners who are delinquent in paying assessments.

10.7. **Collections from Tenants.** The Association may collect directly from any tenant of a Unit the Owner of which is delinquent and the payment of assessments all or any portion of the rent due for such Unit until such Owner's delinquency has been satisfied including any applicable late charges, interest, and security deposit requirements. The Association shall not exercise this right unless the Owner fails to pay any delinquency within thirty (30) days after notice of the delinquency has been given to the Owner. The tenant of any such Unit shall receive full credit against his or her rental obligations to the Owner for all amounts paid to the Association in response to the Association's demand. Provided, however, the payment of rents by any such tenant shall not act as a waiver of any requirements stated in this declaration with regard to the lease and approval of the same by the Association, and shall not discharge any liability of the Owner hereunder except that such delinquency shall be reduced by the amounts actually received, and shall not release the Association's lien against the Unit for any remaining delinquency.

## **SECTION 11 Regulation of Uses**

11.1. **Residential Use.** The building and Units shall be used for single family residential purposes only, on an ownership, rental or lease basis; and for the common social, recreational and other reasonable uses normally incident to such purposes including use as a home office not involving use by nonresident employees or regular visits by customers or clients. Short-term rentals, through the use of services such as AirBnB, VRBO, or otherwise, are prohibited. Units may not be used or sold on a time-share basis. Determination of reasonableness and whether or not a use is incident to residential uses shall be made by the Board of Directors and shall be binding on all Owners. Home occupations are permissible only to the extent allowed by applicable city ordinances; provided, however, that in no event may signs be displayed in connection with any such home occupation. The Board of Directors may by rule or regulation specify the limits of this use in general and also in particular cases.

11.2. **Facilities Required By Declarant.** Notwithstanding any other provisions of this Declaration, the Declarant, its agents, employees and contractors, may maintain during the period of completion of the Community and until the Declarant has sold all Units, construction facilities, one or more model Units, a business or sales office, signs and storage facilities. The number, location and relocation of these facilities required by Declarant shall be determined by Declarant in its sole discretion.

11.3. **Parking.** Owners are required to park in their parking garage rather than in parking designated primarily for guests. Parking spaces are restricted to use for parking of operative automobiles. Other items and equipment (such as boats, trailers, campers, or recreational vehicles) may be kept in parking spaces only subject to the rules and regulations of the Association. The Board may require removal at the risk and expense of the Owner thereof of any inoperative or unsightly vehicle, and any other equipment or item not stored in parking spaces in accordance with this provision. The use of all parking areas is also subject to rules and regulations adopted by the Association, including time restrictions for use of off street spaces within the Community.

**11.4. Driveways, Walkways, etc.** Driveways, walkways, halls, corridors, stairways and other portions of the Common Elements used for access shall be used exclusively for normal ingress and egress. No obstructions shall be placed therein unless permitted by the Board of Directors or the Association's rules and regulations.

**11.5. Maintenance and Modification of Units and Limited Common Elements.**

**11.5.1. Maintenance of Unit.** Each Owner shall, at its sole expense, keep the interior of the Unit and the equipment, appliances, and appurtenances relating thereto, in a good and sanitary condition, free of rodents, pests and mold, in good order, condition, repair and appearance and shall do all decorating and painting at any time necessary to maintain the good appearance and condition of the Unit. Each Owner shall be responsible for the maintenance, repair or replacement of the entry doors and related door hardware and door jams; plumbing lines, hoses and fixtures; fans or other equipment; and electrical fixtures or appliances which may be in, or are part of, such Owner's Unit. The Association may, as a Common Expense, provide for the inspection of any Unit or Limited Common Element, where the failure to maintain the same may cause damage to the Common Elements or any other Unit or cause unnecessary expenses, including toilets, sinks, showers, bathtubs, deck drains, deck surfaces, flashing, membranes, other weatherproofing components, and plumbing and electrical fixtures (referred to herein as "High-Risk Components"). The Association shall give written notice to the occupant at least three days before entering, stating the items to be inspected and time of the inspection. The Association may impose any reasonable requirements for the purpose of mitigating the risk of damage from High-Risk Components including: (i) installation protective pans and alarms; (ii) imposing a schedule for inspections or replacement at specified times; (iii) establishing minimum standards for replacements of the High-Risk Components; (iv) imposing standards for those people performing any inspections, repairs or replacements; (v) requiring notice to the Board and the opportunity for the Board to supervise all work relating to the High-Risk Components; and (vi) provide the Board with any evidence the Board may reasonably request to confirm that the Owner has complied with its obligations with regard to the High-Risk Components.

**11.5.2. Right to Modify Unit.** No Unit may be altered in any way except in accordance with this Section.

(a) **Minor Alterations.** An Owner may make any improvements or alterations to the Owner's Unit that do not change the structural walls, affect the structural integrity or acoustical properties of the building or the plumbing, mechanical or electrical systems.

(b) **Substantial Alteration.** A proposal that contemplates substantial alteration of one or more Units is subject to approval by the Board. The Board shall approve an Owner's request under this Section within 30 days of receipt of plans and specifications, unless the proposed alteration does not comply with paragraph (b) above or impairs the structural integrity or acoustical properties of the building or the plumbing, mechanical or electrical systems serving another Unit or the Common Elements. The Board may also retain, at the Owner's expense, an architect or engineer to review the plans and require evidence satisfactory to it that all permits necessary for the work have been obtained. The failure of the Board to act upon a request

within such period shall be deemed approval thereof. The Board may establish reasonable hours and conditions for performance of work within Units.

(c) **Procedure After Approval.** Upon approval of a proposal under this Section 11.5.2, the Owner making it may proceed according to the proposed plans and specifications; provided that the Board may in its discretion require that the Board administer the work or that provisions for the protection of other Units of Common Elements or that reasonable deadlines for completion of the work be inserted in the contracts for the work.

11.5.3. **Appearance of Limited Common Elements.** Except as otherwise provided in this Declaration, Owners may not modify, paint or otherwise decorate, or in any way alter that portion of their respective Limited Common Elements which are visible from the Common Elements, other Units or public areas without prior approval of the Board of Directors, which shall not be unreasonably withheld, conditioned, or delayed. Owners in all events must use their Limited Common Elements in compliance with the Association's rules and regulations.

11.5.4. **Maintenance of Limited Common Elements.** Generally, the Association is responsible for the repair, maintenance and replacement of the Common Elements. Each Owner shall keep the Limited Common Elements allocated to such Owner's Unit in a neat and clean condition in accordance with such rules, regulations, and standards as may be adopted by the Association.

11.5.5. **Impact on the Common Elements or Other Owners.** Each Owner shall coordinate with the Board in advance and obtain approval for all construction matters which impact the Common Elements or any other Owner including any blockage of access, interruption of utilities, and use of the Common Elements for staging. The Board shall coordinate all such activities for the mutual benefit of both Owners, and shall act reasonably and diligently in granting all approvals, and allocating use of the Common Elements for construction purposes. The Board may impose reasonable conditions in all such matters including scheduling those matters to coordinate with the competing requests of both Owners and to limit the disruption of the other Owner and its Occupants and Invitees.

11.5.6. **Insurance.** Each Owner shall maintain in effect during construction normal and customary insurance including commercial general liability coverage described in Section 12 below and builders risk coverage in the full amount of the improvements being constructed. Each Owner shall also require all contractors to carry normal and customary commercial general liability policies.

11.5.7. **Best Construction Practices.** Each Owner shall ensure all construction required or permitted by this Section utilizes best construction practices including: (i) measures to ensure job site safety and the safety of others such as fencing the site, posting safety rules, and mandating the use of safety equipment; (ii) wetting down the site and otherwise controlling the amount of dirt and debris traveling off of the jobsite; (iii) clearing debris on a regular basis and otherwise keeping the site in an orderly condition; (iv) complying with all regulations regarding work hours and maximum permissible noise levels; and (v) measures to attempt to mitigate excessive noise.

11.5.8. **Work Rules and Hours; Notice to the Board.** The Board may adopt work rules and work hours provided the same are reasonable, apply to all Owners, are enforced on a nondiscriminatory basis, and serve the primary purpose of ensuring safe and orderly construction, limiting disruption of Owners, Occupants and their Invitees, and preventing damage to the Common Elements. All work shall be done by licensed contractors and shall comply with all applicable laws. All work shall be done in a workmanlike manner and all work affecting the structural portions shall be approved by a licensed structural engineer. All work affecting the weatherproofing systems shall be monitored during construction and upon completion approved by a qualified building enclosure inspector as defined in RCW 64.55.040. All work which increases the load on shared utility systems and facilities, if any, shall be approved by a properly licensed and qualified engineer.

#### 11.6. **Exterior Appearance.**

11.6.1. **General.** To preserve the uniform appearance of the Building and the Common Elements (including the Limited Common Elements), particularly those visible to the public, the Board of Directors may require and provide for the painting and finishing of the Common Elements and prescribe the type and color of the surfaces and finishes. It may prohibit, require or regulate any modification or decoration of the Common Elements, including any such items as screens, doors, awnings, rails or other portions of each Unit and the Building visible from the exterior. The Board of Directors may regulate and control the items stored in or used on the Limited Common Elements in order to preserve the good appearance and condition of the entire Community. In addition, this regulatory power extends to the control of the type and color of blinds, draperies and underdrapes or drapery linings, and any other window coverings of each Unit.

11.6.2. **Antennae, Etc.** No exterior radio, television or satellite reception antennas or dish may be installed on the Common Elements without the prior written consent of the Board of Directors, except as provided below for protected antennas. The Owner shall bear all costs of installation, operation, maintenance, repair and replacement of any permitted satellite dish or antenna and its connection to the Unit and shall be responsible for any damage done to the Common Elements in connection therewith. Owners may not install antennas, dishes or other receiving devices in or on any portion of the Common Elements or Limited Common Elements, except that an Owner may install a "Protected Antenna," as defined in 47 C.F.R. Section 1.4000, as it may be amended ("FCC Rule"), within a Limited Common Element allocated to the Owner's Unit, subject to such reasonable rules and regulations as the Board may adopt; provided, however the Association may prohibit the installation of Protected Antennas if the Association provides a central antenna system that complies with the FCC Rule. If the restrictions stated in this Declaration conflict with any applicable federal, state or local law, ordinance, rule or regulation, then the offending restriction shall be enforced only to the extent permitted by any such law.

**11.7. Uses Affecting Insurance.** The Owners shall not permit anything to be done or kept in the Units or Common Elements which will result in the cancellation of insurance on any part of the Community, or would be in violation of any applicable laws or regulations, without the consent of the Board of Directors, which shall not be unreasonably withheld. An Owner may use his or her Unit or the Limited Common Elements allocated to it in a manner which may increase the insurance premiums for the Community, but the Board of Directors may, in its reasonable discretion, allocate the cost of such increase in insurance premiums to such Owner.

**11.8. Signs.** No signs of any kind shall be displayed to the public view on or from any Unit or from the Common Elements without the consent of the Board of Directors or pursuant to the Association's rules and regulations; provided, that the Board of Directors shall, by appropriate rule: (i) permit temporary placement of a sign, at a place and of a size and appearance designated by the Board, indicating that a Unit is for sale or lease; (ii) allow the display of the "flag of the United States" as defined in RCW 64.90.501(1) in an appropriate manner, time and place; and (iii) allow signs regarding candidates of public or Association office, or ballot issues, in an appropriate manner, time, place, size and number. This Section shall not apply to Declarant.

**11.9. Animals.** Domesticated animals or birds ("Pets") may be kept in the Units subject to rules and regulations adopted by the Board; provided that no Owner may keep more than three cats and no dogs; two dogs and one cat; or one dog and two cats. Pets will not be allowed on any Common Elements unless they are on a leash and accompanied by their Owner. The Board may at any time require the removal of any Pet which it finds is disturbing other Owners unreasonably, and may exercise this authority for specific Pets even though other Pets are permitted to remain. In addition, the Board may adopt rules and regulations prohibiting Pets over a particular size or weight, or Pets wholly or partially of breeds which the Board deems inappropriate for community living. The Board may later require the removal of any such pet after Notice and Opportunity to be heard. The Owner of any Pet shall be responsible for any damage to person or property caused by the Pet and shall indemnify and hold the Association and the Board harmless from any and all liability arising from or caused by the Pet.

**11.10. Offensive Activity.** No noxious or offensive activity shall be carried on in any Unit or Common Elements, nor shall anything be done therein which may be or becomes an annoyance or nuisance to other Owners, would be in violation of any laws, or would interfere with the quiet enjoyment of the other residents. For example, sound system speakers shall not be rigidly attached to a wall shared with another Unit or otherwise installed in a manner that will induce vibrations into the structure of the Building. In addition, Owners shall not permit any condition to exist that will induce, breed or harbor infectious plant diseases or noxious insects or vermin.

**11.11. Trash Removal.** Each Owner shall be responsible for removing all trash or garbage from the Unit and depositing it promptly in proper receptacles as designated by the Association in accordance with such rules and regulations as the Board may adopt.

**11.12. Lighting.** Except as may be permitted by Board, exterior lighting visible from the street shall not be permitted except for: (a) approved lighting as originally installed; (b) street lights in conformity with an established street lighting program for the community; (c) seasonal

decorative lights (for a length of time permitted by Board); or (d) illumination of model homes or for active construction purposes.

**11.13. Construction Work - Common Elements.** The Common Elements shall not be reconstructed, rebuilt, altered, removed or replaced except by the Association acting through the Board of Directors acting in accordance with the Act, this Declaration, and the Bylaws or the Declarant when exercising rights reserved under this Declaration.

**11.14. Rentals.** Prior to leasing any Unit, the Owner shall use a professional tenant screening service. The Owner shall submit the proposed lease and report from the tenant screening service to the Association upon request. The terms of any lease or rental agreement for a Unit shall be subject to and incorporate the provisions of this Declaration and the Bylaws. All leases or rental agreements shall be in writing and a copy thereof shall be filed with the Board of Directors upon request. Owners may not lease or rent their Units for initial terms of less than six (6) months. No lease of a Unit shall be on a time-share basis. If any tenant or occupant of a Unit violates or permits the violation by his guests and invitees of any provisions hereof or of the Bylaws or Rules and Regulations, and the Board determines that such violations have been repeated and that a prior notice to cease has been given, the Board may give notice to the tenant or occupant of the Unit and the Owner thereof to forthwith cease such violations; and if the violation is thereafter repeated, the Board shall have the authority, on behalf and at the expense of the Owner, to evict the tenant or occupant if the Owner fails to do so after Notice and an Opportunity to be Heard. The Board shall have no liability to an Owner or tenant for any eviction made in good faith. The Association shall have a lien against the Owner's Unit for any costs incurred by it in connection with such eviction, including reasonable attorneys' fees, which may be collected and enforced in the same manner as delinquent assessments.

## **SECTION 12 Insurance**

**12.1. Insurance Coverage.** Commencing not later than the time of the first conveyance of a Unit to a person other than the Declarant, the insurance maintained by or on behalf of the Association shall include, to the extent reasonably available, policies necessary to provide (a) property insurance, (b) commercial general liability insurance, (c) fidelity insurance, (d) worker's compensation insurance to the extent required by applicable laws, (e) directors and officers liability insurance, and (f) such other insurance as the Board deems advisable. All insurance shall be obtained from insurance carriers that are generally acceptable for similar projects, authorized to do business in the state of Washington, and carry a financial stability rating of A- VIII or better consistent with the specific requirements of FNMA, FHLMC, FHA and VA, so long as any of them is a Mortgagee or Owner of a Unit, regarding the qualifications of insurance carriers. Notwithstanding any other provision herein, the property, liability and fidelity insurance required by this Section shall be continuously maintained, except to the extent such coverage is not available. All such insurance policies shall provide that coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice (10 days for cancellation for nonpayment of premium) to the named insureds therein, including parties with insurable interests such as Owners, Mortgagees, and designated servicers of Mortgagees when applicable and necessary.

12.1.1. **Property Insurance.** The property insurance shall, at a minimum, provide special cause of loss coverage in an amount equal to the full replacement cost of the Common Elements, the Limited Common Elements, the Units, and personal property of the Association. The property insurance shall also cover betterments and improvements including permanently-installed wall and floor coverings, equipment, fixtures (such as cabinets) and appliances, and replacements or upgrades of the same, in or serving the Units, whether installed by the Declarant, Owners, or their tenants, with an "Agreed Amount" or equivalent endorsement. Each Owner of a Unit shall promptly inform the Board in writing of any betterment or improvement intended as a permanent part of its Unit which cost in excess of \$5,000. The cost of any such increases in insurance may be assessed to the affected Owner as a Specially Allocated Expense as provided in Section 9.7 above. The policy shall provide a separate loss payee provision in favor of the Mortgagee of each Unit as required by written agreement. Each Owner and the Owner's Mortgagee, if any, shall be beneficiaries of the policy in accordance with the Allocated Interest allocated to the Owner's Unit. Certificates of insurance shall be issued to each Owner and Mortgagee upon request.

12.1.2. **Commercial General Liability Insurance.** The liability insurance that the Association carries will insure the Association and Owners with regard to their ownership, management, maintenance and use of the Common Elements. The policy will cover liability of the insureds for property damage and bodily injury arising out of the operation, maintenance, and use of the Common Elements, including but not limited to, employers' liability insurance (if applicable), automobile liability insurance (if applicable), and such other risks as are customarily covered. The limits of liability shall be in amounts generally required by Mortgagees for projects of similar construction, location and use.

12.1.3. **Fidelity Insurance.** The required fidelity/crime insurance shall afford coverage to protect against dishonest acts on the part of officers, directors, trustees, employees of the Association and all other insured persons who handle or are responsible for handling funds of or administered by, the Association. All such fidelity insurance shall name the Association and shall be not less than the estimated maximum of funds, including reserve funds, in custody of the Association at any time during the term of each policy, but, in no event, shall the aggregate amount of insurance be less than three months' aggregate Assessments including reserve funds. The fidelity/crime insurance shall cover the Manager, if any, and only if the Association is contractually obligated to provide such coverage.

12.1.4. **Other insurance.** The Board of Directors may obtain other insurance it deems advisable.

12.1.5. **Flood Insurance.** The Association shall obtain flood insurance if the Community is located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program ("NFIP"). Such insurance shall be obtained by the Association, as a Common Expense, under a "master" or "blanket" policy

of flood insurance on the buildings and any other property covered by the required form of policy in an amount deemed appropriate by the Association.

**12.2. Owner's Insurance.** Each Owner of a Unit is required to obtain individual property and liability insurance as is typically maintained by Owners of similar homes at his or her own expense. Such coverage may include loss of use and loss assessment coverage. The property insurance shall include coverage for personal property and/or improvements to the Unit if not covered by the property insurance carried by the Association. No Owner shall, however, maintain insurance coverage in any manner which would decrease the amount which the Board of Directors, or any trustee for the Board of Directors, on behalf of all of the Owners, will realize under any insurance policy which the Board of Directors may have in force at any particular time. Coverage amounts, terms and conditions are at the Owner's discretion but should, at a minimum, be enough to cover any obligation to reimburse the Association for the amount of the Association's property deductible. The Board of Directors may request and the Owner shall provide a Certificate of Insurance evidencing the coverage required by this Section.

**12.3. Insurance Proceeds.** Insurance proceeds for damage or destruction to any part of the Property shall be paid to the Board who shall hold such proceeds in trust for each Owner and their first Mortgage holders, as their interests may appear, and shall segregate such proceeds from other funds of the Association for use and payment as provided for in Section. The Association acting through its Board of Directors shall have the authority to settle and compromise any claim under insurance obtained by the Association, and the insurer may accept a release and discharge of liability made by the Board of Directors on behalf of the named insureds under the policy.

**12.4. Additional Provisions.** The policies required by this Section shall contain the following provisions to the extent they are reasonably available:

12.4.1. Each Owner of a Unit is an insured person under the policy with respect to liability arising directly out of the Owner's interest in the Common Elements or membership in the Association.

12.4.2. The policy shall not provide for contribution by or Assessment against Mortgagees or become a lien on the Community superior to the lien of a First Mortgage.

12.4.3. Commercial General Liability Insurance shall be primary and non-contributory to any other insurance obtained by or for any Owner or any Mortgagee;

12.4.4. Coverage shall not be prejudiced by any act, omission or neglect of an Owner when such act or neglect is not within the scope of the Owner's authority to act on behalf of the Association;

12.4.5. For the property policy, a waiver of subrogation by the insurer for any and all claims against the Association, the Owner of any Unit and/or their respective household members, agents, employees or tenants, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

12.4.6. A provision that the insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of Chapter 48.18 RCW pertaining to the cancellation or non-renewal of contracts of insurance, with an exception for excess and surplus non-admitted placements.

12.4.7. The standard mortgagee clause included with the Association's property insurance policy shall: (a) Provide that any reference to a mortgagee in the policy shall mean and include all Mortgagees of any Unit in their respective order of preference, whether or not named therein; (b) Provide that such insurance as to the interest of any such Mortgagee shall not be invalidated by any act or neglect of the Association or its officers, directors and employees (c) Waive any provision invalidating such mortgage clause by reason of the failure of any such Mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that such Mortgagee pay any premium thereon, and any contribution clause; and (d) Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to the Association as the first named insured on the policy or the insurance trustee.

12.4.8. Each Owner appoints the Association or any insurance trustee appointed pursuant to Section 13.4.3 below, as attorney-in-fact for the purpose of purchasing and maintaining the insurance provided for under this Section 12, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

### **SECTION 13 Damage or Destruction, Reconstruction**

13.1. **Initial Board of Directors' Determinations.** The Board of Directors shall make the following determinations with respect to making determinations and taking action with regard to the administration of insurance claims, rebuilding damaged improvements, and employing such advice as the Board deems advisable:

13.1.1. **Extent of Damages.** The nature and extent of the damage or destruction, together with an inventory of the improvements and property directly affected thereby.

13.1.2. **Estimates.** A reasonably reliable estimate of the cost to repair and restore the damage and destruction, which estimate shall, if reasonably practicable, be based upon two or more firm bids obtained from responsible contractors.

13.1.3. **Insurance Proceeds.** The anticipated insurance proceeds, if any, to be available from insurance covering the loss based on the amount paid or initially offered by the insurer.

13.1.4. **Deductible.** The amount of the deductible to be paid by an Owner with respect to damage or loss within the Owner's Unit.

13.1.5. **Reserves.** The amount of available reserves or other Association funds, although the Board is not required to use any reserves or other Association funds.

13.1.6. **Excess Cost.** The amount, if any, by which the estimated cost of repair and restoration exceeds the portion of the deductible to be paid by an Owner, anticipated insurance proceeds and available reserves or other Association funds, and the amount of the assessment to each Unit if such excess is paid as a Common Expense and specially Assessed against all the Units in proportion to their Common Expense Liability.

13.1.7. **Recommendation.** The Board of Directors' recommendation whether or not such damage or destruction should be repaired or restored.

13.2. **Notice of Damage or Destruction.** The Board of Directors shall promptly, and in all events within sixty (60) days after the date of damage or destruction, file a proof of loss statement with the insurance company if the loss is covered by insurance and abide by all terms and conditions of its insurance policies, unless the Board determines it would not be in the best interest of the Association to file a proof of loss. The Board shall then provide each Owner and each Mortgagee who has theretofore requested special notice, with a written notice summarizing the initial Board of Directors' determinations made under Section 13.1. If the Board of Directors fails to do so within said sixty (60) days, then any Owner or Mortgagee may make the determinations required under Section 13.1 and give the notice required under this Section 13.2.

### 13.3. **Definitions:**

13.3.1. **Restoration.** As used in this Section 13, the words "repair," "reconstruct," "rebuild" or "restore" shall mean restoring the improvements to substantially the same condition in which they existed prior to the damage or destruction, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. Modifications to conform to then applicable governmental rules and regulations or available means of construction may be made.

13.3.2. **Emergency Work.** As used in this Section 13, the term "emergency work" shall mean that work which the Board of Directors deems reasonably necessary to avoid further damage, destruction or substantial diminution in value to the improvements and to reasonably protect the Owners from liability from the condition of the site.

### 13.4. **Restoration by Board of Directors.**

13.4.1. **Board of Directors Shall Restore.** Unless the Board decided not to repair the damaged improvements in accordance with this Declaration, the Board of Directors shall promptly repair and restore the damaged improvements. The Board of Directors shall use the available insurance proceeds to pay for the actual cost of repair and restoration. Any excess cost determined as provided in Section 13.1.6 shall be a Common Expense collected from the Owners as a Special Assessment.

13.4.2. **Authority to Contract.** The Board of Directors shall have the authority to employ architects and attorneys, advertise for bids, let contracts to contractors and others, and to take such other action as is reasonably necessary to effectuate the repair and restoration. Contracts for such repair and restoration shall be awarded when the Board of Directors, by means of insurance proceeds and sufficient Assessments, has made provision for the cost thereof. The Board of Directors may further notify and negotiate with the insurers in order to proceed with repair and restoration upon satisfaction of the Board of Directors that such work will be appropriately carried out.

13.4.3. **Insurance Trustee.** The Board of Directors may enter into a written agreement in recordable form with any reputable financial institution or trust or escrow company that such firm or institution shall act as an insurance trustee to collect the insurance proceeds and carry out the provisions of this Section 13.

13.5. **Decision to Not Restore; Disposition.** In the event of a decision not repair and restore the damaged improvements, if the Community is terminated, then the distribution of proceeds shall be governed by RCW 64.90.290. If the decision is made not rebuild the damaged improvements, or if such repair would be illegal, and provided the Community has not been terminated pursuant to RCW 64.90.290, as it may be amended, the Board of Directors may nevertheless expend such of the insurance proceeds and common funds as the Board of Directors deems reasonably necessary for emergency work (which emergency work may include but is not necessarily limited to removal of the damaged or destroyed building and clearing, filling and grading the real property). The remaining funds, if any, and property shall thereafter be held and distributed as follows:

13.5.1. **Repair of Common Elements.** The insurance proceeds attributable to the damaged Common Elements (except for Limited Common Elements) shall be used to restore the damaged area to a condition compatible with the remainder of the Community.

13.5.2. **Distribution to Owners of Damaged Units.** The insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lienholders of such Units, as their interests may appear.

13.5.3. **Remaining Proceeds.** The remainder of the proceeds shall be distributed to all the Owners or lienholders, as their interests may appear, in proportion to such Owner's allocated interest in the Common Elements.

13.5.4. **Reallocation of Interests; Amendment.** The allocated interests of any Unit which the Owners vote not to rebuild are automatically reallocated upon the vote not to rebuild as if the Unit had been condemned pursuant to Section 14. The Board of Directors shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

## **SECTION 14 Condemnation**

14.1. **Consequences of Condemnation.** The Association shall represent the Owners in all negotiations and proceedings with the condemning authority if at any time or times during the continuance of the Community all or any part of the Community shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof. Each Owner appoints the Association as attorney-in-fact for such purpose. If any Unit or portion thereof or the Common or Limited Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Board of Directors shall give each Owner and each Mortgagee written notice of any such proceeding or proposed acquisition.

14.2. **Proceeds.** All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Board of Directors on behalf of the Association.

14.3. **Complete Taking.** In the event that the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Community ownership thereof shall terminate. The Condemnation Award shall be apportioned equally among the Owners in proportion to the respective undivided interests in the Common Elements; provided, that if a standard different from the value of the Property as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. On the basis of the foregoing principle, the Board of Directors shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. After first paying out of the respective share of each Owner, to the extent sufficient for the purpose, all Mortgages and liens on the interest of such Owner, the balance remaining in each share shall then be distributed to each Owner respectively.

14.4. **Partial Taking.** In the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Community ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner

14.4.1. **Allocation of Award.** As soon as practicable the Board of Directors shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds.

14.4.2. **Apportionment Among Owners.** The Board of Directors shall apportion the amounts so allocated to the taking of or injury to the Common Elements excluding the Limited Common Elements which, in turn, shall be apportioned among Owners equally. Any amount apportioned to the taking of or injury to the Limited Common Elements shall be divided equally among Owners of Units to which those Limited Common Elements were assigned.

14.4.3. **Severance Damages.** The total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned.

14.4.4. **Damage to a Particular Unit.** The respective amounts allocated to the taking of or injury to a particular Unit and/or the improvements an Owner has made within his own Unit shall be apportioned to the particular Unit involved.

14.4.5. **Consequential Damages.** The amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Board determines to be equitable under the circumstances.

14.4.6. **Agreed Allocation.** If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Board shall employ such allocation to the extent it is relevant and applicable.

14.4.7. **Distribution of Proceeds.** Distribution of apportioned proceeds shall be made to the respective Owners and their respective Mortgagees in the manner provided in this Declaration.

14.5. **Reductions of Community upon Partial Taking.** In the event that (a) a partial taking occurs which pursuant to Section 14.4 does not result in a termination of the Community ownership hereunder, and (b) at least one (1) Unit is taken or condemned and (c) the condemning authority elects not to hold, use and own said Unit as an Owner subject to and in accordance with the Declaration, then the provisions of this Section 14.5 shall take effect immediately upon the condemning authority taking possession of the Unit or Units so taken or condemned.

14.5.1. **Reduction of Declaration.** The Units subject to this Declaration shall be reduced to those Units or partial Units not taken or condemned (or not sold or otherwise disposed of in lieu of or in avoidance thereof).

14.5.2. **Reduction of Common Elements.** The Common Elements subject to this Declaration shall be reduced to those Common Elements not taken or condemned.

14.5.3. **Reduction of Limited Common Elements.** The Limited Common Elements, which were not taken or condemned, but which were appurtenant to Units that were taken or condemned, shall be deemed part of the general Common Elements remaining subject to this Declaration. Any remnant of a Unit remaining after part of such Unit was condemned such that the Unit may not practically or lawfully be used for any purpose permitted by Section 11 shall become a Common Element upon such condemnation.

14.5.4. **Recalculation of Allocated Interests.** The votes and Allocated Interests appurtenant to each Unit not so taken or condemned shall be reallocated in proportion to the relative votes and Allocated Interests of those remaining Units. Provided however, if a portion of any Unit is condemned, but the remaining portion of that Unit may still be practically and lawfully used for the uses specified in Section 11, then the votes and Allocated Interests of that Unit shall be reduced in the same proportion as the reduction in the area of the Unit resulting from the partial condemnation. In the latter case, the votes and Allocated Interests shall be reallocated among all Units in proportion to their relative votes and Allocated Interests with the partial Unit participating

on the basis of its reduced vote and Allocated Interest. In each case, the allocations shall be rounded such that the totals are 100%.

**14.5.5. Interest of Owner of Condemned Unit.** Except with respect to the share of proceeds apportioned pursuant to Section 14.4, no Owner or Mortgagee of a Unit so taken or condemned (except for a Unit only partially condemned which may still be practically and lawfully used) shall have, nor shall there be appurtenant to any Unit so taken or condemned, any right, title, interest, privilege, duty or obligation in, to or with respect to the Association and any Unit, or Common Elements which remain subject to this Declaration and which are not so taken or condemned.

**14.5.6. Interest of Owners of Remaining Units.** Except as otherwise expressly provided in Section 14.5, the rights, title, interests, privileges, duties and obligations of an Owner and Mortgagee in, to or with respect to a Unit not so taken or condemned (and in, to or with respect to the Association and the Common Elements appurtenant to said Unit) shall continue in full force and effect as provided in this Declaration.

**14.5.7. This Section Binding.** The provisions of Section 14.5 shall be binding upon and inure to the benefit of all Owners and Mortgagees of (and other persons having or claiming to have any interest in) all Units which are, as well as all Units which are not, so taken or condemned. All such Owners, Mortgagees and other persons covenant to execute and deliver any documents, agreements or instruments (including, but not limited to, appropriate amendments to the Declaration, Map) as are reasonably necessary to effectuate the provisions of Section 14.5.

**14.6. Reconstruction and Repair.** Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Section 13 above, provided that the Board of Directors may retain and apply such portion of each Owner's share of the Condemnation Award as is necessary to discharge said Owner's liability for any special assessment arising from the operation of said Section 13.

## **SECTION 15 Mortgagee Protection**

**15.1. Priority of Mortgages.** Notwithstanding all other provisions hereof and as provided in the Act, the liens created under this Declaration upon any Unit for assessments shall be subject to tax liens on the Unit in favor of any assessing authority or special district and be subject to the rights of the secured party in the case of any indebtedness secured by Mortgages which were made in good faith and for value upon the Unit. Where such Mortgagee of the Unit, or other purchaser of a Unit, obtains possession of a Unit thereof, such possessor and his successors and assigns, shall not be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Unit which become due prior to such possession, but will be liable for the Common Expenses and Assessments accruing after such possession. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Owners including such possessor, his successor and assigns.

**15.2. Abandonment of Community Status, Decision Not to Rebuild and Insurance Proceeds.** The Association first must receive the approval from Mortgagees who represent at least

fifty-one percent (51%) of the votes of the Units that are subject to Mortgages before the Association may approve any of the following: (i) any action to terminate the legal status of the Community; (ii) any decision to restore or repair of the Community after partial condemnation or damage due to an insurable hazard in a manner that is not substantially in accordance with the Declaration and the original plans and specifications; and (iii) any decision to use insurance proceeds for any purpose other than to rebuild. In addition, the Association shall not, without consent of sixty-seven percent (67%) of all Eligible Mortgagees of the Units: (i) approve any action to terminate the legal status of the Community; or (ii) abandon, encumber, sell or transfer any of the Common Elements.

**15.3. Material Amendments.** The Association shall not make any amendments to the Declaration or Bylaws of a material adverse nature to Mortgagees without the prior approval of fifty-one percent (51%) of all Mortgagees. A change or addition to any of the provisions establishing, providing for, governing or regulating any of the following would be considered material: (1) Voting; (2) Assessments, assessment liens or subordination of liens; (3) Reserves for maintenance, repair and replacement of Common Elements; (4) Insurance or fidelity bonds; (5) Rights to use of the Common Elements; (6) Responsibility for maintenance and repair of the several portions of the Community; (7) the addition, annexation or withdrawal of Property to or from the Community; (8) Boundaries of any Unit; (8) The interests in the Common Elements or Limited Common Elements; (9) Convertibility of Units into Common Elements or of Common Elements into Units; (10) Leasing of Units; (11) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit in the Community; and (12) Establishment of self-management by the Association where professional management has been required by any of the Mortgagees.

**15.4. Implied Approval.** A Mortgagee shall be deemed to have approved of an amendment to the Declaration or Bylaws, including an amendment which would result in the abandonment of the Community status or of a material adverse nature to Mortgagee, when the Mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "Return Receipt" requested. In addition, with respect to any action requiring the consent of a specified number or percentage of Mortgagees, the consent of only eligible Mortgagees holding a first lien mortgage need be obtained and the percentage shall be based upon the votes attributable to Units with respect to which eligible Mortgagees have an interest. An eligible Mortgagee means the holder of a Mortgage on a Unit who has filed with the Secretary of the Association a written request that it be given copies of notices of any action by the Association that requires the consent of Mortgagees.

**15.5. Effect of Declaration Amendments.** No amendment of this Declaration shall be effective to modify, change, limit or alter the rights expressly conferred upon Mortgagees in this instrument with respect to any unsatisfied Mortgage duly recorded unless the amendment shall be approved in writing by the holder of such Mortgage. Any provision of this Declaration conferring

rights upon Mortgagees which is inconsistent with any other provision of Declaration or the Bylaws shall control over such other inconsistent provisions.

15.6. **Written Notice.** Where a Mortgagee of a Unit (or any insurer or guarantor of such Mortgage) has filed a written request with the Board of Directors, for each such entity requesting notice, the Board of Directors shall:

15.6.1. **Notice of Cancellation and Material Change.** Provide written notice of any lapse, cancellation, failure to renew, reduction in coverage or limits, or other material modification of any insurance policy maintained by the Association.

15.6.2. **Notice of Taking.** Provide written notice of any condemnation, eminent domain or casualty loss affecting a material portion of the Community or the Unit securing such Mortgage, which includes any condemnation, eminent domain, property loss or casualty loss affecting the Common Elements resulting in losses greater than ten percent (10%) of the annual budget or any Unit insured by the Association in which the Mortgagee has an interest.

15.6.3. **Notice of Owner's Default.** Provide written notice that an Owner/mortgagor of a Unit has for more than sixty (60) days failed to meet any obligation under the Declaration.

15.6.4. **Notice of Amendment.** Provide written notice of any proposed amendment to the Declaration or Map effecting a change in the boundaries of any Unit or exclusive easement rights appertaining thereto, the interests in the Common Elements or Limited Common Elements appertaining to any Unit, or the liability for Common Expenses appertaining thereto, the number of votes in the Association appertaining to any Unit, or the purposes to which any Unit or the Common Elements are restricted. If the VA is a Mortgagee, then the Association shall also give the VA notice of all material amendments and extraordinary actions and, during the period of Declarant control, Declarant shall provide a copy of all amendments to the VA.

15.6.5. **Notice of Termination of Community.** Provide written notice of any proposed termination of the legal status of the Community or dissolution of the Association at least thirty (30) days before any action is taken.

15.6.6. **Notice of Meetings.** Provide written notice of any proposed action which requires the consent of a specified percentage of Mortgagees.

15.7. **Insurance Policy Terms.** The Association's property insurance policy required under Section 12 shall contain a standard Mortgagee clause which shall, if reasonably obtainable: (i) Provide that any reference to a Mortgagee in such policy shall mean and include all holders of Mortgages of any Unit or Unit lease or sublease of the project, in their respective order and preference, whether or not named therein; (ii) Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board of Directors or Owners or any persons under any of them; and (iii) Waive any provision invalidating such Mortgage clause by reason of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy; any requirement that the Mortgagee pay any premium thereon; and any contribution clause.

**15.8. Inspection of Community Documents Books and Records.** The Association shall make available for examination and copying by Owners, Mortgagees and their authorized representatives, all records the Association is required to maintain pursuant to RCW 64.90.495 including current copies of this Declaration, the Articles, the Bylaws, the rules and regulations of the Association, and other books, records, and financial statements of the Association. "Available" means available for examination and copying during reasonable business hours or at a mutually convenient time and location at the offices of the Association. The Association may require the requesting party to pay a reasonable charge to cover the cost of making the copies and for supervising the inspection.

**15.9. Obtaining Declarant's Powers.** In the event the Mortgagee of the Community becomes bound by this Declaration by granting one or more partial releases or otherwise, and forecloses its Mortgage or acquires a deed in lieu of Foreclosure, and obtains possessory rights, legal title, or certificates of sale to the unsold Unit or Units and appurtenant Common Elements covered by the respective deed of trust or Mortgage liens, then the Mortgagee of the Community may succeed to and assume, to the exclusion of the Declarant, the powers of the Declarant as set forth in this Declaration.

**15.10. Rights of Mortgagee of Community.** The Mortgagee of the Community shall be entitled to appoint a receiver during the pendency of any Foreclosure, and said receiver shall immediately, upon appointment, succeed to and assume the rights and powers of the Declarant as set forth in this Declaration, and the receiver shall be entitled to sell unsold Units during the pendency of said Foreclosure, and said sales shall be subject to confirmation by court order.

**15.11. Right of Board of Directors to Cure Defaults.** Nothing herein contained shall limit or restrict the right of the Board of Directors on behalf of all the Owners to cure defaults under Mortgages to which the liens created hereunder are subordinated under this Section. The Board of Directors is expressly authorized to cure any and all such defaults by payments to the Mortgagee or Mortgagees of any defaulting Owner from the Common Expense fund. Any such payments shall be specially assessed against the Unit of the defaulting Owner and said special assessment shall be secured by the lien created under Section 10 hereof; provided, however, that the Board of Directors shall not be able to assign their lien rights under Section 10 or otherwise transfer the Unit or any interest therein except when such transfer occurs pursuant to a lien Foreclosure proceeding.

## **SECTION 16 Compliance**

**16.1. Enforcement.** Each Owner shall comply strictly with the provisions of this Declaration, the Bylaws, and the administrative rules and regulations made pursuant thereto as they may be lawfully amended from time to time. Failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Board of Directors on behalf of the Owners, or in a proper case, by any aggrieved Owner. Failure to comply shall also entitle the Board of Directors to recover any costs and reasonable attorneys' fees incurred by reason of such failure whether or not such activities result in suit being commenced or prosecuted to judgment. In addition, the Board of Directors shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

16.2. **No Waiver of Strict Performance.** The failure of the Board of Directors in any one or more instances to insist upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or of the Bylaws, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Board of Directors of any sum from an Owner, with knowledge of any such breach shall not be deemed a waiver of such breach, and no waiver by the Board of Directors of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors.

## **SECTION 17 Easements**

17.1. **In General.** In addition to rights under the Act, each Unit has an easement in and through each other Unit and the Common Elements for all support elements and utility, wiring, heat and service elements, and for an unrestricted right of ingress and egress thereto, as required to effectuate and continue proper operation of this Community plan. Finally, each Unit as it is constructed is granted an easement to which each other Unit and all Common Elements are subject for the location and maintenance of all the original equipment and facilities and utilities for such Unit. The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for Common Elements reserved by law. All such easements shall be located as such features are located in the buildings as built, or as they may become located due to settling or repair or reconstruction.

17.2. **Utility and Other Easements.** The Board of Directors shall have the authority to grant permits, licenses and easements over the Common Elements for utilities, roads and other purposes necessary for the proper operation of the Community.

17.3. **Association Functions.** There is hereby reserved to the Association, or their duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Association as are set forth in the Declaration, the Bylaws, or the Association's rules and regulations. These easements include access through the Units to access mechanical systems or decks, balconies, terraces, patios or private yards for inspection, maintenance, repair and replacement of those systems and improvements and the exterior of the Building.

17.4. **Encroachments.** Each Unit and all Common Elements are hereby declared to have an easement over all adjoining Units and Common Elements for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful act or acts with full knowledge of said Owner or Owners. In the event a Unit or Common Elements are partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Units and Common Elements shall be permitted, and that

there shall be valid easements for the maintenance of said encroachments so long as they shall exist. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any Unit.

**17.5. Easement for Construction, Inspections and Repairs.** There is retained by the Declarant, for exercise by it and its successors and assigns, an easement over, across, and through the Common Elements and Limited Common Elements for the purpose of completing construction, renovation or repair of the Community and all its Units, making repairs required by any agreement for the sale of a Unit, showing the Units for sale, discharging Declarant's obligations or exercising any Development Rights or Special Declarant Rights. This easement affects all parts of the Property as required. This Section may not be amended without the written consent of Declarant.

**17.6. Utility Easement Granted by the Declarant.** Declarant reserves the right to grant easements to the various companies or municipalities who provide, or wish to provide, utility services to the Community or to the Units in the Community easements for the installation, construction, maintenance, repair and reconstruction of all utilities serving the Community or the Owners, including, without limitation, such utility services as water, sanitary sewer, storm sewer, electricity, gas, cable television, data and telephone, and an easement for access over and under the Common Elements and Limited Common Elements of the Community to the utility service facilities.

**17.7. Right of Entry for Inspections, Maintenance, Repairs, Emergencies or Improvements.** The Association shall have the right to have access to each Unit from time to time as may reasonably be necessary for inspection, maintenance, repair or replacement or improvement of any of the Common Elements accessible therefrom, or for making repairs necessary to prevent damage to the Common Elements or to the other Units, or for any emergency situations.

**17.8. Emergency Ingress and Egress.** Each Unit has an easement for ingress and egress through all stairways, corridors, elevators and other access features to the extent necessary to satisfy code requirements for emergency ingress and egress.

## **SECTION 18 Amendment of Declaration and Map**

**18.1. Declaration Amendment.** Except for those amendments that may be executed by Declarant alone (as provided in Sections 18.3, 18.4, 18.5 and 18.6 below), or by the Board as provided in this Declaration regarding condemnation, reallocation of Limited Common Elements, relocation of Unit boundaries, subdivision of Units, and termination of the community, amendments must: (i) conform to the Mortgagee protection provisions set forth in Section 15; (ii) be made by an instrument in writing substantially entitled "Amendment to Declaration" which sets forth the entire amendment; (iii) be approved by a majority of the Board of Directors prior to its adoption by the Owners; and (iv) be adopted at a meeting of the Owners if Owners holding at least sixty-seven percent (67%) of the total votes in the Association approve such amendment, or without any meeting if all Owners have been duly notified and Owners holding at least sixty-seven percent (67%) of the total votes in the Association consent in writing to such amendment. In all

events, the amendment when adopted shall bear the signature of the president of the Association attesting that the amendment was properly adopted. Amendments once properly adopted shall be effective upon recording in the appropriate governmental offices. Notwithstanding the foregoing, no amendment may create or increase Special Declarant Rights (as defined in the Act), increase the number of Units, change the boundaries of any Unit, the allocated interests of a Unit, or the uses to which any Unit is restricted, unless the requirements of the Act for adopting such amendments are satisfied. Any amendment to this Declaration properly adopted will be completely effective to amend any or all of the covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration or Map unless otherwise specifically provided in the Section being amended or the amendment itself.

18.2. **Map Amendment.** Except as otherwise provided herein, the Map may be amended by recording revised versions or revised portions thereof and by recording an amendment to the Declaration which describes and references those changes to the Map. Copies of any such proposed amendment to the Map shall be made available for the examination of every Owner. Such amendment to the Map shall be effective, once properly adopted, upon recordation in the appropriate county office in conjunction with the Declaration amendment.

18.3. **Amendments by Declarant.** Declarant may record amendments to this Declaration and the Map to exercise any development right or special declarant right reserved under this Declaration and such amendment need be acknowledged only by Declarant and need not otherwise comply with the requirements of this Section 18.

18.4. **Amendments to Conform to Construction.** Declarant, upon Declarant's sole signature, may at any time file an amendment to the Declaration and to the Map to conform them to the actual location of any of the constructed improvements and to establish, vacate and relocate utility easements, access road easements, or storage facilities, and any such amendment need not otherwise comply with the requirements of this Section 18.

18.5. **Amendments to Conform to Lender Guidelines.** This Declaration is intended to comply with the most recent requirements and guidelines of Fannie Mae, Freddie Mac, FHA, and VA. Declarant, upon Declarant's sole signature, may at any time file an amendment to the Declaration and to the Map to conform them to the requirements and guidelines of those lending institutions.

18.6. **Corrective Amendments by Declarant.** Upon thirty-day advance notice to the Owners, Declarant may, without a vote of the Owners or approval by the Board, unilaterally adopt, execute, and record a corrective amendment or supplement to the this Declaration, the Map, or other governing documents to correct a mathematical mistake, an inconsistency, or a scrivener's error, or clarify an ambiguity in the governing documents with respect to an objectively verifiable fact including, without limitation, recalculating the Allocated Interests (including votes and Common Expense Liability), within five (5) years after the recordation or adoption of the governing document containing or creating the mistake, inconsistency, error, or ambiguity. Any such amendment or supplement may not materially reduce what the obligations of the Declarant would have been if the mistake, inconsistency, error, or ambiguity had not occurred.

## **SECTION 19 Termination of Community Status**

19.1. Except as provided elsewhere in this Declaration the Community may be terminated voluntarily by the Owners only upon the agreement of Owners of Units to which at least eighty percent (80%) of the total votes in the Association are allocated, and the approval of the percentage of Eligible Mortgagees specified in Section 15.2. Following termination, the Owners shall comply with the procedures, hold title to the Property formerly constituting the Community, and be entitled to disbursement of proceeds all as provided in RCW 64.90.290.

## **SECTION 20 Miscellaneous**

20.1. **Notice.** Except as may be specifically provided herein, all notices, requests, demands, statements, advice, assessments, notifications and other communications contemplated hereunder or given pursuant hereto shall comply with RCW 64.90.515.

20.2. **Notice to Mortgagee.** Upon written request to the Board of Directors for notices and for a period of three (3) years thereafter (or for such longer period as the Board of Directors shall set), the Mortgagee of any Unit will be entitled to each notice permitted or required herein to be given to the Owner whose Unit is subject to the Mortgage. No notice to such Owner shall be deemed validly given until and unless each Mortgagee of such Owner entitled to notice is also given such notice. A request for notices may be renewed periodically until said Mortgage is discharged of record.

20.3. **Remedies Not Exclusive.** No right or remedy conferred or reserved by this Declaration is exclusive of any other right or remedy, but each is cumulative, and shall be in addition to every other right or remedy given hereby or hereafter existing at law or equity or by statute.

### **20.4. Mortgagee's Acceptance.**

20.4.1. **Priority of Mortgage.** This Declaration shall not initially be binding upon any Mortgagee of record at the time of recording of said Declaration but rather shall be subject and subordinate to the interest of said Mortgagee.

20.4.2. **Acceptance upon First Conveyance.** Declarant shall not consummate the conveyance of title of any Unit until said Mortgagee shall have accepted the provisions of this Declaration and made appropriate arrangements, in accordance with the Act, for partial release of Units with their appurtenant Limited Common Elements and Allocated Interests from the lien of said Mortgage. The issuance and recording of the first such partial release by said Mortgagee shall constitute its acceptance of the provisions of this Declaration and the Community status of the Units remaining subject to its Mortgage as well as its acknowledgment that such appropriate arrangements for partial release of Units have been made; provided, that, except as to Units so released, said Mortgage shall remain in full effect as to the entire Property.

20.5. **Severability.** If any term or provision of this Declaration or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of

this Declaration, and the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Declaration shall be valid and enforceable to the fullest extent.

20.6. **Effective Date.** The Declaration shall take effect upon recording.

20.7. **Reference to Map.** The Map of the building referred to herein were filed with the Recorder of Kitsap County, Washington, immediately prior to the recording of this Declaration under the recording number completed on the cover page of this Declaration.

## **SECTION 21 Development Rights and Other Special Declarant Rights**

21.1. **Reserved Rights.** All of the Property described on Exhibit A is subject to development rights and special declarant rights reserved to Declarant in this Declaration, including Declarant's right to do the following:

21.1.1. Incorporate a portion of the Common Elements into existing or newly-created Units; provided, however Declarant may not take away those Common Elements necessary for any Owner to substantially enjoy the benefits of his or her Unit without first obtaining the approval of that Owner.

21.1.2. Convert Common Elements into Limited Common Elements, such as patios, decks or terraces; provided, however, Declarant may not, without first obtaining the approval of the affected Owners, take away any Limited Common Element allocated to a Unit which is not owned by Declarant.

21.1.3. Subdivide or combine Units owned by Declarant or an affiliate of Declarant.

21.1.4. Convert all or a portion of a Unit into a Common Element.

21.1.5. Reallocate Limited Common Elements among Units owned by Declarant.

21.1.6. Complete, maintain, repair and replace improvements in Units or Common Elements which improvements may or may not be shown on the Map. This right specifically includes completing the original construction of the improvements in accordance with Declarant's plans and specifications, as the same may be changed from time to time, constructing additional improvements in connection with the sale of any Unit, performing inspections and completing work in connection with any warranty obligation of Declarant. Improvements may be structural, and may involve connecting to Common Elements systems for the Building, building envelope penetrations, and installing equipment and related piping, conduit, wiring, and ducting in the Common Elements. This right shall not terminate until the later of the period stated in Section 21.4 below, the date Declarant's warranty obligations expire for all Units and Common Elements, and the date any warranty claim asserted against Declarant is resolved to Declarant's satisfaction.

21.1.7. Establish, maintain or conduct within any Unit owned by Declarant and on the Common Elements: any sales offices, management offices, model Units, interior and exterior signs, and such other facilities as Declarant desires, and sales events and other activities relating to the marketing of Units advertising in connection with the construction, sale or rental of the Units.

21.1.8. Exercise all development rights reserved to Declarant under this Declaration.

21.1.9. Appoint or remove any officer or director of the Owners Association and the right to veto or approve any proposed action of the Owners Association until the Owner-elected Board of Directors is constituted.

21.1.10. Attend meetings of the Owners and, except during an executive session, the Board.

21.1.11. Have access to the records of the Association to the same extent as an Owner.

21.2. **Right to Use Common Elements.** Declarant reserves as a Development Right the right to use the Common Elements for ingress, egress, use of facilities, construction of improvements, and installation and connection of utilities as may be necessary or desirable to permit Declarant to exercise the Development Rights reserved in this Declaration. Common Expenses shall include all expenses associated with the operation, maintenance, repair and replacement of those Common Elements which Owners have the right to use notwithstanding that those Common Elements are subject to development rights.

21.3. **Reallocation of Interests.** Declarant shall recalculate the votes and Allocated Interests whenever the exercise of a development right or special declarant right results in the change in an increase or decrease in the total number of Units. Declarant shall state the reallocations in an amendment to this Declaration signed by Declarant alone. Declarant shall use the same formula to calculate those reallocations as stated in Section 5.1 which Declarant used to make the initial allocations.

21.4. **Exercise and Termination of Development Rights.** To exercise any Development Right or Special Declarant Right (as those terms are defined in the Act), Declarant shall prepare, execute and record an amendment to the Declaration and comply with RCW 64.90.250 (exercise of development rights) and RCW 64.90.245 (amendment of the Map). Such amendment shall require only Declarant's signature. Except as otherwise provided in this Declaration, all Development Rights and Special Declarant Rights shall expire seven (7) years after the recording of this Declaration; provided, that Declarant may voluntarily terminate any and all such rights at any time by recording an amendment to the Declaration, which amendment specifies which rights are thereby terminated. Any Development Right (i) may be exercised with respect to different portions of the Property at different times, (ii) no assurances are made regarding the boundaries of portions of the Property which may be subjected to the exercise of a Development Right or the order in which a Development Right may be exercised, and (iii) if a

Development Right is exercised, it is not necessary that the Development Right be exercised in all or in any other portion of the remainder of the Property.

## **SECTION 22 Dispute Resolution**

22.1. **Policy – Mediation.** Community living requires that all Owners and the Association cooperate in good faith and deal fairly in performing their duties and exercising their rights under this Declaration. If any party to a dispute determines that the dispute cannot be resolved without intervention, then that parties shall give notice (the "Arbitration Demand") to all other parties to the dispute and the Association demanding that the dispute be submitted to mediation and arbitration pursuant to this Section. All parties to the dispute shall than participate in a nonbinding mediation for 45 days after the Arbitration Demand. The mediator shall be chosen by the Association. If the mediation is not successful, the dispute shall be resolved by binding arbitration conducted pursuant to Section 22.2 below. The parties confirm that by agreeing to this alternate dispute resolution process, they intend to give up their right to have any dispute decided in court by a judge or jury.

22.2. **Binding Arbitration.** If binding arbitration is required to resolve a dispute, it shall be conducted in Seattle, pursuant to RCW 7.04.060, provided, that the total award by a single arbitrator (as opposed to a panel of three arbitrators) shall not exceed \$50,000, including interest, attorneys' fees and costs. If any party demands a total award greater than \$50,000, there shall be three (3) neutral arbitrators. If the parties cannot agree on the selection of the arbitrator(s) within ten (10) days of the arbitration demand, the arbitrator(s) shall be selected by the Presiding Judge of the Kitsap County Superior Court or a special master appointed for that purpose. Each arbitrator shall be an attorney with at least fifteen (15) years' experience in commercial or real estate law in the Kitsap County. The arbitrator(s) shall determine whether the dispute is subject to binding arbitration under this Section. All statutes of limitations which would otherwise be applicable shall apply to any arbitration proceeding hereunder.

22.3. **Hearing Procedure.** The arbitrator(s) shall take such steps as may be necessary to hold the arbitration hearing within ninety (90) days of the Arbitration Demand, conclude the hearing within three (3) days, issue its decision not later than fourteen (14) calendar days after the hearing. These time limits are intended to expedite the proceeding, but they are not jurisdictional. The arbitrator(s) may for good cause permit reasonable extensions or delays. The arbitrator(s) shall issue a written decision stating the award for each claim involved in the dispute. In making the decision and award, the arbitrator(s) shall apply applicable substantive law. Absent fraud, collusion or willful misconduct by an arbitrator, the award shall be final, and judgment on the award may be entered in any court having jurisdiction thereof. The arbitrator(s) may award injunctive relief or any other remedy available from a judge, order the joinder of parties, or consolidate the arbitration with any other proceeding involving common issues of law or fact or to promote judicial economy. The arbitrator(s) shall not have the power to award punitive or exemplary damages to any party. If the hearing is before a panel of three (3) arbitrators, the decision of any two arbitrators shall be the decision of the panel.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**DECLARANT:**

SEASIDE KINGSTON, LLC, a Washington limited liability company

By: \_\_\_\_\_

JOSHUA FREED

Its: Manager

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that JOSHUA FREED is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager of SEASIDE KINGSTON, LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_, 2020.

---

Print Name: \_\_\_\_\_

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My Appointment expires: \_\_\_\_\_

## **EXHIBIT A**

### **Legal Description of the Property Included in the Community**

THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 27 NORTH, RANGE 2 EAST, W.M., IN KITSAP COUNTY WASHINGTON.

LOTS A, B, C & D OF SHORT PLAT NO. 7222, RECORDED UNDER AUDITOR'S FILE NO. 200306060403/0404, IN VOLUME 17 OF SHORT PLATS, PAGE 187.

PARCEL A NO. 262702-4-079-2001

PARCEL B NO. 262702-4-080-2008

PARCEL C NO. 262702-4-081-2007

PARCEL D NO. 262702-4-082-2006

## EXHIBIT B

### Buildings and Units

Building	No. of Units in each Building	Unit Numbers
Building "A"	11 Units	83 - 93
Building "B"	12 Units	105 - 116
Building "C"	12 Units	129 - 140
Building "D"	12 Units	117 - 128
Building "E"	11 Units	94 - 104
Building "F"	6 Units	77 - 82
Building "G"	12 Units	1 - 12
Building "H"	10 Units	13 - 22
Building "J"	10 Units	23 - 32
Building "K"	10 Units	33 - 42
Building "L"	9 Units	43 - 51
Building "M"	9 Units	52 - 60
Building "N"	9 Units	61 - 69
Building "P"	7 Units	70 - 76
<b>14 Buildings</b>	<b>140 Units</b>	<b>1 - 140</b>

The Units range in size from 832 to 1,092 square feet.

Other Improvements Include:

Open space, recreational amenities, landscaping, access roads, stormwater treatment and detention control vaults, and utilities. Lindvog Road NE frontage improvements include a vertical curb, gutter, planting strip and six-foot sidewalk.