

WHEN RECORDED, RETURN TO:

Century Communities
20000 N Creek Parkway, Suite 201
Bothell, WA 98011

DOCUMENT TITLE(S): DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATIONS

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED: None

GRANTOR(S): (DECLARANT) Century Communities of Washington, LLC

Grantee(s): (PROJECT) The Bluffs at Whiskey Ridge

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER

005907-000-105-00

ABBREVIATED LEGAL DESCRIPTION (SECTION, TOWNSHIP, RANGE)

T30, R05, S35 SE

SUNNYSIDE FIVE ACRE TRS BLK 000 D-00 - LOT 105 SUBJ ESE PUD

SEE EXHIBIT A FOR FULL LEGAL DESCRIPTION

NOTICE TO RECORDER'S OFFICE: As Required by RCW Chapter 64.90, at the Time of Recording of this Declaration Insert the Recording Number for the Map and Plans Recorded in Connection Herewith.
AF#. _____

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
RESERVATIONS (“DECLARATION”) FOR THE BLUFFS AT WHISKEY RIDGE,
A PLAT COMMUNITY**

*This Community is subject to RCW 64.90
(Washington Uniform Common Interest Ownership Act).*

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Common Interest Community: This Project was established as a Common Interest Community pursuant to the Washington Uniform Common Interest Ownership Act (RCW 64.90 hereinafter the "Act") and is a plat community. The provisions of this Declaration have been drafted to comply with the Act.

Article 1 - INTERPRETATION

1.1 LIBERAL CONSTRUCTION.

This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of this Project under the provisions of the applicable statutory law. Insofar as it affects this Declaration and Project, the provisions of the applicable statutory law under which this Declaration is operative shall be liberally construed to effectuate the intent of this Declaration insofar as reasonably possible.

1.2 CONSISTENT WITH APPLICABLE STATUTORY LAW.

The terms used herein are intended to have the same meaning given in the applicable statutory law unless the context clearly requires otherwise or to so define the terms would produce an illegal or improper result.

1.3 COVENANT RUNNING WITH LAND.

This Declaration shall be operative as a set of covenants running with the land, or equitable servitudes, binding on and inure to the benefit of Declarant, its successors and assigns, the Association, all subsequent Owners of the Property, together with their grantees, successors, heirs, executors, administrators, devisees or assigns, supplementing and interpreting the applicable statutory law, and operating independently of the applicable statutory law should the applicable statutory law be, in any respect, inapplicable.

1.4 PERCENTAGE OF OWNERS OR MORTGAGEES.

For purposes of determining the percentage of Owners or Mortgagees, or percentage of voting power for approving a proposed decision or course of action in cases where an Owner owns, or a Mortgagee holds Mortgages on, more than one (1) Unit, such Owner shall be deemed a separate Owner for each such Unit so owned and such Mortgagee shall be deemed a separate Mortgagee for each such first Mortgage so held.

1.5 DECLARANT AS ORIGINAL OWNER.

Upon Recording of this Declaration, the Declarant is the Owner of all land and improvements initially in the Project.

1.6 CAPTIONS AND EXHIBITS.

Captions given to the various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein and attached hereto shall be deemed incorporated herein by reference as though fully set forth where such reference is made.

1.7 INFLATIONARY INCREASE IN DOLLAR LIMITS.

Any dollar amounts specified in this Declaration in connection with any proposed action or decision of the Board or Association may, in the discretion of the Board, be increased proportionately by the increase in the consumer price index for the City of Seattle, Washington for All Urban Consumers, prepared by the United States Department of Labor for the base period January 1 of the calendar year following the year in which this Declaration was Recorded, to adjust for any deflation in the value of the dollar.

1.8 DEFINITIONS

1.8.1 **"Act"** means the Washington Uniform Common Interest Ownership Act (RCW Chapter 64.90).

1.8.2 **"Affiliate of a Declarant"** means any person who controls, is controlled by, or is under common control with a declarant. For purposes of this subsection: (a) A person controls a declarant if the person: (i) Is a general partner, managing member, officer, director, or employer of the declarant; (ii) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interest in the declarant; (iii) Controls in any manner the election or appointment of a majority of the directors, managing members, or general partners of the declarant; or (iv) Has contributed more than twenty percent (20%) of the capital of the declarant. (b) A person is controlled by a declarant if the declarant: (i) Is a general partner, managing member, officer, director, or employer of the person; (ii) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interest in the person; (iii) Controls in any manner the election or appointment of a majority of the directors, managing members, or general partners of the person; or (iv) Has contributed more than

twenty percent (20%) of the capital of the person. (c) Control does not exist if the powers described in this subsection (1) are held solely as security for an obligation and are not exercised.

1.8.3 **"Allocated Interests"** means the following interests allocated to each unit: (a) In a condominium, the undivided interest in the common elements, the common expense liability, and votes in the Association; (b) In a cooperative, the common expense liability, the ownership interest, and votes in the Association; and (c) In a plat community and miscellaneous community, the common expense liability and the votes in the Association, and also the undivided interest in the common elements if owned in common by the Unit Owners rather than an Association.

1.8.4 **"Assessment"** means all sums chargeable by the Association against a unit, including any assessments levied pursuant to section 480 of the Act, fines or fees levied or imposed by the Association pursuant to the Act or the governing documents, interest and late charges on any delinquent account, and all costs of collection incurred by the Association in connection with the collection of a delinquent owner's account, including reasonable attorneys' fees.

1.8.5 **"Association" or "Unit Owners Association"** means the Unit Owners Association organized under section 400 of the Act and, to the extent necessary to construe sections of the Act made applicable to common interest communities pursuant to section 080, 090, or 095 of the Act the Association organized or created to administer such common interest communities.

1.8.6 **"Ballot"** means a Record designed to cast or register a vote or consent in a form provided or accepted by the Association.

1.8.7 **"Board"** means the body, regardless of name, designated in the Declaration, map, or Organizational Documents, with primary authority to manage the affairs of the Association.

1.8.8 **"Books and Records of the Association"** means all financial and other Records, in whatever form they are kept, that are the property of the Association; and does not mean Records that are the property of a Person other than the Association, even though such Records that are the property of a Person other than the Association might be discoverable under the laws of Washington governing judicial proceedings. "Books and Records" that are the property of the Association shall be given the broadest possible meaning and shall include, without limitation, exception or qualification, the following:

(a) Declaration, Map, Articles of Incorporation, Bylaws and other Governing Documents and rules and regulations governing the Project (or any part thereof), and all amendments thereto;

(b) Minute books, including all minutes, of all Owner, Board, Officer, Committee or other meetings relating to the Project (or any part thereof, including all reports, documents, communications or written instruments attached thereto or referenced therein);

(c) All available financial Records, including without limitation canceled checks, bank statements, and financial statements of the Association and source documents from the time of incorporation of the Association through the current date;

(d) All reports, documents, communications or written instruments pertaining to the personal property of the Association or the Project (or any part thereof);

(e) All reports, documents, communications, written instruments, plans, and specifications pertaining to the construction, remodeling, maintenance, repair, replacement or condition of the Project (or any part thereof);

(f) All insurance policies or copies thereof for the Project (or any part thereof) and Association;

(g) Copies of any certificates of occupancy that may have been issued for the Project (or any part thereof);

(h) Any other permits or notices issued by governmental bodies applicable to the Project (or any part thereof) in force or issued;

(i) All written warranties that are still in effect for the Common Elements, or any other areas or facilities which the Association has the responsibility to maintain and repair, from the Declarant, contractor, subcontractors, suppliers, and manufacturers, together with all owners' manuals or instructions furnished to the Declarant with respect to installed equipment or building systems;

(j) A roster of Owners, Officers and Board members and Eligible Mortgagees and their addresses and telephone numbers, if known;

(k) Any leases of the Common Elements or areas and other leases to which the Association is a party; any employment, service, consultation, professional or other contracts in which the Association, Board or Officer (to the extent acting on behalf of the Association) is one of the contracting parties, or in which the Association or the Owners

have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge, or which in any way relate to the Project (or any part thereof);

(l) All reports, documents, communications or written instruments pertaining to any litigation or other legal or mediation/arbitration proceeding (whether pending, threatened, or under consideration) to which the Association (or Board, Officer or Owner (to the extent acting on behalf of the Association)) is or may be a party, or which may relate to or affect the Project (or any part thereof); and

(m) All other reports, documents, communications or written instruments in any way relating to or affecting the Association, Board, Officers, Owners or the Project (or any part thereof).

1.8.9 **"Bylaws"** shall mean the Bylaws of the Association provided for in Article 8.

1.8.10 **"Committee"** shall mean a committee, the members of which are appointed by the Board to perform tasks as determined by the Board.

1.8.11 **"Common Elements"** (a) In a condominium or cooperative, all portions of the Project other than the units; (b) In a plat community or miscellaneous community, any real estate other than a unit within a plat community or miscellaneous community that is owned or leased either by the Association or in common by the Unit Owners rather than an Association; and (c) In all common interest communities, any other interests in real estate for the benefit of any Unit Owners that are subject to the Declaration.

1.8.12 **"Common Expenses"** means any expense of the Association, including allocations to reserves, allocated to all of the Unit Owners in accordance with common expense liability.

1.8.13 **"Common Expense Liability"** means the liability for Common Expenses allocated to each Unit pursuant to section 2235 of The Act.

1.8.14 **"Common Interest Community"** means real estate described in a Declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements, other units, or other real estate described in the Declaration. "Common interest community" does not include an arrangement described in section 110 or 115 of the Act. A common interest community may be a part of another common interest community.

1.8.15 **"Condominium"** means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the Unit Owners.

1.8.16 **"Conveyance"** or **"Convey"** means, with respect to a unit, any transfer of ownership of the unit, including a transfer by deed or by real estate contract and, with respect to a unit in a leasehold common interest community or a proprietary lease in a cooperative, a transfer by lease or assignment of the unit, but does not include the creation, transfer, or release of a security interest.

1.8.17 **"Dealer"** means a person who, together with such person's Affiliates, owns or has a right to acquire either six (6) or more Units in a Common Interest Community or fifty percent (50%) or more of the Units in a Common Interest Community containing more than two (2) Units.

1.8.18 **"Declarant"** means (a) Any person who executes as declarant a Declaration; (b) Any person who reserves any special declarant right in a Declaration; (c) Any person who exercises special declarant rights or to whom special declarant rights are transferred of Record. The holding or exercise of rights to maintain sales offices, signs advertising the common interest community, and models, and related right of access, does not confer the status of being a declarant; or (d) Any person who is the owner of a fee interest in the real estate that is subjected to the Declaration at the time of the Recording of an instrument pursuant to section 425 of the Act and who directly or through one or more affiliates is materially involved in the construction, marketing, or sale of units in the common interest community created by the Recording of the instrument.

1.8.19 **"Declarant Control"** means the right of the declarant or persons designated by the declarant to appoint or remove any officer or Board member of the Association or to veto or approve a proposed action of any Board or Association, pursuant to section 415(1)(a) of the Act.

1.8.20 **"Declaration"** means the instrument, however denominated, that creates a common interest community, including any amendments to the instrument.

1.8.21 **"Declarant Rights"** means collectively and regardless of whether denoted by the word "right" or similar term:

(a) **"Development Rights"** means any right or combination of rights reserved by a declarant in the Declaration to: (a) Add real estate or improvements to a common interest community; (b) Create units, common elements, or limited common elements within a common interest community; (c) Subdivide or combine units or convert units into common elements; (d) Withdraw real estate from a common interest community; or (e) Reallocate limited common elements with respect to units that have not been conveyed by the declarant.

(b) **"Special Declarant Rights"** means rights reserved for the benefit of a declarant to: (a) Complete any improvements indicated on the map or described in the Declaration or the public offering statement pursuant to section 610(1)(h) of the Act; (b) Exercise any development right; (c) Maintain sales offices, management offices, signs advertising the common interest community, and models; (d) Use easements through the common elements for the purpose of making improvements within the common interest community or within real estate that may be added to the common interest community; (e) Make the common interest community subject to a master Association; (f) Merge or consolidate a common interest community with another common interest community of the same form of ownership; (g) Appoint or remove any officer or Board member of the Association or any master Association or to veto or approve a proposed action of any Board or Association, pursuant to section 415(1) of the Act; (h) Control any construction, design review, or aesthetic standards committee or process; (i) Attend meetings of the Unit Owners and, except during an executive session, the Board; (j) Have access to the Records of the Association to the same extent as a Unit Owner.

(c) **"Miscellaneous Declarant Rights"** means (so long as not expressly prohibited by the Act or other principal of law) any other right, power, authority privilege or benefit or combination thereof provided to and for the benefit of Declarant by:

(i) This Declaration;

(ii) Any other document which may govern the Project or to which the Project may be subject; or

(iii) The Act or other principles of law and equity, including without limitation the law of corporations and unincorporated Associations, real estate, contract, principal and agent, and trusts.

1.8.22 **"Dispose"** or **"Disposition"** means "Convey" or "Conveyance."

1.8.23 **"Division"** means the division of Real Estate pursuant to the applicable Washington state statute, portions of which are designated for separate ownership and the remainder of which is designated either for ownership by the Association or for common ownership solely by the Owners of those portions.

1.8.24 **"Electronic Transmission"** or **"Electronically Transmitted"** means any electronic communication (a) not directly involving the physical transfer of a Record in a tangible medium and (b) that may be retained, retrieved, and reviewed by the sender and the recipient of the communication, and that may be directly reproduced in a tangible medium by a sender and recipient.

1.8.25 **"Eligible Mortgagee"** means the holder of a security interest 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 mortgagees.

1.8.26 **"Foreclosure"** means a statutory forfeiture or a judicial or nonjudicial foreclosure of a security interest or a deed or other conveyance in lieu of a security interest.

1.8.27 **"Governing Documents"** means the Organizational Documents, map, Declaration, rules, or other written instrument by which the Association has the authority to exercise any of the powers provided for in the Act or to manage, maintain, or otherwise affect the property under its jurisdiction.

1.8.28 **"Identifying Number"** means a symbol or address that identifies only one (1) unit or limited common element in a common interest community.

1.8.29 **"Limited Common Element"** means a portion of the common elements allocated by the Declaration or by operation of section 210 (1)(b) or (3) of the Act for the exclusive use of one (1) or more, but fewer than all, of the Unit Owners.

1.8.30 **"Limited Common Expense"** means expenditures made by or financial liabilities of the Association which are related to a Limited Common Element including without limitation expenses relating to the maintenance, repair and replacement of the Limited Common Element (together with any allocations to reserves), and any other costs allocated solely to one (1) or more but fewer than all of the Units.

1.8.31 **"Manager"** means a Person that may be retained by the Board to perform such management and administrative functions and duties with respect to the Project as are delegated to such Person and as are provided in a written agreement between such Person and the Association.

1.8.32 **"Map"** means: (a) With respect to a plat community, the plat as defined in RCW 58.17.020 and complying with the requirements of Title 58 RCW, and (b) with respect to a condominium, cooperative, or miscellaneous community, a map prepared in accordance with the requirements of the Act.

1.8.33 **"Master Association"** means an organization described in section 300 of the Act, whether or not it is also an Association described in section 400 of the Act.

1.8.34 **"Mortgage"** means a "Security Interest."

1.8.35 **"Mortgagee"** means the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a Unit created by a Security Interest and shall also mean the vendor, or the designee of a vendor, of a real estate contract for the sale of a Unit. A Mortgagee of the Project and a Mortgagee of a Unit are included within the definition of Mortgagee.

1.8.36 **"Mortgagee of a Unit"** means the holder of a Security Interest on a Unit, which Security Interest was Recorded simultaneously with or after the Recordation of this Declaration. Unless the context requires otherwise, the term "Mortgagee of a Unit" shall also be deemed to include the Mortgagee of the Project.

1.8.37 **"Mortgagee of the Project"** means the holder of a Security Interest on the Property which this Declaration affects, which Security Interest was either: Recorded prior to the Recordation of this Declaration; or was Recorded against all Units after the Recordation of this Declaration but prior to the Recorded Conveyance of any Unit. The term "Mortgagee of the Project" does not include Mortgagees of the individual Units.

1.8.38 **"Notice and Opportunity to be Heard"** means the procedure described in Article 10 of this Declaration.

1.8.39 **"Non-Residential Purposes"** means any use other than Residential Purposes.

1.8.40 **"Officer"** means an officer of the Association (including without limitation the president, secretary and treasurer) appointed or elected pursuant to the Declaration and Bylaws.

1.8.41 **"Organizational Documents"** means the instruments filed with the secretary of state to create an entity and the instruments governing the internal affairs of the entity including, but not limited to, any articles of incorporation, certificate of formation, bylaws, and limited liability company or partnership agreement.

1.8.42 **"Owner"** or **"Unit Owner"** means, subject to Section 1.9.5, a Declarant (so long as the Declarant owns a Unit) 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 or is merely "Renting" or "Leasing" a Unit as defined in Section 1.8. A "Unit Owner" is also sometimes referred to herein as an "Owner" or collectively (more than one Unit Owner) as the "Owners." "Unit Owner" means the vendee, not the vendor, of a Unit under a real estate contract. The declarant is the Unit Owner of any Unit created by the Declaration.

1.8.43 **"Person"** means an individual, corporation, business trust, estate, the trustee or beneficiary of a trust that is not a business trust, partnership, limited liability company, Association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal entity.

1.8.44 **"Plat Community"** means a common interest community in which units have been created by subdivision or short subdivision as both are defined in RCW 58.17.020 and in which the boundaries of units are established pursuant to chapter 58.17 RCW.

1.8.45 **"Project"** means the land described herein and all improvements thereto. As the context requires, sometimes referred to as the **"Community"** in purchase and sale documents, advertising material and other disclosure documents.

1.8.46 **"Purchaser"** means any Person, other than a Declarant, or a dealer, which by means of a voluntary transfer acquires a legal or equitable interest in a Unit other than as security for an obligation. As the context requires, sometimes referred to as the **"Buyer"** in purchase and sale documents, advertising material and other disclosure documents.

1.8.47 **"Qualified financial institution"** means a bank, savings Association, or credit union whose deposits are insured by the federal government.

1.8.48 **"Real Estate"** means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that by custom, usage, or law pass with a conveyance of

land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water.

1.8.49 **"Real Estate Contract"** has the meaning as defined in RCW 61.30.010

1.8.50 **"Record,"** when used as a noun, means information inscribed on a tangible medium or contained in an electronic transmission.

1.8.51 **"Rent" or "Renting" or "Lease" or "Leasing"** a Unit means the granting of a right to use or occupy a Unit, for a specified term or indefinite term (with rent reserved on a periodic basis), in exchange for the payment of rent (that is, money, property or other goods or services of value); but shall not mean and include joint ownership of a Unit by means of joint tenancy, tenancy-in-common or other forms of co-ownership.

1.8.52 **"Residential Purposes"** means use for dwelling or recreational purposes, or both.

1.8.53 **"Rule"** means a policy, guideline, restriction, procedure, or regulation of an Association, however denominated, that is not set forth in the Declaration or Organizational Documents and governs the conduct of persons or the use or appearance of property.

1.8.54 **"Security Interest"** means an interest in real estate or personal property, created by contract or conveyance that secures payment or performance of an obligation. "Security interest" includes a lien created by a mortgage, deed of trust, real estate contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation.

1.8.55 **"Specially Allocated Expense"** means any expense of the association, including allocations to reserves, allocated to some or all of the unit owners pursuant to section 480 (4) through (8) of this act.

1.8.56 **"Structure"** means a structure located or to be located within a Unit that under local law may legally be occupied. **"Detached Structure"** means a Structure is not physically attached to another Structure. **"Attached Structure"** means a Structure that is physically attached to another Structure.

1.8.57 **"Survey"** has the same meaning as defined in RCW 58.09.020.

1.8.58 **"Tangible Medium"** means a writing, copy of a writing, facsimile, or a physical reproduction, each on paper or other tangible material.

1.8.59 **"Timeshare"** shall have the meaning specified in the Timeshare Act, RCW 64.36.010(11). Unless otherwise specifically provided in this Declaration, Timesharing of Units is prohibited.

1.8.60 **"Transition Meeting"** means the meeting held pursuant to section 415(4) of the Act.

1.8.61 **"Unit"** means a physical portion of the Project designated for separate ownership or occupancy, the boundaries of which are described pursuant to section 225(1)(d) of the Act.

1.8.62 **"Unit Improvements"** means the improvements located or to be located within a Unit.

1.8.63 **"Use" or "Purpose"**, when used in conjunction with phrases such as (a) residential or non-residential use or purpose, (b) restricted to residential or non-residential use or purpose, (c) use to which a Unit is restricted, (d) Units shall be used for or (e) use or purpose authorized by this Declaration, shall have the meaning commonly used in zoning codes that establish, classify, regulate, restrict or segregate the uses or types of uses permitted on land, water, buildings or other improvements thereto.

1.8.64 **"Writing"** does not include an electronic transmission.

1.8.65 **"Written"** means embodied in a tangible medium.

1.9 CONSTRUCTION AND VALIDITY

1.9.1 All provisions of this Declaration and the Bylaws are severable.

1.9.2 The rule against perpetuities may not be applied to defeat any provision of this Declaration, the Bylaws, or any rules, or regulations adopted pursuant to the Act.

1.9.3 In the event of a conflict between the provisions of this Declaration and the Bylaws, this Declaration prevails except to the extent this Declaration is inconsistent with the Act. In the event of a conflict between the provisions of this Declaration and the Act, the Act prevails.

1.9.4 The creation of this Project shall not be impaired and title to the Unit and Common Elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of this Declaration or the Map or any amendment thereto to comply with the Act.

1.9.5 If this Declaration or the Bylaws now or hereafter provide that any Officers or directors of the Association must be Owners, then notwithstanding the definition contained in Section 1.8 above, the term "Owner"

in such context shall, unless this Declaration or Bylaws otherwise provide, be deemed to include any director, Officer, partner in, agent, or trustee of any Person, who is, either alone or in conjunction with another Person or Persons, an Owner. Any Officer or director of the Association who would not be eligible to serve as such if he or she were not a director, Officer, partner in, agent, or trustee of such a Person shall be disqualified from continuing in office if he or she ceases to have any such affiliation with that Person, or if that Person would have been disqualified from continuing in such office as a natural Person.

1.9.6 The principles of law and equity, including the law of corporations and any other form of organization authorized by the law of this state and unincorporated Associations, the law of real estate, and the law relative to the capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the Act, except to the extent inconsistent with Act.

Article 2 - DESCRIPTION OF REAL ESTATE

The Real Estate included in the Project is described in Exhibit A attached hereto.

Article 3 - DESCRIPTION OF UNIT

3.1 UNITS.

3.1.1 Upon Recording of this Declaration, the Project contained twenty-five (25) Units. The maximum number of Units is estimated to be twenty-five (25) but will not exceed the maximum permitted by law.

3.1.2 The Units are described in Exhibits A and B attached hereto and depicted on the Map.

3.1.3 A Unit shall include all structures, improvements, and fixtures now or hereafter located within said space.

3.1.4 Each Unit has direct access to the Common Elements, and all such Common Elements have direct access to public streets.

3.2 MONUMENTS AS BOUNDARIES.

3.2.1 The physical boundaries of a Unit located in a building containing or comprising that Unit constructed or reconstructed in substantial accordance with the Map, or amendment to the Map, are its boundaries, rather than any boundaries shown on the Map, regardless of settling or lateral movement of the Unit or of any building containing or comprising the Unit, or of any minor variance between boundaries of the Unit or any building containing or comprising the Unit shown on the Map.

3.2.2 This section does not relieve a Unit Owner from liability in case of the Unit Owner's willful misconduct or relieve a declarant or any other person from liability for failure to adhere to the Map.

3.3 RELOCATION OF BOUNDARIES; ADJOINING UNITS.

3.3.1 Subject to the provisions of the Declaration, section 255 of the Act, and other provisions of law, the boundaries between adjoining Units may be relocated upon application to the Board by the Unit Owners of those Units and upon approval by the Board pursuant to this section. The application must include plans showing the relocated boundaries and such other information as the Board may require. If the Unit Owners of the adjoining Units have specified a reallocation between their Units of the Allocated Interests, the application must state the proposed reallocations. Unless the Board determines, after receipt of all required information, that the reallocations are unreasonable or that the proposed boundary relocation does not comply with the Declaration, section 255 of the Act, or other provisions of law, the Board must approve the application and prepare any amendments to the Declaration and Map in accordance with the requirements of this section.

3.3.2 Subject to the provisions of the Declaration and other provisions of law, boundaries between Units and Common Elements may be relocated to incorporate Common Elements within a Unit by an amendment to the Declaration upon application to the Association by the Unit Owner of the Unit who proposes to relocate a boundary. The amendment may be approved only if the Unit Owner of the Unit, the boundary of which is being relocated, and, unless the Declaration provides otherwise, persons entitled to cast at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to Units not owned by the Declarant, agree.

3.3.3 The Association may require payment to the Association of a one-time fee or charge or continuing fees or charges payable by the Unit Owners of the Units whose boundaries are being relocated to include Common Elements.

3.3.4 The Association must prepare any amendment to the Declaration in accordance with the requirements of section 225 of the Act and any amendment to the map in accordance with the requirements of section 245 of the Act necessary to show or describe the altered boundaries of affected Units and their dimensions and identifying numbers.

3.3.5 The amendment to the Declaration must be executed by the Unit Owner of the Unit, the boundaries of which are being relocated, and by the Association, contain words of conveyance between them, and be recorded in the names of the Unit Owner or Owners and the Association, as grantor or grantee, as appropriate and as required under section 285(3) of the Act. The amendments are effective upon recording.

3.3.6 All costs, including reasonable attorneys' fees, incurred by the Association for preparing and recording amendments to the Declaration and map under this section must be assessed to the Unit the boundaries of which are being relocated.

Article 4 - DESCRIPTION OF OTHER IMPROVEMENTS

Other improvements may be described in Exhibit A attached hereto or on the Map.

Article 5 - COMMON ELEMENTS

5.1 DESCRIPTION.

Except as otherwise specifically allocated by the provisions of Article 6 or other provisions of this Declaration or amendments hereto, the Common Elements consist of all portions of the Project except Units and include the following:

5.1.1 The Real Estate described in Exhibit A, and improvements thereto, which are not part of a Unit.

5.1.2 Installations of utility services such as: power, light, gas and sewer, storm line, storm vault, cable, phone lines and in general all apparatus and installations existing for common use; but excluding plumbing, electrical and similar fixtures, which fixtures are located within a Unit for the exclusive use of that Unit.

5.1.3 The driving areas (not part of a Unit or not allocated as Limited Common Elements by this Declaration or amendments thereto) which provide access to the Units for parking; and any guest parking or other parking areas (not part of a Unit or not allocated to Units as Limited Common Elements by this Declaration or amendments thereto.)

5.1.4 The yards, gardens, landscaped areas and walkways (not part of a Unit or not assigned as Limited Common Elements by this Declaration or amendments thereto) which surround and provide access to the Units or are used for recreational purposes.

5.1.5 All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use.

5.2 RIGHT TO USE.

Subject to the Act, and this Declaration, each Owner shall have a right to use the Common Elements in common with all other Owners.

Article 6 - LIMITED COMMON ELEMENTS

6.1 LIMITED COMMON ELEMENTS.

The Limited Common Elements, if any, are allocated for the exclusive use of the Owner or Owners of the Unit or Units to which they are allocated and, in addition to any Limited Common Elements provided by law, shall consist of such other Limited Common Elements, if any, as may be described in other provisions of this Declaration including Exhibit A attached hereto (or amendments thereto) or depicted and labeled on the Map (or amendments thereto).

6.2 BOUNDARY.

The boundary of Limited Common Elements created by the Declarant at the time of recording the original Plat Map, if any, shall be as depicted on the Plat Map.

6.3 REALLOCATION

6.3.1 **Reallocation Between Units.** Except in the case of a reallocation being made by Declarant pursuant to a Declarant Right reserved in this Declaration, a Limited Common Element may only be reallocated between Units with the approval of the Board and by an amendment to this Declaration executed by the Owners of the Units to which the Limited Common Element was and will be allocated. The Board shall approve the request of the Owner or Owners under this subsection within thirty (30) days, unless the proposed reallocation does not comply with the Act or this Declaration. The failure of the Board to act upon a request within such period shall be deemed approval thereof. The amendment shall be Recorded in the names of the parties and of the Project. The requesting Owners shall be responsible for any costs related to such reallocation.

6.3.2 **Common Element to Unit, Etc.** Except in the case of a reallocation or incorporation being made by Declarant pursuant to a Declarant Right reserved in this Declaration, and unless otherwise provided in this Declaration, the Owners of Units to which at least sixty-seven percent (67%) of the votes are allocated, including the Owner of the Unit to which the Limited Common Element will be assigned or incorporated, must agree to reallocate a Common Element as a Limited Common Element or to incorporate a Common Element or a Limited Common Element into an existing Unit. Such reallocation or incorporation shall be reflected in an amendment to this Declaration, and the Map.

6.3.3 **Reallocation Costs.** The parties requesting the reallocation or incorporation shall be responsible for payment of all costs relating to the reallocation or incorporation, including without limitation the payment of the costs and expenses incurred in preparation and Recording of an amendment to this Declaration and the Map.

Article 7 - ALLOCATED INTERESTS

The Allocated Interests of each Unit (that is, the undivided interest in the Common Elements, the Common Expense Liability and the votes in the Association allocated to each Unit) are based on an equal share per Unit. The Allocated Interest pertaining to each Unit cannot be changed except as provided in this Declaration. The Allocated Interest and the title to the respective Units shall not be separated or separately conveyed and each undivided interest shall be deemed to be conveyed with its respective Unit even though the description in the instrument of Conveyance or encumbrance may refer only to the title to the Unit. Except where permitted by the Act, the Common Elements are not subject to partition, and any purported Conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an Allocated Interest made without the Unit to which that Interest is allocated is void.

Article 8 - OWNER'S ASSOCIATION

8.1 FORM OF ASSOCIATION.

8.1.1 The Association shall be organized no later than the date the first Unit in the Project is conveyed to a Purchaser as a nonprofit corporation under the laws of the State of Washington and shall be known as the "The Bluff at Whiskey Ridge Owners Association."

8.1.2 In case of any conflict between Title 23B RCW or chapter 23.86, 24.03, 24.06, or 25.15 RCW and the Act, the Act controls.

8.2 MEMBERSHIP.

8.2.1 **Qualification.** Each Owner (including Declarant so long as Declarant owns a Unit) shall be a member of the Association and shall be entitled to one (1) membership for each Unit so owned; provided, that if a Unit has been sold on contract, the contract Purchaser shall exercise the rights of the Owner for purposes of the Association, this Declaration, and the Bylaws, except as hereinafter limited, and shall be the voting representative unless otherwise specified. Ownership of a Unit shall be the sole qualification for membership in the Association.

8.2.2 **Transfer of Membership.** The Association membership of each Owner (including Declarant so long as Declarant owns a Unit) 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 thereof.

8.3 VOTING

8.3.1 **Number of Votes.** The total voting power of all Owners shall be equal to the total number of votes allocated to all Units.

8.3.2 **Voting Without Meeting.** When a vote is conducted without a meeting, Unit Owners may vote by Ballot pursuant to subsection (6) of this section.

8.3.3 **Voting Method.** Unit Owners or their proxies who are present in person may vote by voice vote, a show of hands, standing, written Ballot, or any other method for determining the votes of Unit Owners, as designated by the person presiding at the meeting.

8.3.4 **Multiple Owners.** If only one (1) of several Unit Owners of a Unit is present, that Unit Owner is entitled to cast all the votes allocated to that Unit. If more than one (1) of the Unit Owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the Unit Owners, unless the Declaration expressly provides otherwise. There is a majority agreement if any one (1) of the Unit Owners casts the votes allocated to the Unit without protest being made promptly to the person presiding over the meeting by any of the other Unit Owners of the Unit.

8.3.5 **Vote Approval.** Unless a greater number or fraction of the votes in the Association is required under the Act or the Declaration or Organizational Documents, a majority of the votes cast determines the outcome of any action of the Association.

8.3.6 **Absentee Ballot.** Whenever proposals or Board members are to be voted upon at a meeting, a Unit Owner may vote by duly executed absentee Ballot if:

(a) The name of each candidate and the text of each proposal to be voted upon are set forth in a writing accompanying or contained in the notice of meeting;

(b) A Ballot is provided by the Association for such purpose; and

(c) When a Unit Owner votes by absentee Ballot, the Association must be able to verify that the Ballot is cast by the Unit Owner having the right to do so.

8.3.7 **Proxies.** Except as provided otherwise in the Declaration or Organizational Documents, the following requirements apply with respect to proxy voting:

(a) Votes allocated to a Unit may be cast pursuant to a directed or undirected proxy duly executed by a Unit Owner in the same manner as provided in RCW 24.06.110;

(b) If a Unit is owned by more than one (1) person, each Unit Owner of the Unit may vote or register protest to the casting of votes by the other Unit Owners of the Unit through a duly executed proxy;

(c) A Unit Owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the secretary or the person presiding over a meeting of the Association or by delivery of a subsequent proxy. The death or disability of a Unit Owner does not revoke a proxy given by the Unit Owner unless the person presiding over the meeting has actual notice of the death or disability;

(d) A proxy is void if it is not dated or purports to be revocable without notice; and

(e) Unless stated otherwise in the proxy, a proxy terminates eleven (11) months after its date of issuance.

8.3.4 **Vote Without Meeting.** Unless prohibited or limited by the Declaration or Organizational Documents, an Association may conduct a vote without a meeting. In that event, the following requirements apply:

(a) The Association must notify the Unit Owners that the vote will be taken by Ballot;

(b) The notice must state;

(i) The time and date by which a Ballot must be delivered to the Association to be counted, which may not be fewer than fourteen (14) days after the date of the notice, and which deadline may be extended in accordance with (g) of this subsection;

(ii) The percent of votes necessary to meet the quorum requirements;

(iii) The percent of votes necessary to approve each matter other than election of Board members;

and

(iv) The time, date, and manner by which Unit Owners wishing to deliver information to all Unit Owners regarding the subject of the vote may do so;

(c) The Association must deliver a Ballot to every Unit Owner with the notice.

(d) The Ballot must set forth each proposed action and provide an opportunity to vote for or against the action;

(e) A Ballot cast pursuant to this section may be revoked only by actual notice to the Association of revocation. The death or disability of a Unit Owner does not revoke a Ballot unless the Association has actual notice of the death or disability prior to the date set forth in (b)(i) of this subsection;

(f) Approval by Ballot pursuant to this subsection is valid only if the number of votes cast by Ballot equals or exceeds the quorum required to be present at a meeting authorizing the action;

(g) If the Association does not receive a sufficient number of votes to constitute a quorum or to approve the proposal by the date and time established for return of Ballots, the Board may extend the deadline for a reasonable period not to exceed eleven (11) months upon further notice to all members in accordance with (b) of this subsection. In that event, all votes previously cast on the proposal must be counted unless subsequently revoked as provided in this section;

(h) A Ballot or revocation is not effective until received by the Association;

(i) The Association must give notice to Unit Owners of any action taken pursuant to this subsection within a reasonable time after the action is taken and

(j) When an action is taken pursuant to this subsection, a Record of the action, including the Ballots or a report of the persons appointed to tabulate such Ballots, must be kept with the minutes of meetings of the Association.

8.3.5 Association Owned Units. In any vote of the Unit Owners, votes allocated to a unit owned by the Association must be cast in the same proportion as the votes cast on the matter by Unit Owners other than the Association.

8.3.6 Pledged Votes. If an Owner is in default under a first Security Interest on the Unit for ninety (90) consecutive days or more, the Mortgagee shall automatically be authorized to declare at any time thereafter that the Owner has pledged his or her vote on all issues to the Mortgagee during the continuance of the default. If the Board has been notified of any such pledge to a Mortgagee, or in the event the Record Owner or Owners have otherwise pledged their vote regarding special matters to a Mortgagee under a duly Recorded Security Interest, only the vote of such Mortgagee or vendor, will be recognized in regard to the special matters upon which the vote is so pledged, if a copy of the instrument with this pledge has been filed with the Board. Amendments to this subsection shall only be effective upon the written consent of all the voting Owners and their respective Mortgagees, if any.

8.4 MEETINGS, NOTICES AND QUORUMS.

8.4.1 Meetings. The following requirements apply to Unit Owner meetings:

(a) A meeting of the Association must be held at least once each year. Failure to hold an annual meeting does not cause a forfeiture or give cause for dissolution of the Association and does not affect otherwise valid Association acts.

(b) (1) An Association must hold a special meeting of Unit Owners to address any matter affecting the Project or the Association if its president, a majority of the Board, or Unit Owners having at least twenty percent (20%), or any lower percentage specified in the Organizational Documents, of the votes in the Association request that the secretary call the meeting. (2) If the Association does not provide notice to Unit Owners of a special meeting within thirty days after the requisite number or percentage of Unit Owners request the secretary to do so, the requesting members may directly provide notice to all the Unit Owners of the meeting. Only matters described in the meeting notice required in (c) of this subsection may be considered at a special meeting.

(c) An Association must provide notice to Unit Owners of the time, date, and place of each annual and special Unit Owners meeting not less than fourteen (14) days and not more than fifty (50) days before the meeting date. Notice may be by any means described in section 515 of the Act. The notice of any meeting must state the time, date, and place of the meeting and the items on the agenda, including:

(i) The text of any proposed amendment to the Declaration or Organizational Documents;

(ii) Any changes in the previously approved budget that result in a change in the assessment obligations; and

(iii) Any proposal to remove a Board member or officer.

(d) The minimum time to provide notice required in (c) of this subsection may be reduced or waived for a meeting called to deal with an emergency.

(e) Unit Owners must be given a reasonable opportunity at any meeting to comment regarding any matter affecting the Project or the Association.

(f) The Declaration or Organizational Documents may allow for meetings of Unit Owners to be conducted by telephonic, video, or other conferencing process, if the process is consistent with subsection (2)(i) of this section.

(g) The following requirements apply to meetings of the Board and committees authorized to act for the Board:

(i) Meetings must be open to the Unit Owners except during executive sessions, but the Board may expel or prohibit attendance by any person who, after warning by the chair of the meeting, disrupts the meeting. The Board and those committees may hold an executive session only during a regular or special meeting of the Board or a committee. A final vote or action may not be taken during an executive session.

(ii) An executive session may be held only to:

(a) Consult with the Association's attorney concerning legal matters;

(b) Discuss existing or potential litigation or mediation, arbitration, or administrative proceedings;

(c) Discuss labor or personnel matters;

(d) Discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the Association at a disadvantage; or

(e) Prevent public knowledge of the matter to be discussed if the Board or committee determines that public knowledge would violate the privacy of any person.

(h) For purposes of this subsection, a gathering of members of the Board or committees at which the Board or committee members do not conduct Association business is not a meeting of the Board or committee. Board members and committee members may not use incidental or social gatherings to evade the open meeting requirements of this subsection.

(i) During the period of declarant control, the Board must meet at least four (4) times a year. At least one of those meetings must be held at the Project or at a place convenient to the community. After the transition meeting, all Board meetings must be at the Project or at a place convenient to the Project unless the Unit Owners amend the bylaws to vary the location of those meetings.

(j) At each Board meeting, the Board must provide a reasonable opportunity for Unit Owners to comment regarding matters affecting the Project and the Association.

(k) Unless the meeting is included in a schedule given to the Unit Owners or the meeting is called to deal with an emergency, the secretary or other officer specified in the Organizational Documents must provide notice of each Board meeting to each Board member and to the Unit Owners. The notice must be given at least fourteen (14) days before the meeting and must state the time, date, place, and agenda of the meeting.

(l) If any materials are distributed to the Board before the meeting, the Board must make copies of those materials reasonably available to the Unit Owners, except that the Board need not make available copies of unapproved minutes or materials that are to be considered in executive session.

(m) Unless the Organizational Documents provide otherwise, fewer than all Board members may participate in a regular or special meeting by or conduct a meeting through the use of any means of communication by which all Board members participating can hear each other during the meeting. A Board member participating in a meeting by these means is deemed to be present in person at the meeting.

(n) Unless the Organizational Documents provide otherwise, the Board may meet by participation of all Board members by telephonic, video, or other conferencing process if:

(i) The meeting notice states the conferencing process to be used and provides information explaining how Unit Owners may participate in the conference directly or by meeting at a central location or conference connection; and

(ii) The process provides all Unit Owners the opportunity to hear or perceive the discussion and to comment as provided in (e) of this subsection.

(o) After the transition meeting, Unit Owners may amend the Organizational Documents to vary the procedures for meetings described in (i) of this subsection.

(p) Instead of meeting, the Board may act by unanimous consent as documented in a Record by all its members. Actions taken by unanimous consent must be kept as a Record of the Association with the meeting minutes. After the transition meeting, the Board may act by unanimous consent only to undertake ministerial actions, actions subject to ratification by the Unit Owners, or to implement actions previously taken at a meeting of the Board.

(q) A Board member who is present at a Board meeting at which any action is taken is presumed to have assented to the action taken unless the Board member's dissent or abstention to such action is lodged with the person acting as the secretary of the meeting before adjournment of the meeting or provided in a Record to the secretary of the Association immediately after adjournment of the meeting. The right to dissent or abstain does not apply to a Board member who voted in favor of such action at the meeting.

(r) A Board member may not vote by proxy or absentee Ballot.

(s) Even if an action by the Board is not in compliance with this section, it is valid unless set aside by a court. A challenge to the validity of an action of the Board for failure to comply with this section may not be brought more than ninety (90) days after the minutes of the Board of the meeting at which the action was taken are approved or the Record of that action is distributed to Unit Owners, whichever is later.

(t) Minutes of all Unit Owner meetings and Board meetings, excluding executive sessions, must be maintained in a Record. The decision on each matter voted upon at a Board meeting or Unit Owner meeting must be Recorded in the minutes.

8.4.2 Quorums.

(a) A quorum is present throughout any meeting of the Unit Owners if persons entitled to cast twenty percent (20%) of the votes in the Association:

- (i) Are present in person or by proxy at the beginning of the meeting;
- (ii) Have voted by absentee Ballot; or
- (ii) Are present by any combination of (a) and (b) of this subsection.

(b) A quorum of the Board is present for purposes of determining the validity of any action taken at a meeting of the Board only if individuals entitled to cast a majority of the votes on that Board are present at the time a vote regarding that action is taken. If a quorum is present when a vote is taken, the affirmative vote of a majority of the Board members present is the act of the Board unless a greater vote is required by the Organizational Documents.

8.5 BYLAWS AND RULES OF ASSOCIATION

8.5.1 **Adoption of Bylaws.** Bylaws (and amendments thereto) for the administration of the Association and the Project, and for other purposes not inconsistent with the Act or with the intent of this Declaration shall be adopted by the Association upon concurrence of those voting Owners holding a majority of the total voting power. Amendments to the Bylaws may be adopted at any regular or special meeting. Declarant may adopt initial Bylaws.

8.5.2 **Bylaws Provisions.** The Bylaws may contain supplementary, not inconsistent, provisions regarding the operation and administration of the Project.

8.5.3 Rules

(a) The Board must, before adopting, amending, or repealing any rule, give all Unit Owners notice of:

(i) Its intention to adopt, amend, or repeal a rule and provide the text of the rule or the proposed change; and

(ii) A date upon which the Board will act on the proposed rule or amendment after considering comments from Unit Owners.

(b) Following adoption, amendment, or repeal of a rule, the Association must give notice to the Unit Owners of its action and provide a copy of any new or revised rule.

(c) The Association may adopt rules to establish and enforce construction and design criteria and aesthetic standards and, if so, must adopt procedures for enforcement of those standards and for approval of construction applications, including a reasonable time within which the Association must act after an application is submitted and the consequences of its failure to act.

(d) An Association's internal business operating procedures need not be adopted as rules.

(e) Every rule must be reasonable.

Article 9 - MANAGEMENT OF PROJECT

9.1 ADMINISTRATION OF THE PROJECT.

The Owners covenant and agree that the administration of the Project shall be in accordance with the provisions of the Governing Documents, and the Act, all of which are incorporated herein by reference and made a part hereof.

9.2 ELECTION AND REMOVAL OF BOARD AND OFFICERS.

9.2.1 Except as provided otherwise in the Governing Documents, subsection 9.2.9 of this section, or other provisions of the Act, the Board may act on behalf of the Association.

9.2.2 In the performance of their duties, officers and Board members must exercise the degree of care and loyalty to the Association required of an officer or director of a corporation organized and are subject to the conflict of interest rules governing directors and officers and are entitled to the immunities from liability available to officers and directors, under chapter 24.06 RCW. The standards of care and loyalty and conflict of interest rules and immunities described in this section apply regardless of the form in which the Association is organized.

9.2.3 Except as provided otherwise in section 300(5) of the Act, effective as of the transition meeting held in accordance with section 415(4) of the Act, the Board must be comprised of at least three (3) members, at least a majority of whom must be Unit Owners. However, the number of Board members need not exceed the number of units then in the Project.

9.2.4 Unless the Declaration or Organizational Documents provide for the election of officers by the Unit Owners, the Board must elect the officers.

9.2.5 Unless provided otherwise in the Declaration or Organizational Documents, Board members and officers must take office upon adjournment of the meeting at which they were elected or appointed or, if not elected or appointed at a meeting, at the time of such election or appointment, and must serve until their successor takes office.

9.2.6 In determining the qualifications of any officer or Board member of the Association, "Unit Owner" includes, unless the Declaration or Organizational Documents provide otherwise, any Board member, officer, member, partner, or trustee of any person, who is, either alone or in conjunction with another person or persons, a Unit Owner.

9.2.7 Any officer or Board member of the Association who would not be eligible to serve as such if he or she were not a Board member, officer, partner in, or trustee of such a person is disqualified from continuing in office if he or she ceases to have any such affiliation with that person or that person would have been disqualified from continuing in such office as a natural person.

9.2.8 Except when voting as a Unit Owner, the Declarant may not appoint or elect any person or to serve itself as a voting, ex officio or nonvoting Board member following the transition meeting.

9.2.9 The Board may not, without vote or agreement of the Unit Owners:

- (a) Amend the Declaration, except as provided in section 285 of the Act;
- (b) Amend the Organizational Documents of the Association;
- (c) Terminate the common interest community;

(d) Elect members of the Board, but may fill vacancies in its membership not resulting from removal for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of Board members; or

- (e) Determine the qualifications, powers, duties, or terms of office of Board members.

9.2.10 The Board must adopt budgets as provided in section 525 of the Act.

9.2.11 Except for committees appointed by the Declarant pursuant to special declarant rights, all committees of the Association must be appointed by the Board. Committees authorized to exercise any power reserved to the Board must include at least two (2) Board members who have exclusive voting power for that committee. Committees that are not so composed may not exercise the authority of the Board and are advisory only.

9.2.12 The Unit Owners, by a two-thirds (2/3) vote of the voting power in the Association present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Board with or without cause.

9.3 MANAGEMENT BY BOARD.

9.3.1 **On Behalf of Association.** Except as provided in the Association's Governing Documents or the Act, the Board shall act in all instances on behalf of the Association. In the performance of their duties, the Officers and

members of the Board shall exercise the degree of care and loyalty required of an Officer or director of a corporation organized under Chapter 24.03 RCW.

9.3.2 **Not on Behalf of Association.** The Board shall not act on behalf of the Association to amend this Declaration, Map or the Association Articles of Incorporation in any manner that requires the vote or approval of the Owners pursuant to Section 20.1, or to terminate the Project, or to elect members of the Board or determine the qualifications, powers, and duties, or terms of office of members of the Board; but the Board may fill vacancies in its membership for the unexpired portion of any term.

9.4 **AUTHORITY OF THE ASSOCIATION.**

9.4.1 The Association must:

- (a) Adopt Organizational Documents;
- (b) Adopt budgets as provided in section 525 of the Act;
- (c) Impose assessments for common expenses and specially allocated expenses on the Unit Owners as provided in sections 080(1) and 525 of the Act;
- (d) Prepare financial statements as provided in section 530 of the Act; and
- (e) Deposit and maintain the funds of the Association in accounts as provided in section 530 of the Act.

9.4.2 Except as provided otherwise in subsection 9.4.4 of this section and subject to the provisions of the Declaration, the Association may:

- (a) Amend Organizational Documents;
- (b) Amend budgets under section 525 of the Act;
- (c) Hire and discharge managing agents and other employees, agents, and independent contractors;
- (d) Institute, defend, or intervene in litigation or arbitration, mediation, or administrative proceedings or any other legal proceeding in its name on behalf of itself or two (2) or more Unit Owners on matters affecting the Project; provided, that on matters affecting a Unit the Association must obtain the prior written consent of the Owner of the Unit affected;
- (e) Make contracts and incur liabilities subject to this section;
- (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 name any right, title, or interest to real estate or personal property, but:
 - (i) Common elements in a condominium, plat community, or miscellaneous community may be conveyed or subjected to a security interest pursuant to section 465 of the Act only; and
 - (ii) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest pursuant to section 465 of the Act only;
- (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 limited common elements described in section 210(1)(b) and (3) of the Act; Services provided to Unit Owners; and
 - (ii) Moving in, moving out, or transferring title to units to the extent provided for in the Declaration;
- (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 the Declaration, resale certificates required under section 640 of the Act, lender questionnaires, or statements of unpaid assessments;
- (n) Provide for the indemnification of its officers and Board members, to the extent provided in RCW 23B.17.030;
- (o) Maintain directors' and officers' liability insurance;
- (p) Subject to subsection 9.4.4 of this section, assign its right to future income, including the right to receive assessments;

(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 Project property for activities and projects that benefit the Project directly or indirectly;

(r) Establish and administer a reserve account as described in section 535 of the Act;

(s) Unless exempt, prepare a reserve study as described in section 545 of the Act;

(t) Exercise any other powers conferred by the Declaration or Organizational Documents;

(u) Exercise all other powers that may be exercised in this state by the same type of entity as the Association;

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

(w) Require that disputes between the Association and Unit Owners or between two (2) or more Unit Owners regarding the Project, other than those governed by chapter 64.50 RCW, be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding; provided, that parties to a dispute arising under the Act or the Governing Documents may agree at any time to resolve the dispute by any form of binding or nonbinding alternative dispute resolution and

(x) Suspend any right or privilege of a Unit Owner who fails to pay an assessment, but may not:

(i) Deny a Unit Owner or other occupant access to the owner's unit;

(ii) Suspend a Unit Owner's right to vote; or

(iii) Withhold services provided to a unit or a Unit Owner by the Association if the effect of withholding the service would be to endanger the health, safety, or property of any person.

9.4.3 The Declaration may not limit the power of the Association beyond the limit authorized in subsection 9.4.2(w) of this section to:

(a) Deal with the Declarant if the limit is more restrictive than the limit imposed on the power of the Association to deal with other persons; or

(b) Institute litigation or arbitration, mediation, or administrative proceeding against any person, subject to the following:

(i) The Association must comply with chapter 64.50 RCW, if applicable, before instituting any proceeding described in chapter 64.50 RCW in connection with construction defects; and

(ii) The Board must promptly provide notice to the Unit Owners of any legal proceeding in which the Association is a party other than proceedings involving enforcement of rules or to recover unpaid assessments or other sums due to the Association.

9.4.4 Any borrowing by an Association that is to be secured by an assignment of the Association's right to receive future income pursuant to subsection 9.4.2 (e) and (p) of this section requires ratification by the Unit Owners as provided in this subsection.

(a) The Board must provide notice of the intent to borrow to all Unit Owners. The notice must include the purpose and maximum amount of the loan, the estimated amount and term of any assessments required to repay the loan, a reasonably detailed projection of how the money will be expended, and the interest rate and term of the loan.

(b) In the notice, the Board must set a date for a meeting of the Unit Owners, which must not be less than fourteen and no more than fifty days after mailing of the notice, to consider ratification of the borrowing.

(c) Unless at that meeting, whether or not a quorum is present, Unit Owners holding a majority of the votes in the Association or any larger percentage specified in the Declaration reject the proposal to borrow funds, the Association may proceed to borrow the funds in substantial accordance with the terms contained in the notice.

9.4.5 If a tenant of a Unit Owner violates the governing documents, in addition to exercising any of its powers against the Unit Owner, the Association may:

(a) Exercise directly against the tenant the powers described in subsection 9.4.2(l) of this section;

(b) After giving notice to the tenant and the Unit Owner and an opportunity to be heard, levy reasonable fines against the tenant and Unit Owner for the violation; and

(c) Enforce any other rights against the tenant for the violation that the Unit Owner as the landlord could lawfully have exercised under the lease or that the Association could lawfully have exercised directly against the Unit

Owner, or both. The rights referred to in this subsection (5)(c) may be exercised only if the tenant or Unit Owner fails to cure the violation within ten (10) days after the Association notifies the tenant and Unit Owner of that violation.

9.4.6 Unless a lease otherwise provides, this section does not:

(a) Affect rights that the Unit Owner has to enforce the lease or that the Association has under other law;
or

(b) Permit the Association to enforce a lease to which it is not a party in the absence of a violation of the Governing Documents.

9.4.7 The Board may determine whether to take enforcement action by exercising the Association's power to impose sanctions or commencing an action for a violation of the Governing Documents, including whether to compromise any claim for unpaid assessments or other claim made by or against it.

9.4.8 The Board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(a) The Association's legal position does not justify taking any or further enforcement action;

(b) The covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law;

(c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(d) It is not in the Association's best interests to pursue an enforcement action.

9.4.9 The Board's decision under subsections (7) and (8) of this section to not pursue enforcement under one set of circumstances does not prevent the Board from taking enforcement action under another set of circumstances, but the Board may not be arbitrary or capricious in taking enforcement action.

9.4.10 Maintain and repair any Unit, its appurtenances and appliances, and any Limited Common Elements, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect the Common Elements or to preserve the appearance and value of the Project, and if the Owner of said Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board to the Owner; provided, that the Board shall levy a special charge against the Unit of such Owner for the cost of such maintenance or repair.

9.4.11 Pay any amount necessary to discharge any lien or encumbrance levied against the entire Property or any part thereof which is claimed to or may, in the opinion of the Board, constitute a lien against the Property or against the Common Elements, rather than merely against the interest therein of particular Owners. Where one (1) or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs and expenses (including court costs and attorney fees) incurred by the Board by reason of such lien or liens shall be specially charged against the Owners and the Units responsible to the extent of their responsibility.

9.4.12 The Board's power hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the Association funds a capital addition or improvement (other than for purposes of restoring, repairing or replacing portions of the Common Elements) having a total cost in excess of Five Thousand Dollars (\$5,000), without first obtaining the affirmative vote of a majority of Owners at a meeting called for such purpose, or if no such meeting is held, then the written consent of a majority of Owners; provided that any expenditure or contract for each capital addition or improvement in excess of Twenty-Five Thousand Dollars (\$25,000) must be approved by Owners having not less than sixty-seven percent (67%) of the voting power.

9.4.13 Nothing herein contained shall be construed to give the Association authority to conduct an active business for profit on behalf of all of the Owners or any of them.

9.5 BORROWING BY ASSOCIATION.

In the discharge of its duties and the exercise of its powers as set forth in Section 9.4.1, but subject to the limitations set forth in this Declaration, the Board may borrow funds on behalf of the Association and to secure the repayment of such funds, assess each Unit (and the Owner thereof) for said Unit's pro rata share of said borrowed funds and the obligation to pay said pro rata share shall be a lien against said Unit and the undivided interest in the Common Elements appurtenant to said Unit. Provided, that the Owner of a Unit may remove said Unit and the Allocated Interest in the Common Elements appurtenant to such Unit from the lien of such Assessment by payment of the

Allocated Interest in Common Expense Liability attributable to such Unit. Subsequent to any such payment, discharge, or satisfaction, the Unit and the Allocated Interest in the Common Elements appurtenant thereto shall thereafter be free and clear of the liens so paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any Unit and the Allocated Interest in the Common Elements appurtenant thereto not so paid, satisfied, or discharged.

9.6 ASSOCIATION RECORDS AND FUNDS.

9.6.1 **Records.** The Association or its managing agent shall keep financial and other Books and Records sufficiently detailed to enable the Association to fully declare to each Owner the true statement of its financial status. All financial and other Books and Records of the Association, including but not limited to checks, Bank Records, and invoices, in whatever form they are kept, are the property of the Association. Each Association managing agent shall turn over all original Books and Records to the Association immediately upon termination of the management relationship with the Association, or upon such other demand as is made by the Board. A Manager is entitled to keep copies of Association Records. All Books and Records which the Manager has turned over to the Association shall be made reasonably available for the examination and copying by the Manager.

9.6.2 **Examination.** All Books and Records of the Association, including the names and addresses of Owners and other occupants of the Units, shall be available for examination by all Owners, holders of Security Interests on the Units, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the Association or its Manager. The Association shall not release the unlisted telephone number of any Owner. The Association may impose and collect a reasonable charge for copies and any reasonable costs incurred by the Association in providing access to Books and Records.

9.6.3 **Fund Commingling.** The funds of the Association shall be kept in accounts in the name of the Association and shall not be commingled with the funds of any other Association, or with the funds of any Manager of the Association or any other Person responsible for the custody of such funds. Any reserve funds of the Association shall be kept in a segregated account and any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two (2) Persons who are either Officers or directors of the Association.

9.6.4 **Audit.** At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association. The financial statements of Associations with annual assessments of fifty thousand dollars (\$50,000) or more shall be audited at least annually by an independent certified public accountant, but the audit may be waived if sixty-seven percent (67%) of the votes cast by Owners, in person or by proxy, at a meeting of the Association at which a quorum is present, vote each year to waive the audit.

9.7 ASSOCIATION AS TRUSTEE.

With respect to a third Person dealing with the Association in the Association's capacity as a trustee, the existence of trust powers and their proper exercise by the Association may be assumed without inquiry. A third Person is not bound to inquire whether the Association has the power to act as trustee or is properly exercising trust powers. A third Person, without actual knowledge that the Association is exceeding or improperly exercising its powers, is fully protected in dealing with the Association as if it possessed and properly exercised the powers it purports to exercise. A third Person is not bound to assure the proper application of trust assets paid or delivered to the Association in its capacity as trustee.

9.8 COMMON ELEMENTS, CONVEYANCE, ENCUMBRANCE.

9.8.1 **In General.** Portions of the Common Elements which are not necessary for the habitability of a Unit may be conveyed or subjected to a security interest by the Association if the Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated, including eighty percent (80%) of the votes allocated to Units not owned by Declarant, agree to that action; but all the Owners of Units to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a security interest. Proceeds of the sale or financing are an asset of the Association.

9.8.2 **Agreement.** An agreement to convey Common Elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of Owners. The agreement must specify a date after which the agreement will be void unless Recorded before that date. The agreement and all ratifications thereof must be Recorded in every county in which a portion of the Project is situated and is effective only upon Recording.

9.8.3 **Conditions Precedent.** The Association, on behalf of the Owners, may contract to convey Common Elements or subject them to a security interest, but the contract is not enforceable against the Association until approved pursuant to Sections 9.8.1 and 9.8.2. Thereafter, the Association has all powers necessary and appropriate to effect the Conveyance or encumbrance, including the power to execute deeds or other instruments.

9.8.4 **Void Transactions.** Any purported Conveyance, encumbrance, or other voluntary transfer of Common Elements, unless made pursuant to this Section, is void.

9.8.5 **Support Right.** A Conveyance or encumbrance of Common Elements pursuant to this section shall not deprive any Unit of its rights of access and support.

9.8.6 **Prior Encumbrances.** A Conveyance or encumbrance of Common Elements pursuant to this section shall not affect the priority or validity of preexisting encumbrances either on Units (and their Allocated Interest in Common Elements) or on Common Elements.

9.9 TERMINATION OF CONTRACTS AND LEASES.

If entered into before the Board elected by the Owners pursuant to Section 9.2 takes office, the Association may, without penalty, upon not less than ninety (90) days' notice to the other party, or within such lesser notice period provided for without penalty in the contract or lease, terminate: (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the Association and a Declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the Owners at the time entered into under the circumstances then prevailing. This Section does not apply to any lease, the termination of which would terminate the Project or reduce its size, unless the Real Estate subject to that lease was included in the Project for the purpose of avoiding the right of the Association to terminate a lease under this Section.

9.10 GOVERNMENTALLY REQUIRED MAINTENANCE, ETC.

Except as otherwise provided in this Declaration, any insurance, maintenance, repair, replacement, alteration or other work, or the monitoring of such work, which is required by any governmental entity (including without limitation, federal, state or local government, public or private utility provider, local improvement district, or other governmental or quasi-governmental entity or agency), and regardless of whether such requirement is now or hereafter established, and whether imposed in connection with a building permit or other governmental approval or requirement, and whether involving land within public rights of way or subject to ownership or exclusive use of one (1) Owner, shall not be the responsibility of the Declarant, but rather shall be the sole and exclusive responsibility of: (1) the Association with respect to matters affecting the Common Elements and any cost incurred in connection therewith shall be a Common Expense; or (2) the Owner with respect to matters affecting only the Unit and any cost incurred in connection therewith shall be the responsibility of the Owner. In furtherance of the generality of the foregoing, and not by way of limitation, such work shall include: maintenance of any grass-lined swales and proper disposal of clippings; maintenance of wetland plantings; replacement of wetland and landscape plantings that die during any required maintenance period; maintenance of public and private storm sewer and retention systems. Declarant shall have the right, but not the obligation, to perform any such work if the Association (as to matters affecting the Common Elements) or the Owner (as to matters affecting only the Unit) fails to do so. The Association (as to work for which it is responsible) and the Owner (as to work for which the Owner is responsible) shall promptly upon demand reimburse Declarant for any costs directly or indirectly incurred by Declarant as a result of the Declarant performing, or the Association's or Owner's failure to perform, such work (including any work necessary to obtain a release, or avoid a forfeiture, of any cash deposit or other bond made by Declarant).

9.11 MAINTENANCE, REPAIR, INSPECTION AND WARRANTY PROCEDURE.

The Association shall defend, indemnify and hold Declarant harmless from any expense or claim arising from or relating to any Association's failure, without legal excuse, to promptly and properly maintain, repair or inspect the Project (or any part thereof), or the Association's failure, without legal excuse, to promptly and properly make a claim (or comply with dispute resolution procedures) under any warranty obtained or issued by Declarant. Declarant shall not be liable under any express or implied warranty for loss or damage which the Association or Owners have not taken timely action to minimize, or which is caused or made worse by a failure to properly and promptly maintain, repair, or inspect (including without limitation failure to fully comply with any inspection, monitoring, maintenance or repair checklist, manual or recommendation provided by Declarant or by a contractor, subcontractor or manufacturer to the Association or Owners).

9.12 ASSOCIATION LITIGATION.

9.12.1 The term "Legal Proceedings" as used herein shall include litigation, administrative, mediation, arbitration or other proceedings in the name of the Association on behalf of itself or two (2) or more Owners on matters affecting the Project.

9.12.2 The provisions of this Section 9.12 shall not apply to Legal Proceedings, as a result of which the Association could not be held responsible for costs of suit (including fees for attorneys, experts, witnesses, investigations and other costs of suit) in an aggregate amount of not more than ten thousand dollars (\$10,000) (including without limitation fees contingent on a result), and which involve:

(a) Collection of delinquent regular or special Assessments, the enforcement of any Assessment lien, and interest and penalties in connection therewith;

(b) Collection of monies owed to the Association, or recovery of damages caused to the Association or Project (or any part thereof), when the principal amount to be recovered involves less than twenty-five thousand dollars (\$25,000);

(c) Enforcement of the provisions of this Declaration, Articles, Bylaws or Rules of the Association;

(d) Defense of a claim against the Association, when the principal amount to be recovered involves less than \$25,000 (twenty-five thousand dollars); or

(e) The filing of a complaint, answer or other pleading for the limited purpose satisfying a statute of limitation deadline, avoiding entry of a default order or judgement, or preventing personal injury or serious harm to the Project (if such purpose is certified in good faith by the Association's attorney), but except for this limited purpose the other conditions of Section 9.12 must be satisfied.

9.12.3 In order for the Association (or the Board acting on behalf of the Association) to institute, defend, or intervene in Legal Proceedings ("Participating in Legal Proceedings"), and in order for the Association to become obligated in the aggregate sum in excess of ten thousand dollars (\$10,000), to professionals, consultants or other experts in connection with Legal Proceedings, all of the following conditions must first be satisfied:

(a) The Board has received a detailed written summary ("Litigation Summary") concerning the substance of the proceeding, including (i) agreements with lawyers, experts and consultants; (ii) issues involved; (iii) legal and factual basis of anticipated allegations on behalf of and against the Association; (iv) remedies to be sought on behalf of and against the Association; (v) estimated amount to be sought on behalf of (and that could be sought from) the Association; (vi) Association's estimated costs of suit (including fees for attorneys, experts, witnesses, investigations and other costs of suit) and any third-party costs of suit that the Association would pay if the Association does not prevail; (vii) reports and recommendations by any professionals or consultants retained by the Association (and by any opposing party, if available); (viii) any written demands or settlements offers made by an opposing party (the Board shall request that an opposing party make such demand and settlement offer); and (ix) any negative consequences that the Association, Project or Owners could suffer during such proceedings including required disclosures to prospective Purchasers, impediments to Unit refinancing, or diminishment of Unit value;

(b) If the proceeding will involve a claim against the Declarant (or Declarant's contractor, subcontractors, vendors, suppliers or other professionals) concerning construction defects or other condition of the Project, the Litigation Summary will also include: a description of the construction defects or other condition (which shall also have been transmitted to the Declarant); and any written response from the Declarant concerning such defects (including any offer to settle by performing remedial work, payment of cash or a combination of both); and

(c) A copy of the Litigation Summary shall be transmitted to all Owners, together with a written notice of the Owner's right of access to the Books and Records of the Association as provided in Section 9.6.2, and a written notice of a special Owners' meeting to be convened as provided in this Declaration; if the proceeding will involve a claim against the Declarant (or Declarant's contractor, subcontractors, vendors, suppliers or other professionals) concerning construction defects or other condition of the Project at which meeting the Declarant (and its representatives shall be entitled to attend and make a presentation at that meeting).

Unless at that meeting the Owners holding a majority of the votes in the Association oppose the Association (or the Board acting on behalf of the Association) Participating in the Legal Proceedings, the Association (or the Board acting on behalf of the Association) is deemed authorized to Participate in the Legal Proceedings in accordance with the provisions of this Declaration and the Act.

Article 10 - USE; REGULATION OF USES; ARCHITECTURAL UNIFORMITY

10.1 RESIDENTIAL UNIT.

The Units shall be used:

10.1.1 For Residential Purposes (as defined in Section 1.8, above), including sleeping, eating, food preparation for on-site consumption by occupants and guests, entertaining by occupants of personal guests and similar activities commonly conducted within a residential dwelling, without regard to whether the Owner or occupant resides in the Unit as a primary or secondary personal residence, on an ownership, rental, lease or invitee basis;

10.1.2 For such other reasonable ancillary purposes commonly associated with residential dwellings and otherwise in compliance with the Declaration and applicable law in residential dwellings (including without limitation a Home/professional business office. The owners shall use their respective properties in such a manner so as not to offend or detract from other owners' enjoyment of their own respective properties. All Owners shall use their property solely and exclusively for private single-family residences, provided however, a trade, craft business, commercial business or commercial activity ("Home Business") may be conducted or carried on within any building located on a Unit, provided that any goods, materials or supplies used in connection with any trade, service or business, wherever the same may be conducted, be kept or stored inside any building on any Unit and that they not be visible from the exterior of the home; nor shall any goods, used for private purposes and not for trade or business be kept or stored outside any building on any Unit. The provisions of this Section shall permit such Home Businesses to the extent permitted by applicable zoning laws and other government laws, regulations, rules and ordinances, under the following conditions: (1) business visits to the Unit do not result in a demand for on-street or guest parking in excess of that associated with a residential dwelling; (2) no modifications of the exterior of the home be made; and (3) the Home Business will not cause unreasonable annoyance or nuisance to other Owners. The providing of on-site health and mental care services to a Unit resident shall not constitute a private business so long as otherwise in compliance with the Declaration and applicable law. Developer's temporary sales offices and model homes are exempt from the restrictions in this Article. The Association may, from time-to-time, promulgate rules and regulations that govern the establishment and activities of Home Businesses located in a Unit pursuant to the authority granted to the Association under these Covenants, the Bylaws and RCW Chapter 64.90.

10.1.3 For the common social, recreational or other reasonable uses normally incident to such purposes; and

10.1.4 For purposes of operating the Association and managing the Project.

10.2 VEHICLE PARKING RESTRICTIONS.

10.2.1 Parking on all streets within the Project must comply with all applicable governmental laws, the provisions of this Declaration and the Association's reasonable rules and regulations.

10.2.2 Off-street parking spaces (including garages and driveways) within the Project shall only be used by residents, or guests or invitees of residents, for parking of operable and licensed motor vehicles. Occupants of dwellings shall first use garages and then driveways for parking and shall not use such parking spaces in any manner that precludes use for off-street parking at any time of operable motor vehicles regularly used by occupants of dwellings. No garage shall be used for a storage, work or shop area if such use impairs the ability of an occupant to park a motor vehicle therein. Garages may not be converted to living space without the approval of the Board. Parking spaces located in a common area shall be available to occupants of the Project (for not more than 48 (forty-eight) hours in duration) or to the guests or invitees of such occupants and shall not be reserved for any specific Unit.

10.2.3 No vehicle shall be parked on any driveway that extends into the streets or sidewalks of the Project or otherwise inhibits vehicular or pedestrian traffic thereon, or blocks mailboxes. Commercial-type vehicles, campers, trailers, motor homes, or boats are prohibited from parking on any driveway or common parking space (they must be parked in enclosed garages).

10.2.4 No vehicle repairs or maintenance shall be done in any driveway, common parking spaces or street.

10.2.5 The Association may direct that any vehicle or other thing improperly parked or kept in a garage, driveway, common parking space, or on private roads or sidewalks be removed at the risk and cost of the Owner thereof.

10.3 UNIT MAINTENANCE.

Subject to the provisions of Section 10.5:

10.3.1 Standard of Condition. Each Owner shall, at his sole expense, have the right and the duty to keep the interior and exterior of his Unit and its structures, improvements, equipment, appliances, and appurtenances in good order, condition and repair. Each Owner shall be responsible for the construction, alteration, maintenance, repair or replacement of any landscaping areas, any sprinkler systems, any structures, exterior components of the Unit (including but not limited to, roofing, siding, gutters and paint), improvements, plumbing fixtures, water heaters, fans, heating or other equipment, electrical fixtures or appliances which may be in or connected with his Unit. Each Owner shall perform the maintenance and upkeep on any retaining wall or rockery located on their Unit which was constructed by the Declarant. If a retaining wall or rockery constructed by the Declarant is located between two or more Units in the Community those Units shall be jointly responsible for maintenance and upkeep of said retaining wall or rockery. Any Unit Owner that constructs a retaining wall or rockery on their Unit shall be solely responsible for maintenance, repair and replacement of such retaining wall or rockery. No Owner shall take any action to add, construct or place any improvement on the Unit so that it may, in the judgment of the Association, result in: disturbance of, weakening of, or damage to a retaining wall or rockery; increase any engineered load or alter design criteria; or cause damage to the retaining wall or rockery and surrounding properties. Any improvements on any Unit including a retaining wall or rockery shall require prior written approval of the Board as provided in Article 10 of this Declaration. Regardless of such approval, any Unit Owner who takes such action shall be responsible for all resulting costs of repair and restoration of the retaining wall or rockery.

10.3.2 Additional Rights and Duties. Without limiting the generality of the foregoing, each Owner shall have the right, at his sole cost and expense, to construct, alter, maintain, repair, paint, paper, panel, plaster, tile, and finish: the windows; window frames; doors; door frames and trim; and the ceilings, floors, and the walls of any Dwelling located within his Unit; and shall not permit or commit waste of his Unit or the Common Elements. This Section shall not be construed as permitting any violation of any other provision of this Declaration or any interference with or damage to, or interference with the use and enjoyment of the Common Elements or of the other Units or any of them, nor shall it be construed to limit the powers or obligations of the Association or Board hereunder.

10.3.3 Landscaping.

(a) Except as otherwise provided herein, each Owner shall be responsible for the maintenance and repair of the entire yard within the Owner's Unit, including street planter strips/trees adjacent to that Owner's Unit, with the exception of Community maintained areas, including without limitation, the requirements for fertilizers, re-planting, weed control and all other aspects of landscaping care and maintenance. No Owner shall allow the lawn or landscaping to die or deteriorate or allow waste, rubbish, trash, animal waste, or other material to accumulate on the grounds of their Unit. The Association shall have and retain the right to demand that each Owner maintain and replace the lawn, landscaping, irrigation system and other landscaping within the Owner's Unit. If any portion of the Unit is not maintained properly, or if the Owner fails to properly install or maintain the lawn, landscaping, or irrigation system, the Board may notify the Owner of such failure, and instruct the Owner to remedy such failure. If the Owner does not remedy such failure within fifteen (15) days after such Notice and Opportunity to be heard, then the Association shall have the right to contract for the completion of the required work and levy a special Assessment against the Owner for the cost. Any material modifications to the landscaping are subject to Board approval.

(b) Except as provided in Section 10.3.3(a) above, the Association shall be responsible for maintenance, repair and upkeep of all landscaping, including without limitation, requirements for fertilizing, re-planting, weed control and all other aspects of landscaping care and maintenance, and any associated irrigation system(s) within the Common Elements and the street planter strip/trees adjacent to Common Elements.

(c) The Association may, in the discretion of the Board, perform and pay for as a Common Expense for the repair and maintenance of all (or such portion as the Board may determine) of the landscaping within what would generally be considered a front yard (including the area between a privacy fence and the adjacent sidewalk or roadway).

10.4 ALTERATIONS OF UNITS.

Although the Owners have the responsibility for maintenance, repair and replacement of the exteriors of the Unit Improvements and their Units, the Board shall be responsible for ensuring that any changes to the exterior of a Unit

Improvements or the Units are compatible with the other Unit Improvements and improvements in the Project. Accordingly, Owners shall not modify any portion of the exterior of any Unit Improvements, including, but not limited to, changing paint color or building material, window or door glass or screens, or adding or changing any deck or patio ("Modifications") without the prior written approval of the Board. The Board may require evidence that Owners have notified their neighbors of the proposed Modification and have obtained any required governmental permits before commencing the work. Solar panels, satellite dishes, radio or television antennas, or other equipment or appliances shall not be installed on the exterior of any Unit Improvements or within a Unit without the prior written approval of the Board. The Board may regulate the location and screening of any antenna, satellite dish or similar equipment which an Owner may have the right to install on the Owner's Unit Improvements or within the Owner's Unit pursuant to the federal law. An Owner desiring to make a change to the Unit Improvements or Unit governed by this Section shall furnish the Board such information concerning the Modifications as the Board may specify. The Board shall have sixty (60) days after receipt of the information within which to approve or disapprove the Modification. The failure of the Board to act within the specified time-period will be deemed its approval thereof. An Owner may elect to install air conditioning in its Unit; provided, however, any air conditioning related equipment required to be placed on the exterior of the Unit Improvements shall be placed in the area specified solely by Declarant during Declarant Control or the Board following Declarant Control.

10.5 LIMITED COMMON ELEMENT MAINTENANCE.

Limited Common Elements, as defined in Article 6, are for the sole and exclusive use of the Units for which they are reserved or assigned; provided, that the use, condition and appearance thereof and of Units may be regulated under provisions of the Bylaws, Rules adopted by the Association or this Declaration including the following:

10.5.1 **Performance of Work.** Performance of such Maintenance Work shall be carried out by the Owner(s) of the Unit(s) for which the Limited Common Element is reserved or assigned;

10.5.2 **Owner Pays Cost.** Owners will be responsible for the cost of such Maintenance Work for the Units and Limited Common Elements reserved for or assigned to their Units;

10.5.3 **Multiple Owners.** With respect to a Limited Common Element reserved for or assigned to more than one Unit for the mutual and joint use thereof, the cost of such Maintenance Work for such Limited Common Element shall be divided into equal shares among the Units for which such Limited Common Element is reserved.

10.6 MAINTENANCE BY ASSOCIATION.

10.6.1 Except to the extent provided by the Declaration, subsections 10.6.2 and 10.6.4 of this section, or section 470(8) of the Act, the Association must maintain, repair, and replace the common elements, including limited common elements not assigned to a Unit, if any, and each Unit Owner must maintain, repair, and replace that owner's unit and any limited common element assigned to that Unit. The Common Expenses shall include, but shall not be limited to, the following:

1. The real property taxes, if any, levied upon the Association for the Common Elements;
2. The cost of maintaining all required insurance coverage and fidelity bonds on any Common Elements, and for directors and officers of the Association;
3. The cost of maintaining, repairing and replacing all Common Element improvements, including, but not limited to, any applicable play structures, sport courts, picnic/recreational tables, benches, signs, lights, fences, walls, irrigation systems, drainage facilities, private roads and alleys, plantings and landscaping and water detention facilities not maintained by the City of Renton;
4. The cost of maintaining landscaped street borders, planting strips or other areas and improvements thereon in which the Association holds an easement and/or those adjacent to Common Elements;
5. The cost of maintaining landscaped areas within the right-of-way adjacent to the plat or inside the plat and not adjacent to a Unit and associated irrigation facilities, if any;
6. The cost of maintaining and upkeeping any retaining wall or rockery constructed by the Declarant which is located on a Common Element (if a retaining wall or rockery constructed by the Declarant is located between a Unit or Units and a Common Element, maintenance and upkeep shall be a joint responsibility of the Association and applicable Unit Owner(s));
7. The costs associated with maintenance and repair of Common Elements in accordance with any common element maintenance schedule/manual provided by the Builder, if any; and

8. Any other expenses associated with the Association's obligations under this Declaration.

Tract 998 has been designated for environmental protections by applicable governmental agencies ("Protected Areas"). The Association, Unit Owners and their guests, agents, contractors and employees are strictly prohibited from using the Protected Areas contrary to the local jurisdiction's rules and regulations pertaining to such areas. In furtherance of the local jurisdiction's rules and regulations and not to limit same, Unit Owners, the Association and their guests, agents, contractors and employees are prohibited from dumping any materials, erecting any structures (including rockeries, retaining walls, etc.), constructing landscape features (such as, but not limited to, ponds, streams, waterfalls, etc.), cutting or removing any native vegetation, using pesticides, herbicides or chemical fertilizers and/or planting non-native vegetation in Protected Areas. Unit Owners shall not fence off or otherwise exercise dominion or control over any Protected Areas.

10.6.2 The Board may by rule designate physical components of the property for which a Unit Owner is otherwise responsible that presents a heightened risk of damage or harm to persons or property if the physical components fail. The Association may require that specific measures be taken by the Unit Owner or the Association to diminish that risk of harm. If a Unit Owner fails to accomplish any necessary maintenance, repair, or replacement to those components, or fails to take any other measures required of the Unit Owner under this subsection, or fails to maintain any common element that the Unit Owner is required to maintain under this Declaration, the Association may, after notice to a Unit Owner and an opportunity to be heard, enter the unit in the manner pursuant to subsection (3) of this section to perform such maintenance, repair, replacement, or measure at the expense of that Unit Owner.

10.6.3 Upon prior notice, except in case of an emergency, each Unit Owner must afford to the Association and the other Unit Owners, and to their agents or employees, access through that owner's unit and limited common elements reasonably necessary for the purposes stated in subsections 10.6.1 and 10.6.2 of this section, including necessary inspections by the Association. If damage is inflicted on the common elements or on any unit through which access is taken, the Unit Owner responsible for the damage, or the Association if it is responsible, is liable for the prompt repair of the damage.

10.6.4 In addition to the liability that a declarant as a Unit Owner has under the Act, the declarant alone is liable for all expenses in connection with real estate subject to development rights and no other Unit Owner and no other portion of the Project is subject to a claim for payment of those expenses. Any income or proceeds from real estate subject to development rights inures to the Declarant.

10.7 EFFECT ON INSURANCE.

Nothing shall be done or kept in any Unit or in any Common or Limited Common Element which will increase the rate of insurance on the Common Elements or Units without the prior written consent of the Board. No Owner and/or Purchaser shall permit anything to be done or kept in the Unit or in the Common or Limited Common Elements which will result in the cancellation of insurance on any Unit or any part of the Common or Limited Common Elements, or which would be in violation of any laws.

10.8 SIGNS.

No sign of any kind shall be displayed to the public view on or from any Unit or Common or Limited Common Element without the prior consent of the Board; provided:

10.8.1 Board shall, by and subject to appropriate Rule, permit temporary placement of a sign not more than 3 (three) square feet in area, at a space designated by the Board, indicating that a Unit is for sale or lease;

10.8.2 Subject to reasonable Rules regarding the placement and manner of display of political yard signs, outdoor display of political yard signs by an owner or resident on the owner's or resident's property before any primary or general election is permitted; and

10.8.3 This section shall not apply to Declarant or Declarant's agents in exercising any Special Declarant Right reserved by Declarant under this Declaration.

10.9 PETS.

10.9.1 No animals, (including pigs), other than dogs, cats, caged birds, and tanked fish, may be kept on any Unit. Notwithstanding the foregoing, no fighting dogs shall be allowed as pets. No more than four (4) pets may be kept on any Unit. Dogs shall not be allowed to run at large. Leashed animals are permitted within Common Elements. Efforts shall be made by the person accompanying the animal to remove animal waste deposited on rights-of-way, Common Elements or Units. Any proposed animal pen or enclosure must be approved by the Board

prior to construction and shall be kept clean and odor free at all times. If an investigation by the Board indicates that animals are kept in violation of this section, the Board will give the Owner ten (10) days' written notice of the violation. Such violations must be remedied by the Owner within ten (10) days. Failure to comply with the written notice will result in a fine of \$25 per day. The Association shall be entitled to reimbursement of all attorneys' fees and associated costs for any action taken to collect such fines. If a Lot Owner violates provisions of this section regarding pens and enclosures on more than two (2) occasions, the Board may require the Lot Owner to remove such structure. Persistent disturbances caused by a Lot Owner's pet including a barking dog may be considered an unreasonable interference with the right of other Owners to use and enjoy their property. The Board may require Lot Owners to keep animals that are causing a disturbance to keep the pet indoors.

10.9.2 Domestic pets will not be allowed by the occupant of a Unit to roam unattended about any Common Elements, or a Limited Common Element allocated for the use of more than one (1) Unit, or a Unit other than the Unit occupied by owner of the pet without being on a leash under a person's control. At all times the Common Elements shall be free of any pet debris, including food and feces matter. No livestock, poultry, rabbits or other animals whatsoever shall be allowed or kept in any part of the Project, nor may any animal be bred or used therein for any commercial purpose.

10.10 OFFENSIVE ACTIVITY.

10.10.1 No noxious or offensive activity shall be carried on in any Unit or Common or Limited Common Element, nor shall anything be done therein which may be or become an unreasonable annoyance or nuisance to other Owners.

10.10.2 All occupants shall avoid making noises, and using musical instruments, radios, and amplifiers in such manner as may disturb other occupants. Owner shall also control their pets so that they do not disturb other occupants.

10.10.3 No garments, rugs or other objects shall be hung from the windows or facades, lanai of the Project or otherwise displayed in public view. No rugs or other objects shall be dusted or shaken from the windows, lanai or doors of any Unit or cleaned by beating or sweeping on any walkways, patios, entries or other exterior part of the Project.

10.10.4 No refuse, garbage or trash of any kind shall be thrown, placed or kept on any Common Element of the Project outside of the disposal facilities provided for such purposes, for a period of not greater than twenty-four (24) hours prior to or after the regular pickup day for the local disposal service.

10.10.5 Every Owner and occupant shall at all times keep his Unit in a strictly clean and sanitary condition, free of rodents and pests, and observe and perform all laws, ordinances, rules and regulations, including kennel laws and animal control laws.

10.10.6 No Owner shall permit anything to be done or kept in the Owner's Unit, Limited Common Elements or Common Elements which would interfere with the right of quiet enjoyment of the other residents of the Project.

10.11 EXCAVATIONS; SUBSURFACE RIGHTS.

No excavation or drilling for mineral, ore, stone, gravel, petroleum or earth shall be made upon any Unit, or the Common or Limited Common Elements, other than excavations necessary for construction purposes relating to the Dwelling, garage, outbuildings, utilities, drainage, concrete work, and for the purpose of contouring, shaping, fencing, landscaping and generally improving any Unit in a manner approved by the Board. There shall be no deed, Conveyance, agreement or other document executed by an Owner which should affect or cause separation into different ownership of the surface or subsurface rights of any Unit, or portion thereof.

10.12 COMMON ELEMENT ALTERATIONS.

Nothing shall be altered or constructed in, or (except for an Owner's personal property) removed from, the Common Elements except upon the written consent of the Board and after procedures required herein or by law.

10.13 RULES.

The board pursuant to RCW 64.90.505 is empowered to pass, amend and revoke detailed, reasonable administrative rules and regulations ("Rules") and/or Design Guidelines, that are not otherwise in conflict with the Governing Documents and that are necessary or convenient from time-to-time to ensure compliance with the general guidelines of this Article. Such Rules and Design Guidelines shall be binding upon all Owners, lessees, guests and invitees upon adoption by the Association.

10.14 RENTAL UNITS.

The Leasing or Renting of a Unit by its Owner shall be governed by the provisions of this Section 10.14:

10.14.1 Minimum Term/Short Term Rentals.

Rental of Entire Unit. No Owner shall be permitted to Lease or rent their entire Unit for any period less than thirty (30) days. Short term vacation rentals such as Airbnb, VRBO, HomeAway or any other similar short-term rental of the entire Unit is absolutely prohibited. Owners are prohibited from advertising their Unit as a short-term rental.

Rental of ADUs, Guest Houses, Etc. No Owner may rent any fraction or portion of the Unit, including but not limited to accessory dwelling unit, guest house, granny suite, cottage or alike area of the Unit, for any period less than thirty (30) days. Short term vacation rentals such as Airbnb, VRBO, HomeAway or any other similar short-term rental of any fraction or portion of the Unit, accessory dwelling unit, guest house, granny suite, cottage or alike area of the Unit, is absolutely prohibited and Owners are prohibited from advertising same.

Rental to Roommates. Owners residing in the Unit as their primary residence may rent a room in the Unit to a roommate(s) for a period of not less than thirty days. Leases to roommates shall be in writing and subject to all other requirements concerning leases stated herein.

Primary Residence shall mean a person's permanent place of abode in which a person intends to remain indefinitely.

10.14.2 Compliance with Law. No Owner shall be permitted to Lease his Unit in violation of applicable governmental law.

10.14.3 Written Leases. All Leasing or Rental agreements shall be in writing and be subject to the Governing Documents (with a default by the tenant in complying with the Governing Documents constituting a default under the Lease or Rental agreement). Copies of all Leases and Rental agreements shall be delivered to the Association before the tenancy commences.

10.14.4 Rent to Association. If a Unit is rented by its Owner, the Board may collect, and the tenant or lessee shall pay over to the Board, so much of the rent for such Unit as is required to pay any amounts due the Association hereunder, plus interest and costs if the same are in default over thirty (30) days. The renter or lessee shall not have the right to question payment over to the Board, and such payment will discharge the lessee's or renter's duty of payment to the Owner for rent, to the extent such rent is paid to the Association and will also discharge the liability of the Owner and the Unit under this Declaration for Assessments to the extent of such payment. The Board shall not exercise this power where a receiver has been appointed with respect to the Unit or its Owner; nor in derogation of any rights which a Mortgagee of such Unit may have with respect to such rents.

10.14.5 Tenant Eviction. If any lessee or occupant of a Unit violates or permits the violation by his guests and invitees of any provisions hereof or of the Bylaws or the Rules of the Association, and the Board determines that such violations have been repeated and a prior notice to cease has been given, the Board may give notice to the lessee or occupant of the Unit and the Owner thereof to forthwith cease such violations. 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 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 foreclosed by the Association in the same manner as Assessments are collected and foreclosed under this Declaration.

10.14.6 Other. Other than as stated in this Section, there is no restriction on the right of any Owner to Lease or otherwise Rent his Unit.

10.15 UTILITIES.

All utility connections and service lines to each Unit shall be installed underground, including electric service, irrigation piping, water service, gas service, sewer, cable TV, and telephone cable, in accordance with accepted construction and utility standards. The cost of installation and usage of all utilities shall be borne solely by the applicable Owner.

10.16 SLOPE MAINTENANCE.

Each Owner will strictly comply with the slope retention restrictions and requirements described in applicable law, rules and regulations, or the Association's Rules.

10.17 HAZARDOUS SUBSTANCES.

Except for reasonable quantities consistent with Residential use, each Owner shall not permit any Hazardous Substance to be generated, processed, stored, transported, handled, or Disposed of on, under, in or through either the Owner's Unit or any Common Element. Each Owner shall indemnify, defend, and hold harmless the other Owner or Owners and the Association from all fines, suits, procedures, claims, and actions of any kind arising out of or in any way connected with any spills or discharges of Hazardous Substances or wastes arising from the operation or use of the Unit by the Owner, tenants, or invitees of the Owner. As used herein, the term "Hazardous Substance" means any hazardous, toxic or dangerous substance, waste, or material which is or becomes regulated under any federal, state, or local statute, ordinance, rule, regulation, or other law now or hereafter in effect pertaining to environmental protection, contamination or cleanup, including without limitation any substance, waste, or material which now or hereafter is designated as a "Hazardous Substance" under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), or under any local or state rule or regulation. Without limiting the foregoing, Hazardous Substances shall include, but not be limited to, any substance which after being released into the environment and upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, and/or genetic abnormalities.

10.18 NOTICE AND OPPORTUNITY TO BE HEARD.

Whenever this Declaration requires that an action of the Board be taken after "Notice and Opportunity to be Heard," the procedure set forth in this Section shall be observed. The Board shall give written notice of the proposed action to all Owners, tenants, or occupants of Units 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 of 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 meeting was given.

10.19 REGULATION OF USE.

The Declaration (or amendments thereto) or the Association Rules (adopted in accordance with the Declaration) may reasonably regulate (a) a use or purpose authorized by this Declaration or (b) behavior in Units or Common or Limited Common Elements so as to:

10.19.1 Implement a provision of the Declaration;

10.19.2 Prevent any behavior in or occupancy of a Unit that violates the Declaration or adversely affects the reasonable use and enjoyment of other Units or the Common Elements by other occupants;

10.19.3 Prevent the occurrence of noxious or offensive activity restricted under this Declaration;

10.19.4 Reasonably satisfy underwriting requirements of institutional lenders that regularly make loans secured by first mortgages on Units in comparable common interest communities or that regularly purchase those mortgages; or

10.19.5 Protect other legitimate interests of the Association or the Owners.

The adoption or modification of such reasonable regulations, not prohibiting or otherwise significantly and materially interfering with such use or purpose, shall not be deemed a change in the permitted use.

Article 11 - COMMON EXPENSES AND ASSESSMENTS

11.1 ESTIMATED EXPENSES.

11.1.1 Within sixty (60) days prior to the beginning of each calendar year, or such other fiscal year as the Board may adopt, the Board: shall estimate the charges including Common Expenses, Limited Common Expenses, and any special charges for particular Units to be paid during such year; shall make provision for creating, funding and maintaining reasonable reserves for contingencies and operations, as well as for maintenance, repair, replacement and acquisition of Common Elements; and shall take into account any expected income and any surplus available from the prior year's operating fund.

11.1.2 Without limiting the generality of the foregoing but in furtherance thereof, the Board shall in accordance with the Act create and maintain from regular Assessments a reserve fund for replacement of those

Common Elements. The initial Board, whether appointed by Declarant or elected by Declarant or Owners other than Declarant, may at any suitable time establish the first such estimate.

11.1.3 If the sum estimated and budgeted at any time proves inadequate for any reason (including non-payment for any reason of any Owner's Assessment), the Board may at any time adopt an amendment to a previous budget in accordance with Section 11.1.4. Similarly, if the sum estimated and budgeted, and being collected and/or already collected, at any time proves excessive in the Board's sole determination, the Board may reduce the amount being assessed and/or apply existing funds (in excess of current needs and required reserves) against future Assessments and/or refund such excess funds.

11.1.4 Within thirty (30) days after adoption by the Board of any regular or special proposed budget for the Association, the Board shall provide a copy of the budget to all 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 sixty (60) days after mailing of the proposed budget. Unless at that meeting the Owners holding a majority of the votes in the Association reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

11.2 PAYMENT BY OWNERS.

The Declarant in the exercise of its reasonable discretion shall determine when the Association shall commence making Assessments. Each Owner shall be obligated to pay its share of Common Expenses and special charges made pursuant to this Article to the treasurer for the Association in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Board shall designate. No Owner may exempt himself from liability for payment of Assessments for any reason, including waiver of use or enjoyment of any of the Common Elements or abandonment of the Owner's Unit.

11.3 ALLOCATED LIABILITY.

Except for Assessments under Sections 11.5, 11.6, 11.7 and 11.8, all Common Expenses must be assessed against all the Units in accordance with the allocations set forth in the Declaration. Any past due Common Expense Liability or installment thereof bears interest at the rate established by the Association pursuant to Section 11.14.

11.4 LIMITED COMMON ELEMENT.

Any Common Expense associated with the operation, maintenance, repair, or replacement of a Limited Common Element shall be paid by the Owners of, or assessed against, the Units to which that Limited Common Element is assigned, equally.

11.5 ONLY SOME UNITS BENEFITTED.

The Board may elect that any Common Expense or Limited Common Expense or portion thereof benefitting fewer than all of the Units must be assessed exclusively against the Units benefitted.

11.6 INSURANCE COSTS.

The Board may elect that the costs of insurance must be assessed in proportion to risk.

11.7 UTILITY COSTS.

The Board may elect that the costs of utilities, if any, must be assessed in proportion to usage.

11.8 ASSESSMENTS FOR JUDGMENT.

Assessments to pay a judgment against the Association may be made only against the Units in the Project at the time the judgment was entered in proportion to their allocated Common Expense Liability at the time the judgment was entered.

11.9 OWNER MISCONDUCT.

To the extent that any Common Expense is caused by the misconduct of any Owner, the Association shall assess that expense against the Owner's Unit.

11.10 REALLOCATION.

If Common Expense Liabilities are reallocated, Common Expense Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense Liabilities.

11.11 LIEN FOR ASSESSMENTS.

11.11.1 **Lien.** The Association has a lien on a Unit for any unpaid Assessments levied against a Unit from the time the Assessment is due.

11.11.2 **Priority.** A lien under Section 11.11 shall be prior to all other liens and encumbrances on a Unit except: (a) liens and encumbrances Recorded before the Recording of this Declaration; (b) a Security Interest on the Unit Recorded before the date on which the Assessment sought to be enforced became delinquent; and (c) liens for Real Estate taxes and other governmental Assessments or charges against the Unit.

11.11.3 **Security Interest Priority.** Except as provided in Sections 11.11.4 and 11.11.5, the lien for Assessments shall also be prior to the Security Interests described in Section 11.11.2(b) to the extent of Assessments for Common Expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the Association pursuant to Section 11.1, which would have become due during the six (6) months immediately preceding the date of the sheriff's sale in an action for judicial Foreclosure by either the Association or a Mortgagee, the date of a trustee's sale in a non-judicial Foreclosure by a Mortgagee, or the date of Recording of this Declaration of forfeiture in a proceeding by the vendor under a real estate contract.

11.11.4 **Mortgagee Notice.** The priority of the Association's lien against Units encumbered by a Security Interest held by an Eligible Mortgagee or by a Mortgagee which has given the Association a written request for a notice of delinquent Assessments shall be reduced by up to three (3) months if and to the extent that the lien priority under Section 11.12.3 includes delinquencies which relate to a period after such holder becomes an Eligible Mortgagee or has given such request for notice and before the Association gives the holder a written notice of the delinquency. This Section does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other Assessments made by the Association.

11.11.5 **Recording as Notice.** Recording of this Declaration constitutes Record notice and perfection of the lien for Assessments. While no further Recording of any claim of lien for Assessment under this section shall be required to perfect the Association's lien, the Association may record a notice of claim of lien for Assessments under this Section in the Real Estate Records of the County in which the Project is located. Such Recording shall not constitute the written notice of delinquency to a Mortgagee referred to in Section 11.12.3.

11.11.6 **Limitation on Action.** A lien for unpaid Assessments and the personal liability for payment of Assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three (3) years after the amount of the Assessments sought to be recovered becomes due.

11.11.7 **Foreclosure.**

(a) **Judicial.** The lien arising under Section 11.12 may be enforced judicially by the Association or its authorized representative in the manner set forth in Chapter 61.12 RCW. The Association or its authorized representative shall have the power to purchase the Unit at the Foreclosure sale and to acquire, hold, lease, Security Interest, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial Foreclosure action, the period of redemption shall be eight (8) months. Nothing in this Section shall prohibit an Association from taking a deed in lieu of Foreclosure.

(b) **Non-Judicial.** A lien arising under this Article may be foreclosed nonjudicially in the manner set forth in RCW 61.24 for nonjudicial foreclosure of deeds of trust. For the purpose of preserving the Association's nonjudicial foreclosure option, this Declaration shall be considered to create a grant of each Unit in trust to Chicago Title Insurance Company or its successors or assigns ("Trustee"), to secure the obligations of each Owner ("Grantor") to the Association ("Beneficiary") for the payment of Assessments. Grantor shall retain the right to possession of Grantor's Unit so long as Grantor is not in default of an obligation to pay Assessments. The Trustee shall have a power of sale with respect to each Unit, which becomes operative in the case of a default in a Grantor's obligation to pay Assessments. The Units are not used principally for agricultural or farming purposes. If the Association forecloses its lien nonjudicially pursuant to this section, it shall not be entitled to the lien priority over Security Interests provided in Section 11.2.3.

11.11.8 **Receiver.** From the time of commencement of an action by the Association to foreclose a lien for nonpayment of delinquent Assessments against a Unit that is not occupied by the Owner thereof, the Association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the Unit as and when due. If the rent is not paid, the receiver may obtain possession of the Unit, refurbish it for rental up to a reasonable standard for rental Units in this type of Project, rent the Unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the Unit, then to applicable charges, then to costs, fees, and charges of the Foreclosure action, and then to the payment of the delinquent Assessments. Only a receiver may take possession and collect rents under this section, and a receiver

shall not be appointed less than ninety (90) days after the delinquency. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Unit.

11.11.9 Mortgagee Liability. Except as provided in Section 11.11.3, the holder of a Security Interest or other Purchaser of a Unit who obtains the right of possession of the Unit through Foreclosure shall not be liable for Assessments or installments thereof that became due prior to such right of possession. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Owners, including such Mortgagee or other Purchaser of the Unit. Foreclosure of a Security Interest does not relieve the prior Owner of personal liability for Assessments accruing against the Unit prior to the date of such sale as provided in this Section.

11.11.10 Lien Survives Sale. The lien arising under Section 11.11 shall not be affected by the sale or transfer of the subject Unit except in the event of sale through Foreclosure, as provided in Section 11.11.9.

11.12 OWNER LIABILITY.

In addition to constituting a lien on the Unit, each Assessment shall be the joint and several obligation of the Owner or Owners of the Unit to which the same is assessed as of the time the Assessment is due. In a voluntary Conveyance the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the latter up to the time of the grantor's Conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Suit to recover a personal judgment for any delinquent Assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

11.13 LATE CHARGES.

The Association may from time-to-time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent Assessments or installments thereof. In the absence of another established non-usurious rate, delinquent Assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the Assessments became delinquent.

11.14 ATTORNEYS' FEES.

The prevailing party 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. In addition, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

11.15 ASSESSMENT CERTIFICATE.

The Association, upon written request, shall furnish to a Unit Owner or a Mortgagee a statement signed by an Officer or authorized agent of the Association setting forth the amount of unpaid Assessments against that Unit. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board, and every Owner, unless and to the extent known by the recipient to be false.

11.16 ACCELERATION OF ASSESSMENTS.

In the event any monthly Assessment or special charge attributable to a particular Unit remains delinquent for more than sixty (60) days, the Board may, upon fifteen (15) days' written notice to the Owner of such Unit, accelerate and demand immediate payment of all, or such portion as the Board determines, of the monthly Assessments and special charges which the Board reasonably determines will become due during the next succeeding twelve (12) months with respect to such Unit.

11.17 DELINQUENT ASSESSMENT/WORKING CAPITAL DEPOSIT.

11.17.1 Delinquent Assessment Deposit.

(a) An Owner may be required by the Board or by the Manager, from time-to-time, to make and maintain a deposit equal to not less than one (1) month nor in excess of three (3) months estimated monthly Assessment and charges, which may be collected as are other Assessments and charges. Such deposit shall be held in a separate fund, be credited to the Unit owned by such Owner, and be for the purpose of establishing a reserve for delinquent Assessments.

(b) Resort may be had thereto at any time when such Owner is ten (10) days or more delinquent in paying his monthly or other Assessments and charges. Said deposits shall not be considered as advance payments of regular Assessments. In the event the Board should draw upon said deposit as a result of an Owner's delinquency in payment of any Assessments, said Owner shall continue to be responsible for the immediate and full payment of said delinquent Assessment (and all penalties and costs thereon) and thus the full restoration of said deposit, and the

Board shall continue to have all of the rights and remedies for enforcing such Assessment payment and deposit restoration as provided by this Declaration and by law.

(c) Upon the sale of a Unit, the seller/Owner thereof shall not be entitled to a refund from the Association of any deposit or reserve account made or maintained with respect to such Unit pursuant to this or any other Section of this Declaration; rather, any such deposit or reserve account shall continue to be held by the Association for the credit of such Unit, and the Purchaser of a Unit shall succeed to the benefit thereof, and the Unit seller shall be responsible for obtaining from the Purchaser appropriate compensation therefor.

11.17.2 Working Capital Contribution. Upon the initial transfer of title to a Unit by the Declarant, the transferee shall pay to the Association (or to Declarant if Declarant has already made the payment), in addition to other amounts due, a sum to be determined by the Declarant, which will be a non-refundable contribution to the Association's working capital. Such working capital contributions shall not be used to defray Declarant's expenses in completing the construction of the Project, or to pay any expense owed by Declarant to the Association. Such working capital contributions may be used for any purpose authorized by the Declaration, including the Association's reserves for future replacement or major repair of Common Elements.

Article 12 - INSURANCE

12.1 IN GENERAL.

Commencing not later than the time of the first conveyance of a Unit to a person other than a Declarant, the Association shall maintain in its name, to the extent reasonably available and subject to reasonable deductibles:

12.1.2 Property Insurance.

(a) Property insurance on the Common Element insuring against all risks of direct physical loss commonly insured against, which insurance, after application of any deductibles, must be not less than eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

(b) The Association property insurance policy on the Project may:

(i) Include equipment, improvements, and betterments in a Unit installed by the Declarant and by the Owners; or

(ii) Include equipment, improvements, and betterments in a Unit installed by the Declarant, but exclude equipment, improvements, and betterments in a Unit installed by the Owners; or

(iii) Exclude equipment, improvements, and betterments in a Unit whether installed by the Declarant or by the Owners.

(c) The provisions of the Act and the provisions of this Declaration provide that the Board has the legal authority to determine annually whether the Association property insurance policy will provide for the coverage specified by subsections (b)(i), or (b)(ii) or (b)(iii) above.

(d) A decision made by the Board (as evidenced by a written Board Resolution adopted by the Board) with respect to the property insurance to be maintained by the Association shall have the same legal force and effect, and be binding upon all parties (including insurers, insurance brokers, Owners and Mortgagees) as if that Board decision was included in this Declaration as a mandatory requirement. All such parties may rely upon such Board Resolution, a copy of which shall be provided to them upon request.

12.1.3 Commercial General Liability Insurance, including medical payments insurance, in an amount determined by the Board but not less than One Million Dollars (\$1,000,000.00), covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.

12.1.4 Workmen's compensation insurance to the extent required by applicable laws.

12.1.5 Fidelity bonds naming the members of the Board, the Manager and its employees and such other persons as may be designated by the Board as principals and the Association as obligee, in at least an amount equal to three (3) months aggregate Assessments for all Units plus reserves, in the custody of the Association or Manager at any given time during the term of each bond. Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definitions of "employee" or similar expression.

12.1.6 Personal property insurance against loss of personal property of the Association by fire, theft and other losses with deductible provisions as the Board deems advisable.

12.1.7 **Such other insurance** (including directors and Officers liability) as the Board deems advisable; provided, that notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for Projects established by Federal National Mortgage Association, Government National Mortgage Association, Federal Unit Loan Mortgage Corporation, Veteran's Administration, or other governmental or quasi- governmental agencies involved in the secondary mortgage market, so long as any such agency is a Mortgagee or Owner of a Unit within the project, except to the extent such coverage is not reasonably available or has been waived in writing by such agency.

12.2 COVERAGE NOT AVAILABLE.

If the insurance described in Section 12.1 is not reasonably available, or is modified, canceled, or not renewed, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by first class United States mail to all Owners, to each Eligible Mortgagee, and to each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. The Association in any event may carry any other insurance it deems appropriate to protect the Association or the Owners.

12.3 REQUIRED PROVISIONS.

Insurance policies carried pursuant to this Article shall:

12.3.1 Provide that each Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association;

12.3.2 Provide that the insurer waives its right to subrogation under the policy as to any and all claims against the Association, the Owner of any Unit and/or their respective agents, employees or tenants, and members of their household, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured;

12.3.3 Provide that no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, nor any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no direct control, will void the policy or be a condition to recovery under the policy;

12.3.4 Provide that, if at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance, and that the liability of the insurer thereunder shall not be affected by, and the insurer shall not claim any right of set-off, counterclaims, apportionment, proration, contribution or assessment by reason of, any other insurance obtained by or for any Owner or any Mortgagee;

12.3.5 Provide that, despite any provision giving the insurer the right to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association, or when in conflict with the provisions of any insurance trust agreement to which the Association is a party, or any requirement of law;

12.3.6 Contain no provision (other than insurance conditions) which will prevent Mortgagees from collecting insurance proceeds; and

12.3.7 Contain, if available, an agreed amount and Inflation Guard Endorsement.

12.4 CLAIMS ADJUSTMENT.

Any loss covered by the property insurance under this Article must be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a Security Interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for Owners and lienholders as their interests may appear. Subject to the provisions of Article 13, the proceeds must be disbursed first for the repair or restoration of the damaged property, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Project is terminated.

12.5 OWNER'S ADDITIONAL INSURANCE.

12.5.1 The Association insurance does not prevent an Owner from obtaining insurance for the Owners own benefit. Regardless of whether an Owner has obtained such insurance, the Owner shall be responsible for any damage or loss to the Owner's Unit.

12.5.2 As a general rule, unless this Declaration provides otherwise, and subject to the Association's insurance policy obtained pursuant to this Declaration, each Owner at the Owner's expense shall be obligated to maintain

adequate property and liability insurance with respect to the Unit, and any improvements thereto or personal property located therein, which insurance shall comply with the requirements of this Declaration.

12.5.3 If required by the Mortgagee of an Attached Dwelling Unit (or a governmental or quasi-governmental agency involved in the secondary mortgage market, including Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Veteran's Administration or Federal Housing Administration) who is a Mortgagee or Owner of an Attached Dwelling Unit) – then the Association shall obtain the property insurance provided for under Declaration Article 12 with respect to the structures and improvements within such Units; provided, that such property insurance shall satisfy the minimum requirements of said Mortgagee.

12.6 CERTIFICATE.

An insurer that has issued an insurance policy under this Article shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner or holder of a Security Interest. 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 nonrenewal of contracts of insurance. The insurer shall not modify the amount or the extent of the coverage of the policy, or cancel or refuse to renew the policy, without complying with the requirements of the Act.

12.7 NOTIFICATION ON SALE OF UNIT.

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 to the Association for the benefit of the Owners under Article 12 of the name and address of the new Owner and request that the new Owner be made a named insured under such policy.

Article 13 - DAMAGE OR DESTRUCTION; RECONSTRUCTION

13.1 DEFINITIONS; SIGNIFICANT DAMAGE; REPAIR; EMERGENCY WORK.

13.1.1 As used in this Article, the term "Significant Damage" means damage or destruction, whether or not caused by casualty, to any part of the Project which the Board is responsible to maintain or repair: (a) for which funds are not available in the maintenance and repair or contingency budget of the Association to make timely repairs; and (b) which has a significant adverse impact on the habitability of any Unit or the ability of an Owner or Owners to use the Property or any significant portion of the Property for its intended purpose.

13.1.2 As used in this Article, the term "Repair" means to repair, reconstruct, rebuild or restore the improvements which suffered Significant Damage to substantially the same condition in which they existed prior to the damage or destruction, with each Unit and the Common and Limited 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.

13.1.3 As used in this Article, the term "Emergency Work" shall mean that work which the Board deems reasonably necessary to avoid further damage, destruction or substantial diminution in value to the improvements and to reasonably protect the Owners from liability arising out of the condition of the Property.

13.2 INITIAL BOARD DETERMINATIONS.

In the event of Significant Damage to any part of the Project which the Board is responsible to maintain or repair, the Board shall promptly, and in all events within thirty (30) days after the date of Significant Damage, or, if the Significant Damage did not occur at a particular identifiable time, after the date of its discovery, make the following determinations with respect thereto employing such advice as the Board deems advisable:

13.2.1 The nature and extent of the Significant Damage, together with an inventory of the improvements and Property directly affected thereby.

13.2.2 A reasonably reliable estimate of the cost to Repair the Significant Damage, which estimate shall, if reasonably practicable, be based upon a firm bid obtained from a responsible contractor.

13.2.3 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.

13.2.4 The amount, if any, that the estimated cost of Repair exceeds the anticipated insurance proceeds therefor and the amount of Assessment to each Unit if such excess was paid as a Common Expense and specially assessed against all the Units in proportion to their Allocated Interest in the Common Elements.

13.2.5 The Board's recommendation as to whether such Significant Damage should be Repaired.

13.3 NOTICE OF DAMAGE OR DESTRUCTION.

The Board shall promptly, and in all events within thirty (30) days after the date of Significant Damage, provide each Owner and each first Mortgagee with a written notice summarizing the initial Board determination made under Section 13.2. If the Board fails to do so within said thirty (30) days, then any Owner or Mortgagee may make the determination required under Section 13.2 and give the notice required under this Section.

13.4 GENERAL PROVISIONS.

13.4.1 **Duty to Restore.** Any portion of the Project for which insurance is required under Article 12 which is Significantly Damaged shall be Repaired promptly by the Association unless: (a) the Project is terminated; (b) repair would be illegal under any Federal, state or local health or safety statute or ordinance; or (c) eighty percent (80%) of the Owners, including every Owner of a Unit or assigned Limited Common Element which will not be Repaired, vote not to Repair. Even if the Significant Damage is not to be Repaired, the Board shall still have authority to perform Emergency Work. The cost of Repair in excess of insurance proceeds and reserves is a Common Expense.

13.4.2 **Damage not Restored.** If all or any portion of the damaged portions of the Project are not Repaired (regardless of whether such damage is Significant): (a) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Project; (b) the insurance proceeds attributable to Units and Limited Common Elements which are not Repaired 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, as their interests may appear; and (c) the remainder of the proceeds shall be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Common Element interests of all the Units.

(a) **Restoration by Board.** If the damage (regardless of whether such damage is Significant Damage) is to be repaired pursuant to Section 13.4, then:

(b) **Contract and Contractors.** The Board 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, by means of insurance proceeds and sufficient Assessments, has provision for the cost thereof. The Board may further authorize the insurance carrier to proceed with Repair upon satisfaction of the Board that such work will be appropriately carried out.

(c) **Insurance Trustee.** The Board 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 adjust and settle any claim for a loss in excess of Fifty Thousand Dollars (\$50,000), or for such firm or institution to collect the insurance proceeds and carry out the provisions of this Article.

13.4.3 **Decision to Terminate.** In the event of a decision to terminate the Project and not to Repair and Restore damage and destruction, the Board may nevertheless expend as much of the insurance proceeds and funds of the Association as the Board deems reasonably necessary for Emergency Work (which Emergency Work may include but is not necessarily limited to removal of the damaged or destroyed buildings and clearing, filling and grading the Real Estate), and the remaining funds, if any, and Property shall thereafter be held and distributed as provided by the Declaration and applicable law.

13.5 RESTORATION OF UNIT.

In the event of damage or destruction by fire or other casualty to any Unit Improvements or other improvements to the Unit, the Owner shall, regardless of the amount or availability of insurance proceeds, repair or rebuild such damage or destroyed portions of the Unit and improvements in a good workmanlike manner and in accordance with the provisions of this Declaration.

Article 14 - CONDEMNATION

14.1 IN GENERAL.

If a unit is acquired by condemnation or part of a unit is acquired by condemnation leaving the Unit Owner with a remnant that may not practically or lawfully be used for any purpose permitted by the Declaration, the award must include compensation to the Unit Owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are

automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the Association must promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

14.2 PARTIAL UNIT CONDEMNATION.

Except as provided in subsection 14.1, if part of a unit is acquired by condemnation, the award must compensate the Unit Owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree provides otherwise: (a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the Declaration; and (b) The portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

14.3 COMMON ELEMENT CONDEMNATION.

If part of the common elements is acquired by condemnation, the portion of the award attributable to the common elements taken must be paid to the Association. A court may award damages to a Unit Owner or owners for particular damage to the owner's units arising from condemnation. Unless the Declaration or the decree provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

14.4 RECORDING OF JUDGMENT.

The decree must be Recorded in every county in which any portion of the Project is located.

14.5 ASSOCIATION TO REPRESENT OWNERS.

The Association shall represent the Owners in any proceedings, negotiations, settlements or agreements regarding a condemnation of any part of the Project, and any condemnation proceeds shall be payable to the Association for the benefit of the Owners of affected Units and their Mortgagees. Should the Association not act, based on a right reserved to the Association in the Declaration, on the Owners' behalf in a condemnation process, the affected Owners may individually or jointly act on their own behalf.

Article 15 - COMPLIANCE WITH GOVERNING DOCUMENTS

15.1 ENFORCEMENT.

Each Owner shall comply strictly with the provisions of the Governing Documents, as the same may be lawfully amended from time-to-time, and with all decisions adopted pursuant to the Governing Documents. Failure to comply shall be grounds for an action to recover sums due for damages, or injunctive relief, or both, maintainable by the Board (acting through its Officers on behalf of the Owners), or by the aggrieved Owner on his own against the party (including an Owner or the Association) failing to comply. In the event of a dispute between the Declarant and the Association (or the Board or any Owner), each party shall be solely responsible for payment of all legal fees incurred by that party, regardless of the nature of the dispute or who may be the prevailing party.

15.2 NO WAIVER OF STRICT PERFORMANCE.

The failure of the Board or Declarant in any one (1) or more instances to insist upon the strict performance of the Governing Documents, 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 any Assessment 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 any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

Article 16 - LIMITATION OF LIABILITY

16.1 LIABILITY FOR UTILITY FAILURE, ETC.

Except to the extent covered by insurance obtained by the Board pursuant to Article 12, neither the Association nor the Board members (including the Declarant if a Board member) nor the Manager shall be liable for: (i) any failure

of any utility or other service to be obtained and paid for by the Board; (ii) for injury or damage to Person or Property caused by the elements, or resulting from electricity, noise, smoke, water, rain (or other liquid), dust or sand which may leak or flow from outside or from any parts of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other places; or (iii) for 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 Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

16.2 NO PERSONAL LIABILITY.

So long as a Board member, Association committee member, or Officer (including Declarant in its capacity as a Board or committee member or Officer) has acted in good faith, without willful or intentional misconduct, upon the basis of such information as may be possessed by such Person and such Person's evaluation of such information, no such Person (and no Manager acting pursuant to the directions of the Board) shall be personally liable to any Owner, or other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence, including any discretionary decision, or failure to make a discretionary decision, by such Person in such Person's official capacity. Without limiting the generality of the foregoing, the term "discretionary decisions" shall include evaluating and deciding whether or not to act in response to reports, investigations or recommendations received by such Person, and shall include deciding whether or not to commence, defend, continue, or settle lawsuits or arbitration/mediation or other legal proceedings involving the Association or Project (or any part thereof). 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 pursuant to Article 12.

16.3 INDEMNIFICATION OF BOARD MEMBERS.

Each Board member or Association committee member, or Association Officer (including Declarant in its capacity as a Board or committee member or Officer), shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of being or having held such position at the time such expenses or liabilities arose or are incurred, except in such cases wherein such Person is adjudged guilty of either willful or intentional misconduct, a knowing violation of the law in the performance of his duties and except in such cases where such Person has participated in a transaction from which said Person would personally receive a benefit in money, Property or services to which said Person is not legally entitled. Provided, that, in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interest of the Association.

16.4 LEGAL PROCEEDINGS.

The rights, powers, benefits, duties and obligations granted to and imposed upon parties subject to this Declaration (including without limitation the Declarant, Owners, Association, Board and Officers) shall not be restricted, diminished, or otherwise modified by threatened or pending legal proceedings (including without limitation litigation, administrative, mediation, or arbitration), which proceedings involve one or more of such parties.

Article 17 - MORTGAGEE PROTECTION

17.1 CHANGE IN MANAGER.

The Association shall not elect to terminate professional management and assume self-management without the prior written approval of at least fifty percent (50%) of the Owners; provided that such prior consent shall not be required to change from one professional Manager to another professional Manager.

17.2 ABANDONMENT OF PROJECT STATUS.

Except when acting pursuant to the provisions of the Act involving damage, destruction, or condemnation, the Association shall not: without prior written approval of at least sixty-seven percent (67%) of all Eligible Mortgagees and eighty percent (80%) of the Owners of record of the Units, seek by act or omission to either (i) abandon or terminate the status of the Project or (ii) abandon, encumber, sell or transfer any of the Common Elements.

17.3 PARTITIONS AND SUBDIVISION.

The Association shall neither combine nor subdivide any Unit or the appurtenant Limited Common Elements, nor abandon, partition, subdivide, encumber or sell any Common Elements, or accept any proposal so to do, except in

accordance with the provisions of this Declaration and without the prior written unanimous approval of the Eligible Mortgagee(s) and Owner(s) of the Unit(s), so affected.

17.4 CHANGE IN PERCENTAGES.

The Association shall not make any Material Amendment (as defined in Section 20.8) to this Declaration or Bylaws (including changes in the percentages of interest in the Common Elements) without the prior written approval of at least fifty-one percent (51%) of all Eligible Mortgagees and sixty-seven percent (67%) of all Owners of record of the Units, including unanimous approval of the Eligible Mortgagee(s) and Owner(s) of the Unit(s) for which the percentage(s) would be changed.

17.5 COPIES OF NOTICES.

A Mortgagee of a Unit (and any insurer or guarantor of such Security Interest) shall be entitled to receive timely written notice: (a) that the Owner/Mortgagor of the Unit has for more than sixty (60) days failed to meet any obligation under the Project documents; (b) of all meetings of the Association and be permitted to designate a representative to attend all such meetings; (c) of any condemnation loss or casualty loss affecting a material portion of the Property or the Unit on which it holds a Security Interest; (d) of any lapse, cancellation or material modification of insurance policies or fidelity bonds maintained by the Association; and (e) of any proposed action that requires the consent of a specified percentage of Mortgagees. To be entitled to receive notices under this Section 17.5, the Mortgagee (or Security Interest insurer or guarantor) must send a written request to the Association stating both its name and address and the Unit number or address of the Unit on which it has (or insures or guaranties) the Security Interest.

17.6 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 Security Interest duly Recorded unless the amendment shall be consented to in writing by the holder of such Security Interest. Any provision of this Declaration conferring rights upon Mortgagees which is inconsistent with any other provision of said Declaration or the Bylaws shall control over such other inconsistent provisions.

17.7 INSURANCE

17.7.1 **Board Duties.** With respect to a first Eligible Mortgagee of a Unit, the Board shall:

- (a) Cause any insurance carrier to include in the insurance policy a standard mortgage clause, naming any Mortgagee who makes written request to the Board to be so named;
- (b) Furnish any such Mortgagee with a copy of any insurance policy or evidence thereof which is intended to cover the Unit on which such Mortgagee has a lien;
- (c) Require any insurance carrier to give the Board and any and all insured (including such Mortgagees) at least thirty (30) days' written notice before canceling, reducing the coverage or limits, or otherwise substantially modifying any insurance with respect to the Property on which the Mortgagee has a lien (including cancellation for a premium non-payment);
- (d) Not make any settlement of any insurance claims for loss or damage to any such Unit, Common or Limited Common Element exceeding Five Thousand Dollars (\$5,000) without the approval of such Mortgagee; provided, that the withholding of such approval by the Mortgagee shall not be unreasonable or in conflict with the provisions of Article 14;
- (e) Give such Mortgagee written notice of any loss or taking affecting Common Elements, if such loss or taking exceeds Ten Thousand Dollars (\$10,000);
- (f) Give such Mortgagee written notice of any loss, damage or taking affecting any Unit or Limited Common Elements in which it has an interest, if such loss, damage or taking exceeds One Thousand Dollars (\$1,000).

17.7.2 **Additional Policy Provisions.** In addition, the insurance policy acquired shall:

- (a) Provide that any reference to a Mortgagee in such policy shall mean and include any holders of Mortgages of any Unit or Unit lease, in their respective order and preference, whether or not named therein;
- (b) Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or Owners or any Persons claiming under any of them;
- (c) Waive any provision invalidating such Mortgage clause by reason of: (i) the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy; (ii) any requirement that the Mortgagee pay any premium thereon; and (iii) any contribution clause.

17.8 INSPECTION OF BOOKS.

Owners (including Declarant so long as Declarant owns a Unit), Mortgagees, insurers and guarantors of any Security Interest on any Unit, and their agents and attorneys shall be entitled: to inspect and copy at all reasonable hours of weekdays (or under other reasonable circumstances) all of the Books and Records of the Association (as defined in Section 1.8), within a reasonable time following request; and, upon written request of any holder, insurer or guarantor of a first Security Interest at no cost to the party so requesting (or if this project contains fewer than fifty (50) Units, upon the written request of the holders of fifty-one percent (51%) or more of first Security Interests at their expense if an audited statement is not otherwise available), to receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.

17.9 LIMITATION ON MORTGAGEE APPROVAL.

No requirement for Mortgagee approval may operate to: (a) Deny or delegate control over the general administrative affairs of the Association by the Unit Owners or the Board; (b) Prevent the Association or the Board from commencing, intervening in, or settling any litigation or proceeding; or (c) Prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds except pursuant to the Act.

17.10 ELIGIBLE MORTGAGEE.

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 Security Interest need be obtained and the percentage must be based upon the votes attributable to Units with respect to which Eligible Mortgagees have an interest.

17.11 COMMON ELEMENT ENCUMBRANCE

A lender who has extended credit to an Association secured by an assignment of income or an encumbrance on the Common Elements may enforce its security agreement in accordance with its terms, subject to the requirements of this chapter and other law. A requirement that the Association must deposit its common periodic charges before default with the lender to which the Association's income has been assigned or increase its common charges at the lender's direction by amounts reasonably necessary to amortize the loan in accordance with its terms, does not violate the prohibitions on lender approval contained in this section.

Article 18 - EASEMENTS

18.1 GENERAL.

It is intended that in addition to rights under the Act, each Unit has an easement in and through the Common and Limited Common Elements for all support elements and utility, wiring, heat and service elements, and for reasonable access thereto, as required to effectuate and continue proper operation of this Project plan; and for the maintenance, repair and replacement of all improvements within each Unit. Each Unit as it is constructed is granted an easement (to which each other Unit and all Common and Limited Common Element is 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.

18.2 UTILITY, ETC., EASEMENTS.

The Board, on behalf of the Association and all members thereof, shall have authority to grant utility, road and similar easements, licenses and permits under, through or over the Common Elements, which easements the Board determines are reasonably necessary to the ongoing development and operation of the Property.

18.3 ASSOCIATION FUNCTIONS. The Association, or its duly authorized agents and representatives, shall hereby have such easements and rights of access over, across, under or into the Project (and any part thereof) as are necessary, for repairs, maintenance or replacement and/or to perform the rights, duties and obligations of the Association as are set forth, provided for or authorized in: (i) this Declaration; (ii) the Map; (iii) the Articles of Incorporation; (iv) the Bylaws; or (v) Association Rules.

18.4 DECLARANT FUNCTIONS. The Declarant (and its duly authorized agents, employees, contractors and representatives), hereby has such easements and rights of access over, across, under or into the Project (and any part thereof) as are necessary, to exercise any Declarant Right or to make repairs, maintenance or replacement or to perform the rights, duties and obligations of the Declarant as are set forth, provided for or authorized in: (i) this Declaration; (ii) the Map; (iii) the Articles of Incorporation, (iv) the Bylaws, (v) Association Rules; (vi) building or other governmental permits or approvals; (vii) any Purchase and Sale Agreement between Declarant and a Purchaser of a Unit; (viii) any express or implied warranty under which Declarant is obligated; or (ix) otherwise authorized or required by law.

18.5 ENCROACHMENTS. Each Unit and all Common and Limited Common Elements are hereby declared to have an easement over all adjoining Units and Common and Limited Common Element, for the purpose of accommodating any encroachment due to engineering errors, or errors in original construction, reconstruction, repair of any portion of the Unit Improvements, 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; 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 or Limited Common Element is partially or totally destroyed, and then Repaired or rebuilt, the Owners agree that minor encroachments over adjoining Units and Common and Limited 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.

18.6 EASEMENTS ON EXTERIOR UNIT LINES. In addition to easements reserved on the Map or shown by instrument of record, easements for utilities and drainage are hereby created for the Developer or its assigns, over, under and on a two and one half (2½) foot wide strip along each side of the interior Unit lines, and a five (5) foot wide strip over, under and on the rear and front of each Unit, and over, under and on the Common Areas. Within all of said exterior Unit line easements, no structure, planting or fill material shall be placed or permitted to remain which may, in the opinion of the Board, damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through drainage channels and the easements. The easement area of each Unit and all improvements within it shall be maintained continuously by the Owner of such Unit, except those improvements for which a public authority, utility company or the Association is responsible.

18.7 RETAINING WALL EASEMENTS. Any Unit that includes or is adjacent to a retaining wall or rockery installed by the Declarant that crosses, is adjacent to or straddles one or more property lines, is hereby subject to a permanent easement granted to the Unit Owner on the other side of such property line for the purpose of maintenance, repair and replacement of such retaining wall or rockery. Further, each Unit upon which any portion of a retaining wall or rockery constructed by the Declarant is located shall be subject to an easement, for the benefit of all other Units, for the purposes of support by and natural drainage from such retaining wall or rockery. Easements as shown on the Map are created by reservation on the recorded Map.

Article 19 - PROCEDURES FOR SUBDIVIDING OR COMBINING

19.1 PROCEDURE.

Subdivision and/or combining of any Unit or Units, are authorized only as follows:

19.2 SUBDIVISION.

Unless prohibited in the Declaration, subject to the provisions of the Declaration, section 255 of the Act, and other provisions of law, a Unit may be subdivided into two (2) or more Units upon application to the Association by the Unit Owner of the Unit and upon approval by the Board pursuant to this section. The application must include plans

showing the relocated boundaries, a reallocation of all the Allocated Interests of the Units among the Units created by the subdivision, and such other information as the Board may require. Unless the Board determines, after receipt of all required information, that the reallocations are unreasonable or that the proposed boundary relocation does not comply with the Declaration, sections 240 and 255 of the Act, or other provisions of law, the Board must approve the application and prepare any amendments to the Declaration and Map in accordance with the requirements of this section.

19.3 COMBINATION.

Unless prohibited in the Declaration, subject to the provisions of the Declaration, section 255 of the Act, and other provisions of law, two (2) or more Units may be combined into a lesser number of Units upon application to the Association by the Owners of those Units and upon approval by the Board pursuant to this section. The application must include plans showing the relocated boundaries, a reallocation of all the Allocated Interests of the Units being combined among the Units resulting from the combination, and such other information as the Board may require. Unless the Board determines, after receipt of all required information, that the reallocations are unreasonable or that the proposed boundary relocation does not comply with the Declaration, sections 240 and 255 of the Act, or other provisions of law, the Board shall approve the application and prepare any amendments to the Declaration and Map in accordance with the requirements of subsection (4) of this section.

19.4 COMMON ELEMENT FEE.

All costs incurred by the Association in connection with a request to subdivide or combine Units shall be paid by the Owner(s) of the Unit(s) so requesting.

19.5 DECLARATION/MAP AMENDMENTS.

The Association must prepare, execute, and record any amendments to the Declaration and the Map, prepared in accordance with the requirements of sections 245 and 285(3) of the Act, subdividing or combining those Units. The amendment to the Declaration must be executed by the Association and Unit Owner or Owners of the Units from which the subdivided or combined Unit or Units are derived, assign an identifying number to each resulting Unit, and reallocate the Allocated Interests formerly allocated to the Unit from which a combination was derived to the new Unit or, if two or more Units are derived from such combination, among the new Units in any reasonable manner prescribed by such Owners in the amendment or on any other basis the Declaration requires. The amendments are effective upon recording.

19.6 ASSOCIATION COSTS.

All costs, including reasonable attorneys' fees, incurred by the Association for preparing and recording amendments to the Declaration and Map under this section must be assessed to the Unit, the boundaries of which are being relocated.

19.7 DEVELOPMENT RIGHT

This section does not apply to the Declarant's exercise of any Development right to subdivide or combine a Unit previously created.

Article 20 - AMENDMENT OF DECLARATION, SURVEY MAP, PLANS

20.1 IN GENERAL.

20.1.1 Except in cases of amendments that may be executed by: A declarant under subsection (10) of this section, sections 240(2), 245(12), 250, or 415(2)(d) of the Act; the Association under section 030, 230(5), 240(3), 260(1), or 265 of the Act or subsection (11) of this section; or certain Unit Owners under section 240(2), 260(1), 265(2), or 290(2) of the Act, and except as limited by subsections (4), (6), (7), (8), and (12) of section 285 of the Act, the Declaration may be amended only by vote or agreement of Unit Owners of units to which at least sixty-seven percent (67%) of the votes in the Association are allocated, unless the Declaration specifies a different percentage not to exceed ninety percent (90%) for all amendments or for specific subjects of amendment. For purposes of this section, "amendment" means any change to the Declaration, including adding, removing, or modifying restrictions contained in a Declaration.

20.1.2 If the Declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval; however, any right of approval may not result in an expansion of special declarant rights reserved in the Declaration or violate any other section of the Act, including sections 015,

050, 055, and 060 of the Act. If the Declaration requires the affirmative vote or approval of any particular Unit Owner or class of Unit Owners as a condition of its effectiveness, the amendment is not valid without that vote or approval.

20.1.3 The following Sections and Articles may be amended only by vote or agreement of: (a) Owners of Units to which eighty percent (80%) of the votes in the Association are allocated, (b) the Owner of each Unit particularly affected by the amendment, and (c) the Declarant (so long as Declarant owns a Unit, or so long as any right, power, duty or obligation of the Declarant continues under (i) this Declaration, (ii) any express or implied warranty, (iii) other agreement, (iv) or law): 1.8.6 (Books and Records of the Association); 1.8.14 (Declarant Rights); 9.4.1(d) (Board Authority Litigation); 9.6.1 (Association Records and Funds); 9.10 (Governmentally Required Maintenance, etc.); 9.11 (Maintenance, Repair, Inspection and Warranty Procedure); 9.12 [Association Litigation]; Article 16 (Limitation of Liability); 18.4 (Declarant Easements); 20.1 (In General); 20.4 (General Limitations); 20.6 (Declarant Rights); 20.7 (Material Amendments); Article 22 (Declarant Rights); Article 23 (Dispute Resolution); and Article 24 (Construction of Unit Improvements).

20.2 CHALLENGE TO VALIDITY.

In the absence of fraud, any action to challenge the validity of an amendment adopted by the Association may not be brought more than one (1) year after the amendment is Recorded.

20.3 RECORDING.

Every amendment to the Declaration must be Recorded in every county in which any portion of the Project is located and is effective only upon Recordation. An amendment, except an amendment pursuant to section 260(1) of the Act, must be indexed in the grantee's index in the name of the Project and the Association and the grantor's index in the name of the parties executing the amendment.

20.4 GENERAL LIMITATIONS.

Except to the extent expressly permitted or required by other provisions of the Act or the Declaration, no amendment may create or increase Special Declarant Rights, increase the number of Units, change the boundaries of any Unit, the Allocated Interests of a Unit, or change the uses (as that term is defined in Section 1.8) to which any Unit is restricted (pursuant to Section 10.1), in the absence of the vote or agreement of the Owner of each Unit particularly affected, the Declarant (if the Declarant owns a Unit or has the right to exercise any Special Declarant Rights) and the Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated other than the Declarant; provided, that the regulation pursuant to Article 10 of uses to which any Unit is restricted shall not be deemed a changes of such uses. Amendments to the Declaration required to be executed by the Association must be executed by any authorized officer of the Association who must certify in the amendment that it was properly adopted.

20.6 DECLARANT RIGHTS.

No amendment may restrict, eliminate, or otherwise modify any Declarant Right (including Development Right, Special Declarant Right or Miscellaneous Declarant Right, (collectively "Rights"), or any other right, power, benefit provided in this Declaration to Declarant (nor otherwise hinder the business activities or expectations of, or benefits provided hereunder to, the Declarant) without the consent of the Declarant and any Mortgagee of record with a security interest in such Rights or in any Real Estate subject thereto, excluding Mortgagees of Units owned by Persons other than the Declarant.

20.7 DECLARANT CORRECTION OF ERRORS.

Upon thirty (30) day advance notice to Unit Owners the Declarant may, without a vote of the Unit Owners or approval by the Board, unilaterally adopt, execute, and record a corrective amendment or supplement to the 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 undivided interest in the Common Elements, the liability for Common Expenses, or the number of votes in the Association appertaining to a Unit, 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.

20.8 MATERIAL AMENDMENTS.

Any amendment to a provision of this Declaration establishing, providing for, governing or regulating the following (all of which shall be deemed "Material Amendments") shall, in addition to other requirements set forth in this

Declaration or in the Act, require the consent of at least fifty-one percent (51%) of the Eligible Mortgagees: voting rights; Assessments, Assessment liens, or the priority of Assessment liens; reserves for maintenance, repair, and replacement of Common Elements; responsibility for maintenance and repairs; reallocation of interests in the Common or Limited Common Elements, or rights to their use; redefinition of any Unit boundaries; convertibility of Units into Common Elements or vice versa; expansion or contraction of the Project, or the addition, annexation, or withdrawal of Property to or from the Project; insurance or fidelity bond; leasing of Units; imposition of any restrictions on an Owner's right to sell or transfer his or her Unit; a decision by the Association to establish self-management when professional management had been required previously by the Project documents or by an Eligible Security Interest holder; restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration; any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or any provisions that expressly benefit Security Interest holders, insurers, or guarantors. A Mortgagee who fails to respond within sixty (60) days of a written request to approve an amendment shall be deemed to have approved the request if such request was delivered by certified or registered mail with a return receipt requested.

20.9 MORTGAGEE APPROVAL.

If any provision of the Act or the Declaration requires the consent of a holder of a security interest in a unit as a condition to the effectiveness of an amendment to the Declaration, the consent is deemed granted if a refusal to consent in a Record is not received by the Association within sixty (60) days after the Association delivers notice of the proposed amendment to the holder at an address for notice provided by the holder or mails the notice to the holder by certified mail, return receipt requested, at that address. If the holder has not provided an address for notice to the Association, the Association must provide notice to the address in the security interest of record.

20.10 MAP AMENDMENT.

Except as otherwise provided herein, and subject to the Act, the Map may be amended by revised versions or revised portions thereof referred to and described as to affect an amendment to this Declaration adopted as provided for herein. 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 also be effective, once properly adopted, upon Recordation in the appropriate county office in conjunction with this Declaration amendment.

20.11 LENDER REQUIREMENTS.

All Owners covenant and agree, for themselves and their heirs, successors and assigns, to vote in favor of and implement any amendments hereto which may be necessary to satisfy the requirements of the Federal National Security Interest Association, Veteran's Administration and Federal Housing Administration.

Article 21 - MISCELLANEOUS

21.1 NOTICES FOR ALL PURPOSES.

21.1.1 Delivery of Notice. Any notice permitted or required to be delivered under the provisions of Governing Documents may be delivered either personally or by mail. If delivery is made by mail, any such notice shall be deemed to have been delivered twenty-four (24) hours after a copy has been deposited in the United States mail, postage prepaid, for first class mail, addressed to the Person entitled to such notice at the most recent address given by such Person to the Board, in writing, for the purpose of service of such notice, or to the most recent address known to the Board. Notice to the Owner or Owners of any Unit shall be sufficient if mailed to the Unit of such Person or Persons if no other mailing address has been given to the Board by any of the Persons so entitled. Mailing addresses may be changed from time-to-time by notice in writing to the Board. Notice to be given to the Board may be given to Declarant until the Board has been constituted and thereafter shall be given to the president or secretary of the Association.

21.1.2 Mortgagee Notice. Upon written request therefor, and for a period specified in such notice, the Mortgagee of any Unit shall be entitled to be sent a copy of any notice respecting the Unit covered by his security instrument until the request is withdrawn or the security instrument discharged. Such written request may be renewed an unlimited number of times.

21.2 MORTGAGEE ACCEPTANCE.

21.2.1 **Priority of Security Interest.** This Declaration shall not initially be binding upon any Mortgagee of the Project of record at the time of Recording of said Declaration but rather shall be subject and subordinate to said Security Interest.

21.2.2 **Acceptance Upon First Conveyance.** Unless otherwise expressly approved by the Purchaser of a Unit, Declarant shall not consummate the Conveyance of title of such Unit until said Mortgagee of the Project 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 Interest in Common Elements from the lien of said Security Interest. 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 Project status of the Units remaining subject to its Security Interest as well as its acknowledgment that such appropriate arrangements for partial release of Units have been made; provided, that, except as to the Units (and their Allocated Interests in Common Elements) so released, said Security Interest shall remain in full effect as to the entire Project.

21.3 SEVERABILITY.

The provisions hereof shall be deemed independent and severable, and the validity or partial invalidity or enforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof if the remainder complies with the Act or as covenants that affect the common plan for the Project.

21.4 CONVEYANCES; NOTICE REQUIRED.

The right of an Owner to sell, transfer, or otherwise convey the Unit shall not be subject to any right of approval, disapproval, first refusal, or similar restriction by the Association or the Board, or anyone acting on their behalf. An Owner intending to sell a Unit shall deliver a written notice to the Board, at least two (2) weeks before closing, specifying: the Unit to be sold; the name and address of the Purchaser, the closing agent, and the title insurance company insuring the Purchaser's interest; and the estimated closing date. The Board 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. It is understood, however, that a violation of this Section shall not invalidate a sale, transfer or other Conveyance of a Unit which is otherwise valid under applicable law.

21.5 TRANSFER OF DECLARANT'S POWERS.

It is understood that Declarant, at any time in the exercise of its sole discretion, may sell, assign, transfer, encumber, or otherwise convey to any Person, upon such terms and conditions as Declarant may determine, all or any of the Declarant Rights (including Development Rights, Special Declarant Rights or Miscellaneous Declarant Rights), or any other right, power, authority, privilege, or benefit provided in this Declaration to Declarant by virtue of Declarant's capacity as Declarant (which right, power, authority, privilege, or benefit are in addition to those arising from Declarant's ownership of one or more Units).

21.6 EFFECTIVE DATE.

This Declaration shall take effect upon Recording.

Article 22 - DECLARANT RIGHTS

22.1 SPECIAL DECLARANT RIGHTS.

As more particularly provided in this Article, Declarant, for itself and any successor Declarant, has reserved the following Special Declarant Rights:

22.1.1 **Completion of Improvements.** Declarant, and its agents, employees, contractors and representatives, shall have the right to complete, repair, replace or correct improvements and otherwise perform work as set forth, provided for or authorized in: this Declaration; Map; Articles, Bylaws, or Association Rules; building or other governmental permits or approvals; any Purchase and Sale Agreement between Declarant and a Purchaser of a Unit; any express or implied warranty under which Declarant is obligated; or otherwise authorized or required by law. This Special Declarant Right shall continue so long as any right, duty or obligation of the Declarant continues under any express or implied warranty, agreement or law.

22.1.2 **Exercise of Development Rights.** Declarant shall have the right to exercise Development Rights, if any, under this Declaration and the Act.

22.1.3 Sales Facilities of Declarant. Declarant, and its agents, employees and contractors and representatives shall be permitted to establish and maintain in any Unit still owned by Declarant and in any of the Common Elements (other than Limited Common Elements assigned to Units not owned by Declarant), such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of Units and appurtenant interests, including but not limited to: business offices; management offices; sales offices; construction offices; storage areas; signs; model Units; and parking areas for all agents, employees, contractors, prospective tenants or Purchasers of Declarant. Declarant may maintain signs on the Common Elements advertising the Project. The provisions of this Section are subject to the provisions of other state law and local ordinances. The number, size, location, and relocation of such facilities shall be determined from time-to-time by Declarant in the exercise of its sole discretion; provided, that the maintenance and use of such facilities shall not unreasonably interfere with an Owner's use and enjoyment of: the Unit and appurtenant Limited Common Elements; and those portions of the Common Elements reasonably necessary to use and enjoy such Unit and Limited Common Elements.

22.1.4 Use Easements. Use easements through the Common Elements for the purpose of making improvements within the Project or within Real Estate which may be added to the Project.

22.1.5 Master Association. Make the Project subject to a master Association.

22.1.6 Merger, Consolidation. Merge or consolidate a Project with another common interest community of the same form of ownership.

22.1.7 Declarant Control. Appoint or remove any officer or Board member of the Association or any master Association or to veto or approve a proposed action of any Board or Association, pursuant to section 415(1) of the Act.

22.1.8 Construction Review. Control any construction, design review, or aesthetic standards committee or process.

22.1.9 Meetings. Attend meetings of the Unit Owners and, except during an executive session, the Board.

22.1.10 Records. Have access to the Records of the Association to the same extent as a Unit Owner.

22.1.11 Declarant Approval of Fencing. Declarant shall have the right to review and approve proposed fencing on individual Units, as well as the right to adopt as part the Association's Rules a standard fence detail and plans identifying the permitted design, styles and materials for fencing within the Project.

22.1.12 Termination of Special Declarant Rights. Except as otherwise provided in this Declaration, the foregoing Special Declarant Rights shall continue so long as Declarant is completing improvements which are within or may be added to this Project, or Declarant owns any Units, or any Development Rights remain in effect; provided, that Declarant may voluntarily terminate any or all of such rights at any time by Recording an amendment to the Declaration, which amendment specifies which Right is thereby terminated. Provided, a period of Declarant Control, if has been reserved by Declarant, terminates no later than the earlier of: (i) sixty days after conveyance of seventy-five percent (75%) of the Units which may be created to Owners other than a Declarant; (ii) two (2) years after the last conveyance or transfer of Record of a Unit except as security for a debt, except to a dealer; or (iii) two years after any Development Right to add new Units was last exercised; or (iv) the date the declarant, after giving notice in a Record to Unit Owners, records an amendment to the Declaration voluntarily surrendering all rights to appoint and remove officers and Board members. A Declarant may voluntarily surrender the right to appoint and remove Officers and members of the Board before termination of that period pursuant to (i), (ii), and (iii) of this subsection, but in that event the Declarant may require, for the duration of the period of Declarant Control, that specified actions of the Association or Board, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

22.2 DEVELOPMENT RIGHTS.

As more particularly provided in this Article, the Declarant, for itself and any successor Declarant, has reserved the following Development Rights:

22.2.1 Parking Assignment.

(a) Except as may be provided by subsequent amendments to this Declaration, on the initial Recording of this Declaration the Declarant does not intend to provide parking or storage for the exclusive use of a Unit other than the parking and storage located within the Unit boundaries.

(b) Declarant reserves the right to make the initial allocation of any Limited Common Element parking spaces to each Unit such allocation being made pursuant to Section 7.3 and Exhibits attached hereto (or by

amendments thereto). With respect to each Unit, Declarant shall make such allocations prior to or contemporaneously with the closing of the sale of such Unit by Declarant.

(c) Until the approximate locations are shown on the Map, and an allocation to Units is made by this Declaration or amendments thereto, parking spaces (other than those within the boundaries of Units) shall continue as part of the Common Elements (but not as Limited Common Elements).

(d) Once the Declarant's right to make such allocations of any Limited Common Element has expired, the balance of any parking spaces, if any, not so allocated to specific Units shall continue as part of the Common Elements (not as Limited Common Elements) to be used in accordance with the Rules established from time-to-time by the Board.

(e) If Declarant elects to reallocate any Limited Common Element parking previously allocated to Units still owned by Declarant, Declarant shall comply with the provision of Section 7.3; such reallocation is expressly recognized as being authorized by and in compliance with this Declaration.

22.2.2 **Add Real Estate.** Add Real Estate or improvements to the Project;

22.2.3 **Create Units.** Create Units, Common Elements, or Limited Common Elements within Real Estate included or added to the Project;

22.2.4 **Subdivide/Combine.** Subdivide or combine units or convert units into common elements.

22.2.5 **Withdraw.** Withdraw real estate from the Project.

22.2.6 **Reallocate Limited Common Elements.** Reallocate Limited Common Elements with respect to Units that have not been conveyed by the Declarant.

22.2.7 **Boundaries of Limited Common Elements.** Declarant shall have the right to establish, expand, contract or otherwise modify the boundaries of any Limited Common Element allocated to a Unit; provided, the prior consent will be required from the Owner with an interest in the affected Limited Common Element.

22.2.8 **Development in Phases**

(a) **Right to Phase.** Declarant has reserved the right to develop this Project in more than one (1) Phase. If Declarant elects to exercise the right to develop the Project in Phases:

(i) Declaration Exhibit A provides a description of the land within Phase 1 and all future Phases. Declaration Exhibit B provides a description of the Units for Phase 1, and (either therein or in amendment thereto) the Units for the remainder of future Phases.

(ii) The Map, filed simultaneously herewith, depict certified as-built with respect to Phase 1 the following: a survey of the surface of the land for Phase 1 and all possible phases; and the plans of the Units for Phase 1 showing as to each Unit in Phase 1 the vertical and horizontal boundaries, the location of all such Units, and the number and dimensions of all such Units. The Map or amendments thereto, shall show such similar data with respect to the remainder of Phases.

(iii) The provisions regarding Phase 1 shall be effective immediately to establish Phase 1 (including the Phase 1 land and all Units, Unit Structures and other improvements constructed thereon) as a Project under the Act. The provisions regarding subsequent Phases shall not be effective to add subsequent Phases (including the land and all Units, Unit Structures and other improvements constructed thereon) to the Project under the Act until Declarant records an amendment to this Declaration (and an amendment to the Map if necessary).

(iv) The Declarant may also elect on the initial recording of this Declaration to include the land for all possible Phases in the Project, subject to Declarant's right to withdraw from and to add back to the Project portions of such land.

(b) **Declaration, Map and Plans Amendments.** For each subsequent phase following Phase 1, the Declarant shall execute and record an amendment to this Declaration stating that said subsequent phase (including the subsequent phase land, and all Units, Unit Structures and other improvements thereon) is added to the Project under the Act. From and after the recording of said amendment, all of the land within Phase 1 and within subsequent phases for which such an amendment has been recorded, together with all Units, Unit Structures and other improvements constructed thereon, shall constitute a single Project pursuant to the Act and the provisions of this Declaration. In conjunction with said amendment to this Declaration, an updated or revised Map or both, shall be filed if the previous Map and Plans filed affecting or describing said subsequent phase lack required detail, certification or other matters required under the Act. The Declarant is the Unit Owner of any Units thereby created. The amendment to this Declaration shall assign an Identifying Number to each new Unit created and reallocate the

Allocated Interests among all Units. The amendment must describe any Common Elements and any Limited Common Elements thereby created and, in the case of Limited Common Elements, designate the Unit to which each is allocated to the extent required by the Act. Development Rights may be reserved within any Real Property added to the Project if the amendment adding that Real Property includes all matters required by the Act, and the Map include all matters required by the Act. This provision does not extend the time limit on the exercise of Development Rights imposed by this Declaration.

(c) **Common Elements.** All Common Elements for each phase will be utilized by Unit Owners of the next succeeding phase as it is established, and the additional Owners will, after the effective date of the subsequent phase, also share in the expenses of such Common Elements. Owners in a prior phase will utilize the Common Elements for the subsequent phases and also share in the expense thereof.

(d) **Completion.** Declarant shall complete subsequent phases in accordance with the plans and specifications prepared and modified from time-to-time by or for Declarant (in the exercise of its sole discretion) and as approved from time-to-time by governmental authorities having jurisdiction thereof and by the lender or lenders financing the construction of subsequent phases. Completion of subsequent phases will be pursued by Declarant as expeditiously as reasonably possible, subject to delays for reasons (including, but not limited to, financing availability, labor disputes, material shortages, acts of God, and changes in market conditions) reasonably beyond the control of Declarant. All improvements for subsequent phases (other than Dwelling Units) shall be substantially completed before such phase is incorporated into the Project by amendment.

(e) **Allocated Interests.** It is specifically covenanted that the Allocated Interests for Phase 1 are calculated with respect to the Units within Phase 1. At such time as additional phases are made effective by the filing of the above-described Declaration Amendment by Declarant, the Allocated Interests thereafter effective for all Units in Phase 1 and those added in each subsequent phase shall be reallocated as provided in this Declaration and in Exhibit B.

(f) **Assessments Based on Allocated Interests for Phases.** All Assessments for the various phases shall utilize and be based on the Allocated Interests stated for that phase until the succeeding phase is activated and commenced. The Declarant or Board may upon the addition of any phase, based on the reallocation of Allocation Interests, recompute the budget and the Assessments, and impose the revised Assessments.

(g) **Easements for Phased Development.**

(i) In addition to the general easements reserved by statute and by reference in other sections of this Declaration, there is reserved a non-exclusive easement in favor of Declarant (and Declarant's heirs, successors, assigns and Purchasers) over and across the Phase 1 land (and across the land hereafter described in Exhibit A, as hereafter amended, for any subsequently completed phase) for ingress and egress and over and across easements, roadways, and utility lines specified or established in and for completed phases, and the right to connect thereto is reserved. Such reservations are for the purpose either of completing subsequent phases, or otherwise developing portions of the land for other purposes if not completed as a Project phase.

(ii) The easements reserved under this Section shall entitle the Declarant (and Declarant's heirs, successors, assigns), for development of each successive phase of the Project, or for development and utilization of the lands to have been included in any phase if such lands are utilized for other purposes under the powers reserved to Declarant: to tie into water, sewer, storm sewer, electrical, gas, telephone or other utility lines of all varieties; to connect with roadways or utility systems developed and placed in the completed phases of the Project; and, to the extent as Owners and occupants within the Project, utilize any recreational facilities developed in completed phases of the Project.

(iii) Declarant shall bear the cost of tie-ins to said utilities and roads and will not connect with said utilities in a manner that impairs or significantly reduces the quality of the utility service to the land described in Exhibit A as Phase 1 and for the land in a subsequently completed phase; provided, that if said tie-ins cause an increase in the cost of delivering affected utility services to Phase 1 and for land in any subsequently completed phase, that cost shall be borne by the Declarant.

(iv) Any land which is not developed as a subsequent phase of the Project and which utilizes and benefits from the utility, roadway easements and recreational facility reserved to Declarant hereunder, shall pursuant to an irrevocable covenant running with the land be obligated to pay a pro rata share (based on relative

number of living Units) of the costs of subsequent repairs, maintenance and operation of said utilities, roadways and recreational facilities.

(v) Declarant (and Declarant's heirs, successors and assigns) shall have a non-exclusive easement to construct and maintain (at any time and at Declarant's sole cost and expense, and in the exercise of Declarant's sole discretion, and at such locations within Phase 1 and within any subsequently completed phases of the Project as Declarant may determine) such signs as Declarant may deem necessary for the identification of the name, location and direction, and for the sale or renting, of Unit Structures and Units, regardless of whether such Unit Structures and Units are located on land which is within a subsequent phase of the Project or on land which the Declarant under powers reserved hereunder has elected not to develop as a phase of the Project.

(h) **Liens Arising in Connection with Phases.** At the time the amendment incorporating a subsequent phase into the Project is made, no lien arising in connection with the Declarant's ownership of, and construction of improvements upon, the subsequent phase land will adversely affect the rights of existing Unit Owners or the priority of first Mortgages on Units in the existing Project Property. All taxes, Assessments, mechanics liens, and other charges affecting a subsequent phase land will be paid or otherwise satisfactorily provided for by the Declarant.

(i) **Withdrawal of Subsequent Phases.** If, despite the good faith efforts of Declarant, and for reasons (including, but not limited to, financing availability and market conditions, labor disputes, material shortages and acts of God) beyond the reasonable control of Declarant, all or any of the subsequent phases are not completed and/or the amendment(s) provided for in this Section are not recorded, then Declarant at any time may elect not to incorporate all or some of such subsequent phases into the subject Project and elect not to record the amendments provided on in this Section. To effectuate the foregoing, Declarant, upon its sole signature and without further consent of any of the other Owners being required, may file such amendment to this Declaration and to the Survey Map and Plans as is necessary to withdraw the land within such subsequent phases (and improvements constructed thereon) from the provisions of this Declaration and to relinquish Declarant's rights under this Section. In the event Declarant should exercise its rights under this Section to withdraw the land within such subsequent phases (and improvements thereon), from the provisions of this Declaration, or if the Declarant's right to add phases expires, then: the phases that were made a part of the Project shall thereafter continue to constitute a complete, fully operational Project; land within such subsequent phases (and improvements thereon) may be used for any other lawful purpose in Declarant's discretion; and the easements provided for in this Section shall continue for the benefit of land within such subsequent phases and Declarant (and its heirs, successors and assigns) for the development and utilization of land within such subsequent phases.

(j) **Limitation of Declarant's Rights.**

(i) It is understood that the total project (if all phases are completed) shall include Units not exceeding in number the maximum permitted by law.

(ii) At the time of recording this Declaration, Declarant may not have acquired title to or an interest in the land for some or all of the land for phases subsequent to Phase 1. Declarant shall not be entitled to exercise its rights to include the land for phases subsequent to Phase 1 (and improvements thereon) as a part of this Project until such time as Declarant has acquired title to or an interest in the land necessary for such subsequent phase.

22.2.9 **Different Parcels; Different Times.**

(a) Any Development Right may be exercised with respect to different parcels of Property at different times;

(b) No assurances are made as to final boundaries of such parcels or as to the order in which those parcels may be subjected to the exercise of each Development Right; and

(c) Even though a Development Right is exercised in any portion of the Property subject to that right, that right need not be exercised in all or in any other portion of the remainder of that Property.

22.2.10 **Exercise of Development Right.** To exercise any Development Right reserved under Section 22.2, the Declarant shall prepare, execute, and record an amendment to this Declaration under Article 21.

22.2.11 **Termination of Development Rights.** Except as otherwise provided in this Declaration, the foregoing Development Rights shall continue so long as the Declarant is completing improvements which are within or may be added to this Project, or the Declarant owns any Units, or any Special Declarant Rights remain in effect; provided, that Declarant may voluntarily terminate any or all of such Development Rights at any time by Recording an amendment to this Declaration, which amendment specifies which Right is thereby terminated.

22.3 MISCELLANEOUS DECLARANT RIGHTS.

As more particularly provided in other provisions of this Declaration, the Declarant, for itself and any successor Declarant, has reserved various Miscellaneous Declarant Rights as defined in Section 1.8.

22.4 LIABILITY FOR DAMAGES.

The Declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the Project, of any portion of the Project damaged by the exercise of rights reserved by Declarant pursuant to or created by this Declaration or the Act.

22.5 COMPLIANCE WITH LAW.

In exercising any Declarant Right, Declarant shall comply with the Act and any other applicable law.

Article 23 - DISPUTE RESOLUTION

23.1 POLICY - MEDIATION.

All parties subject to this Declaration hope there will be no disputes arising out of their relationship. To that end, each party commits to cooperate in good faith and to deal fairly in performing its duties under this Declaration in order to accomplish their mutual objectives and avoid disputes. But if a dispute arises, the parties agree to resolve all disputes by the following alternate dispute resolution process: (a) the parties will seek a fair and prompt negotiated resolution, but if this is not successful; (b) all disputes shall be resolved by binding arbitration; provided that during this process; (c) at the request of either party made not later than forty-five (45) days after the initial arbitration demand, the parties will attempt to resolve any dispute by nonbinding mediation (but without delaying the arbitration hearing date). The parties confirm that by agreeing to this alternate dispute resolution process, they intend, to the full extent permitted by law, to give up their right to have any dispute decided in court by a judge or jury.

23.2 BINDING ARBITRATION.

Any claim between or among any party subject to this Declaration (including without limitation, the Declarant, Association, Board or Officers, Owners, Security Interests, or their respective employees or agents) arising out of or relating to this Declaration, a Unit or Units, Common Elements, the Project or the Association shall be determined by Arbitration in the county in which the Project is located commenced in accordance with RCW 7.04.060; provided, that the total award by a single arbitrator (as opposed to a majority of the arbitrators) shall not exceed fifty thousand dollars (\$50,000), including interest, attorneys' fees and costs. If any party demands a total award greater than fifty thousand dollars (\$50,000), there shall be three (3) neutral arbitrators. If the parties cannot agree on the identity of the arbitrator(s) within ten (10) days of the arbitration demand, the arbitrator(s) shall be selected by the administrator of the American Arbitration Association (AAA) office in Seattle from its Large, Complex Case Panel (or have similar professional credentials). Each arbitrator shall be an attorney with at least fifteen (15) years experience in commercial or real estate law and shall reside in the county in which the Project is located. Whether a claim is covered by this Article shall be determined by the arbitrator(s). Statutes of limitation, statutes of repose, estoppel, waiver, laches and similar doctrines which would otherwise be applicable in an action shall be applicable in any arbitration proceeding brought by a party subject to this Declaration.

23.3 HEARING - LAW - APPEAL LIMITED.

The arbitrator(s) shall take such steps as may be necessary to hold a private hearing within ninety (90) days of the initial demand for arbitration and to conclude the hearing within three (3) business days; and the arbitrator(s) written decision shall be made not later than fourteen (14) calendar days after the hearing. The parties have included these time limits in order to expedite the proceeding, but they are not jurisdictional, and the arbitrator(s) may for good cause afford or permit reasonable extensions or delays, which shall not affect the validity of the award. The written decision shall contain a brief statement of the claim(s) determined and the award made on each claim. 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 and decision shall be final, and the judgment may be entered in any court having jurisdiction thereof. The arbitrator(s) may award injunctive relief or any other remedy available from a judge, including without limitation joinder of parties or consolidation of this arbitration with any other involving common issues of law or fact or which may promote judicial economy; but shall not have the power to award punitive or exemplary damages or to award attorneys' fees and costs to the prevailing party except as specifically provided in this Declaration. The decision and award of the arbitrator(s) need not be unanimous; rather, the decision

and award of two (2) arbitrators shall be final. Provided, if at the time dispute resolution procedures are to commence hereunder, the law of Washington prohibits binding arbitration, then the parties agree to otherwise fully comply with the provisions hereof and agree that any party may seek judicial review of the arbitrator's decision.

23.4 WARRANTY DISPUTE RESOLUTION.

In the event Declarant (or another party) has issued a warranty of quality to the initial Purchasers of Units or to the Association, and such warranty contains provisions governing the making of claims and governing the resolution of disputes, then the provisions of such warranty shall control over the provisions of this Article 23 with respect to all express and implied warranty claims involving Units and Common Elements (regardless of whether the Owner, Association or Board is asserting the claim).

Article 24 - CONSTRUCTION OF UNIT IMPROVEMENTS

An Owner, (including Declarant) at its sole cost and expense, shall have the right to construct (in compliance with the provisions of this Declaration and all applicable laws, rules and regulations) and thereafter maintain, repair, alter and replace improvements within the Unit owned by such Owner. In connection therewith, an Owner is granted the same easements as granted to the Declarant (subject to the same limitations and conditions as imposed on Declarant). In connection therewith, an Owner, at its sole cost and expense, shall have the right and obligation to cause such amendments to this Declaration and the Map to be prepared and Recorded as may be required by law or requested by title insurers or Mortgagees of the Unit; provided, that (except for amendments being made by the Declarant) such amendments must receive the prior written approval of the Board, which approval shall not be unreasonably delayed or denied. This Declaration and the Map may be amended to show data pertaining to Unit Improvements when completed.

This Declaration was approved and adopted in accordance with the provisions of the Act and the Declaration.

DECLARANT: Century Communities of Washington, LLC, a Delaware limited liability company

By: _____

Christian Cermak
Washington Division President

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Christian Cermak to me personally known (or proven on the basis of satisfactory evidence) to be the Washington Division President of Century Communities of Washington, LLC, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed, if any, is the company seal of said company.

WITNESS my hand and seal hereto affixed the day and year in this certificate above written.

NOTARY PUBLIC in and for the State of Washington,
Residing in: _____

EXHIBIT A

TO THE BLUFFS AT WHISKEY RIDGE DECLARATION

1. Description of Real Property included:

Lot 105, Sunny Side Five Acre Tracts, according to the plat thereof, recorded in Volume 7 of Plats, Page 19, records of Snohomish County, Washington.

Situate in the County of Snohomish, State of Washington.

2. Description of any Real Property which may be allocated subsequently by the Declarant as Limited Common Elements. See paragraph 1 above.

3. Description of the Real Property to which any Development Right or Special Declarant Right applies: See paragraph 1 above.

4. Number of Units created: 25.

5. Maximum number of Units the Declarant has reserved the right to create: 0.

6. Moorage Slips: None

7. Recreational Facilities that may be added: Basketball Court, Picnic Table and Chess Table.

8. Recording number of Map _____.

9. Parking in the Common Elements (if all possible phases are included):

a. Uncovered	0
b. Covered	0
c. Enclosed	0
TOTAL	0

(All parking numbers are estimates only, subject to change)

10. Limited Common Elements.

At the time of recording there are no limited common elements.

11. Yard Landscape Maintenance. Although the Unit Owner has the responsibility to maintain, repair, replace and irrigate the landscaping and yards within Unit boundaries, the Declarant reserves the right, so long as exercising any Special Declarant or Development Rights, to maintain, repair, replace and irrigate the landscaping and yards that are adjacent to roads and alleys.

EXHIBIT B

TO THE BLUFFS AT WHISKEY RIDGE DECLARATION

UNIT DATA

NOTE 1: Units shall consist of an envelope of space, the perimeter boundaries of which are on the surface of the land as located and depicted on the Map and which boundaries extend below and above the ground elevation for each Unit as shown on the Map.

UNIT SQUARE FOOTAGE AREA NOTES

NOTE 2: Square footage of Unit is not the area of a dwelling structure within a Unit.

ALLOCATED INTEREST NOTES

NOTE 3: The Allocated Interest of a Unit in Common Expense Liability, Association votes and Common Elements are based on an equal share. The exercise of any Development Right or Special Declarant right as set forth in the Declaration, may act to increase or decrease the number of Units however, Allocated Interest shall continue to be based upon an equal share.

Unit #	Square Footage of Unit/Lot	Allocated Interest Common expenses, Votes and Common Elements
1	3,609	Equal Share (1/25)
2	3,398	Equal Share (1/25)
3	3,399	Equal Share (1/25)
4	3,399	Equal Share (1/25)
5	3,399	Equal Share (1/25)
6	3,388	Equal Share (1/25)
7	3,903	Equal Share (1/25)
8	4,636	Equal Share (1/25)
9	3,497	Equal Share (1/25)
10	3,602	Equal Share (1/25)
11	3,497	Equal Share (1/25)
12	3,497	Equal Share (1/25)
13	3,498	Equal Share (1/25)
14	3,498	Equal Share (1/25)
15	3,524	Equal Share (1/25)
16	3,500	Equal Share (1/25)
17	3,872	Equal Share (1/25)
18	3,500	Equal Share (1/25)
19	3,500	Equal Share (1/25)
20	3,500	Equal Share (1/25)
21	3,500	Equal Share (1/25)
22	3,500	Equal Share (1/25)
23	3,500	Equal Share (1/25)
24	3,500	Equal Share (1/25)
25	3,712	Equal Share (1/25)