

## **PEBBLE CREEK CONDOMINIUM:**

Condominium Declaration  
Condominium Survey Map & Plans  
Engineering Report  
Owners' Association Articles of Incorporation  
Owners' Association Bylaws  
Owners' Association Rules & Regulations  
Owners' Association Proposed Budget

May 27, 1998

Return  
Name and Address:

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*PLAT : BOOK J. PAGE 533*

*AFN : 980526CCC1*

DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND RESERVATIONS  
FOR

PEBBLE CREEK CONDOMINIUM

Recording numbers of related documents are on  
pages 1, 2 and 3 of document.

GRANTOR: Forest Creek Fountains, LLC.

GRANTEE: The Public

ABBREVIATED  
LEGAL  
DESCRIPTION: A portion of the Northwest Quarter of Section 11,  
Township 2 North, Range 1 East, W.M. in Clark  
County, Washington.

Additional or complete legal descriptions are on  
Exhibits A and B of document.

ASSESSOR'S  
PROPERTY TAX  
PARCEL ACCOUNT  
NUMBER:

147955-000.0

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DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND RESERVATIONS  
FOR  
PEBBLE CREEK CONDOMINIUM

THIS DECLARATION is made and executed this 8 day of May, 1998, by FOREST CREEK FOUNTAINS, LLC, a Washington limited liability company, the sole holder of fee simple title to the Property hereinafter described, pursuant to the provisions of the Washington Condominium Act, Chapter 64.34 of the Revised Code of Washington, as amended. The Survey Map and Plans for this Condominium are recorded under Document No. \_\_\_\_\_ in Clark County, Washington.

WITNESSETH:

The purpose of this Declaration is to submit the Property to the condominium form of ownership and use pursuant to the Act and to establish for Declarant's benefit and for the mutual benefit of all future owners or occupants of the Property, or any part thereof, certain easements and rights in, over and upon the Property and certain mutually beneficial restrictions and obligations with respect to the use, occupancy and maintenance thereof.

Declarant intends that all Unit Owners, Mortgagees, occupants, and all other persons acquiring any interest in the Property shall hold their interests subject to the rights, easements, privileges, restrictions and reservations hereinafter set forth.

NOW, THEREFORE, all of the Property shall be held, used, conveyed, encumbered, leased, rented, occupied and improved subject to the following covenants, conditions, restrictions, uses, limitations, obligations and reservations, all of which are declared and agreed to be in furtherance of the division of portions of the Property into Units and Common Elements and shall be deemed to run with the land and bind and benefit Declarant, its successors and assigns, and any and all persons acquiring or owning an interest in and to any portion of the Property, their grantees, successors, heirs, executors, administrators and assigns.

ARTICLE 1

DEFINITIONS

Certain terms, as used in this Declaration, shall be defined as follows, unless the context clearly indicates a different meaning thereof. Any terms used in this Declaration which are not herein defined shall have the meanings set forth in the Act.

1.1 "Act" shall mean the Washington Condominium Act, Chapter 64.34 of the Revised Code of Washington, as amended from time to time.

1.2 "Adjoining Property" shall mean all of the units in Forest Creek, a condominium, established by declaration recorded with the Auditor for Clark County, Washington, under Document No. 8012240130, as amended by Document No. 8302160088.

1.3 "Adjoining Property Users" shall mean the then owners of the Adjoining Property and their tenants and the members of such owners' and tenants' families, all to the extent they are then occupying units thereon.

1.4 "Allocated Interests" shall mean the undivided interests in the Common Elements appurtenant to each Unit, the Common Expense liabilities assigned to each Unit, and the votes in the Association allocated to each Unit, or such of those attributes as are specified in this Declaration in conjunction with the use of such term.

1.5 "Assessments" shall mean all sums chargeable by the Association against a Unit, including, without limitation (a) regular and special assessments for Common Expenses, charges and fines levied by the Association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the Association in connection with the collection of a delinquent Owner's account.

1.6 "Association" shall mean the association of Unit Owners incorporated under the name of "Pebble Creek Condominium Association," and its successors.

1.7 "Board of Directors" and "Board" shall each mean the governing body of the Association, elected pursuant to the Bylaws.

1.8 "Building" shall mean any structure upon the Property which contains Units.

1.9 "Bylaws" shall mean the bylaws of the Association, as amended from time to time.

1.10 "Common Elements" shall consist of all those portions of the Property which are not part of the Units.

1.11 "Common Expenses" shall mean expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.12 "Condominium" shall mean the Pebble Creek Condominium created by this Declaration.

1.13 "Declarant" shall mean Forest Creek Fountains, LLC, a Washington limited liability company, or any other person so defined in the Act.

1.14 "Declaration" shall mean this instrument by which the Condominium is established pursuant to the Act, as amended from time to time.

1.15 "Development Rights" shall mean any rights reserved by the Declarant to create Units, Common Elements and Limited Common Elements within the Condominium; to obtain the Easements within the Easement Areas, create Common Elements and Limited Common Elements within the Easement Areas and allocate such Limited Common Elements to Units; the rights to access, parking and utilities lying under, across, over and within the Easement Areas; to subdivide the Units or convert Units into Common Elements with respect to Units that have not then been conveyed by the Declarant; and to reallocate Limited Common Elements with respect to Units that have not then been conveyed by the Declarant, all as and to the extent more specifically set forth in this Declaration.

1.16 "Easements" shall mean the access, parking and utility easements that may be acquired by the Declarant in the Easement Areas and added to the Property as Common Elements and Limited Common Elements.

1.17 "Easement Areas" shall mean the real property described in Exhibit B attached hereto.

1.18 "Eligible Mortgagee" shall mean the holder of a mortgage on a Unit that has filed with the Association a written request that it be given copies of notices of any action by the Association that requires the consent of Mortgagees.

1.19 "Limited Common Elements" shall mean those portions of the Common Elements which are reserved or assigned in this Declaration or by the Declarant for the use of the Owners of one or more, but less than all, of the Units.

1.20 "Manager" shall mean a person or entity engaged by the Board on behalf of the Association to assist in administration or management of the Condominium.

1.21 "Mortgage" shall mean a mortgage, deed of trust, security agreement or real estate installment sales contract.

1.22 "Mortgagee" shall mean the mortgagee, beneficiary, creditor or vendor in a Mortgage, including the assignees of the interests so held.

1.23 "Property" shall mean the entire parcel of real property described in Exhibit A attached hereto, and any real property from time to time added to the Condominium and less any

property from time to time withdrawn from the Condominium by the Declarant in accordance with the provisions of this Declaration, together with all easements, rights and appurtenances now and hereafter belonging thereto.

1.24 "Special Declarant Rights" shall mean the Declarant's rights to exercise any Development Rights; to maintain sales offices, management offices, signs advertising the Condominium and model Units; to subdivide and combine Units; to obtain, grant and use easements through the Common Elements for the purpose of making improvements on the Property or to provide access to and from other properties; and to make the Condominium part of a larger condominium or development or subject to a master association, all as and to the extent more specifically set forth in this Declaration.

1.25 "Survey Map and Plans" shall mean the survey map and plans of the Condominium simultaneously recorded herewith, as amended from time to time, which are incorporated into this Declaration by this reference.

1.26 "Swimming Pool" shall mean the existing swimming pool on the Property and the area immediately adjoining the same designed for its use.

1.27 "Swimming Pool Costs" shall mean the costs periodically incurred and calculated by the Board or the Manager that are attributable to insuring against casualty and liability and to maintaining, refurbishing, repairing, equipping, operating, securing and supervising the Swimming Pool, including sinking reserve funds established from time to time to defray anticipated replacement costs.

1.28 "Total Voting Power" shall mean all of the votes assigned to the Units, irrespective of other conditions precedent to voting and regardless of the number of votes represented at any meeting.

1.29 "Unit Owner" and "Owner" shall each mean the person or persons holding fee simple title to a Unit of record, or in the event any Unit is sold under a real estate installment sales contract, the record vendee or vendees under said contract, including any natural person, corporation, partnership, limited liability company, association, trustee or other legal entity.

1.30 "Units" shall mean those areas of the Building which are not owned in common with all Unit Owners and are intended for use solely by the persons holding title thereto and their respective tenants, licensees and invitees. "Unit" shall mean any one (1) of the Units.

## ARTICLE 2

### NAMES OF CONDOMINIUM AND ASSOCIATION

The name of the Condominium is the "Pebble Creek Condominium." The name of the Association is the "Pebble Creek Condominium Association."

## ARTICLE 3

### CERTIFICATE OF SUBSTANTIAL COMPLETION

The Declarant hereby certifies pursuant to RCW 64.34.200(2) that all of the structural components and mechanical systems of all buildings containing or comprising any Units that are to form a part of the Condominium have been substantially completed.

## ARTICLE 4

### DESCRIPTION OF REAL PROPERTY

The legal description of the real property included in the Condominium is set forth in Exhibit A attached hereto.

## ARTICLE 5

### UNITS

5.1 Number of Units. This Declaration creates fifty-two (52) Units. The Condominium is comprised of thirteen (13) Buildings, each of which contains four (4) Units. Except for its right to subdivide and combine Units, the Declarant does not reserve the right to add or withdraw Units.

5.2 Identification and Location of Units. The Units are identified by the numbers 1 through 4 in each Building. The Buildings are numbered in accordance with their street addresses, as follows: 1404 N.E. 72nd Street, 1406 N.E. 72nd Street, 1408 N.E. 72nd Street, 1410 N.E. 72nd Street, 1412 N.E. 72nd Street, 1414 N.E. 72nd Street, 1500 N.E. 72nd Street, 1502 N.E. 72nd Street, 1504 N.E. 72nd Street, 1512 N.E. 72nd Street, 7216 N.E. 16th Avenue, 7302 N.E. 16th Avenue and 7306 N.E. 16th Avenue. The location of the Units in each Building are as follows: 1 is on the left side of the first floor from the perspective of a person facing the Unit entrances, and 2, 3 and 4 run clockwise from 1 in consecutive order.

5.3 Physical Characteristics of Units. Each Unit has approximately 975 square feet, one bathroom, two bedrooms and one fireplace.

5.4 Unit Boundaries.

5.4.1 Interior Surfaces. The interior surfaces of perimeter walls, floors, and ceilings are designated as the boundaries of each Unit. Decorative and finished surface coverings and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting a part of the finished surfaces thereof are a part of the Unit, and all other portions of the walls, floors, or ceilings are a part of the Common Elements. All spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit and which are not otherwise defined herein as a Common or Limited Common Elements are part of such Unit.

5.4.2 Physical Boundaries Controlling. The physical boundaries of a Unit constructed in substantial accordance with the original Survey Map and Plans shall constitute its boundaries rather than the metes and bounds expressed in the Survey Map and Plans, regardless of settling or lateral movements of the Building or minor variances between boundaries shown on the Survey Map and Plans and those of the Building. This section does not relieve the Declarant or any other person of liability for failure to adhere to the Survey Map and Plans in all material respects.

5.5 Alterations of Units. A Unit Owner may make any improvements or alterations to the Owner's Unit that do not affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the Condominium or violate the use restrictions in this Declaration. After acquiring an adjoining Unit or an adjoining part of an adjoining Unit the Owner may, with approval of the Board, remove or alter an intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not adversely affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this section is not a relocation of boundaries. The Unit Owner's request for Board approval shall include complete plans and specifications for the proposed removal or alteration. The Board shall approve such request within thirty (30) days after receiving such request in writing and the plans and specifications unless the proposed alteration does not comply with the Act or this Declaration or impairs the structural integrity or mechanical or electrical systems in the Condominium or violates the use restrictions in this Declaration. The failure of the Board to act upon a request within such period shall be deemed approval thereof.

5.6 Relocation of Unit Boundaries. Subject to the provisions of this Declaration and other provisions of law, the boundaries between adjoining Units may only be relocated by an amendment to this Declaration upon application to the Association by the Owners of those Units. If the Owners of the adjoining Units have specified a reallocation between their Units of their

Allocated Interests, the application must state the proposed reallocations. Unless the Board determines within thirty (30) days after receiving the application in writing that the reallocations are unreasonable, the Association shall prepare an amendment that identifies the Units involved, states the reallocations, is executed by those Unit Owners, contains words of conveyance between them, and is recorded in the name of the grantor and the grantee. The Association shall obtain and record an amendment to the Survey Map and Plans complying with the requirements of RCW 64.34.232(4) necessary to show the altered boundaries between adjoining Units and their dimensions and identifying numbers.

5.7 Subdivisions and Combinations of Units. In addition to any rights reserved by the Declarant in this Declaration, subdivisions and/or combinations of any Unit or Units are authorized as follows:

5.7.1 Owner Proposal. Any Owner of any Unit or Units may propose to the Board in writing any subdividing or combining of any Unit or Units, and appurtenant Common Elements or Limited Common Elements, which proposal shall be accompanied by complete plans and specifications for accomplishing the same and proposed amendments to this Declaration and Survey Map and Plans covering such subdividing or combining. The Association shall then notify all other Unit Owners of the requested subdivision or combination.

5.7.2 Required Approvals. Upon written approval of such proposal by the Unit Owners to which sixty-seven percent (67%) of the Total Voting Power is allocated and sixty-seven percent (67%) of the Eligible Mortgagees, and of all Eligible Mortgagee(s) and Owner(s) of the Unit(s) to be combined or subdivided, the Owner(s) making the proposal may proceed according to such plans and specifications; provided, the Board may administer the work or the Board may require that provisions for the protection of other Units or Common Elements or reasonable deadlines for completion of the work be inserted in the contracts for the work and the Board may inspect the work from time to time and may impose such other conditions as it deems advisable for the safe, orderly and proper prosecution and completion thereof.

5.7.3 Allocated Interests. The Allocated Interests formerly allocated to the subdivided Unit shall be reallocated to the new Units in any reasonable and equitable manner prescribed by that Owner of the subdivided Unit. The Allocated Interests of the new Unit resulting from a combination of Units shall be the aggregate of the Allocated Interests formerly allocated to the Units being combined.

5.7.4 Amendments to Declaration and Survey Map and Plans. The Association shall obtain and record amendments to the Declaration and Survey Map and Plans required by any subdivision or combination that is duly approved pursuant to or permitted by this Declaration.



5.8 Access to Common Elements and Public Streets. Each Unit has direct access to a portion of the Common Elements and all of the Common Elements have access to public rights of way, and Unit Owners shall have unrestricted ingress to and egress from their respective Units.

5.9 No Lease of Unit Parking Spaces. Except to another Unit Owner or in conjunction with and as a part of a lease of a Unit to a third party as permitted by this Declaration, Unit Owners shall not lease the parking spaces which form a part of their respective Units or which are Limited Common Elements appurtenant to their Units.

## ARTICLE 6

### ALLOCATED INTERESTS

Except for votes in the Association, the Allocated Interests assigned to the Units shall be based upon a formula that, except for minor rounding adjustments and the like needed to total one hundred percent (100%) or to avoid minor distinctions, gives each Unit an equal undivided fractional or percentage interest in the Common Elements and an equal liability for Common Expenses. Based upon such formula, each Unit shall have a 1/52nd undivided percentage interest in the Common Elements, 1/52nd of the liability for the Common Expenses and one vote in the Association.

## ARTICLE 7

### COMMON ELEMENTS

7.1 Description. All portions of the Property which are not part of the Units and, if and when added to the Condominium, the Easement Areas, shall be Common Elements.

#### 7.2 Conveyance and Encumbrance of Common Elements.

7.2.1 Required Approvals. Portions of the Common Elements which are not necessary for the habitability of any 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 Total Voting Power is allocated, including eighty percent (80%) of the votes allocated to Units not owned by Declarant or an affiliate of Declarant, agree to that action; but all of 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.

7.2.2 Agreement. An agreement to convey Common Elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratification thereof,

in the same manner as a deed, by the requisite number of Unit Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratification thereof must be recorded in every county in which a portion of the Condominium is situated and shall be effective upon recording.

7.2.3 Association's Authority. The Association shall have all powers necessary and appropriate to effect the conveyance or encumbrance authorized pursuant to this section, including the power to execute deeds or other instruments.

7.2.4 Rights of Support. A conveyance or encumbrance of Common Elements pursuant to this section shall not deprive any Unit of its rights of access and support.

7.2.5 Prior Encumbrances. A conveyance or encumbrance of Common Elements pursuant to this section shall not affect the priority or validity of preexisting encumbrances.

7.3 Incorporation of Common Element into Unit. The Owners of the Units to which at least sixty-seven percent (67%) of the Total Voting Power is allocated, including the Owner of the Unit to which the Common Element will be incorporated, must agree to incorporate a Common Element into an existing Unit. Such incorporation shall be reflected in amendments to this Declaration and the Survey Map and Plans.

7.4 Other Common Element Conveyances without Unit Void. Except as otherwise provided in this Article, an individual interest in the Common Elements may be conveyed, encumbered, sold or transferred, voluntarily or involuntarily, solely as a part of a conveyance, encumbrance, sale or transfer of the Unit to which it is appurtenant and any attempt to do so without such a Unit transfer shall be void.

## ARTICLE 8

### LIMITED COMMON ELEMENTS

8.1 Description. Each Limited Common Element forms a portion of the Property legally described herein and shall consist of the following, all of which, to the extent not otherwise stated, are allocated solely to the Unit to which they are the most immediately adjacent or are herein assigned:

(a) All portions of the Property designated as Limited Common Elements by the Act;

(b) If any chute, flue duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated

solely to the Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements;

(c) Any shutters, awnings, window boxes, door-steps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but which are located outside that Unit's boundaries;

(d) Any deck or patio which is immediately adjacent to each Unit, as shown on the Survey Map and Plans, the boundaries of said deck or patio being defined by the interior surfaces of the walls or railings, floor, and ceiling (if any); and

(e) The carport parking spaces, one of which is assigned to each Unit in or pursuant to this Declaration and as shown on the Survey Map and Plans; provided, however, unless and until the Easements are established of record, the Units designated 4 in the Building designated 1502 N.E. 72nd Street, 1 through 4 in the Building designated 7216 N.E. 16th Avenue, 1 through 4 in the Building designated 7302 N.E. 16th Avenue and 1 through 4 in the Building designated 7306 N.E. 16th Avenue do not have assigned carport parking spaces. The boundaries of said parking spaces are defined by the walls or interiors of the striping enclosing said parking space. The initial assignments of parking spaces are shown on the Survey Map and Plans by corresponding the identification number given the assigned space with the number of the Unit to which it is assigned. Parking spaces may also be located within some of the Easement Areas if and when the Easement Areas are added to the Property.

8.2 Reservation of Use. The Limited Common Elements are reserved for the exclusive use of the Unit Owner(s) of the Units to which they are assigned in the Act and this Declaration and such Owners' respective tenants, invitees and licensees. No portion of any of the Property may be reallocated as Limited Common Elements except as provided in this Declaration or Act.

### 8.3 Parking Assignments.

8.3.1 Number and Location. The total number of parking spaces is fifty-four (54), thirty-nine (39) of which are covered carports and fifteen (15) are uncovered. The identifying numbers and locations of the covered parking spaces are depicted on the Survey Map and Plans.

8.3.2 Declarant's Assignments. Except as stated in Section 8.1(e) above, each Unit is assigned one carport, which is depicted on the Survey Map and Plan. The Declarant reserves the right to change such assignments to or among Units owned by the Declarant and to assign parking spaces within the Easement Areas by unilaterally modifying the Survey Map and Plans.

8.3.3 Rights to Use. The Owner of each Unit has the unqualified right to use the parking space which is assigned to his or her Unit as a Limited Common Element. The Unit Owners shall have the right to use the other parking spaces which are not Limited Common Elements subject to the assignments, restrictions, rules and regulations which are from time to time made or adopted by the Board.

8.3.4 Expiration of Declarant's Assignment Rights. The Declarant's rights to create Limited Common Elements in the unassigned parking spaces on the Property or within the Easement Areas shall terminate upon the earlier of (a) seven (7) years after the date this Declaration is recorded, or (b) the day after the conveyance of record of the last Unit owned by the Declarant.

8.4 Leasing and Transfer of Limited Common Elements.

8.4.1 Leasing. After the Declarant's initial assignment, a Unit Owner may rent or lease the parking space assigned to that Unit; provided, the rental or lease term shall automatically expire on the date the Unit Owner disposes of his or her interest in the Unit (whether such disposition is by deed, contract, foreclosure or otherwise). The Board shall be notified in writing of the existence of any such rental or lease arrangement.

8.4.2 Reallocation Between Units. Except as provided in Section 11.3, 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, and approved in writing by the Mortgagees holding Mortgages against, 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 section within thirty (30) days after receiving such request in writing 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 Condominium.

8.4.3 Conversion of Common Element to Limited Common Element. The Owners of the Units to which at least sixty-seven percent (67%) of the Total Voting Power is allocated, including the Owner of the Unit to which the Limited Common Element will be assigned, must agree to convert a Common Element to a Limited Common Element. Such conversion shall be reflected in an amendment to this Declaration and Survey Map and Plans. This section shall not apply to any such conversion made as a result of the exercise of any right reserved by the Declarant in this Declaration to assign and create Limited Common Elements in the existing parking spaces and any parking spaces added to the Property after this Declaration is recorded.

8.4.4 Conversion of Limited Common Element to Common Element. The Owners of the Units to which at least sixty-seven percent (67%) of the Total Voting Power is

allocated, including the Owner of the Unit to which the Limited Common Element has been assigned, must agree to convert a Limited Common Element to a Common Element. Such conversion shall be reflected in an amendment to this Declaration and Survey Map and Plans. This section shall not apply to any such conversion made as a result of the exercise of any right reserved by the Declarant in this Declaration to assign and create Limited Common Elements in the existing parking spaces and any parking spaces added to the Property after this Declaration is recorded.

8.4.5 Incorporation of Limited Common Element into Unit. The Owners of the Units to which at least sixty-seven percent (67%) of the Total Voting Power is allocated, including the Owner of the Unit to which the Limited Common Element will be incorporated, must agree to incorporate a Limited Common Element into an existing Unit. Such incorporation shall be reflected in an amendment to this Declaration and the Survey Map and Plans. This section shall not apply to any such reallocation made as a result of the exercise of any right reserved by the Declarant in this Declaration to assign and create Limited Common Elements in the existing parking spaces and any parking spaces added to the Property after this Declaration is recorded.

## ARTICLE 9

### EASEMENTS

9.1 Service Facilities. In addition to rights under the Act, each Unit has an easement in and through each other Unit and the Common and Limited Common Elements for all support elements and utility, wiring, heat and service elements, and each Unit Owner shall have an unrestricted right of ingress to and egress from his or her Unit for reasonable access thereto, all as required to effectuate and continue the proper operation of the Condominium. Each Unit Owner's right of access to his or her Unit shall be perpetual and shall pass with the Unit as transfers of the ownership of such Unit occurs. Without limiting the generality of the foregoing, each Unit and all Common and Limited Common Elements are specifically subject to an easement for the benefit of each of the other Units in the Condominium for all duct work for the several Units, and for heating, ventilation, air conditioning and fireplaces and associated flues or chimneys. In addition, each Unit and all the Common and Limited Common Elements are specifically subject to easements as required for the intercom, security and electrical entry system, if any, for the electrical wiring and plumbing, for the air conditioning lines and equipment, if any, for each Unit, for the vacuum system roughed in to each Unit, if any, and for the cable television, telephone, sound and other systems wired into each Unit, if any. Each Unit as it is constructed is granted an easement to which each other Unit and all Common and Limited Common Element is subject to the location and maintenance of all the original equipment and facilities and utilities for such Unit. The specific mention of reservation of any easement in this Declaration does not limit or negate the general easement for Common Elements reserved by law.

9.2 Access and Utilities. 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 the Board determines are reasonably necessary for the operation of the Property.

9.3 Association Functions. There is hereby reserved to Declarant and the Association, or their duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Association as are set forth in the Act, this Declaration or the Bylaws.

9.4 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 Elements for the purpose of accommodating any encroachment due to engineering errors, or errors in original construction, reconstruction, repair of any portion of the Building, to shifting and settling, or any other similar cause, and any encroachment due to building overhang or projection so long as the physical boundaries of the Units are in substantial accord with the description of those boundaries in this Declaration. 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 if said encroachment occurred due to the willful and wrongful act with full knowledge of said Owner. 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.

9.5 Easement Areas. If and when the Declarant obtains the Easements, pedestrian and vehicular access to the Property from N.E. 16th Avenue will be via a mutual easement over that portion of the Easement Areas that lies outside of the Limited Common Element parking spaces in the Easement Areas and shared with the Adjoining Property Users, and access via a sidewalk easement on the Adjoining Property will be similarly shared. Such nonexclusive access easements will be reserved for the use of the persons then occupying or having the right of access to the Units and their guests, licensees and invitees.

9.6 Swimming Pool Access. The Declarant hereby grants to the Adjoining Property Users a mutual, nonexclusive easement to access and use the Swimming Pool. Such use and the means of access thereto shall be subject to (a) such rules and regulations as are promulgated by the Board from time to time, which rules may not discriminate between the Unit Owners as a group on the one hand and the Adjoining Property Users as a group on the other, but may otherwise reasonably limit and condition access to and the use of the Swimming Pool and provide for Swimming Pool closures, and (b) the timely payment by the Adjoining Property

Users owners' association of their proportionate share of the Swimming Pool Costs. Except as otherwise provided as part of the Declarant's acquisition of the Easements, such share shall be determined by dividing the total number of apartment or condominium units located on the Adjoining Property by the aggregate of all apartment and condominium units on the Adjoining Property and in the Condominium and multiplying the Swimming Pool Costs by such fraction.

## ARTICLE 10

### USE RESTRICTIONS

10.1 General Purpose. The Property shall be used exclusively for residential and related common purposes and by the Declarant for the purposes reserved herein as Special Declarant Rights.

#### 10.2 Unit and Building Uses and Alterations.

10.2.1 Residential Use. Each Unit shall be used as a residence for a single family and such other uses permitted by this Declaration and for no other purpose. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit a Unit Owner from maintaining his or her personal professional library therein, keeping his or her personal business and professional records therein, or handling his or her personal business or professional telephone calls or correspondence therefrom.

10.2.2 Structural Alterations. The Unit Owner shall not, without first obtaining written consent of the Board, make, or permit to be made, any structural alteration, improvement or addition in or to his or her Unit or in or to the exterior of the Building or any of the Common Elements.

10.2.3 Exterior Appearance. Unit Owners shall not display, hang, store or use any signs, clothing, sheets, blankets, laundry or other articles which may be visible in or from the Common Elements or the Building exterior (other than draperies, curtains or shades, which have a uniform exterior appearance in accordance with the rules and regulations adopted by the Board), or paint or decorate or adorn the outside of any Unit, or install any canopy or awning or outside radio or television antenna, or other equipment, fixtures or items of any kind, without the prior written permission of the Board.

10.2.4 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, that the Board shall, by and subject to appropriate rule, permit temporary placement of a sign, at a space designated by the Board, indicating that a Unit is for sale or lease; and provided, that this section shall not apply to Declarant or Declarant's agents in exercising any rights reserved by Declarant under this Declaration.

10.3 Common Element Uses and Alterations. Except for the Declarant's exercise of the Special Declarant Rights and the permitted use of the easements granted in the Survey Map and Plans or this Declaration or any amendment to the Survey Map and Plans or this Declaration or by the Association, the Common Elements shall be used only for access, ingress and egress to and from the Units by the respective Owners or lessees residing therein, and their guests and other authorized visitors, and for such other purposes which are incidental to the residential use of the Units. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner. Nothing shall be altered or constructed in, or (except for an Owner's personal property) removed from, the Common Element except upon the written consent of the Board and after complying with the procedures required herein or by law.

10.4 Vehicle Parking Restrictions. All parking spaces are restricted to use for parking of motor vehicles; other items and equipment may be parked or kept therein only subject to the rules or regulations of the Board. The Board may require removal of any vehicle (and any other equipment or item) improperly stored in parking spaces. If the same is not removed, the Board may cause removal at the risk and expense of the Owner thereof. Use of all parking areas may be regulated by the Board.

10.5 Use of Equipment. No person shall overload the electric wiring in the Building, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others or connect any machines, appliances, accessories or equipment to the heating or air-conditioning system.

10.6 Pets. No animals shall be raised, bred or kept in any Unit, except for dogs and cats weighing less than thirty-five (35) pounds that are not kept for commercial purposes, and provided further that they shall be kept in strict accordance with the Association's rules relating to household pets as from time to time adopted by the Board. The Board shall have the right to require a Unit Owner to remove from the Condominium any household pet which unreasonably disturbs or presents an unreasonable risk of injury to other occupants, as determined by the Board in its sole discretion.

10.7 Illegal Uses. No unlawful, immoral, noxious or offensive activities shall be carried on in any Unit or elsewhere on the Property, nor shall anything be done therein or thereon which shall constitute a nuisance or which shall, in the judgment of the Board, cause unreasonable noise or disturbance to others.

10.8 Rental Restrictions. The leasing or renting of a Unit by its Owner shall be subject to the following provisions:



10.8.1 No Transient Purposes. With the exception of a lender in possession of a Unit following a default under a Mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of a foreclosure, no Unit Owner shall be permitted to lease his or her Unit for any period less than thirty (30) consecutive days.

10.8.2 Entire Unit. No Unit Owner may lease less than an entire Unit.

10.8.3 Timesharing Prohibited. No Unit may be subjected to or included in any timeshare program, whether in the nature of a "right to use" club or the sale of fractional fee interests.

10.8.4 Written Leases. All rental agreements shall be in writing and shall be subject to this Declaration and the Bylaws and the rules and regulations adopted by the Board.

10.8.5 Rent Paid 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. The lessee shall not have the right to question payment to the Board, and such payment will discharge the lessee's duty of payment to the Owner to the extent such rent is paid to the Association, but will not discharge the liability of any Owner. The Board shall not exercise this power where a receiver has been appointed with respect to the Unit or its Owner or in derogation of any rights which a Mortgagee may have with respect to such rents.

10.9 No Impairment of Insurance. Nothing shall be done or kept in any Unit or in the 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 shall permit anything to be done or kept in his 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.

10.10 Rules and Regulations. All Unit Owners and their tenants, licenses and invitees shall comply with any rules and regulations governing operation of the Condominium and the use of the Common Elements, as may be adopted and amended from time to time by the Board.

## ARTICLE 11

### SPECIAL DECLARANT RIGHTS

11.1 Declarant's Completion of Improvements. The Declarant, its agents, employees and contractors shall have the right to perform work authorized by the Declaration; indicated on the Survey Map and Plans; authorized by building permits; provided for under any purchase and sale agreement or other contract between the Declarant or its designee and a Unit purchaser;

necessary to satisfy any express or implied warranty under which the Declarant is obligated; or otherwise authorized or required by law.

11.2 Declarant's Permitted Uses. In addition to the uses otherwise permitted by this Declaration, the Declarant, its agents, employees and contractors may establish and maintain in any Unit owned by the Declarant and in any of the Common Elements (other than Limited Common Elements assigned to Units not owned by the Declarant) such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction, sale, rental or management 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, and prospective tenants or purchasers. Any such facilities not designated a Unit by the Declaration is a Common Element and, when the Declarant ceases to be a Unit Owner, the Declarant's rights to use them for the purposes enumerated above shall terminate, except that the Declarant shall have the right to promptly remove all of the Declarant's and its agents' and employees' property from such areas. The Declarant may maintain signs on the Common Elements advertising the Condominium. The Declarant's rights under this section are subject to the provisions of other applicable state laws and local ordinances. The number, size, location, and relocation of such facilities shall be determined from time to time by the Declarant in its sole discretion; provided, however, the maintenance and use of such facilities shall not unreasonably interfere with a Unit Owner's use and enjoyment of such Owner's 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.

11.3 Declarant's Subdivisions and Combinations. The Declarant shall have the right to subdivide or combine Units owned by the Declarant, combine Common Elements or Limited Common Elements into existing Units, convert Units or portions of Units owned by Declarant into Common Elements or Limited Common Elements, convert Common Elements into Limited Common Elements, convert Limited Common Elements into Common Elements, and convert Common Elements or Limited Common Elements into new Units. The Declarant may assign Limited Common Elements to Units it owns and reallocate Limited Common Elements among Units it owns. Whenever the Declarant exercises a Development Right to subdivide, combine or convert a Unit, Common Element or Limited Common Element into additional Units, Common Elements or Limited Common Elements,

(a) If the Declarant converts a Unit entirely to Common Elements or Limited Common Elements, the amendment to this Declaration must reallocate all of the Allocated Interests of that Unit among the other Units as if that Unit had been taken by condemnation.

(b) If the Declarant subdivides a Unit into two or more Units, whether or not any part of the Unit is converted into Common Elements, the amendment to the

Declaration must reallocate all of the Allocated Interests of the Unit among the Units created by the subdivision in any reasonable and equitable manner prescribed by the Declarant.

(c) If the Declarant combines two or more Units, the amendment to the Declaration must reallocate to the new Unit all of the Allocated Interests formerly allocated to the Units so combined.

(d) If the Declarant creates one or more Units from Common Elements or Limited Common Elements, the amendment to the Declaration must assign each of such new Unit(s) an identifying number, describe any Limited Common Elements allocated to such new Unit(s), and reallocate all of the Allocated Interests among all of the Units using the formula specified in Article 6.

11.4 Acquisition and Use of Easements. The Declarant shall have the right to acquire the Easements from the Adjoining Property Users or their owners' association or designated agent for nonexclusive access, utilities and parking and for exclusive parking, all as and when determined by the Declarant. To the extent the Easements are acquired the same shall constitute Common Elements, and the Declarant shall have the right to create Limited Common Elements for exclusive parking within the Easement Areas and to allocate such Limited Common Element parking to certain Units. Such allocation shall first be made to the Units not having an assigned Limited Common Element parking space before any other Unit is assigned an additional Limited Common Element parking space by the Declarant. The terms, covenants and conditions set forth in the agreement creating the Easements shall be determined and accepted solely by the Declarant and may include, without limitation, an allocation of maintenance responsibilities, risk of loss and use restrictions. Such consideration may have the effect of increasing the potential Assessments levied against the Units as a result of increased responsibility for certain Common Elements of the Condominium, both within and outside of the Easement Areas or within the Property.

11.5 Limitations Upon Special Declarant Rights.

(a) Notwithstanding any other provision of this Declaration, the Declarant's right to add phases by amendments under this section shall expire seven (7) years after the date this Declaration is first recorded.

(b) No Unit and no Limited Common Element allocated to such Unit may be subdivided, combined with any other Unit or converted into a Unit, Common Element or Limited Common Element without the execution of the amendment to the Declaration which effects the same by the Unit Owner of such Unit.

11.6 No Sequence or Timing Constraints. Any Development Right may be exercised with respect to different parcels of real property at different times, and 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. Even though a Development Right is exercised in any portion of the Property which is subject to that right, that right need not be exercised in all or in any other portion of the Property.

11.7 Termination of Development Rights. Except as otherwise provided in this Declaration, the Development Rights shall continue until the Declarant voluntarily terminates any or all of the Development Rights by recording an amendment to the Declaration which specifies which Development Right is thereby terminated.

11.8 Liability for Damage. The Declarant shall promptly repair and restore any portion of the Condominium damaged by the exercise of its Development Rights and as otherwise required by the Act.

11.9 Liability for Unsold Units. If and so long as the Declarant owns any Units in or added to the Condominium the Declarant shall be the Unit Owner with respect to each such Unit and as such shall enjoy the same rights and be subject to the same duties as would be held or assumed by any other person owning such Unit.

## ARTICLE 12

### ASSOCIATION

12.1 Incorporation. The Association shall be incorporated as a nonprofit Washington corporation.

12.2 Membership. Each Unit Owner (including Declarant) shall be a member of the Association so long as he or she shall be a Unit Owner of record, and such membership shall automatically terminate when such person ceases to be a Unit Owner of record. The Association's members shall consist exclusively of the Unit Owners.

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

#### 12.4 Authority of Association.

12.4.1 Enumerated Powers. The Association, acting by and through the Board, or a Manager appointed by the Board, for the benefit of the Condominium and the Owners, shall enforce the provisions of this Declaration and of the Bylaws and shall have all powers and authority permitted to the Association under and subject to the Act and this Declaration, including, without limitation, the right and authority to:

- (a) Adopt and amend Bylaws, rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures and reserves, and impose and collect Assessments from Unit Owners;
- (c) Hire, discharge and contract with managing agents and other employees, agents, and independent contractors;
- (d) Institute, defend and intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Condominium;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement and modification of Common Elements, including the parking spaces and the Swimming Pool;
- (g) Cause additional improvements to be made as a part of the Common Elements;
- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but Common Elements may be conveyed or subjected to a security interest only pursuant to the provisions of this Declaration;
- (i) Grant permits, easements, leases, licenses, and concessions through or over the Common Elements for utilities, roads and other purposes necessary for the proper operation of the Condominium and petition for or consent to the vacation of streets and alleys;
- (j) Impose and collect any payments, fees, or charges for the use, rental, or operation of the Common Elements (other than Limited Common Elements) and for services provided to Unit Owners;
- (k) Impose and collect charges for the late payment of assessments and, after notice and an opportunity to be heard by the Board or by such representative designated

by the Board and, in accordance with such procedures as provided in this Declaration or the Bylaws or rules and regulations adopted by the Board, levy reasonable fines in accordance with a previously established schedule thereof adopted by the Board and furnished to the Owners for violations of this Declaration, Bylaws, and rules and regulations of the Association;

(l) Impose and collect reasonable and lawful charges for the preparation and recording of amendments to this Declaration and the Survey Map and Plans, resale certificates and updates thereof and statements of unpaid Assessments;

(m) Provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive Assessments, but only to the extent this Declaration so provides;

(o) 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 Element or to preserve the appearance and value of the Condominium, and 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;

(p) 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 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 attorneys' 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;

(q) Exercise any other powers conferred by the Act, this Declaration or the Bylaws;

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

(s) Exercise any other powers necessary and proper for the governance and operation of the Association.

12.4.2 Limitations upon Capital Expenditures. 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 Ten Thousand Dollars (\$10,000), 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 seventy-five percent (75 %) of the Total Voting Power.

12.4.3 Limitations upon Business Activities. Nothing herein contained shall be construed to give the Association authority to conduct a business for profit on behalf of all of the Owners or any of them.

12.4.4 Termination of Contracts and Leases. If entered into before the Board elected by the Unit Owners takes office, (a) any management contract, employment contract, or lease or recreational or parking areas or facilities, (b) any other management contract between the Association and the Declarant or an affiliate of the Declarant, or (c) any contract or lease that is not bona fide or was unconscionable to the Unit Owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the Association at any time after the Board elected by the Unit Owners takes office 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. This section does not apply to any lease, the termination of which would terminate the Condominium or reduce its size, unless the real property subject to that lease was included in the Condominium for the purpose of avoiding the right of the Association to terminate a lease under this section.

12.4.5 Borrowing by Association. In the discharge of its duties and the exercise of its powers as herein set forth, 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 its 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 for any other amounts not so paid, satisfied or discharged.

12.5 Bylaws. Bylaws (and amendments thereto) for the administration of the Association and the Property and for other purposes not inconsistent with the Act or this Declaration shall be adopted by the Board.

12.6 Meetings, Notices and Quorums. The annual and special meetings of the Association and the Board and all procedures therefor, including required notices and quorums, shall be as set forth in the Bylaws.

12.7 Voting.

12.7.1 Number of Votes. The Total Voting Power in the Association shall be the sum of all the votes assigned to the Units.

12.7.2 Method of Voting. The means by which votes in the Association shall be cast and recognized, including voting by proxy or written consent, shall be as set forth in the Bylaws.

12.7.3 Percentage of Owners or Mortgagees. For purposes of determining the 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 Unit, such Owner shall be deemed a separate Owner for each such Unit so owned and such Mortgagee shall be deemed a separate Mortgagee with respect to each Mortgage so held.

12.7.4 Association's Units. No votes allocated to a Unit owned by the Association may be cast, and in determining the percentage of votes required to act on any matter, the votes allocated to Units owned by the Association shall be disregarded.

12.8 Management by Board. Except as otherwise provided in this Declaration, the Bylaws, and the Act, the Board shall act on behalf of the Association.

12.9 Limitation of Board's Liability. Except and to the extent covered by insurance, the members of the Board shall not be liable for any service to be obtained and paid for by the Board of Directors or for injury or damage to person or property caused by the elements or by another Unit Owner or person in the Condominium or resulting from the flow of electricity, water or gas from outside or from any parts of the Building or from any of their pipes, drains, conduits, appliances or equipment or from any other place. No diminution or abatement of Assessments shall be claimed or allowed for inconveniences or discomfort arising from making of repairs or improvements to the Common Elements or from any action taken to comply with any law, ordinance or orders of governmental authorities. The Board and Manager shall not be responsible to Unit Owners for loss or damage by theft or otherwise of articles which may be used or stored by Unit Owners on the Property.



12.10 No Personal Liability for Decisions. So long as a Board member, Association committee member, or Association officer has acted in good faith, without willful or intentional misconduct, upon the basis of such information as may be possessed by such person, no such person shall be personally liable to any Owner, or other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, negligence (except gross negligence), decision, or failure to make a decision; provided, that this section shall not apply if and to the extent the consequences of such act, omission, error, negligence or decision are covered by insurance obtained by the Board.

12.11 Indemnification of Board and Officers. Each member of the Board and each officer of the Association shall be indemnified by Unit Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred or imposed in connection with any proceeding to which he or she may be a party or in which he or she may become involved by reason of being, or having been, such a member or officer, including the settlement of any proceeding, whether or not he or she is such a member or officer at the time such expenses are incurred, except in such cases where the member or officer is adjudged guilty of willful misfeasance or malfeasance.

12.12 Arbitration. In the event of a dispute among the Unit Owners which cannot be resolved through the voting procedures provided for under the Declaration and the Act or by mere compliance with the provisions of the Declaration and the Act, such dispute shall be determined by an arbitrator in an arbitration proceeding. Such proceeding shall be conducted as expeditiously as possible and in accordance with the rules of the American Arbitration Association. The arbitrator shall be appointed with the approval of Unit Owners holding two-thirds of the Total Voting Power; provided, however, if no such arbitrator is so appointed or approved, then any Unit Owner may cause the appointment of an arbitrator by appropriate petition to the Clark County Superior Court. Such arbitrator shall be neutral and independent and be an attorney licensed to practice law in the State of Washington and have reasonable prior experience with condominium law and practice. All of the costs associated with the arbitration proceeding shall be paid by the Association as a Common Expense; provided, however, the legal fees of any attorney retained by an individual Unit Owner shall be paid by such Unit Owner. The ruling of the arbitrator shall be consistent with the Declaration and the Act, but otherwise shall be final and binding upon the Unit Owners.

12.13 Association's Records and Funds.

12.13.1 Records and Audits. The Association shall keep financial records sufficiently detailed to enable the Association to provide resale certificates. The Association shall retain current copies of the Declaration, the Association's articles of incorporation, rules and regulations, and the Bylaws. All financial and other records, including, but not limited to, checks, bank records and invoices, shall be the property of the Association. All of the items referred to in this section and the Association's books, records and financial statements shall be

made available for examination and copying by the Manager, a Unit Owner, a Unit Owner's authorized agents and all Mortgagees during normal business hours. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association in accordance with generally accepted accounting principles. If this Condominium consists or hereafter consists of fifty (50) or more Units, the financial statements of the Condominium shall be audited at least annually by a certified public accountant. If this Condominium consists of fewer than fifty (50) Units, an annual audit is also required but may be waived annually by Owners (other than the Declarant) of Units to which sixty percent (60%) of the votes are allocated, excluding the votes allocated to Units owned by the Declarant.

12.13.2 Name of Accounts. The funds of the Association shall be kept in accounts under the name of the Association.

12.13.3 Fund Commingling. The funds of the Association shall not be commingled with the funds of any other association or entity, nor with the funds of any Manager or any other person responsible for the custody of such funds.

12.13.4 Reserve 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 officers or directors of the Association.

12.14 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 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.

## ARTICLE 13

### ASSESSMENTS

13.1 Owners' Obligations. Each Owner shall be obligated to pay its share of Common Expenses and special charges made pursuant to the Act, this Declaration and the Bylaws 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 which requires Common Expense Assessments to be due and payable monthly as the Board shall designate; provided, however, any Assessments that are specially allocated or assessed to a particular Unit or Units shall be

paid by the Owner or Owners thereof at such time or times as the Board shall determine. No Owner may exempt itself 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.

13.2 Common Expenses. Common Expenses shall include:

- (a) Expenses of administration;
- (b) The Swimming Pool Costs and other expenses of maintenance, repair, replacement and landscaping of Common Elements and Limited Common Elements;
- (c) Expenses associated with the operation, maintenance, repair, and replacement of any Common Elements which the Declarant has the right to convert to Limited Common Elements and incurred prior to such conversion being effective;
- (d) Cost of insurance or bond required by the Act, this Declaration and the Bylaws or as obtained at the direction of the Board;
- (e) Bills for any utility services furnished to the Common Elements or to Units that are not separately metered;
- (f) Any general operating reserve established by the Board from time to time;
- (g) Reserves for replacements and deferred maintenance established by the Board from time to time;
- (h) Any deficit in Common Expenses for any prior period; and
- (i) Any other items properly chargeable as expenses of the Association.

13.3 Budget. The Board shall prepare a budget for the Association at least annually, estimate the Common Expenses expected to be incurred, less any previous overassessment, and except as otherwise provided in this Declaration, assess the Common Expenses to each Unit in proportion to the Unit's Allocated Interest therefor set forth in this Declaration. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Board shall provide a summary of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing of the summary. Unless at that meeting the Owners of Units to which a majority of the votes in the Association are allocated 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 Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board.

13.4 Reserve Funds. In establishing its regular budget of Common Expenses and Assessments, the Board shall make provision for creating, funding and maintaining reasonable reserves for contingencies and operations and for the maintenance, repair, replacement and acquisition of Common Elements and Limited Common Elements and shall take into account any expected income and any surplus available from the prior year's operating fund. Said reserve shall also be sufficient to cover any deductible amounts which are included in the casualty and any flood insurance policy for the Condominium obtained by the Association. The Board shall calculate the contributions to said reserve fund so that there are sufficient funds therein to replace, or perform such major repair, to each Common Element covered by the fund at the end of the estimated useful life of each such Common Element. The initial Board, whether appointed by Declarant or elected by Unit Owners, may at any suitable time establish the first such estimate. If the sum estimated and budgeted at any time proves inadequate for any reason (including nonpayment for any reason of any Owner's Assessment), the Board may at any time levy a further Assessment. Similarly, if the sum estimated and budgeted, and being collected and/or already collected, at any time proves excessive, 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.

13.5 Commencement of Assessments. Assessments shall commence at the earlier of such time as (a) is determined by the Board, or (b) sixty (60) days after the Declarant's first conveyance of a Unit. Until the Association makes an Assessment, the Declarant shall pay all Common Expenses. After any assessment has been made by the Association, and except as otherwise provided in this Declaration, Assessments must be made against all Units based on their Allocated Interests for Common Expense liability and the budget adopted by the Association.

#### 13.6 Allocation of Assessments.

13.6.1 Allocated Liability. Except for the Swimming Pool Costs that are collected from the Adjoining Property Users or as otherwise stated in this section, all Common Expenses shall be assessed against all of the Units in accordance with Article 6 of this Declaration, as amended from time to time.

13.6.2 Limited Common Element Expenses. Any Common Expense associated with the operation, maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit to which that Limited Common Element is assigned. If any such Common Expense is assessed against more than one Unit, such Units shall share such Assessment equally.

13.6.3 Only Some Units Benefited. The Board may elect that any Common Expense or portion thereof benefiting fewer than all of the Units must be assessed exclusively against the Units benefited.

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

13.6.5 Utility Costs. The Board may elect that the costs of utility must be assessed in proportion to usage.

13.6.6 Assessments for Judgments. Assessments to pay a judgment against the Association pursuant to RCW 64.34.368(1) may be made only against the Units in the Condominium at the time the judgment was entered in proportion to their respective Allocated Interests at the time the judgment was entered.

13.6.7 Owner Misconduct. To the extent that any Common Expense is caused by the misconduct or neglect of any Unit Owner, the Association may assess that expense against the Owner's Unit.

13.7 Working Capital Contribution. The Declarant shall establish and fund an initial working capital account in an amount equal to the product of the number of Units in the Condominium multiplied times twice the initial monthly Assessment per Unit. Deposits into the working capital fund for any particular Unit shall be made at the earlier of (a) the closing of the sale of such Unit by the Declarant, or (b) the date the Declarant transfers control of the Association to the Unit Owners as required by this Declaration or the Act. Such working capital contributions shall be deposited into a segregated account to meet unforeseen expenditures or to purchase additional equipment or services which are not acquired with the proceeds of the other Assessments. Working capital deposits shall not be considered advance payments of Assessments or used to defray the Declarant's expenses or pay the Declarant's construction costs or contributions to Association reserves. When a Unit owned by the Declarant is sold, the Declarant may apply funds collected at closing from the purchaser to reimburse itself for funds paid to the Association for such contribution with respect to that Unit.

13.8 Assessment Certificate. The Association, upon written request, shall furnish to a Unit Owner or his or her 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 Unit Owner, unless and to the extent known by the recipient to be false.

## ARTICLE 14

### ASSOCIATION'S RIGHTS AND REMEDIES

14.1 Enforcement. Each Owner shall comply strictly with the provisions of this Declaration, the Bylaws and rules and regulations passed hereunder, as the same may be lawfully amended from time to time, and with all decisions adopted pursuant to this Declaration, the Bylaws and rules and regulations. 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.

14.2 Access to Property. The Board and its agents or employees, may enter any Unit or Limited Common Element when necessary in connection with any maintenance, landscaping or construction for which the Board is responsible or in the event of emergencies. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Board and paid for as a Common Expense if the entry was due to an emergency, or for the purpose of maintenance or repairs to Common or Limited Common Elements where the repairs were undertaken by or under the direction or authority of the Board; provided, if the repairs or maintenance were necessitated by or for the Unit entered or its Owners, or requested by its Owners, the costs thereof shall be specially charged to such Unit. In furtherance of the foregoing, the Board (or its designated agent) shall have the right at all times to possess such keys and/or lock combinations as are necessary to gain immediate access to Units and Limited Common Elements.

14.3 Abatement of Construction. Prior to causing any items of construction which are alleged to be in violation of the Act or this Declaration to be altered or demolished, the Association shall institute appropriate judicial proceedings, including such requests for temporary restraining orders and preliminary or permanent injunctions as the Board may deem appropriate, to obtain a judicial determination of the rights of the parties.

14.4 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.

14.5 Owner Liability. Each Assessment shall be the joint and several obligation of the Owner or Owners of the Unit to which the same are assessed as of the time the Assessment is due. Following a voluntary conveyance of a Unit the grantee thereof 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 Assessments shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

14.6 Mortgagee Liability. The holder of a Mortgage or other Purchaser of a Unit who obtains the right of possession of the Unit through foreclosure (or a deed in lieu thereof) 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 Unit Owners, including such Mortgagee or other purchaser of the Unit. Foreclosure of a Mortgage (or deed in lieu thereof) 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.

14.7 Lien for Assessments.

14.7.1 Lien. The Association shall have a lien on a Unit for any unpaid Assessments levied against that Unit from the time the Assessment is due.

14.7.2 General Priority. The Association's lien for unpaid Assessments 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) except as herein provided, a Mortgage on the Unit recorded before the date on which the Assessment sought to be enforced became delinquent, and (c) liens for real property taxes and other governmental assessments or charges against the Unit.

14.7.3 Mortgage Priority. The Association's lien for unpaid Assessments shall be prior to Mortgages recorded before the date on which the Assessment sought to be enforced became delinquent to the extent of Assessments for Common Expenses, excluding any amounts for capital improvements and based on the periodic budget adopted by the Association pursuant to this Declaration, 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 nonjudicial 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, or the date of delivery of a deed in lieu of any of the foregoing.

14.7.4 Mortgagee Notice. The priority of the Association's lien against Units encumbered by a Mortgage 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 the Association's lien priority 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.

14.7.5 Recording as Notice. Recording this Declaration constitutes record notice and perfection of the Association's lien for unpaid Assessments. While no further recording of any claim of lien for unpaid Assessments 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 property records of any county in which the Condominium is located. Such recording shall not constitute a written notice of delinquency to a Mortgagee.

14.7.6 Judicial Foreclosure. The Association's lien 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, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgement 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.

14.7.7 Receiver. From the time of commencement of a judicial 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 rental 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 condominium, 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 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.

14.7.8 Nonjudicial Foreclosure. The Association shall have the right to foreclose its Assessment lien nonjudicially in the manner provided for trustees' sales under the Washington Deed of Trust Act, RCW Ch. 61.24. For such purpose, the Property is hereby conveyed, transferred, and assigned to Chicago Title Insurance Company, as trustee, in trust with power of sale, for the benefit of the Association as security for the payment of the Assessments when due. Said power of sale may be exercised with respect to any given Unit or Units upon the failure of the Owner thereof to pay any amounts which are secured by said lien. The Declarant confirms that no portion of the Property is used principally for agricultural or farming purposes. The Association or its authorized representative shall have the power to purchase the Unit at the trustee's sale and to acquire, hold, lease, mortgage, or convey the same.



14.7.9 Lien Survives Sale. The Association's lien for unpaid Assessments shall not be affected by the sale or transfer of a Unit except in the event of sale by foreclosure, trustee's sale, contract forfeiture or deed in lieu thereof. Such foreclosure, trustee's sale, contract forfeiture or deed in lieu thereof shall extinguish the Association's lien for all Assessments due and payable prior to the date of such foreclosure, trustee's sale or forfeiture or the delivery of a deed in lieu thereof except to the extent of the priority of the Association's lien for unpaid Assessments, but in doing so shall not relieve subsequent Unit Owners of the foreclosed Unit from paying Assessments levied thereafter.

14.8 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 nonusurious 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.

14.9 Attorneys' Fees. The prevailing party shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the enforcement of this Declaration, the Bylaws or the rules and regulations adopted by the Board, including 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.

14.10 Limitation on Actions. The Association's lien for unpaid Assessments and the personal liability for payment of Assessments are 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.

## ARTICLE 15

### ORDINARY MAINTENANCE AND REPAIR

15.1 Units. Each Unit Owner shall, at his or her sole expense, keep his or her Unit in good order, condition and repair and in a clean and sanitary condition, and shall perform all maintenance which may at any time be necessary to maintain the good appearance and condition of his or her Unit. Each Unit Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, fans, heating equipment, lighting fixtures, fireplaces, refrigerators, dishwashers, ranges, or other fixtures or appliances that comprise a part of his or her Unit.

15.2 Common Elements. The Association shall cause the Common Elements to be maintained in a good, clean, sanitary and operating condition. In order to preserve a uniform exterior appearance to the Building, the Board shall require and provide for the painting and

other decorative finish of the Building and all Common and Limited Common Elements, and prescribe the type and color of such decorative finishes, and may prohibit, require or regulate any modification or decoration of the Building and Common and Limited Common Elements undertaken or proposed by any Owner. This power of the Board extends to screens, doors, awnings, rails or other visible portions of each Unit and Building. The Board may also require use of a uniform color and kind of Unit window covering (including draperies, blinds, shades, etc.) visible from the exterior of the Building.

15.3 Limited Common Elements. Limited Common Elements are for the sole and exclusive use of the Units to which they are reserved or assigned; provided, that the use, condition and appearance thereof may be regulated by the Board as follows:

15.3.1 Decisions by Board. Decisions with respect to the standard of appearance and condition of Limited Common Elements, and with respect to the necessity for, and manner of, caring for, maintaining, repairing, repainting or redecorating Limited Common Elements shall be made by the Board.

15.3.2 Performance of Work. The Association shall maintain and repair the Limited Common Elements.

15.3.3 Board Approval. Owners may not modify, paint, or otherwise decorate or in any way alter their respective Limited Common Elements without prior written approval of the Board.

15.4 Damage Caused by Misconduct or Neglect. If, due to the misconduct or neglect of a Unit Owner or such Owner's tenant, licensee or invitee, or of a member of his or her family or his or her household pet, the Common Elements or any Unit or Units owned by others are damaged, such Unit Owner shall pay for repair and replacement of such damaged areas as may be determined by the Association to the extent not covered by the Association's insurance.

## ARTICLE 16

### INSURANCE

16.1 Required Policies. Commencing not later than the time of the first conveyance of a Unit to any person other than a Declarant, the Association shall maintain, to the extent reasonably available:

(a) Casualty insurance on the entire Condominium, including the Units, the Common and Limited Common Elements, and fixtures, building service equipment and common personal property and supplies owned by the Association, and which may, but need not, include equipment, improvements, and betterments in a Unit installed by the Declarant or the

Unit Owners unless required by Mortgagees, insuring against all risks of direct physical loss normally insured against under a standard fire and extended coverage endorsement, and all other perils customarily covered for similar types of projects, including those covered by a standard "all risk" endorsement. The total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost 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 casualty policies and subject to deductibles which do not exceed the lesser of one percent (1%) of the policy face amount or Ten Thousand Dollars (\$10,000). The policy shall contain a construction code endorsement to the extent the applicable building codes require changes to undamaged portions of the Condominium when only a part of the Condominium is destroyed by an insured hazard, and, when deemed appropriate by the Board or any Mortgagee, a steam boiler and machinery coverage endorsement which provides for the insurer's minimum liability per accident of at least the lesser of (a) Two Million Dollars (\$2,000,000), or (b) the insurable value of the Building;

(b) Comprehensive liability insurance for the Condominium which provides coverage for bodily injury and property damage resulting from the operation, maintenance or use of the Common Elements in an amount of at least One Million Dollars (\$1,000,000) for any single occurrence and which contains a specific endorsement to preclude the insurer's denial of a Unit Owner's claim because of the negligent act of the Association or other Unit Owners;

(c) Workers' compensation insurance to the extent required by applicable laws;

(d) If and to the extent required by the Board or any Mortgagee, a fidelity bond naming the Association's officers, members of the Board, any Manager and its employees and such other persons as may be designated by the Board as principals and the Association as obligee, in an amount at least equal to the greater of (i) three (3) months' aggregate Assessments for all Units plus reserves, or (ii) the maximum funds that are expected to be within the Association's custody or control. The bond shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definitions of "employee" or similar expression. The bond shall cover all persons who handle or are responsible for funds that the Association holds or administers, whether or not such person receives compensation for services and shall name the Association as the obligee. The bond shall cover the maximum funds that will be in the custody of the Association at any given time during the period in which the bond is in force. Additionally, the Board shall require that any Manager is covered by its own fidelity bond;

(e) Insurance against loss of personal property of the Association by fire, theft and other losses with such deductibles as the Board deems advisable;

(f) If any portion of the Condominium is in a special flood hazard area, a master or blanket policy of flood insurance equal to the lesser of (a) one hundred percent (100%) of the insurable value of the Condominium, or (b) the maximum coverage available under the appropriate National Flood Insurance Administration program, and subject to a maximum deductible amount of the lesser of (i) Five Thousand Dollars (\$5,000), or (ii) one percent (1%) of the policy face amount; and

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

16.2 Coverage Not Available. If the casualty insurance described in this section is not reasonably available, or is modified, canceled, or not renewed, the Association shall promptly cause notice of that fact to be hand delivered or sent prepaid by first class United States mail to all Unit 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.

16.3 Required Provisions. Insurance policies carried pursuant to this Article shall:

(a) Provide that the Association is the named insured, and that each Unit Owner is an insured under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association;

(b) 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 coinsurance or upon invalidity arising from the acts of the insured;

(c) Provide that no act or omission by any Unit 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;

(d) Provide that if, at the time of a loss under the policy, there is other insurance in the name of a Unit 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 to set-off, counterclaims, apportionment, proration, contribution or assessment by reason of, any other insurance obtained by or for any Unit Owner or any Mortgagee;

(e) 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; and that insurance trust agreements will be recognized;

(f) Contain standard mortgagee clauses which name mortgagees and their successors and assigns, require at least ten (10) days' prior written notice to the insureds before the policy may be cancelled or substantially modified and contain no provision (other than insurance conditions) which will prevent Mortgagees from collecting insurance proceeds; and

(g) Contain, if available, an agreed amount and inflation guard endorsement.

16.4 Claims Adjustment. Any loss covered by the property insurance carried under this Article must be adjusted with the Association, and each Unit Owner, by acquiring his or her Unit subject to this Declaration, appoints the Association as his or her attorney-in-fact for such purposes. The insurance proceeds are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a Mortgage. The insurance trustee or the Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear. Subject to the provisions of the Act, the proceeds must be disbursed first for the repair or restoration of the damaged property, and Unit 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 the Condominium is terminated.

16.5 Owner's Additional Insurance. An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for the Owner's own benefit.

16.6 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 Unit Owner or holder of a Mortgage. 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.

16.7 Notification on Sale of Unit. Promptly upon conveyance of a Unit, the new Unit Owner shall notify the Association of the date of the conveyance and the Unit 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 of the name and address of the new Owner and request that the new Owner be made a named insured under such policy.

## ARTICLE 17

### REPAIR OF SIGNIFICANT DAMAGE

17.1 Definitions. As used in this Article, the term "Significant Damage" means damage or destruction, whether or not caused by casualty, to any part of the Property 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. As used in this Article, the term "Repair" means to repair, reconstruct, rebuild or restore the Building or improvement 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 and include modifications to conform to then applicable governmental rules and regulations or available means of construction. As used in this Article, the term "Emergency Work" means the work 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.

17.2 Initial Board Determinations. In the event of Significant Damage to any part of the Condominium, 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:

- (a) The nature and extent of the Significant Damage, together with an inventory of the improvements and property directly affected thereby;
- (b) 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;
- (c) 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;

(d) 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; and

(e) Whether such Significant Damage should be Repaired.

17.3 Notice of Determinations. 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. If the Board fails to do so within said thirty (30) days, then any Owner or Mortgagee may make the determination required under this section and give the notice required under this section.

17.4 Duty to Restore. Any portion of the Condominium for which insurance is required under this Article which is Significantly Damaged shall be Repaired promptly by the Association unless (a) the Condominium is terminated; (b) Repair would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent (80%) of the Unit Owners, including every Owner of a Unit or 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 and Emergency Work in excess of insurance proceeds and reserves shall be a Common Expense.

17.5 Board's Authority. Without limiting the rights and powers of the Board generally, if any damage to the Property is to be Repaired by the Board, 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 the Board reasonably determines to be necessary to effectuate the Repair. The Board may authorize the insurance carrier to proceed with Repair upon satisfaction of the Board that such work will be appropriately carried out. The Board may enter into a written agreement with any reputable financial institution or trust or escrow company to engage such firm or institution to 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. In the event of a decision to terminate the Condominium and not to Repair, the Board may expend such of the insurance proceeds and funds of the Association as the Board deems reasonably necessary for Emergency Work and the remaining funds, if any, and the Property shall thereafter be held and distributed as provided in the Act.

17.6 Damage not Restored. If all or any portion of the damaged portions of the Condominium 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 Condominium; (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 Unit Owners or lienholders, as their interests may appear, in proportion to their Allocated Interests in the Common Elements.

17.7 Reallocation of Allocated Interests. If the Unit Owners vote not to Repair any Unit, that Unit's Allocated Interests shall automatically be reallocated as if the Unit had been condemned, and the Association shall promptly prepare, execute, and record an amendment to this Declaration reflecting such reallocations.

## ARTICLE 18

### CONDEMNATION

18.1 Condemnation of Units. If a Unit is acquired by condemnation, or if part of a Unit is acquired by condemnation leaving the Unit Owner with a remnant of a Unit which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must compensate the Unit Owner for the Owner's Unit and its appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, that Unit's Allocated Interests in the Common Elements and for Common Expense liability shall automatically be reallocated to the remaining Units in proportion to the respective Allocated Interests therein of those Units in the Common Elements and for Common Expense liability, respectively, before the taking, and the Association shall promptly prepare, execute; and record an amendment to this Declaration reflecting reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this section is thereafter a Common Element.

18.2 Partial Unit Condemnation. 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 appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides (a) that Unit's Allocated Interests in the Common Elements and for Common Expense liability shall automatically be reduced in proportion to the reduction in the size of the Unit, and (b) the portion of the Allocated Interests divested from the partially acquired Unit shall automatically be reallocated to that Unit and 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.

18.3 Common Element Condemnation. If part of the Common Elements is acquired by condemnation, the portion of the award attributable to the Common Elements taken shall be paid to the Owners based on their respective Allocated Interests in the Common Elements. 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.

18.4 Association to Represent Owners. Unless the Board decides otherwise in a particular case, the Association shall represent the Unit Owners in any proceedings, negotiations, settlements or agreements regarding a condemnation of any part of the Condominium, and any condemnation proceeds shall be payable to the Association for the benefit of the Owners of affected Units and their Mortgagees, and, by acquiring Units subject to this Declaration, each Unit Owner appoints the Association as his or her attorney-in-fact for such purposes. Should the Association not act on the Owners' behalf in a condemnation process, the affected Owners may individually or jointly act on their own behalf.

18.5 Recording of Judgment. The court judgment shall be recorded in every county in which any portion of the Condominium is located.

## ARTICLE 19

### PROTECTION OF MORTGAGEES

19.1 Change in Manager. If professional management is employed by the Association, at least thirty (30) days' notice of any contemplated change in the professional manager shall be given to any Eligible Mortgagee. The Association shall not elect to terminate professional management and assume self-management without the prior written approval of sixty-seven percent (67%) of the Owners and fifty-one percent (51%) of all Eligible Mortgagees; provided that such prior consent shall not be required to change from one professional manager to another professional manager.

19.2 Retention of Common Elements. Except when acting pursuant to the provisions of the Act involving damage, destruction, or condemnation, the Association shall not, without the prior written approval of sixty-seven percent (67%) of all Eligible Mortgagees, seek by act or omission to encumber, sell or transfer any of the Common Elements.

19.3 Partitions and Subdivisions. The Association shall not combine or subdivide any Unit or the appurtenant Limited Common Elements, or abandon, partition, subdivide, encumber or sell any Common Elements, or accept any proposal so to do, without the prior written approval of fifty-one percent (51%) of all Eligible Mortgagees and sixty-seven percent (67%) of the Unit Owners and without unanimous approval of the Eligible Mortgagee(s) and Owner(s) of the Unit(s) so affected.

19.4 Change in Percentages. The Association shall not amend this Declaration to change percentages of interest in the Common Elements without the prior written approval of fifty-one percent (51 %) of all Eligible Mortgagees and sixty-seven percent (67 %) of the Unit Owners and without unanimous approval of the Eligible Mortgagee(s) and Owner(s) of the Unit(s) for which the percentage(s) would be changed.

19.5 Copies of Notices. A Mortgagee of a Unit (and any insurer or guarantor of such Mortgage) 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 Condominium documents;

(b) Of all meetings of the Association and be permitted to designate a representative to attend all such meetings;

(c) Of any condemnation proceeding or casualty loss affecting a material portion of the Property or the Unit on which it holds a Mortgage;

(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 such notices the Mortgagee (or Mortgage insurer or guarantor) must send a written request for such notices 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 Mortgage.

19.6 Insurance Requirements. With respect to a first Mortgage of a Unit, the Board shall:

(a) Select insurance carriers which meet the Mortgagees' highest required A.M. Best's and financial size ratings;

(b) 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;

(c) 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;

(d) Require any insurance carrier to give the Board and any and all insureds (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 nonpayment);

(e) Not make any settlement of any insurance claims for loss or damage to any such Unit or Common or Limited Common Element exceeding Five Thousand Dollars (\$5,000) without the approval of such Mortgagee; provided, that the withholding of such approval shall not be unreasonable or in conflict with the requirements of the Act;

(f) Give such Mortgagee written notice of any loss or taking affecting Common Elements, if such loss or taking exceeds Ten Thousand Dollars (\$10,000);

(g) 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);

(h) 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;

(i) Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or Unit Owners or any persons claiming under any of them; and

(j) Waive any provision invalidating such Mortgage insurance clause by reason of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the Mortgagee pay any premium thereon, and any contribution clause.

19.7 Inspection of Books and Financial Statements. Owners, Mortgagees, insurers and guarantors of any Mortgage on any Unit shall be entitled to inspect during all normal business hours all of the books and records of the Association including current copies of this Declaration, the Association's articles of incorporation, Bylaws, the rules and regulations governing the Condominium, and other books, records and financial statements of the Association (within a reasonable time following request). Upon written request of any holder, insurer or guarantor of a first Mortgage at no cost to the party so requesting (or if the Condominium contains fewer than fifty (50) Units, upon the written request of any Mortgagee at its expense if an audited statement is not otherwise available), to receive an annual audited financial statement of the Association within one hundred and twenty (120) days following the end of any fiscal year of the Association.

19.8 Approvals of Decisions. Unless sixty-seven percent (67%) of first Mortgagees or purchasers of first Mortgages shall have given their prior written approval, the Association shall not be entitled to do any of the following:

(a) By act or omission seek to abandon or terminate the Condominium regime;

(b) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer real estate or improvements thereon which are owned, directly or indirectly, by the Association for the benefit of Unit Owners; provided, however, the granting of easements for public utilities or for other public purposes consistent with the intended use of the Property shall not be deemed a transfer within the meaning of this clause;

(c) Change the method of determining the obligations, assessments, dues or other charges which may be levied against the Units or the Unit Owners;

(d) By act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the Units, the exterior maintenance of the Units, the maintenance of party walls, common fences and driveways, or the upkeep of lawns and plantings on the Property;

(e) Fail to maintain fire and extended coverage insurance on insurable portions of the Common Elements on a current replacement cost basis in an amount not less than one hundred percent (100%) of insurable value based on the then current replacement cost, or fail to maintain any other insurance or endorsement thereto then required by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association;

(f) Use hazard insurance proceeds for losses to any of the Property for other than the repair, replacement or reconstruction of improvements located thereon, except as provided in the Act in cases of substantial losses to the Property;

(g) Alienate all or any portion of the Common Elements; and

(h) Amend this Declaration to change the ratio of assessments, hazard insurance proceeds or condemnation awards attributable to Unit Owners, or the pro rata share of any Unit Owner in the Common Elements.

19.9 Approvals of Amendments. Any material amendment to this Declaration and any amendment to this Declaration establishing, providing for, governing or regulating the following shall require the consent of at least fifty-one percent (51%) of the Eligible Mortgagees:

(a) Voting rights;

(b) Increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), or any amendments to Assessment liens or the priority of Assessment liens;

(c) Reductions in reserves for maintenance, repair and replacement of Common Elements;

(d) Responsibility for maintenance and repairs;

(e) Reallocation of interests in the Common or Limited Common Elements, or rights to their use;

(f) Redefinition of any Unit boundaries;

(g) Convertibility of Units into Common Elements or vice versa;

(h) Expansion or contraction of the Condominium, or the addition, annexation, or withdrawal of property to or from the Condominium;

(i) Hazard or fidelity insurance requirements;

(j) Imposition of any restrictions upon the leasing of Units;

(k) Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;

(l) If the Condominium then contains fifty (50) or more Units, a decision by the Association to establish self-management if professional management had been required previously by the Condominium's documents or by an Eligible Mortgagee;

(m) Restoration or repair of the Condominium (after a damage or partial condemnation) in a manner other than that specified in this Declaration; or

(n) Any provisions that expressly benefit Mortgage holders, insurers or guarantors.

A Mortgagee who fails to respond within thirty (30) days of a written request to approve any amendment referred to above shall be deemed to have approved the request if such request was delivered by certified or registered mail with a return receipt requested.

19.10 Remedial Advances. First Mortgagees or purchasers of first Mortgages on Units may, jointly or singly, pay taxes or other charges which are in default and which may have or become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Elements, and first Mortgagees or the purchasers of first Mortgages making such payments shall be owed immediate reimbursement therefor from the Association.

19.11 Condemnation Awards. In the event all or any portion of the Common Elements are acquired by condemnation or under threat of condemnation, the condemnation award shall be utilized by the Association to acquire, to the extent possible, comparable replacement areas and facilities. In the event the Association is unable to obtain comparable replacement areas and facilities within a period of nine (9) months from the date the Association received the condemnation award or monies paid to the Association under threat of condemnation, the Association shall pay jointly to any Unit Owner and the Mortgagee holding the Mortgage on said Unit, if any, a pro rata share of said condemnation award or monies received attributable to said Unit. The pro rata share of said condemnation award or monies received shall be determined in accordance with the Act.

19.12 Provisions Controlling. Any provision of this Declaration conferring rights upon Mortgagees which is inconsistent with any other provision of this Declaration or the Bylaws shall control over such other inconsistent provisions.

## ARTICLE 20

### AMENDMENTS

20.1 In General. Except in cases of amendments that may be executed solely by the Declarant, the Association or certain Unit Owners as otherwise stated herein, this Declaration, including the Survey Maps and Plans, may be amended only by vote or agreement of Owners of Units to which at least sixty-seven percent (67%) of the Total Voting Power is assigned; provided, however, any action requiring the consent of a greater number of votes under this Declaration may be amended only upon the affirmative vote of such greater number.

20.2 Execution. Amendments to this Declaration required by the Act to be recorded by the Association shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the President of the Association.

20.3 Recording. Every amendment to this Declaration must be recorded in every county in which any portion of the Condominium is located, and is effective only upon recording. An amendment shall be indexed in the name of the Condominium and shall contain a cross-reference by recording number to this Declaration and each previously recorded

amendment thereto. All amendments adding Units shall contain a cross-reference by recording number to the Survey Map and Plans relating to the added Units and set forth all information required by the Act.

20.4 General Limitations. Except to the extent expressly permitted or required by other provisions of the Act, no amendment may create or increase any Special Declarant Rights, increase the number of Units, change the boundaries of any Unit, the Allocated Interests of a Unit, or the uses to which any Unit is restricted, in the absence of the vote or agreement of the Owner of each Unit particularly affected and the Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated other than the Declarant.

20.5 Special Declarant and Development Rights. No amendment may restrict, eliminate, or otherwise modify any special declarant or development right provided for in this Declaration without the consent of the Declarant and any Mortgagee of record with a security interest in the special declarant or development right or in any real property subject thereto, excluding Mortgagees of Units owned by persons other than the Declarant.

20.6 Challenge to Validity. No action to challenge the validity of an amendment adopted by the Association pursuant to this Article may be brought more than one (1) year after the amendment is recorded.

20.7 Survey Map and Plans Amendment. Except as otherwise provided herein, the Survey Map and Plans may be amended by revised versions or revised portions thereof referred to and described as to effect in an amendment to this Declaration adopted as provided for herein. Copies of any such proposed amendment to the Survey Map and Plans shall be made available for the examination of every Owner. Such amendment to the Survey Map and Plans shall also be effective, once properly adopted, upon recordation in the appropriate county office in conjunction with this Declaration amendment.

## ARTICLE 21

### TERMINATION

21.1 General. Except in the case of a taking of all of the Units by condemnation, this Condominium may be terminated only by agreement of the Unit Owners of Units to which at least eighty percent (80%) of the Total Voting Power is assigned. Such vote must be evidenced by the execution of a termination agreement in the same manner as a deed by the requisite number of Unit Owners, and said agreement shall specify a date after which it will be void unless it is recorded before that date and shall contain a description of the manner in which the creditors of the Association will be paid or provided for. No termination shall be effective until the termination agreement is recorded. The termination agreement may provide that the Property shall be sold following termination in the manner and with the consequences prescribed

by the Act. If the Property is not sold following termination, title therein shall vest in the Unit Owners upon termination as tenants in common with the Owners' respective undivided interests to be allocated as provided in the Act.

21.2 Mortgagee Approval. Eligible Mortgagees holding sixty-seven percent (67%) of the votes assigned to Units encumbered by Mortgages must consent to any decision to terminate the legal status of this Condominium for any reason, including substantial destruction or condemnation of the Property.

## ARTICLE 22

### CONSTRUCTION AND INTERPRETATION

22.1 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of this Condominium under the provisions of Washington law. It is intended and covenanted also that, insofar as it affects this Declaration and the Condominium, the provisions of the Act under which this Declaration is operative, shall be liberally construed to effectuate the intent of this Declaration insofar as reasonably possible.

22.2 Immaterial Defects. The creation of this Condominium 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 Survey Map and Plans or any amendment thereto to comply with the Act.

22.3 Partial Invalidity. If any term, covenant, condition, restriction or reservation contained in this Declaration should be held to be unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate this Declaration as creating a condominium and shall be limited to the extent practicable to the provision so invalidated.

22.4 Consistent with Act. The terms used herein are intended to have the same meanings given in the Act unless the context clearly requires otherwise or to so define the terms would produce an illegal or improper result.

22.5 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 exhibits referred to herein and attached hereto shall be deemed incorporated herein by reference as though fully set forth where such reference is made.

22.6 Adjustments for Inflation. 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 to adjust for any changes in the value of the dollar after the effective date of this Declaration.

22.7 Rule against Perpetuities. The rule against perpetuities may not be applied to defeat any provision of this Declaration.

22.8. Conflicts among Act, Declaration and Bylaws. In the event of an express conflict between the provision of this Declaration and the Bylaws, this Declaration shall be controlling. In the event of an express conflict between this Declaration and the Act, the Act shall be controlling.

22.9 Natural Persons. If this Declaration or the Bylaws now or hereafter provides that any officers or directors of the Association must be Unit Owners, the term "Unit Owner" in such context shall, unless this Declaration or the Bylaws otherwise provide, be deemed to include any director, officer, partner in or trustee of any person who is, either alone or in conjunction with another person or persons, a Unit Owner. Any officer or director of the Association who would not be eligible to serve as such if he or she was not a director, officer, partner in 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.

22.10 No Waiver of Strict Performance. The failure of the Board in any one or more instances to insist upon the strict performance of this Declaration, of the Bylaws, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition, restriction or reservation, but such term, covenant, condition, restriction or reservation shall remain in full force and effect. The receipt by the Board of any delinquent 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.

22.11 Delivery of Notice. Any notice permitted or required to be delivered under the provisions of this Declaration or the Bylaws 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, by first class mail, addressed to the person entitled to such notice at the most recent address given by such person 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 at least fifteen (15) days' prior written notice to the Board. Notice to be given to the Board shall be given to the President or Secretary of the Association.

ARTICLE 23

EFFECTIVE DATE

Effective Date. This Declaration shall take effect upon recording.

FOREST CREEK FOUNTAINS, LLC, a  
Washington limited liability Company

By Moore Clear Co., an  
Oregon corporation  
Its Member

By Kenneth L. Bush  
Printed name Kenneth L. Bush  
Title V.P. Sec.

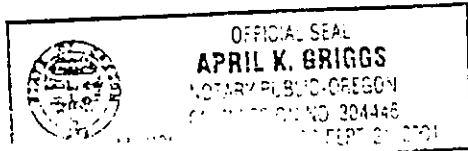
By Kenneth J. Bush  
Kenneth J. Bush  
Its Member

STATE OF Oregon )  
COUNTY OF Multnomah ) ss.

On this 3<sup>rd</sup> day of May, 1998, before me personally appeared Kenneth J. Bush, to me known to be the Vice President / Secretary of Moore Clear Co., an Oregon corporation and a member in FOREST CREEK FOUNTAINS, LLC, the Washington limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation and company, for the uses and purposes therein mentioned, and on oath stated that (s)he was authorized to execute said

instrument on behalf of said corporation and that said corporation has authorized to do so on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



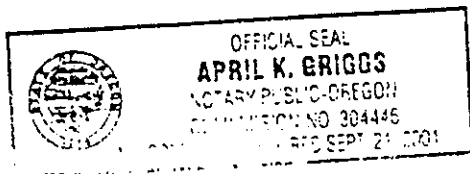
Signature: *April K. Griggs*

Name (Print): APRIL K. GRIGGS  
NOTARY PUBLIC in and for the State of  
Oregon residing at Wane, WA  
My appointment expires: 9/21/2001

STATE OF Oregon )  
 ) ss.  
COUNTY OF Multnomah )

On this 8th day of May, 1998, before me personally appeared Kenneth J. Bush, to me known to be a member in FOREST CREEK FOUNTAINS, LLC, the Washington limited liability company 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 on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Signature: *April K. Griggs*

Name (Print): APRIL K. GRIGGS  
NOTARY PUBLIC in and for the State of  
Oregon residing at Wane, WA  
My appointment expires: 9/21/2001

## EXHIBIT A

That portion of the Northwest quarter of Section 11, Township 2 North, Range 1 East of the Willamette Meridian in Clark County, Washington, lying within the William H. Anderson Donation Land Claim, described as follows:

BEGINNING at the intersection of the South line of Forest Creek Phase Two, according to the plat thereof, recorded in Book "H" of Plats, page 225, with the West line of N.E. 16th Avenue, as conveyed to Clark County, Washington by deed recorded under Auditor's File No. 7812150129; thence along the Southerly and Westerly lines of said Forest Creek Phase Two, North 89 degrees 13'17" West, 69.90 feet; thence North 0 degrees 04'06" East, 12.20 feet; thence North 89 degrees 13'17" West, 69.96 feet; thence North 0 degrees 04'06" East 36.00 feet; thence North 89 degrees 13'17" West, 58.00 feet; thence North 0 degrees 04'06" East 92.00 feet; thence North 89 degrees 13'17" West, 50.00 feet; thence North 0 degrees 04'06" East, 158.00 feet, to the South line of Forest Creek Phase One, according to the plat thereof, recorded in Book "H" of Plats, page 102, thence North 89 degrees 13'17" West, 99.00 feet to the West line of that tract conveyed to William L. Seibel, et al, by deed recorded under Auditor's File No. 7810090302; thence South 0 degrees 04'06" West along the West line of said Seibel tract, 196.00 feet; thence North 89 degrees 13'17" West, 137.28 feet; thence South 0 degrees 04'06" West, 209.10 feet to the North line of N.E. 72nd Street; thence South 89 degrees 16'10" East along the North line of N.E. 72nd Street 484.13 feet to the Westerly line of N.E. 16th Avenue; thence North 0 degrees 04'06" East along the Westerly line of N.E. 16th Avenue, 106.50 feet to the point of beginning.

EXHIBIT B

That portion of the Northwest Quarter of Section 11, Township 2 North, Range 1 East of the Willamette Meridian, Clark County, Washington, described as follows:

BEGINNING at the Northwest corner of Forest Creek Townhouse Condominiums, Phase Two, as recorded in Book H of Plats, Page 225, Plat Records, Clark County, Washington;

THENCE S 00°04'06" W, along the West line of said Plat, 158.00 feet to an interior angle point of said Plat;

THENCE S 89°13'17" E, along said Plat line and its Easterly extension thereof, 85 feet;

THENCE N 00°29'30" E, 32.47 feet to the South line of that easement recorded under AFN 9510060002, Deed Records, Clark County, Washington, said point being on the South line of an existing asphalt drive now there (March 5, 1998);

THENCE S 88°32'15" E, along said South line 162.66 feet to the West right-of-way line of NE 16th Avenue (being 30.00 feet from centerline);

THENCE N 00°04'06" E, along said West right-of-way line, 23.00 feet to the North line of said asphalt drive;

THENCE N 88°32'15" W, along said North line, 180.29 feet;

THENCE N 00°04'06" E, parallel with the West right-of-way line of said NE 16th Avenue, 102.31 feet to the North line of said Forest Creek Townhouse Condominiums, Phase Two and its Easterly extension thereof;

THENCE N 89°13'17" W, along said North line and its easterly extension, 67.61 feet to the point of beginning.

**EXHIBIT B (Continued)**

That portion of the Northwest Quarter of Section 11, Township 2 North, Range 1 East of the Willamette Meridian, Clark County, Washington, described as follows:

COMMENCING at the Northwest corner of Forest Creek Townhouse Condominiums, Phase Two, as recorded in Book H of Plats, Page 225, Plat Records, Clark County, Washington;

THENCE S 00°04'06" W, along the West line of said Plat, 158.00 feet to an interior angle point of said Plat;

THENCE S 89°13'17" E, along said Plat line, 50.00 feet, to an interior angle point of said Plat to the TRUE POINT OF BEGINNING of the easement herein described;

THENCE S 00°04'06" W, along the West line of said Plat, 92.00 feet to an interior angle point of said Plat;

THENCE S 89°13'17" E, along said Plat line, 5.00 feet;

THENCE N 00°04'06" E, 92.00 feet;

THENCE N 89°13'17" W, 5.00 feet to the point of beginning.