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**CONDOMINIUM DECLARATION  
FOR  
THE MOORINGS AT COLUMBIA POINT,  
A PHASED CONDOMINIUM**

**Grantor:** THE MOORINGS AT COLUMBIA POINT LLC, a Washington limited liability company

**Grantee:** THE MOORINGS AT COLUMBIA POINT LLC, a Washington limited liability company

**Abbreviated Legal Description:**

Portion of Section 13, Township 9 North, Range 28 East, W.M., City of Richland, Benton County, Washington.

Complete legal description is at pages 49 through 50 (Schedule A) hereto.

**Assessor's Property Tax Parcel Account Numbers:**

- 1-1398-301-2557-001 (Lot 1, Short Plat No. 2709)
- 1-1398-301-2557-002 (Lot 2, Short Plat No. 2709)
- 1-1398-301-2557-005 (Lot 3, Short Plat No. 2709)
- 1-1398-301-2557-004 (portion) (Lot 4, Short Plat No. 2709)

**Reference to Related Documents:**

- A.F. No. 2003-019693 (Survey Map and Plans)
- A.F. No. 2003-019692 (Declaration of Easements)



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Benton County

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**ARTICLE 1  
DEFINITIONS**

**Section 1.1 Words Defined.** For the purposes of this Declaration and any amendments hereto, the following definitions shall apply.

(a) **Affiliate of Declarant** shall mean any person who controls, is controlled by, or is under common control with Declarant (as "control" is defined in the Condominium Statute).

(b) **Allocated Interests** shall mean the undivided interest(s) in the Common Elements, the votes in the Association, and common expense liability in the Association allocated to each Unit.

(c) **Articles** shall mean the Articles of Incorporation of the Association defined below.

(d) **Association** shall mean the Association of Owners described in Article 13 of this Declaration, which shall be known as "The Moorings at Columbia Point Owners Association."

(e) **Board** shall mean the Board of Directors of the Association.

(f) **Bylaws** shall mean the Bylaws of the Association.

(g) **Common Elements** shall mean the common elements described in Article 6.

(h) **Condominium** shall mean the real property created by this Declaration.

(i) **Condominium Statute** shall mean the Washington Condominium Act, Laws of 1989, Chapter 43, presently codified in Chapter 64.34, RCW, and any amendments thereto.

(j) **Declarant** shall mean The Moorings at Columbia Point LLC, a Washington limited liability company, and its representatives, successors, and assigns.

(k) **Declaration** shall mean this Condominium Declaration for the Moorings at Columbia Point, a Phased Condominium, as it may from time to time be amended.

(l) **Declarant Control** shall mean the right of the Declarant or persons designated by the Declarant to appoint and remove officers and members of the Board pursuant to Article 15.

(m) **Eligible Mortgagee** shall mean any holder of a First Mortgage who has filed with the Secretary of the Association a written request, including its name and address and the Unit number for the Unit subject to the Mortgage held by such First Mortgagee, that it be notified of any proposed action that requires consent of a specified percentage of Eligible Mortgagees.



(n) **First Mortgage and First Mortgagee** shall mean, respectively, (a) a Mortgage on a Unit that has legal priority over all other Mortgages thereon, and (b) the holder, guarantor or insurer of a First Mortgage.

(o) **Institutional Holder of a Mortgage** shall mean a Mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation in the business of owning or servicing real estate mortgages, an insurance company, or any federal or state agency.

(p) **Limited Common Elements** shall mean those Common Elements described in Article 7.

(q) **Managing Agent** shall mean the person designated by the Board under Section 16.4.

(r) **Mortgage** shall mean a recorded mortgage or deed of trust that creates a lien against a Unit and shall also mean a real estate contract for the sale of a Unit.

(s) **Mortgagee** shall mean the holder, insurer or guarantor of an encumbrance on a Unit created by a Mortgage and shall also mean the vendor of a real estate contract for the sale of a Unit.

(t) **Mortgagee of the Condominium** shall mean the holder of a Mortgage on the real property which this Declaration affects, which Mortgage was recorded prior to the recordation of the Declaration. The term "Mortgagee of the Condominium" does not include Mortgagees of the individual Units.

(u) **Owner** shall mean the Declarant or other legal owner of a Unit and shall also mean the vendee of a real estate contract for the sale of a Unit.

(v) **Person** shall mean a natural person, corporation, partnership, association, trust, governmental subdivision or agency, or other legal entity.

(w) **Phase and Phases** shall have the meanings defined in Article 3.

(x) **Property** shall mean the land and the buildings and all improvements and structures now or hereafter placed on the land described as Phase 1 in Schedule A. Upon the making of a Subsequent Phase Amendment to this Declaration under which a Subsequent Phase is added to the Condominium, the Property shall mean the land and the buildings and all improvements and structures now or hereafter placed on the land described as Phase 1 and such Subsequent Phase in Schedule A.

(y) **RCW** shall mean the Revised Code of Washington.

(z) **Subsequent Phase, Subsequent Phases, and Subsequent Phase Amendment** shall have the meanings as defined in Article 3.

(aa) **Special Declarant Rights** shall mean, individually and collectively, the rights reserved for the benefit of the Declarant to complete improvements described on the Survey

Map and Plans, exercise "Development Rights," as that term is defined in Section 3.1, maintain sales and management offices, models and signs as described in Articles 6 and 11, exercise "Declarant Control" as described in Article 15, and use easements as described in Section 25.3.

(bb) **Survey Map and Plans** shall mean the survey map and the plans recorded simultaneously with this Declaration and any amendments, corrections, and addenda thereto subsequently recorded.

(cc) **Transition Date** is defined in Section 15.1.

(dd) **Unit** shall mean a residential unit composed of a suite of rooms and other enclosed spaces in a Building. The boundaries of a Unit are the unfinished interior surfaces of its perimeter walls, floors, ceilings, windows, and doors, and each Unit shall include all paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof, and each Unit within Phase 1 and Phase 3 of the Condominium as described in Schedule A shall include the unfinished interior surfaces of its appurtenant two (2)-car garage, and the Unit includes the portions of the Building so described and the air space so encompassed, and all interior partitions and other fixtures and improvements so contained.

**Section 1.2 Form of Words.** The singular form of words shall include the plural and the plural shall include the singular. Masculine, feminine, and neuter pronouns shall be used interchangeably.

**Section 1.3 Statutory Definitions.** Some of the terms defined above are also defined in the Condominium Statute upon substantial completion of all improvements to be constructed in such Subsequent Phase. The definitions in this Declaration are not intended to limit or contradict the definitions in the Condominium Statute. If there is any inconsistency or conflict, the definition in the Condominium Statute will prevail.

## ARTICLE 2 SUBMISSION OF THE PROPERTY TO THE CONDOMINIUM STATUTE

Declarant, being the sole owner of the Property, makes this Declaration for the purpose of submitting the Property to the Condominium form of use and ownership and to the provisions of the Condominium Statute. Declarant declares that the Property shall be held, used, conveyed, encumbered, leased, occupied, rented, and improved subject to the covenants, conditions, restrictions, reservations, and easements stated in this Declaration, all of which are in furtherance of the division of the Property into Units and Common Elements and shall be deemed to run with the land and be a burden and benefit to Declarant and all persons who own or acquire an interest in the Property or any part thereof, and their grantees, successors, heirs, executors, administrators, and assigns.

**ARTICLE 3**  
**DEVELOPMENT RIGHTS; DESCRIPTION OF LAND**

**Section 3.1 Reservation of Development Rights.** Declarant reserves the rights (individually and collectively, "Development Rights") to add real property or improvements to the Condominium, create additional Units, Common Elements and/or Limited Common Elements within the real property included in or added to the Condominium, subdivide Units or convert Units into Common Elements, amend the Declaration of Easements as described below, and/or withdraw real property from the Condominium. Declarant proposes to establish this Condominium in four (4) phases (singularly, a "Phase," and collectively, "Phases"). This Declaration shall be effective immediately to establish a Condominium upon the Property described as Phase 1 in Schedule A. There are three (3) potential subsequent Phases (each a "Phase" or "Subsequent Phase"), which may be established upon the Property described as Phase 2, Phase 3, and Phase 4 in Schedule A. If all four (4) Phases are established upon the Property, then there eventually will be a total of sixty-three (63) residential Units within the Condominium. Declarant's phasing plan for residential Units currently is as follows:

Phase 1:	15 Units
Phase 2:	18 Units
Phase 3:	15 Units
Phase 4:	15 Units

The real property to be added, withdrawn or otherwise affected by exercise of Development Rights in such Subsequent Phases is also described in Schedule A. Declarant currently owns the real property described as Phase 1, Phase 2, Phase 3, and Phase 4 in Schedule A. Declarant shall retain ownership of any portions of a Phase which may be withdrawn or for which Declarant does not exercise its Development Rights, as provided in Section 3.5 below.

Declarant shall no longer have the power to exercise any Development Rights after ten (10) years have elapsed from the date on which this Declaration is recorded.

For a period of one (1) year after the date hereof, Declarant shall have the right to make, execute, acknowledge, deliver, and record in the real property records of Benton County, Washington, on behalf of Declarant and all other Owners, any and all amendments to that certain Declaration of Easements made by Declarant on or around the date hereof and recorded in the real property records of Benton County, Washington, under Auditor's File No. \_\_\_\_\_ (the "Declaration of Easements"), and each Owner hereby appoints and constitutes Declarant as its true and lawful attorney-in-fact, granting Declarant full power and authority and in its name, place, and stead to take such actions.

**Section 3.2 Development in Subsequent Phases.** Declarant may exercise Development Rights with respect to different parcels of Property at different times in Subsequent Phases but is not required to exercise Development Rights with respect to any particular parcel in any particular order or at all, nor, if any Development Right is exercised with respect to any portion of the Property subject thereto, must Declarant exercise that Development Right with respect to all or any portion of the remainder of the Property. If Declarant elects to exercise Development Rights in a Subsequent Phase, it may do so by executing and recording, upon substantial completion of all improvements added in such Subsequent Phase, an amendment to this Declaration ("Subsequent Phase Amendment") and a new Survey Map and Plans or new certifications of the Survey Map and Plans as required by the

Condominium Statute. The Subsequent Phase Amendment shall identify each Unit created; describe any Common Elements and Limited Common Elements created by the Subsequent Phase; and, except in a case of a subdivision or conversion of Units, reallocate the Allocated Interests among all Units, effective as of the date of recording of the Subsequent Phase Amendment. Allocated Interests shall be reallocated in accordance with the provisions of Article 9, below. Declarant may supplement Schedule B and amend this Declaration to describe Common Elements and Limited Common Elements included in a Subsequent Phase. Upon the recording of a Subsequent Phase Amendment, the previously existing Condominium shall be merged into and become a part of the Subsequent Phase as a single, unified Condominium. This Declaration and the Articles and Bylaws of the Association of this Condominium shall immediately become applicable to the land added (and inapplicable to the land withdrawn) by a Subsequent Phase.

**Section 3.3 Joint Use and Maintenance of Common Elements.** When (and if) any Subsequent Phase is added to the Condominium or any Units are subdivided or converted to Common Elements in one or more Subsequent Phases, all of the Common Elements in each Phase will be for the use and enjoyment of the entire Condominium and all of the Owners in the Condominium shall share in the subsequent expenses of maintaining, repairing and replacing the Common Elements as may be necessary. In the case of subdivision of a Unit, the Allocated Interests of the subdivided Unit shall be reallocated among the Units created by the subdivision in any reasonable and equitable manner prescribed by Declarant. In the case of conversion of a Unit entirely to Common Elements, such reallocation shall be in accordance with Article 9.

**Section 3.4 Liens.** Any liens that arise in connection with Declarant's ownership or construction of any portion of the Property to be added to the Condominium pursuant to any Subsequent Phase shall be removed prior to addition of such portion of the Property to the Condominium. All taxes and other assessments relating to such portion of the Property for any period prior to the addition of such portion of the Property shall be paid or otherwise provided for by Declarant.

**Section 3.5 Election Not to Exercise Development Rights.** Declarant expects to complete all Phases but is not required to complete any Phase subsequent to Phase 1. If such Subsequent Phases are not in fact completed, Phase 1 or any then existing Phase shall constitute a complete and fully operational Condominium, and the land described for a Subsequent Phase not completed and included in an existing Phase may be used for any other lawful purpose in Declarant's discretion. Access over and across Phase 1 and any Subsequent Phase for which a Subsequent Phase Amendment has been recorded is reserved to Declarant or Declarant's successors or assigns over the easements, roadways and utility lines specified or established in and for Phase 1 and any such Subsequent Phase, and the right to connect thereto is reserved, such reservations being for the purpose of either completing Subsequent Phases or otherwise developing portions of the land for other purposes if not completed as a Subsequent Phase.

**Section 3.6 Character of Improvements.** Any improvements altered or added to the Condominium pursuant to a Subsequent Phase need not be identical to those in Phase 1. Declarant may make reasonable alterations in the style, floor plan, size, and selling price of the Buildings and Units added or altered by a Subsequent Phase as market demand may indicate, but Declarant's latitude in making such alterations shall be restricted in that all improvements added or altered by a Subsequent Phase shall be consistent in style and quality with the improvements in Phase 1, so that the new improvements will be aesthetically harmonious and compatible with the improvements in



Phase 1. Notwithstanding the foregoing, (a) Phase 2 and Phase 4 are located inland from the Columbia River, inland from Phase 1 and Phase 3, and along Columbia Point Drive, (b) Phase 2 and Phase 4 will contain Units that will have scenic views partially obstructed by the Buildings located within Phase 1 and Phase 3, (c) Phase 2 and Phase 4 will contain Units that are likely to be smaller than the Units within Phase 1 and Phase 3, and therefore (d) Phase 2 and Phase 4 will contain Units whose values and selling prices are likely to be affected by the foregoing factors. Any claim that the improvements in a Subsequent Phase do not comply with this Section 3.6 must be made within sixty (60) days after the claimant has notice of the alleged noncompliance and in any event not later than sixty (60) days after the recording of the Subsequent Phase Amendment adding those improvements to the Condominium. The question of whether the improvements in a Subsequent Phase meet the requirements of this Section 3.6 will be referred to Declarant's architect and one other architect to be designated by Declarant, who shall have no association with this Condominium except to review for compliance with this Section 3.6 the improvements in the Subsequent Phase, or the plans for such improvements if they have not yet been built. If the two architects agree that the improvements planned for or built in the Subsequent Phase comply with the requirements of this Section 3.6, such determination shall be conclusive and binding upon all persons who have or thereafter acquire any interest in the Condominium.

**ARTICLE 4  
DESCRIPTION OF BUILDINGS**

There will be one (1) Unit building (singularly, a "Building," and collectively, the "Buildings") in each of the four (4) Phases of the Condominium: Building 1 in Phase 1, Building 2 in Phase 2, Building 3 in Phase 3, and Building 4 in Phase 4. All of the Buildings are or will be constructed principally of wood frame and sheetrock with Ultracoat, wood, and brick masonry exteriors. All Units enjoy Common Elements and Limited Common Elements described below. The Buildings are located as shown on the Survey Map and Plans. The Buildings may be described generally as follows:

- Building 1 (Phase 1): Fifteen (15) Units, each of which includes an enclosed two (2)-car garage located either adjoining the residential portion of the Unit or within an underground parking garage within Building 1.
- Building 2 (Phase 2): Eighteen (18) Units, to each of which is allocated two (2) parking spaces as Limited Common Elements in a parking garage within Building 2.
- Building 3 (Phase 3): Fifteen (15) Units, each of which includes an enclosed two (2)-car garage located either adjoining the residential portion of the Unit or within an underground parking garage within Building 3.
- Building 4 (Phase 4): Fifteen (15) Units, to each of which is allocated two (2) parking spaces as Limited Common Elements in a parking garage within Building 4.

**ARTICLE 5  
UNIT NUMBERS, LOCATION, AND DESCRIPTION**

**Section 5.1 Building Locations.** The Buildings are located as shown on the Survey Map and Plans.

**Section 5.2 Unit Location.** Each Unit is identified by a separate address, as more fully described in Schedule B attached hereto. The specific location of each Unit in the Condominium is identified on the Survey Map and Plans.

**Section 5.3 Unit Description.** All of the Units are residential Units.

**ARTICLE 6  
COMMON ELEMENTS**

**Section 6.1 Description.** The Common Elements consist of all portions of the Condominium other than the Units, including the following:

(a) The tracts of land described in Schedule A, and the easements, rights and appurtenances thereto, which have been included in this Condominium either by this Declaration or by a recorded Subsequent Phase Amendment.

(b) The roofs, foundations, studding, joists, beams, supports, main walls (excluding nonbearing interior partitions of Units, if any), lath, furring, wallboard, plasterboard, plaster, and all other structural parts of the building(s), to the unfinished interior surfaces of the Units' perimeter walls, floors, ceilings, windows, and doors.

(c) The pipes, wires, conduits, TV antennae, cable television and security systems, if any, other fixtures and equipment for utilities, and the interior of the fireplace flue serving any Unit.

(d) The grounds, trees, gardens, landscaped areas, exterior fixtures, walkways, and driveways.

(e) The exterior parking spaces not made Limited Common Elements appurtenant to Units pursuant to Article 7, but which are more particularly described in Section 10.2.

(f) Certain items which could ordinarily be considered Common Elements such as, but not limited to, screen doors, window screens, awnings, storm windows, planter boxes and the like, may, pursuant to the decision of a majority of Owners and specification in the Bylaws or administrative rules, be designed as items to be furnished and maintained by Unit Owners at their individual expense, in good order, according to standards and requirements set by the Board by rule, regulation or Bylaws.

**Section 6.2 Use; Maintenance.** Each Owner shall have the right to use the Common Elements (except the Limited Common Elements reserved for other Units) in common with all other Owners. The right to use the Common Elements shall extend not only to each Owner, but also to his or her agents, servants, tenants, family members, invitees, and licensees. The right to use the Common



Elements, including the Limited Common Elements, shall be governed by the provisions of the Condominium Statute, this Declaration, the Bylaws, and the rules and regulations of the Association. The Owners shall not by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements and no other person shall have the right to have them partitioned or divided. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Owners and occupants shall not be deemed a partition or division. A subdivision of a Limited Common Area as an incident of an authorized subdivision of a Unit pursuant to Article 26, or a subdivision, conversion, addition or withdrawal of Limited Common Elements or Common Elements pursuant to Article 7 will not be deemed a violation of this provision. The Association will be responsible for the operation, maintenance, repair and replacement of the Common Elements, including the Limited Common Elements, except to the extent stated to the contrary in Section 11.3 and any Common Elements on or in real property subject to Development Rights, which Common Elements the Owners have a right to use. Declarant may maintain a sales office, management office, and model unit in any one (1) Unit and within any portion of the Common Elements. In the event any such Unit is sold by Declarant, Declarant reserves the right to designate any other Unit within Declarant's control as the model, sales, and management office and to relocate the model, sales, and management office to such Unit. In addition, Declarant may maintain signs on the Common Elements advertising the Condominium, consistent with the provisions of any applicable law, government regulation, or ordinance.

**ARTICLE 7  
LIMITED COMMON ELEMENTS**

**Section 7.1 Description.** The Limited Common Elements are Common Elements that are reserved for the exclusive use of the Unit or Units to which they are adjacent or allocated. They consist of those specified in the Condominium Statute, as well as the following: (a) the deck, patio, and porch areas accessible from any Unit as shown on the Survey Map and Plans, and (b) in Phase 2 and Phase 4, as described in Schedule A, the parking spaces and storage spaces, if any, assigned to each Unit by Declarant in any Subsequent Phase Amendment to this Declaration and in any amendment to Schedule B. The boundaries of such areas are defined as the interior surfaces of the walls, floor, ceiling, windows, ground, railings, or fence enclosing such areas. If no such enclosure exists, the boundaries shall be as depicted on the Survey Map and Plans.

**Section 7.2 Appurtenant to Units.** Conveyance of a Unit includes the exclusive rights to the use of the Limited Common Elements adjacent or allocated to that Unit.

**Section 7.3 Allocation, Reallocation of Limited Common Elements, Common Elements.** Portions of the Property may be allocated subsequently as Limited Common Elements, as described in Schedule B. Limited Common Elements may be reallocated between Units only with the approval of the Board and by an amendment to the Declaration executed by the Owners of the Units to which the Limited Common Element was and will be allocated, and the Mortgagees of such Units, and recorded. The Board shall approve any request of an Owner or Owners for reallocation within thirty (30) days, unless the proposed reallocation does not comply with this Declaration. The failure of the Board to act upon a request in compliance with this Declaration within such period shall be deemed approval thereof. Common Elements may be reallocated as Limited Common Elements and Limited Common Elements may be incorporated into an existing Unit with the approval of at least sixty-seven percent (67%) of the Owners, including the Owner of the Unit to which the Limited Common Element

will be allocated or incorporated. Such reallocation shall be reflected in amendments to this Declaration and to the Survey Map and Plans.

## ARTICLE 8 ACCESS

**Section 8.1 Access to Common Elements.** Each Unit has direct access to Common Element walks, parking areas and driveways.

**Section 8.2 Access to Public Streets.** The Common Elements have direct access to a public street, Columbia Point Drive, Richland, Washington. Each Unit has an unrestricted right of ingress to and egress from such Unit, which right is perpetual and appurtenant to each Unit.

## ARTICLE 9 PERCENTAGES OF ALLOCATED INTEREST IN COMMON ELEMENTS

The Allocated Interest of each Unit in Phase 1 is set forth in Schedule B attached hereto. The Allocated Interest of each Unit is equal to one (1) divided by the total number of Units within the Condominium. When, and if, the Condominium or any Units, Common Elements or Limited Common Elements are altered, added or withdrawn pursuant to a Subsequent Phase, the Allocated Interests of each Unit will be recalculated to equal one (1) divided by the total number of Units then within the Condominium, and Schedule B attached hereto shall be amended accordingly.

## ARTICLE 10 PARKING

**Section 10.1 Garages.** Each of the Buildings contains a ground level or underground parking garage. In Building 1 (Phase 1) and Building 3 (Phase 3), each Unit includes as part of the Unit a separately enclosed two (2)-car garage located either adjoining the residential portion of the Unit or within the parking garage within the Building, as described in Section 1.1(dd) and in Schedule B. Each of these garages includes a limited quantity of storage space. The garage attached to the Unit is for the exclusive use of the Owner of such Unit, and the Owner shall not lease or rent the garage space of the Unit separately from the living spaces of the Unit.

In Building 2 (Phase 2) and Building 4 (Phase 4), the ground level or underground parking garages do not contain separately enclosed two (2)-car garages and instead contain traditional parking spaces assigned to Units as Limited Common Elements, as described in Schedule B. The parking spaces assigned to each Unit are for the exclusive use of the Owner of such Unit, and the Owner shall not lease or rent the parking spaces separately from the Unit.

The Association may adopt a rule that no garage door is to be left open when the garage is unattended.

**Section 10.2 Use of Exterior Parking Spaces.** Open exterior parking spaces may be used only for the parking of operable passenger motor vehicles, trucks, trailers, and recreational vehicles, and only for the limited periods of time described below. The use of such open parking spaces for other purposes shall be prohibited. Operable passenger motor vehicles may be parked within open exterior parking spaces for no more than forty-eight (48) hours in any seven (7) day period. Trucks, trailers, and recreational vehicles may be parked within open exterior parking spaces for no more than twenty-four (24) hours in any seven (7) day period. The Board may prohibit or restrict the parking of automobiles owned by Owners or their tenants in the parking spaces held for common parking. The Board may direct that any vehicle or other thing improperly parked or kept in a parking space be removed, and if it is not removed within forty-eight (48) hours the Board may cause it to be removed at the risk and cost of the Owner thereof. This section does not apply to the use of a garage.

## ARTICLE 11 PERMITTED USES; MAINTENANCE OF UNITS; CONVEYANCES

**Section 11.1 Residential Use.** The Buildings and the Units are intended for and restricted to use as single family residences only, on an ownership, rental, or lease basis, and for social, recreational, or other reasonable activities normally incident to such use, and for the purposes of operating the Association and managing the Condominium if required. Units may not be used for timeshare purposes or sold or leased on a timeshare basis. In addition to the foregoing, Declarant may use Units it owns as sales offices, management offices and models for sales of Units.

**Section 11.2 Leases.** No more than ten percent (10%) of all Units may be leased or rented at any one time; provided, however, that the Board may grant permission to an Owner to lease his or her Unit, which lease would otherwise be in violation of this sentence, to meet special situations and to avoid undue hardship or practical difficulties. Prior to entering into any lease or rental agreement, any Unit Owner desiring to lease or rent his or her Unit shall obtain written confirmation from the Board that such lease or rental will not result in a violation of the preceding sentence. No Owner or other person shall be permitted to lease or otherwise rent a Unit for a term of less than six (6) months. No lease or rental of a Unit may be of less than the entire Unit. Any lease or rental agreement must provide that its terms shall be subject in all respects to the provisions of this Declaration and the Bylaws and rules and regulations of the Association and that any failure by the tenant to comply with the terms of such documents shall be a default under the lease or rental agreement. All leases and rental agreements shall be in writing and shall be delivered to the Association before the tenancy commences. Other than as stated in this Section 11.2 and Sections 10.1 and 11.12, there is no restriction on the right of any Owner to lease or otherwise rent his or her Unit.

**Section 11.3 Maintenance of Units.** Each Owner shall, at the Owner's sole expense, keep the interior of his or her Unit and its equipment, appliances, and appurtenances in a clean and sanitary condition, free of rodents and pests, and in good order, condition, and repair and shall do all redecorating and painting at any time necessary to maintain the good appearance and condition of the Unit. Each Owner shall be responsible for the maintenance, repair, or replacement of any plumbing fixtures, water heaters, fans, heating or cooling equipment, electrical fixtures, or appliances which are in the Unit or portions thereof that serve that Unit only, and shall replace any glass in the windows and in the exterior doors of the Unit that becomes cracked or broken. Each Owner may make any improvements or alterations to his or her Unit that do not affect the structural integrity, mechanical or

electrical systems, or lessen the support, of any portion of the Condominium, provided, however, that such improvements or alterations are made by Owner in compliance with all applicable building codes, rules, regulations and ordinances of any governmental entity having jurisdiction over the Unit. 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.

**Section 11.4 Exterior Appearance.** In order to preserve a uniform exterior appearance of the Buildings, the Board shall provide for the painting of the Buildings and prescribe the type and color of paint. No Owner may modify or decorate the Common Elements, the exterior of the Buildings, or screens, doors, awnings, or other portions of any Unit visible from outside the Unit without the prior written consent of the Board or in accordance with rules or regulations of the Board. No exterior radio, television or satellite reception antennae or disc may be installed without the prior written consent of the Board, except for the television/cable antenna installed on each Building by Declarant.

**Section 11.5 Utilities.** Each Owner shall, at the Owner's sole expense, be responsible for all gas, heat, electricity, garbage disposal, sewer charges, telephone, cable, Direct TV, and any other utility or service charge related to his or her occupancy of the Unit, including but not limited to any hook-up charges there may be. Notwithstanding the preceding to the contrary, each Building shall have one (1) water meter covering all Units within that Building. Water charges shall be paid by the Association, and each Unit Owner shall pay a reasonable proportion, to be reasonably determined by the Association, of all water charges jointly metered with other Units. Such payment shall be made by each Owner concurrently with the monthly payment of assessments under Article 17, below.

**Section 11.6 Effect on Insurance.** Nothing shall be done or kept in any Unit or Common Element that will increase the rate of insurance on the Property without the prior written consent of the Board. Nothing shall be done or kept in any Unit or Common Element that will result in the cancellation of insurance on any part of the Property, or would be in violation of any applicable laws or regulations.

**Section 11.7 Alteration of Common Elements.** Nothing shall be altered or constructed in or removed from any Common Element except with the prior written consent of the Board.

**Section 11.8 Signs.** No sign of any kind shall be displayed to the public view on or from any Unit or Common Element. This section shall not apply to Declarant.

**Section 11.9 Pets.** No animals, birds, reptiles, or living creatures of any kind ("Pet"), shall be kept in any Unit or in the Common Elements except subject to and in compliance with rules and regulations adopted by the Board, or Bylaws adopted by the Association. The Board may at any time require the removal of any Pet that it finds is disturbing other Owners unreasonably, and may exercise this authority for specific Pets even though other Pets are permitted to remain.

**Section 11.10 Offensive Activity.** No noxious or offensive activity shall be carried on in any Unit or Common Elements, nor shall anything be done therein which may be or become an annoyance or nuisance to other Owners.

**Section 11.11 Conveyances; Notice Required.** The right of an Owner to sell, transfer, mortgage or otherwise convey his or her Unit shall not be subject to any right of approval,

disapproval, or similar restriction by the Association or the Board, or anyone acting on their behalf, except as otherwise expressly provided herein. An Owner intending to sell a Unit, at least thirty (30) days before closing and prior to or simultaneously with any request by such Owner for preparation of a resale certificate with respect to such Unit pursuant to the Condominium Statute, shall deliver a written notice to the Board specifying the Unit being sold; the names and addresses of the purchaser, whether the purchaser will occupy the Unit as his or her primary residence, closing agent, and title insurance company insuring the purchaser's interest; and the estimated closing date, and shall comply in all respects with the provisions of the Condominium Statute pertaining to resale of Units. The Board shall have the right to notify the purchaser, title insurance company, and closing agent of the amount of unpaid assessments and charges outstanding against the Unit, whether or not such information is requested.

**Section 11.12 Sale or Lease, Right of First Refusal, Option.**

(a) **In General.** In the event any Owner of a Unit shall wish to sell, rent, or lease the same and has received any bona fide offer therefor from a prospective purchaser who will not occupy the Unit as his or her primary residence or tenant, the Board shall be given written notice of all terms thereof, together with the name and address of the contemplated lessee, renter, or purchaser, and credit and character references as the Board shall request shall be given to the Board for itself and for all of the Owners. The Owners, through the Board, or an assignee of the Board, for such assignee's own behalf and with such assignee's own funds, shall have the irrevocable option or right to purchase, rent, or lease the Unit upon the same terms and conditions set forth in the offer, provided that written notice of such election to purchase, rent, or lease is given to the selling, renting, or leasing Owner and a matching down payment or deposit is provided to the selling, renting, or leasing Owner during the fifteen- (15-) day period immediately following the delivery of the notice of the bona fide offer to the Board. After the Board or its assignee shall have elected to exercise the option, it shall have thirty (30) days from the date of such election to close the transaction, but the Owner shall not be entitled to proceed with any different or other transaction without first again complying with this right of first refusal.

(b) **Acquisition by Board.** The Board shall not exercise this option on behalf of all Owners without the prior written consent of all Owners, contract purchasers, and sellers. Acquisitions by the Board of Units or interests therein under the provisions of this Section 11.12 shall be made from the Association's maintenance fund. If the fund is insufficient, the Board may levy a special assessment against each Unit in proportion to the Allocated Interest of the Owner thereof in the Common Elements. The Board, in its discretion, may borrow money to finance the acquisition of a Unit, or an interest therein, which acquisition is authorized by this section; provided, however, that no financing may be secured by the encumbrance of any portion of the Condominium other than the Unit or the interest therein to be acquired and shall not permit a deficiency judgment against the Association. Units or interests therein acquired pursuant to the terms of this section shall be held of record in the name of the Board or nominees of the Board, in trust for all the Owners. Such Units or interests therein shall be leased, rented, held, or sold by the Board for the benefit of the Owners. The net proceeds of such leasing, renting, or sale shall be deposited in the Association's accounts or distributed to the Owners, as the Board determines.

(c) **Assignment or Subletting.** The assignment of a lease covering a Unit or subleasing or subrenting of a Unit shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the Owner under this Declaration shall continue for

subsequent transactions notwithstanding the fact that such Owner may have, on one or more occasions, assigned said lease or leased or rented said Unit and complied herewith.

(d) **Right to Mortgage.** In no case shall the right of first refusal reserved herein affect the right of an Owner to subject his or her Unit to a trust deed, mortgage or other security instrument in a transaction which is not a sale or lease.

(e) **Waiver of Board's Rights.** The failure or refusal of the Board to exercise the right to so purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when an Owner receives any subsequent bona fide offer from a prospective purchaser as described in Section 11.12(a) or tenant.

(f) **Deceased Owner.** The Board may proceed to purchase the Unit or the interest therein of any deceased Owner which shall be offered for sale upon the prior written consent of all the Owners, which consent shall set forth a maximum price which the Board is authorized to bid and pay for the Unit or interests therein.

### **Section 11.13 Transactions Not Affected by Right of First Refusal.**

(a) **Foreclosure.** In the event of any default on the part of any Owner under any mortgage or deed of trust, made in good faith and for value, which entitled the holder thereof to foreclose same, any sale under such foreclosure of the deed of trust, or any delivery of a deed to the mortgagee or beneficiary in lieu of such foreclosure, shall be made free and clear of the provisions of Section 11.12, and the purchaser (or grantee under such deed in lieu of foreclosure) of such Unit shall be thereupon and thereafter subject to the provisions of this Declaration. If the purchaser, following such foreclosure sale (or grantee under deed given in lieu of such foreclosure) or sale under deed of trust, shall be the holder of the mortgage or the deed of trust beneficiary or its nominee, the said holder or nominee may thereafter sell and convey, rent, or lease the Unit free and clear of the provisions of Section 11.12, but its grantee or vendee shall thereupon and thereafter be subject to all of the provisions thereof; except, however, in the case where the mortgagee conveys to the Federal Housing Administration, Veterans Administration, or other mortgagee insurer pursuant to legal requirements of the mortgage insurance, such mortgage insurer shall be entitled to convey to its purchaser free and clear of Section 11.12, in which case its grantee or vendee shall thereupon and thereafter be subject to all the provisions thereof.

(b) **Inheritance.** The transfer of a deceased joint tenant's interest to the surviving joint tenant or the transfer of a deceased's interest to a devisee by will or under a community property agreement or to his or her heirs at law under intestate laws shall not be subject to the provisions of Section 11.12.

(c) **Other.** If the Owner of a Unit can establish to the satisfaction of the Board that a proposed transfer is not a sale, lease, or rental, then such transfer shall not be subject to the provisions of Section 11.12.

(d) **Declarant's Transfer.** The restrictions on sale, conveyance, leasing, or rental of Units contained in Section 11.12 shall not apply to Declarant. Acceptance of deeds to or contracts for purchase of any interest whatsoever respecting a Unit constitutes a recognition by the

Owner or purchaser of such Unit that Declarant may continue to own and lease or rent some or all of the other Units herein.

**ARTICLE 12  
ENTRY FOR REPAIRS**

The Association and its agents or employees may enter any Unit and the Limited Common Elements adjacent or allocated thereto to effect repairs, improvements, replacements, or maintenance deemed by the Board to be necessary in the performance of its duties, to do necessary work that the Unit Owner has failed to perform, or to prevent damage to the Common Elements or to another Unit. Except in cases of great emergency that preclude advance notice, the Board shall cause the Unit occupant to be given notice and an explanation of the need for entry as far in advance of entry as is reasonably practicable. Such entry shall be made with as little inconvenience to the Owners and occupants as practicable. Any damage caused by such entry shall be repaired by the Association as a common expense unless the repairs or maintenance were necessitated by the acts or default of the Owner or occupant of the Unit entered, in which event the costs of the repairs or maintenance shall be specially assessed to that Unit.

**ARTICLE 13  
ASSOCIATION OF UNIT OWNERS**

**Section 13.1 Form of Association.** No later than the date the first Unit in the Condominium is conveyed, the Association shall be organized as a nonprofit corporation under the laws of the state of Washington; provided that, from and after the formation of such corporation, the rights and duties of the members and of such corporation shall continue to be governed by the provisions of the Condominium Statute and of this Declaration.

**Section 13.2 Qualification for Membership.** Each Owner (including Declarant) shall be a member of the Association. Declarant shall be considered an "Owner" as that term is used herein, and shall be a member of the Association and the voting representative with respect to any Unit owned by Declarant.

**Section 13.3 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 transferred in any way except upon the transfer of the Owner's interest in the Unit and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of an Owner's interest in a Unit shall operate automatically to transfer the membership in the Association to the new Owner.

**Section 13.4 Voting.** The voting power of the Owner of each Unit shall be equal to the Allocated Interest of such Unit as set forth on Schedule B. An Owner (including Declarant) of more than one Unit shall have the votes appertaining to each Unit owned. 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 the Association shall be disregarded. No lessee of any Unit shall

have the right to use the voting power of the Owner of such Unit, unless such lessee has been designated as the voting representative of such Unit by the Owner pursuant to Section 13.5 below.

**Section 13.5 Voting Representative.** An Owner may, by written notice to the Board, designate a voting representative for his or her Unit. The voting representative need not be an Owner. The designation may be revoked at any time by written notice to the Board from the Owner or by actual notice to the Board of the death or judicially declared incompetence of the Owner, except in cases in which the person designated is a Mortgagee of the Unit. This power of designation and revocation may be exercised by the guardian of an Owner, the attorney-in-fact for the Owner under a durable power of attorney, and the administrators or executors of an Owner's estate. If no designation has been made among multiple Owners of a Unit, or if a designation has been revoked and no new designation has been made, all votes allocated to each Unit may be cast by the one of multiple Owners present at the meeting, or if more than one of multiple Owners are present, according to the agreement of a majority in interest of such Owners in the Unit.

**Section 13.6 Joint Owner Disputes.** The voting interest of each Unit must be cast as a single vote. Fractional votes shall not be allowed. If joint Owners are unable to agree how their vote shall be cast, they shall lose their right to vote on the matter in question.

**Section 13.7 Pledged Votes.** If an Owner is in default under a First Mortgage on his or her Unit for sixty (60) consecutive days or more, the Mortgagee shall automatically be authorized to declare at any time thereafter that the Owner has pledged his or her vote on all issues to the Mortgagee during the continuance of the default. If the Board has been notified of any such pledge to a Mortgagee, and if the pledge is then effective, only the vote of the Mortgagee will be recognized on the issues that are subject to the pledge.

**Section 13.8 Annual and Special Meetings.** There shall be an annual meeting of the members of the Association in the first quarter of each year at such reasonable place and time as may be designated by no less than ten (10) or more than sixty (60) days written notice from the Board. Special meetings of the Association may be called at any time by the president, a majority of the Board or Owners having twenty percent (20%) of the votes in the Association, for the purpose of considering matters which require the approval of all or some of the Owners, or for any other reasonable purpose. Any Institutional Holder of a First Mortgage may attend or designate a representative to attend the meetings of the Association.

**Section 13.9 Books and Records.** The Board shall cause to be kept complete, detailed, and accurate books and records of the receipts and expenditures of the Association, and, at least annually, shall prepare, or cause to be prepared, a financial statement of the Association, in a form that complies with generally accepted accounting principles.

**Section 13.10 Audits.** At the annual meeting, there shall be presented an audited financial statement of the Association, prepared by a certified or licensed public accountant who is not a member of the Board or an Owner. Prior to the completion of Phases 2, 3, and 4 (upon which time there will be more than sixty (60) Units and this sentence will be inapplicable), the above-described audit may be waived annually by Owners, other than Declarant, of Units to which at least sixty percent (60%) of the votes in the Association are allocated, excluding the votes allocated to the Declarant. If the above-described audit is waived, any holder of a Mortgage may cause an audited financial statement of the Condominium to be prepared at such holder's expense and the Association shall

cooperate fully with any such audit. The Board, or persons having thirty-five percent (35%) or more of the voting power of the Association, may require that an audit of the Association and management books be presented at any special meeting. An Owner, at his or her expense, may at any reasonable time conduct an audit of the books of the Board and the Association.

**Section 13.11 Articles and Bylaws.** The Association will adopt Bylaws to supplement this Declaration and the Articles and to provide for the administration of the Association and the Property and for other purposes not inconsistent with the Condominium Statute or this Declaration. The Articles and Bylaws may be amended by the affirmative vote of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated at any duly called regular or special meeting of the Association. However, no material amendment of the Articles or Bylaws may be made without the prior written approval of fifty-one percent (51%) of the Eligible Mortgagees.

**Section 13.12 Inspection of Condominium Documents, Books, and Records.** During normal business hours and at other reasonable times this Declaration, the Survey Map and Plans, the Articles, the Bylaws, and other rules governing the operation of the Condominium (collectively, the "Condominium Documents") shall be available for inspection free of charge by the Owners, First Mortgagees, prospective purchasers and their prospective First Mortgagees, and the agents or attorneys of any of them and, in addition, at such times the books and records, financial statements, authorizations for payment of expenditures, and all contracts, documents, papers, and other records of the Association shall be available for inspection by the Owners, Mortgagees, and the agents or attorneys of either of them.

#### ARTICLE 14 NOTICES

**Section 14.1 Form and Delivery of Notice.** All notices given under the provisions of this Declaration or the Bylaws or rules or regulations of the Association shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, the notice shall be deemed to have been delivered on the third (3rd) day of regular mail delivery after it has been deposited in the United States mail, first class, postage prepaid, addressed to the person entitled to such notice at the most recent address known to the Board. Notice to the Owner of any Unit shall be sufficient if mailed to the Unit if no other mailing address has been given to the Board. Mailing addresses may be changed by notice in writing to the Board. Notices to the Board shall be given to the president or secretary of the Association.

**Section 14.2 Eligible Mortgagees.** Until such time as any Eligible Mortgagee withdraws its request for notice or satisfies the Mortgage held, guaranteed or insured by such Eligible Mortgagee of record, the Board shall send to the Eligible Mortgagee a copy of all notices of any proposed actions which require the consent of a specified percentage of Eligible Mortgagees. All Institutional Holders of First Mortgages shall be entitled to notices under Article 23 (damage and repair of damage to property) and Article 24 (condemnation) irrespective of whether they have filed requests for notices.

**ARTICLE 15**  
**PERIOD OF DECLARANT CONTROL**

**Section 15.1 Transition Date.** The "Transition Date" shall mean the date after which Declarant may no longer exercise Declarant Control (as defined in Section 15.2), which shall be the earlier of (1) sixty (60) days after conveyance of ninety percent (90%) of the Units that may be created to Owners other than Declarant; (2) three (3) years after the last conveyance or transfer of record of a Unit except as security for a debt; (3) five (5) years after any Development Right to add new Units was last exercised; (4) the date on which Declarant records an amendment to the Declaration pursuant to which the Declarant voluntarily surrenders Declarant Control; or (5) ten (10) years after the date on which this Declaration is recorded. Declarant may voluntarily surrender Declarant Control before the Transition Date, but require that until the Transition Date, specified actions of the Association or the Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they shall become effective. If the Transition Date has occurred under the foregoing provision (1), later expansion into a Subsequent Phase shall not act to revert Declarant Control to Declarant, but if the Transition Date has not occurred prior to the recording of a Subsequent Phase Amendment, the seventy-five percent (75%) of the Units under provision (1) above shall be determined on the basis of all Units in the Condominium after recording of the Subsequent Phase Amendment.

**Section 15.2 Declarant's Powers Until Transition Date.** Until the Transition Date, Declarant shall have the full power and authority to appoint and remove the Board and the officers of the Association ("Declarant Control") subject to the limitations set forth in this Article 15. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of all the Units (including Units in the Subsequent Phases) to Owners other than Declarant, the Board shall be composed of three (3) members, and at least one (1) member of the Board and not less than twenty-five percent (25%) of the members of the Board must be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of all the Units (including Units in the Subsequent Phases) to Owners other than Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board must be elected by Owners other than Declarant.

**Section 15.3 Transfer of Administration.** Within thirty (30) days after the Transition Date the Owners shall elect a Board of not fewer than three (3) directors, at least a majority of which must be Owners. The Board or the Managing Agent shall call a meeting of the Association to be held within thirty (30) days after the Transition Date for the purpose of electing the new Board. The new Board shall elect the officers of the Association and such members of the Board and officers shall take office upon election.

**Section 15.4 Mortgagee Assumption of Declarant's Position.** In the event that the Mortgagee of the Condominium becomes bound by this Declaration by granting one or more partial releases or otherwise, and forecloses its mortgage or acquires a deed in lieu of the foreclosure, and obtains possessory rights, legal title or certificates of sale to an unsold Unit or Units and appurtenant Common Elements covered by the respective deed of trust or mortgage liens, then the Mortgagee of the Condominium or other transferee may succeed to and assume to the exclusion of Declarant, the rights and obligations of Declarant set forth in this Declaration including any Special Declarant Rights unless such transferee requires that such Special Declarant Rights not be transferred and such rights not being transferred are described in the instrument conveying title; and provided that the Transition Date shall be deemed to have passed unless the judgment or instrument transferring title provides for transfer of all Special Declarant Rights to such transferee.



**Section 15.5 Transfer of Association Control.** Within sixty (60) days after the Transition Date, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant including, but not limited to, the original or a photocopy of this Declaration and each amendment hereto; the certificate of incorporation and a copy or duplicate original of the Articles of the Association as filed with the Washington Secretary of State; the Bylaws and minute books, including all minutes and other books and records of the Association; any rules and regulations that have been adopted; any resignations of officers and members of the Board who are required to resign because Declarant is required to relinquish control of the Association; all financial records, including cancelled checks, bank statements and financial statements of the Association and source documents from the time of incorporation of the Association through the date of transfer of control to the Owners; all Association funds (including the working capital fund described in Section 17.1) or the control thereof; all tangible personal property of the Association represented by Declarant to be the property of the Association or ostensibly the property of the Association and an inventory of such property; a copy of Declarant's plans and specifications utilized in the construction or remodeling of the Condominium and a certificate of the Declarant or a licensed architect or engineer that the plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications used by the Declarant in the construction or remodeling of the Condominium (except for alterations to a Unit done by an Owner other than Declarant); insurance policies or copies thereof for the Condominium and the Association; copies of any certificates of occupancy that may have been issued to the Condominium; any other permits issued by governmental bodies applicable to the Condominium; all written warranties still in effect for the Common Elements or any areas or facilities which the Association has the responsibility to maintain and repair and all documents related thereto; a roster of Owners and Eligible Mortgagees and their addresses and telephone numbers; and any leases or contracts to which the Association is a party. Upon the transfer of control to the Owners, the records of the Association shall be audited as of the date of transfer by an independent certified public accountant in accordance with generally accepted accounting principles unless the Owners other than Declarant by two-thirds (2/3's) vote elect to waive the audit.

**ARTICLE 16  
AUTHORITY OF THE BOARD**

**Section 16.1 Adoption of Rules and Regulations.** The Board is empowered to adopt, amend, and revoke on behalf of the Association detailed administrative rules and regulations necessary or convenient from time to time to ensure compliance with the general guidelines of this Declaration and to promote the comfortable use and enjoyment of the Condominium. The Declaration and the Bylaws and the rules and regulations of the Association shall be binding upon all Owners and occupants and all other persons claiming any interest in the Condominium.

**Section 16.2 Enforcement of Declaration, etc.** The Board shall have the power and the duty to enforce the provisions of this Declaration, the Articles, the Bylaws, and the rules and regulations of the Association, as the same may be lawfully amended from time to time, for the benefit of the Association.

**Section 16.3 Goods and Services.** The Board shall acquire and pay for as common expenses of the Condominium all goods and services reasonably necessary or convenient for the efficient and orderly functioning of the Condominium. The goods and services shall include (by way

of illustration and not limitation) utility services for the Common Elements; policies of insurance and fidelity bonds (including directors and officers liability insurance); legal and accounting services; maintenance, repair, landscaping, gardening, and general upkeep of the Common and Limited Common Elements; and all supplies, materials, fixtures, and equipment that are, in the Board's judgment, necessary or desirable for the operation of the Condominium and enjoyment of it by the Owners. The Board may hire such full-time or part-time employees as it considers necessary.

**Section 16.4 Managing Agent.** The Board may, but shall not be required to, contract with an experienced professional Managing Agent to assist the Board in the management and operation of the Condominium and may delegate such of its powers and duties to the Managing Agent as it deems to be appropriate, except as limited herein. If a Managing Agent is employed by the Board, the prior written approval of at least fifty-one percent (51%) of all Eligible Mortgagees and seventy-five percent (75%) of all Institutional Holders of First Mortgages shall be required before the Board may terminate professional management and assume self management. The Managing Agent shall not enter any Unit (directly or through agents) without the consent of the occupant unless entry has been directed by the Board. Only the Board can approve an annual budget or a supplemental budget, and only the Board can impose a special assessment on a Unit or authorize foreclosure of an assessment lien. Any contract with a Managing Agent, or any other contract providing for management or operational services, shall have a term no longer than one (1) year (but may be renewable by agreement of the parties for successive one- (1) year periods) and shall be terminable by the Board without payment of a termination fee, with or without cause, on thirty (30) days' written notice.

**Section 16.5 Protection of Property.** The Board may spend such funds and take such action as it may from time to time deem necessary to preserve the Property, settle claims, or otherwise act in what it considers to be the best interests of the Condominium or the Association.

**Section 16.6 Imposition of Payments, Fees, Fines.** The Board may impose and collect charges for late payment of assessments described in Article 18 and, after notice and opportunity to be heard by the Board or by such representative designated by the Board and in accordance with procedures provided by 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 the Declaration, Bylaws, or rules and regulations of the Association. The Board may impose and collect reasonable charges for the preparation and recording of amendments to the Declaration, resale certificates and statements of unpaid assessments, and may assign its right to future income, including the right to receive common expense assessments. The Board may impose and collect any payments, fees or charges for the use, rental or operation of the Common Elements other than Limited Common Elements appurtenant to each Unit, and for services provided to Owners. Upon ninety (90) days notice, the Board may terminate without penalty any management contract, employment contract or lease of recreational parking areas or facilities or any other contract or lease between the Association and Declarant or an affiliate of Declarant, or any contract or lease that is not *bona fide* or was unconscionable to the Owners at the time entered into under the circumstances then prevailing, if such contract or lease was entered into before the Board elected by the Owners pursuant to Article 15 took office.



**ARTICLE 17**  
**BUDGET AND ASSESSMENT FOR COMMON EXPENSES**

**Section 17.1 Preparation of Budget.** At least ninety (90) days prior to the beginning of each calendar year, the Board shall estimate the charges (including common expenses, and any special charges for particular Units) to be paid during such year and prepare a budget for creating, funding and maintaining reasonable repair, replacement and acquisition of Common Elements, taking into account any expected income and any surplus available from the prior year's operating fund (which surplus may be applied by the Association to current operating expenses as referenced in the budget). Within thirty (30) days after adoption of any proposed budget for the Condominium, the Board shall provide a summary thereof to all Owners and set a date which is not less than fourteen (14) nor more than sixty (60) days after mailing of the summary for a meeting of the Owners to consider ratification of the budget. The budget shall be ratified unless at such meeting Owners to which a majority of votes in the Association are allocated reject the budget, whether or not a quorum is present. Without limiting the generality of the foregoing but in furtherance thereof, the Board shall create and maintain from regular monthly assessments a reserve fund for periodic maintenance and repair of Common Elements and for replacement of those Common Elements which can reasonably be expected to require replacement prior to the end of the useful life of the Building. The Board shall calculate the contributions to said reserve fund so that there are sufficient funds therein to replace each Common Element covered by the fund at the end of the estimated useful life of each such Common Element. If the sum estimated and budgeted at any time proves inadequate for any reason (including nonpayment of any Owner's assessment), the Board may at any time levy a further assessment, which shall be assessed to the Owners in like proportions. In addition to the foregoing, Declarant shall establish a working capital fund (the "Fund") equal to at least two (2) months' estimated assessments for common expenses for each Unit in the Condominium. Upon the initial transfer of each Unit from Declarant to an Owner, Declarant shall collect such Unit's share of the Fund as a cost of closing. Upon transfer of control of the Condominium to the Association as provided in Section 15.5, Declarant shall contribute to the Fund all shares in the Fund of Units that have not yet been transferred by the Declarant to an Owner. Upon the initial transfer of each such Unit thereafter, Declarant may collect such Unit's share in the Fund at closing and reimburse itself for its contribution of such Unit's share in the Fund to the Association. The Fund shall be deposited with the Association for deposit into a segregated fund for the exclusive purposes of paying for unforeseen expenditures and/or purchasing any additional equipment or services necessary for the Association. Amounts paid into the Fund shall not be considered advance payment of regular assessments.

**Section 17.2 Monthly Assessments for Common Expenses and Accrual of Assessments.** The sums required by the Association for common expenses as reflected by the budget and any supplemental budgets shall be divided into equal installments to be paid each month over the period of time covered by the budget or supplemental budget. The monthly installments shall be assessed to all of the Units and their respective Owners in proportion to the Units' Allocated Interests in the Common Elements. Notwithstanding the foregoing, the budget may include expenses related to Limited Common Elements which may be assessed against the Units to which such Limited Common Elements appertain, equally and/or expenses benefiting certain Units which may be assessed exclusively against those Units. The cost of utilities shall be assessed in proportion to usage. Assessments to pay a judgment against the Association perfected under RCW 4.64.020 may be made only against Units in the Condominium at the time the judgment was entered in proportion to their Allocated Interests in common expense liability at the time the judgment was entered. Any common expenses caused by the misconduct of an Owner may be assessed exclusively against such Owner's

Unit. Until the Association makes a common expense assessment, the Declarant shall pay all common expenses. The first assessment shall be made by the Association against all Units, no later than sixty (60) days after the first Unit is conveyed. Thereafter, assessments shall be made against all Units, based on a budget adopted by the Association.

**Section 17.3 Revised Assessments for Phases.** The assessments shall be based upon the percentages stated in Schedule B as amended for Phase I or for any Subsequent Phase. Declarant or the Board may recompute the budget and the assessments and impose a revised assessment after the recording of any Subsequent Phase Amendment.

**Section 17.4 Special Assessments.** If a special assessment becomes chargeable against a Unit under the authority of this Declaration or the Bylaws, the Board shall determine the amount of such special assessment and fix the month in which it is to be paid. The special assessment shall be added to the Unit's monthly installment of common expenses and be included in the assessment against the Unit.

**Section 17.5 Notice of Assessment.** The Board shall notify each Owner in writing of the amount of the monthly assessments to be paid for such Owner's Unit and shall furnish copies of each budget on which the assessments are based to all Owners and, if so requested, to their respective Mortgagees.

**Section 17.6 Payment of Assessments.** On or before the first day of each calendar month each Owner shall pay or cause to be paid to the treasurer of the Association the assessment against the Unit for that month. Any assessment not paid by the first day of the calendar month for which it is due shall be delinquent and subject to late charges, interest charges and collection procedures as provided in Article 18.

**Section 17.7 Proceeds Belong to Association.** All assessments and other receipts received by the Association on behalf of the Condominium shall belong to the Association.

**Section 17.8 Failure to Assess.** Any failure by the Board or the Association to make the budget and assessments hereunder before the expiration of any budget period for the ensuing period shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owners from the obligation to pay assessments during that or any subsequent time period, and the monthly assessments and amounts previously established shall continue until a new assessment is established.

**Section 17.9 Certificate of Unpaid Assessments.** Upon the request of any Owner, Mortgagee, prospective purchaser, or prospective Mortgagee of a Unit, the Board shall furnish within fifteen (15) days after request therefor a certificate in recordable form stating the amount, if any, of unpaid assessments charged to the Unit. The certificate shall be binding upon the Board, the Association and every Owner as to the amount of such indebtedness on the date of the certificate unless and to the extent known by the recipient to be false.

**Section 17.10 Separate Accounts.** The Board shall require that the Association maintain separate accounts for current operations, reserves, and a special separate reserve account for payment of insurance. No funds of the Association shall be commingled with the funds of any other association or with the funds of the Managing Agent or any other person responsible for the custody of such

funds. Each month the Board shall first deposit to the insurance reserve account that portion of the common expense assessment necessary to pay at least one-twelfth (1/12th) of the total cost of all of the insurance policies provided regarding the Condominium and such insurance reserve account shall be held separately and inviolate until utilized for payment of insurance premiums. Thereafter the remainder of the assessments and charges collected may be utilized for payment of other expenses or deposited or credited to other accounts. Any action affecting reserve funds, including issuance of checks, shall require the signature of at least two (2) persons who are officers and directors of the Association. All such assessments and charges shall be collected and held in trust for, and administered and expended for the benefit of, the Owners.

## ARTICLE 18 LIEN AND COLLECTION OF ASSESSMENTS

**Section 18.1 Assessments Are a Lien; Priority.** All unpaid sums assessed by the Association for the share of the common expenses chargeable to any Unit and any sums specially assessed to any Unit under the authority of this Declaration or the Bylaws (together with interest, fines, late charges, costs, and attorneys' fees in the event of delinquency) shall constitute a continuing lien on the Unit and all its appurtenances from the time the assessment is due. The lien for such unpaid assessments shall be prior to all other liens and encumbrances except (a) liens and encumbrances recorded before the recording of the Declaration, (b) 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. Except as provided above (and subject to the provisions of Section 18.2 below), a Mortgagee that obtains the right of possession of a Unit through a foreclosure or deed of trust sale, or by taking a deed in lieu of foreclosure or sale, or a purchaser at a foreclosure sale, shall take the Unit free of any claims for assessments or installments thereof that became due prior to such right of possession, but will be liable for the common expenses and assessments that become due thereafter. The Unit's past due share of common expenses or assessments shall become new common expenses chargeable to all of the Owners, including the Mortgagee or foreclosure sale purchaser and their successors and assigns, in proportion to their respective Allocated Interests in the Common Elements; however, the Owner shall continue to be personally liable for such past accrued assessments, as provided in Section 18.3. For the purpose of this Section, the terms "Mortgage" and "Mortgagee" shall not mean any real estate contract or vendor or designee or assignee of a vendor under a real estate contract.

**Section 18.2 Lien May Be Foreclosed.** Each Unit in the Condominium is hereby granted to Chicago Title Insurance Company, as trustee, in trust with power of sale, to secure the obligation of each Unit (and the Owner thereof) to pay assessments against such Unit made by the Association. The Units are not used principally for agricultural or farming purposes. The power of sale granted hereby is operative in case of any default in the obligation of an Owner to pay any assessment made against such Owner's Unit. The Association's lien for delinquent assessments is not subject to the provisions of Chapter 6.13 RCW. The lien may be enforced by the Managing Agent or the Board, acting on behalf of the Association, judicially in the manner set forth in Chapter 61.12 RCW or nonjudicially in the manner set forth in Chapter 61.24 RCW for nonjudicial foreclosures of deeds of trust. Unless the Association elects to foreclose its lien nonjudicially pursuant to Chapter 61.24 RCW, the lien shall also be prior to any Mortgage described in Section 18.1(b) to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the Association, which would have become due during the six (6) months immediately preceding the



date of a 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 the notice of forfeiture in a proceeding by the vendor under a real estate contract. The priority of the Association's lien against any Unit encumbered by a Mortgage held by a Mortgagee which has given to the Secretary of the Association a written request for 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 has given such notice and before the Association gives the holder a written notice of the delinquency. The Managing Agent or the Board, acting on behalf of the Association, shall have the power to bid on at the foreclosure sale, acquire, hold, lease, mortgage and convey the Unit. The lien for delinquent assessments and the personal liability for payment of the assessments shall be extinguished unless proceedings to enforce the lien are instituted within three (3) years after the amount of assessment sought to be recovered becomes due.

**Section 18.3 Assessments Are Personal Obligations.** In addition to constituting a lien on the Unit and all its appurtenances, all sums assessed by the Association chargeable to any Unit (together with interest, costs and attorneys' fees in the event of delinquency) shall be the joint and several personal obligations of the Unit Owner when the assessment is made and such Owner's successors in title who assume such obligations, for all assessments due up to the time of each Owner's conveyance of the Unit, without prejudice to any such successor's ability to recover from the Owner the amounts paid by such successor therefore. Suit to recover a personal judgment for any delinquent assessments shall be maintainable without foreclosing or waiving the lien securing them.

**Section 18.4 Receiver.** From the later of (a) commencement of an action by the Association to foreclose a lien for delinquent assessment(s) against a Unit that is not occupied by its Owner or (b) delinquency of the assessment(s), the Association may appoint a receiver to collect from any lessee of the Unit 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 applicable charges, then to costs, fees and charges of the foreclosure action, and then to the payment of the delinquent assessments. Exercise by the Association of the foregoing rights shall not effect the priority of any preexisting liens on the Unit.

**Section 18.5 Late Charges and Interest on Delinquent Assessments.** The Board may from time to time establish late charges and a rate of interest to be charged on assessments that may thereafter become delinquent. In the absence of another established nonusurious rate, delinquent assessments shall bear interest at the rate of twelve percent (12%) per annum.

**Section 18.6 Recovery of Attorneys' Fees and Costs.** In any action to collect delinquent assessments, including appeal thereof and enforcement of a judgment, the prevailing party shall be entitled to recover as a part of its judgment a reasonable sum for attorneys' fees and expenses reasonably incurred in connection with the action, in addition to taxable costs permitted by law.

**Section 18.7 Termination of Utility Service.** If an assessment becomes delinquent the Board may give notice to the delinquent Owner to the effect that unless the delinquent assessment is paid within ten (10) days (or such longer time as is specified in the notice) any or all utility services furnished to the Unit by the Association or under the Association's control will be severed and remain

severed until the delinquent assessment has been paid. If the delinquency is not cured in the time specified the Board may take the action described in the notice.

**Section 18.8 Remedies Cumulative.** The remedies provided herein are cumulative and the Board may pursue them, and any other remedies which may be available under the law although not expressed herein, either concurrently or in any order.

**Section 18.9 Security Deposit.** An Owner who has been delinquent in paying its monthly assessments for three (3) of the five (5) preceding months may be required by the Board, from time to time, to make and maintain a security deposit not in excess of three (3) months' estimated monthly assessments, which shall be collected and shall be subject to penalties for nonpayment as are other assessments. The deposit shall be held by the Association in a separate fund, credited to such Owner, and may be resorted to by the Association at any time when such Owner is ten (10) days or more delinquent in paying its assessments.

## ARTICLE 19 COMPLIANCE WITH DECLARATION

**Section 19.1 Enforcement.** Each Owner and the Association shall comply strictly with the provisions of this Declaration and with the Bylaws and administrative 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 and the Bylaws and administrative 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 any aggrieved Owner on its own.

**Section 19.2 No Waiver of Strict Performance.** The failure of the Board (or the Managing Agent) in any instance to insist upon the strict compliance with this Declaration or the Bylaws or rules and regulations of the Association, or to exercise any right 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 any term covenant, condition, or restriction. The receipt by the Board of payment of an assessment from an Owner, with knowledge of a breach by the Owner, shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless expressed in writing and signed for the Board.

## ARTICLE 20 LIMITATION OF LIABILITY

**Section 20.1 Liability for Utility Failure, Etc.** Except to the extent covered by insurance obtained by the Board, none of the Association, the Board, the Managing Agent or the Declarant shall be liable for: the failure of any utility or other service to be obtained and paid for by the Board; any injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust, or sand which may lead or flow from outside or from any parts of the Buildings, or from any of their pipes, drains, conduits, appliances, or equipment, or from any other place; or for

inconvenience or discomfort resulting from any action taken to comply with any law, ordinance, or orders of a governmental authority. No diminution or abatement of common expense assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

**Section 20.2 No Personal Liability.** Except as otherwise provided in the Condominium Statute, so long as a Board member, Association committee member, Association officer, Declarant or the Managing Agent has acted in good faith, with ordinary and reasonable care (and in the case of Board officers and members appointed by Declarant, with the care required of a fiduciary of the Owners), without willful or intentional misconduct, upon the basis of such information as is then possessed by such person, no such person shall be personally liable to any Owner, or to any other person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of such person; provided that this section shall not apply where the consequences of such act, omission, error, or negligence is covered by insurance obtained by the Board.

## ARTICLE 21 INDEMNIFICATION

Each Board member and Association committee member and Association officer, and Declarant and the Managing Agent shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of holding or having held the position of Board member, Association committee member, Association officer or Managing Agent, or any settlement thereof, whether or not he or she holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by any type of insurance and except in such cases wherein such person is adjudged guilty of willful misfeasance in the performance of his or her duties; provided that, in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association; further provided that Declarant shall not be entitled to indemnification against any expenses or liabilities for which it is liable under the Condominium Statute; and further provided liability imposed upon Declarant under the Condominium Statute; and further provided that nothing contained in this Article 21 shall be deemed to obligate the Association to indemnify any Owner who is or has been a Board member or officer of the Association with respect to any duties or obligations assumed or liabilities incurred by he or she under or by virtue of the Declaration as an Owner of a Unit covered thereby.

## ARTICLE 22 INSURANCE

**Section 22.1 General Requirements.** The Board shall cause the Association to purchase and maintain at all times as a common expense a policy or policies and bonds necessary to provide casualty insurance; comprehensive liability insurance; fidelity bonds; worker's compensation insurance to the extent required by applicable laws; insurance against loss of personal property of the Association by fire, theft, or other causes with such deductible provisions as the Board deems



advisable; insurance, if available, for the protection of the Association's directors, officers, and representatives from personal liability in the management of the Association's affairs; and such other insurance as the Board deems advisable or is required by the Condominium Statute. The Board shall review at least annually the adequacy of the Association's insurance coverage. All insurance shall be obtained from an insurance carrier rated Triple A (and rated in Class XI or better financial condition) by Best's Insurance Reports or equivalent rating service, and licensed to do business in the State of Washington. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect casualty, flood, and liability insurance and a fidelity bond that meets the insurance and fidelity bond requirements for condominium projects established by the Federal National Mortgage Association ("FNMA") the Government National Mortgage Association ("GNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), or the Veterans Administration ("VA"), so long as either is a Mortgagee or Owner of a Unit, except to the extent such coverage has been waived in writing by FNMA, GNMA, FHLMC or VA, as may be appropriate. All such insurance policies and fidelity bonds shall provide that coverage may not be cancelled, modified or allowed to lapse (including cancellation for nonpayment of premium) without compliance with all applicable provisions of Chapter 48.18 RCW pertaining to cancellation or nonrenewal of insurance and at least thirty (30) days' prior written notice to any and all Mortgagees, designated servicers of Mortgagees, and all insurers that issue certificates or memoranda to the Association and, upon written request, to any Owner or Mortgagee. Promptly upon the conveyance of a Unit, the new Owner shall notify the Association of the date of the conveyance and the Owner's name and address. The Association shall notify each insurance company that has issued an insurance policy to the Association for the benefit of the Owners under this Article 22 of the name and address of the new Owner and request that the new Owner be made a named insured under such policy.

**Section 22.2 Casualty Insurance.** The casualty insurance shall, at the minimum, consist of a standard form of fire insurance policy with extended coverage or "all risk" endorsements in an amount equal to the full replacement value (*i.e.*, one hundred percent (100%) of current replacement cost exclusive of land, foundation, excavation, and other items normally excluded from coverage) of the Common Elements, and all fixtures and equipment belonging to the Association with an "Agreed Amount Endorsement" or its equivalent, if available, or an "Inflation Guard Endorsement," and, if required by FNMA, a "Demolition and Contingent Liability from Operation of Building Laws Endorsement," an "Increased Cost of Construction Endorsement," an "Earthquake Damage Endorsement," and such other endorsements as FNMA, GNMA, FHLMC, or VA deems necessary and so long as either is a Mortgagee or Owner of a Unit, except to the extent such coverage is waived by FNMA, GNMA, FHLMC, or VA, as may be appropriate. In addition to protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, the policy shall provide protection against loss or damage from sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as are customarily covered in policies for residential condominium projects of similar construction in the greater Seattle metropolitan area. The policy or policies shall provide for separate protection for each Unit to the full insurance replacement value thereof (limited as above provided), and a separate loss payable endorsement in favor of the holder of the Mortgage that creates a lien against such Unit. The insurance proceeds may be made payable to any trustee with which the Association may enter into an insurable trust agreement, or any successor trustee, who shall have exclusive authority to negotiate losses under the policies. The policies shall provide that, notwithstanding any provisions thereof which give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the Association may be a party, or any requirement of law. The policy or policies shall have deductibles

of no greater than the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the coverage amount.

**Section 22.3 Comprehensive Public Liability Insurance.** The comprehensive policy of public liability insurance shall insure the Board, the Association, the Owners, Declarant, and the Managing Agent, and cover all of the Common Elements, with a "Severability of Interest Endorsement" or equivalent coverage that would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or of another Owner, and shall include protection against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and such other risks as are customarily covered with respect to residential condominium projects of similar construction in the greater Tri-City metropolitan area. The limits of liability shall not be less than One Million Dollars (\$1,000,000) covering all claims for personal injury and/or property damage arising out of a single occurrence.

**Section 22.4 Additional Policy Provisions.** The Board shall exercise its reasonable best efforts to obtain insurance policies pursuant to Sections 22.2 and 22.3 containing the following provisions and limitations:

(a) The named insured shall be the Association, as trustee for each of the Owners in accordance with their respective Allocated Interests in the Common Elements. The insurance proceeds may be made payable to any trustee with which the Association may enter into an insurance trust agreement, or any successor trustee, who shall have exclusive authority to negotiate losses under the policies.

(b) Such policies shall not provide for contribution by or assessment against Mortgagees or become a lien on the Property superior to the lien of a First Mortgage.

(c) In no event shall the insurance coverage be brought into contribution with insurance purchased by the Owners of the Units or their Mortgagees.

(d) Coverage shall not be prejudiced by (a) any act or neglect of the Owners when such act or neglect is not within the control of the Association, or (b) failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control.

(e) A waiver of subrogation by the insurer as to any and all claims against the Association, any Owner and their respective agents, employees, household members, or tenants, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

(f) A standard mortgagee clause which shall provide:

(i) that any reference to a mortgagee in the policy shall mean and include all holders of Mortgages that create liens against any Units or Unit leaseholds or subleaseholds in their respective order of preference, whether or not named therein;

(ii) that such insurance as to the interest of any holder of a Mortgage shall not be invalidated by any act or neglect of the Board or Owners or any persons under any of them;

(iii) any provision invalidating such mortgagee clause by reason of the failure of any holder of a Mortgage to notify the insurer of any hazardous use or vacancy, any requirement that such holder pay any premium thereon, and any contribution clause; and

(iv) that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to the Board or the insurance trustee.

**Section 22.5 Fidelity Bonds.** The required fidelity bonds shall afford coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association or the Managing Agent and all other persons who handle or are responsible for handling funds of the Association and be in an amount equal to at least fifty-five percent (55%) of the estimated annual operating expenses of the Condominium, including reserves. All such fidelity bonds shall name the Association as an obligee and contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

**Section 22.6 Owners' Individual Insurance.** Each Owner may obtain additional insurance on his or her Unit and its contents at his or her own expense but only if the Owner's insurance does not decrease the amount that the Board, or any trustee for the Board, on behalf of all of the Owners, will realize under any insurance policy that the Board may have in force on the Property. Each Owner shall notify the Board of all improvements by the Owner to his or her Unit the value of which is in excess of One Thousand Dollars (\$1,000). Any Owner who obtains individual insurance policies covering any portion of the Property other than personal property belonging to such Owner shall file a copy of his or her individual policy or policies with the Board within thirty (30) days after such Owner buys it, and the Board shall immediately review its effect with the Board's insurance broker, agent, or carrier.

**Section 22.7 Insurance Proceeds.** Insurance proceeds for damage or destruction to any part of the Property shall be paid to the Board on behalf of the Association which shall segregate such proceeds from any other funds of the Association for use and payment as provided for in Article 23. The Association acting through the Board shall have the authority to settle and compromise any claim under insurance obtained by the Association, each Owner hereby appoints the Association as its attorney in fact for this purpose and the insurer may accept the release and discharge of liability made by the Board on behalf of the named insured under the policy.

**Section 22.8 Insurance to Meet Secondary Market Requirements.** In addition to any other insurance requirements contained in this Declaration, the Association shall maintain in continuous effect such casualty, flood and liability insurance and fidelity bonds meeting the insurance and bonding requirements for the Condominium, as established by FNMA, GNMA, FHLMC and VA so long as such entity is an Owner or Mortgagee of any Unit, except to the extent such insurance coverage or bond has been waived in writing by such entity.

## ARTICLE 23 DAMAGE AND REPAIR OF DAMAGE TO PROPERTY

**Section 23.1 Initial Board Determination.** In the event of damage to any part of the Property, the Board shall promptly, and in all events within thirty (30) days after the date of damage,

make the following determinations with respect thereto, employing such advice as the Board deems advisable:

- (a) The nature and extent of the damage, together with an inventory of the Property directly affected thereby.
- (b) A reasonably reliable estimate of the cost to repair the damage, which estimate shall, if reasonably practicable, be based upon two (2) or more firm bids obtained from responsible contractors.
- (c) The expected 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, by which the estimated cost of repair exceeds the expected insurance proceeds and the amount of the assessments that would have to be made against each Unit if the excess cost were to be paid as a maintenance expense and specially assessed against all the Units in proportion to their Allocated Interests in the Common Elements.
- (e) The Board's recommendation whether the damage should be repaired.

**Section 23.2 Notice of Damage.** The Board shall promptly, and in all events within thirty (30) days after the date of damage, provide each Owner and each Institutional Holder of a First Mortgage with a written notice describing the damage and summarizing the initial Board determinations made under Section 23.1. If the Board fails to do so within said thirty (30) days, any Owner or Institutional Holder of a First Mortgage may make the determinations required under Section 23.1 and give the notice required under this Section 23.2.

**Section 23.3 Definitions: Damage, Repair, Emergency Work.** As used in this Article 23:

- (a) **Damage** shall mean all kinds of damage, whether of slight degree or total destruction.
- (b) **Repair** shall mean restoring the improvements to substantially the condition they were in before they were damaged, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. Modifications to conform to applicable governmental rules and regulations or available means of construction may be made.
- (c) **Emergency Work** shall mean work that the Board deems reasonably necessary to avoid further damage or substantial diminution in value to the improvements and to protect the Owners from liability from the condition of the site.

**Section 23.4 Execution of Repairs.**

- (a) The Board shall promptly repair the damage and use the available insurance proceeds therefor unless (a) the Condominium is terminated, (b) the repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (c) before the repairs (other than Emergency Work) are begun the Owners decide in accordance with this Article not to repair. If the



cost of repair exceeds the available insurance proceeds the Board shall impose a special assessment against all Units in proportion to their Allocated Interests in the Common Elements in an amount sufficient to pay the excess costs.

(b) The Board shall have the authority to employ architects and engineers, advertise for bids, let contracts to contractors and others, and take such other action as is reasonably necessary to make the repairs. Contracts for the repair work shall be awarded when the Board, by means of insurance proceeds and sufficient assessments, has provided for paying the cost. The Board may authorize the insurance carrier to make the repairs if the Board is satisfied that the work will be done satisfactorily, and if such authorization does not contravene any insurance trust agreement or requirement of law.

(c) The Board may enter into a written agreement with a reputable financial institution or trust or escrow company that the institution or company shall act as an insurance trustee to adjust and settle any claim for casualty loss in excess of Fifty Thousand Dollars (\$50,000) or for the institution or company to collect the insurance proceeds and carry out the provisions of this Article 23.

**Section 23.5 Damage Not Substantial; Assessment Under Three Thousand Five Hundred Dollars (\$3,500).** If the estimated assessment determined under subsection 23.1(d) does not exceed Three Thousand Five Hundred Dollars (\$3,500) for any one Unit, the damage will be deemed not to be substantial and the provisions of this Section 23.5 shall apply.

(a) Either the Board or the requisite number of Owners, within fifteen (15) days after the notice required under Section 23.2 has been given, may but shall not be required to, call a special Owners' meeting in accordance with Section 13.8 and the Bylaws to decide whether to repair the damage.

(b) Except for Emergency Work, no repairs shall be commenced until after the fifteen (15) day period and until after the conclusion of the special meeting if such a special meeting is called within the fifteen (15) days.

(c) A concurring vote of Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated (including Owners of all Units or Limited Common Elements which would not be rebuilt), and eighty percent (80%) of the Institutional Holders of First Mortgages will be required to elect not to repair the damage. The failure of the Board and the Owners within the fifteen (15) day period to call a special meeting shall be deemed a decision to repair the damage.

**Section 23.6 Substantial Damage; Assessment Over Three Thousand Five Hundred Dollars (\$3,500).** If the estimated assessment determined under subsection 23.1(d) is Three Thousand Five Hundred Dollars (\$3,500) or more for any one Unit, the damage will be deemed substantial and the provisions of this Section 23.6 shall apply.

(a) The Board shall promptly, and in all events within thirty (30) days after the date of damage, call a special Owners' meeting to consider repairing the damage. If the Board fails to do so within thirty (30) days, then notwithstanding the provisions of Section 13.8 and the Bylaws, any Owner or Institutional Holder of a First Mortgage may call and conduct the meeting.

(b) Except for Emergency Work, no repairs shall be commenced until the conclusion of the special Owners' meeting.

(c) A concurring vote of at least eighty percent (80%) of the total voting power (excluding that of Declarant) in the Association will be required to elect not to repair the damage. Failure of the Board, the Owners, and the Institutional Holders of First Mortgages to conduct the special meeting provided for under subsection 23.6(a) within ninety (90) days after the date of damage shall be deemed a unanimous decision to repair the damage.

**Section 23.7 Effect of Decision Not to Repair.** Prior to and notwithstanding a decision under either subsection 23.5(a) or 23.6(a) not to repair the damage, the Board may nevertheless expend so much of the insurance proceeds and common funds as the Board deems reasonably necessary for Emergency Work (which Emergency Work may include but is not necessarily limited to removal of the damaged improvements and clearing, filling, and grading the land), and the remaining funds, if any, and the Property shall thereafter be held and distributed as follows:

(a) If Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated and eighty percent (80%) of the Institutional Holders of First Mortgages vote to terminate the Condominium:

(i) Property shall be owned in common by the Owners and shall no longer be subject to this Declaration or to condominium ownership;

(ii) Owner's respective undivided interest in the Property shall be the same as the proportion of the fair market value of that Owner's Unit and Allocated Interest in the Common Elements (as determined by one (1) or more appraisers selected by the Association) to the fair market value of all Units and Common Elements immediately before the casualty. If any Unit or any Common Element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, each Owner's respective undivided interest in the Property shall be the same as each Owner's Allocated Interest in the Common Elements immediately before the termination;

(iii) Mortgages and other liens affecting any of the Units shall be deemed transferred in accordance with the existing priorities to the Owners' respective undivided interests in the Property; and

(iv) Property shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one (1) fund, which fund shall be divided into separate shares, one (1) for each Owner in a percentage equal to the percentage of undivided interest owned by such Owner in the Property. After first paying out of the respective share of each Owner, to the extent sufficient for the purpose, all Mortgages and other liens on such Owner's interest, the balance remaining in each share shall be distributed to the Owner. Notwithstanding the foregoing, the right of partition shall be suspended if an agreement ("Sales Agreement") to sell the Property is provided for in an agreement ("Termination Agreement") to terminate the Condominium entered into by Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated. The suspension of the right to partition shall continue unless and until the first to occur of the following:  
(1) no binding obligation to sell exists three (3) months after the recording of the Termination

Agreement, (2) the Sales Agreement is terminated, or (3) one (1) year after the Termination Agreement is recorded.

(b) If Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated and eighty percent (80%) of the Institutional Holders of First Mortgagees do not vote to terminate the Condominium:

(i) 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;

(ii) insurance proceeds attributable to any Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of such Units and the Owners of the Units to which such Limited Common Elements were allocated, or to the holders of any Mortgages or other liens affecting such Units, as their interests may appear; and

(iii) remainder of the insurance proceeds shall be distributed to all of the Owners and holders of Mortgages or other liens, as their interests may appear, in proportion to the Owners' respective Allocated Interests in the Common Elements. If the Owners vote not to rebuild any Unit, that Unit's Allocated Interest shall be automatically reallocated upon such vote as if the Unit had been condemned as provided in Article 24.

## ARTICLE 24 CONDEMNATION

**Section 24.1 Consequences of Condemnation; Notices.** If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority (collectively, a "Taking") notice of the Taking shall promptly be given to each Owner and to each Institutional Holder of a First Mortgage and the provisions of this Article 24 shall apply. The Association, acting through the Board, shall represent the Owners in any proceedings, negotiations, settlements or agreements in connection with any Taking, and each Owner shall appoint the Association its attorney-in-fact for this purpose.

**Section 24.2 Proceeds.** All compensation, damages, or other proceeds of the Taking (collectively, the "Award") shall be payable to the Association, as trustee for the Owners and Mortgagees as their interests may appear.

**Section 24.3 Complete Taking.** If the entire Property is taken the Condominium ownership shall terminate effective as of the acquisition of the Property by the condemning authority. The Award shall be apportioned among the Owners in proportion to their respective Allocated Interests in the Common Elements; provided that, if a standard different from the value of the Property as a whole is employed to measure the Award in the Taking, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. On the basis of the foregoing principle, the Board shall as soon as practicable determine the share of the Award to which each Owner is entitled. Each Owner's share shall be applied first to the payment of all Mortgages and liens

on the Owner's interest in accordance with the existing priorities and the balance of each share, if any, shall be distributed to the Owner.

**Section 24.4 Partial Taking.** If less than the entire Property is taken the Condominium ownership shall not terminate. The Allocated Interests of all Units taken shall be reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the Taking and the Association shall promptly prepare, execute and record an amendment to this Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of the Unit is taken, which remnant may not practically or lawfully be used for any purpose permitted by this Declaration, shall become a Common Element effective as of the acquisition of the Property taken by the condemning authority. If part of a Unit is taken and the remaining part may be practically and lawfully used for a purpose permitted by this declaration, that Unit's Allocated Interest shall be reduced in proportion to the reduction in size of the Unit or on any other basis specified herein and the portion of the Allocated Interest divested from the partially taken Unit shall be automatically reallocated to such Unit and the remaining Units in proportion to the respective Allocated Interests of those units before the Taking, with any partially taken Unit sharing in the reallocation on the basis of its reduced Allocated Interest. Each Owner shall be entitled to a share of the Award determined in the following manner:

- (a) As soon as practicable the Board shall, reasonably and in good faith, allocate the Award among compensation for Property taken, severance damages, or other proceeds.
- (b) Any amount allocated to taking of or injury to the Common Elements shall be apportioned among Owners in proportion to their respective Allocated Interests in the Common Elements.
- (c) Any amount allocated to the taking or partial taking of or injury to a particular Unit, Limited Common Elements appurtenant thereto and/or improvements made by the Owner therein shall be apportioned to the Unit.
- (d) Any amount allocated to severance damages shall be apportioned to the Units that were not taken.
- (e) Any amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Board determines to be equitable in the circumstances.
- (f) If an allocation of the Award has already been established in negotiation, judicial decree, or otherwise, then in apportioning the Award the Board shall employ that allocation to the extent it is relevant and applicable.
- (g) Distribution of apportioned proceeds shall be made to the Owners and their respective Mortgagees in the manner provided in Section 24.3.

**Section 24.5 Reconstruction and Repair.** Any reconstruction and repair necessitated by a Taking shall be governed by the procedures specified in Article 23 for repair of damage, provided that the Board may retain and apply such portion of each Owner's share of the Award as is necessary to discharge the Owner's liability for any special assessment arising from the operation of Article 23.



## ARTICLE 25 EASEMENTS

**Section 25.1 In General.** Each Unit has an easement in and through each other Unit and the Common Elements for all support elements and utility, wiring, heat, and service elements and for reasonable access thereto, as required to effectuate and continue proper operation of the Condominium. In addition, each Unit and all the Common Elements are specifically subject to easements as required for the electrical wiring and plumbing for each Unit. The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for Common Elements reserved by law.

**Section 25.2 Encroachments.** Each Unit and all Common Elements are hereby declared to have an easement over all adjoining Units and Common Elements for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting, or movement of any portion of the Property, or any other similar cause, and any encroachment due to Building overhang or projection. There shall be valid easements for the maintenance of the encroaching Units and/or Common Elements so long as such encroachments shall exist, and the rights and obligations of Owners shall not be altered in any way by such encroachments; provided, however, that in no event shall a valid easement for encroachment be created in favor of a Unit if the encroachment was caused by the willful act with full knowledge of the Owner. The encroachments described in this Section 25.2 shall not be construed to be encumbrances affecting the marketability of title to any Unit.

**Section 25.3 Easement and Rights Reserved by Declarant.** Declarant hereby reserves nonexclusive easements over, across and through the Common Elements as reasonably necessary for the purpose of discharging Declarant's obligations hereunder and under the Condominium Statute and for exercising any Special Declarant Rights for the benefit of itself and its successors and assigns. Declarant also reserves nonexclusive easements for the benefit of itself and its successors and assigns as present and future owners of the land, if any, to be added by any Subsequent Phase and for the benefit of the Association, for ingress to and egress from such land over the Common Elements for and for access to and over the Common Elements and to tie into and utilize any water, sanitary sewer, storm sewer, electricity, gas, telephone, cable television and other utility lines now or hereafter established in the Condominium. The easements reserved hereby shall not be exercised in a manner that will overload or materially impair the use and enjoyment of the roadways, pathways and utilities by the Owners. The easements reserved shall be exercised for the purpose of discharging Declarant's and the Association's obligations hereunder and under the Condominium Statute and for exercising any Special Declarant Rights. Declarant also reserves an easement over, across and through the Common Elements for the purpose of completing the construction of any Units or other improvements and exhibiting and preparing Units for sale. The Association shall have the right to grant additional permits, licenses and easements over the Common Elements for utilities, roads and other purposes necessary for the proper operation of the Condominium.

**Section 25.4 Utility Easements Granted by Declarant.** Declarant grants to each company or municipality providing utility services to the Condominium or to the Owners an easement for the installation of all utilities serving the Condominium or the Owners, including, without limitation, such utilities services as water, sanitary sewer, storm sewer, electricity, gas, cable television and telephone, and an easement for reasonable access over the roadways and Common Elements to the utility service facilities.

**Section 25.5 Easements Run with the Land.** The easements, covenants, restrictions, benefits and obligations hereunder shall be perpetual and run with the land.

**ARTICLE 26  
PROCEDURES FOR SUBDIVIDING, COMBINING  
OR RELOCATING BOUNDARIES BETWEEN UNITS**

**Section 26.1 Submission of Proposal.** No Unit or Units or Common Elements shall be subdivided and/or combined either by agreement or legal proceedings, except as provided in this Article.

(a) **Subdivision or Combination.** An Owner may propose subdividing and/or combining of a Unit, Units, or Common Elements by submitting the proposal in writing to the Board. If the proposal contemplates the subdivision of a Unit, the proposal must also be given to all First Mortgagees. The proposal must include complete plans and specifications for accomplishing the subdivision or combination (including plans and specifications for removal or alteration) and proposed amendments of this Declaration the Survey Map and Plans, if required by the Condominium Statute.

(b) **Relocation of Boundaries.** The Owners of adjoining Units may apply to the Association for relocation of the boundary between their Units. If the Owners have specified a reallocation between their Units of their Allocated Interests, the application must state the proposed reallocations.

**Section 26.2 Approvals Required.**

(a) **Subdivision.** A proposal that contemplates subdivision of a Unit will be accepted only if approved in writing by all Owners and Mortgagees/Institutional Holders of First Mortgages on the Unit or Units to be subdivided and the Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated.

(b) **Approval Required for Combination.** A proposal that contemplates only combination of Units without subdividing any of them will be accepted if approved in writing by the Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and all Owners and Mortgagees/Institutional Holders of First Mortgages on the Units to be combined.]

**Section 26.3 Procedure After Approval.** An Owner's proposal for combination, subdivision or relocation of boundaries shall be approved by the Board within thirty (30) days after any required Owner and/or Mortgagee approval is obtained, unless the proposed alteration does not comply with the Condominium Statute or this Declaration or impairs the structural integrity or mechanical or electrical systems of the Condominium or any proposed reallocation of Allocated Interests is unreasonable. Upon approval of the proposal, the Owner making it may proceed according to the proposed plans and specifications; provided that the Board may in its discretion require that the Board administer the work or provisions for the protection of other Units or Common Elements or that reasonable deadlines for completion of the work be inserted in the contracts for the work.



(a) **Subdivision.** In the event of a subdivision, the Association shall prepare, execute and record (and the Owner of the subdivided Unit shall execute) an amendment to this Declaration and the Survey Map and Plans, subdividing the Unit, assigning identifying numbers to the Units created, and reallocating the Allocated Interests formerly allocated to the subdivided Unit to the new Units in any reasonable and equitable manner prescribed by the Owner of the subdivided Unit.

(b) **Relocation of Boundaries.** In the event of a reallocation of Unit boundaries, the Association shall prepare an amendment to the Declaration that identifies the Units involved and states the reallocations of Allocated Interests. The amendment must be executed by the Owners of the Units involved, contain words of conveyance between them and be recorded in every county in which a portion of the Condominium is located. The Association shall obtain and record Survey Maps or Plans necessary to show the altered boundaries between adjoining Units and their dimensions and identifying numbers.

**ARTICLE 27**  
**AMENDMENTS OF DECLARATION AND SURVEY MAP AND PLANS**

**Section 27.1 Amendments by the Association.** Any Owner may propose amendments to this Declaration or the Survey Map and Plans to the Board. A majority of the members of the Board may cause a proposed amendment to be submitted to the members of the Association for their consideration. If an amendment is proposed by Owners to which twenty percent (20%) or more of the votes in the Association are allocated, then, irrespective of whether the Board concurs in the proposed amendment, it shall be submitted to the members of the Association for their consideration at their next regular or special meeting. Notice of a meeting at which an amendment is to be considered shall include the text of the proposed amendment. Amendments may be adopted at a meeting of the Association or by written consent of the requisite number of persons entitled to vote, after notice has been given to all persons (including Mortgagees) entitled to receive notice of a meeting of the Association.

**Section 27.2 Approvals Required.** Except for amendments that may be executed by the Declarant under Article 3 (exercise of Development Rights), the consent of Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated and all Owners particularly affected by the amendment shall be required for adoption of any amendment (1) increasing or creating any Special Declarant Rights, (2) increasing the number of Units, or (3) changing the boundaries or Allocated Interests of any Unit or the use to which any Unit is restricted. Except for amendments that may be executed by the Declarant under Article 3 (exercise of Development Rights) or by the Association under Section 7.3 (reallocation of Limited Common Elements), Article 24 (condemnation), or Article 26 (relocation of boundaries or subdivision of Units), or by certain Owners under Section 7.3 (reallocation of Limited Common Elements), or Article 26 (relocation of boundaries or subdivision of Units), and except for amendments under Article 28 (terminating the Condominium), all other amendments shall be adopted if Owners of Units to which at least sixty-seven (67%) of the votes in the Association are allocated approve. In addition to the above and other provisions of this Declaration and of the Condominium Statute, (a) no amendment may restrict, eliminate, or otherwise modify any Special Declarant Right without the prior written approval of Declarant and any Mortgagee with a security interest in the Special Declarant Right or the property subject thereto, excluding Mortgagees of Units owned by persons other than Declarant, and (b) the prior written



approval of at least seventy-five percent (75%) of all Institutional Holders of First Mortgages will be required for any material amendment of this Declaration or the Bylaws, including, but not limited to, any amendment that would change the Allocated Interest of any Unit in the Common Elements. Once an amendment has been adopted by the Association it shall become effective when the amendment, executed and certified on behalf of the Association by any designated officer or the president of the Association, has been recorded in every county in which a portion of the Condominium is located.

**ARTICLE 28  
ABANDONMENT OR TERMINATION OF CONDOMINIUM STATUS**

Except as provided in Articles 23 and 24, the condominium status of the Property shall not be abandoned or terminated by reason of any act or omission by the Owners or the Association except with the consent of the Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated, by an instrument to that effect specifying a date after which such instrument will be ineffective unless recorded prior thereto and containing a description of the manner in which creditors of the Association will be paid or provided for and setting forth the terms of any sale of all or a portion of the Property to be sold following termination, which instrument must be duly recorded and then only if at least seventy-five percent (75%) of all Institutional Holders of Mortgages approve in writing. Proceeds of sale of any portion of the Property shall be distributed to, and title to any portion of the Property not sold upon termination shall vest in, the Owners, as described in the Condominium Statute.

**ARTICLE 29  
SEVERABILITY**

The provisions of this Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision, if the remainder complies with the Condominium Statute or, as covenants, affect the common plan.

**ARTICLE 30  
EFFECTIVE DATE**

This Declaration shall take effect upon recording.

**ARTICLE 31  
REFERENCE TO SURVEY MAP AND PLANS**

The Survey Map and Plans were filed with the Recorder of Benton County, Washington, simultaneously with the recording of this Declaration under File No. \_\_\_\_\_, in Volume \_\_\_\_\_ of Condominiums, pages \_\_\_\_\_ through \_\_\_\_\_.

**ARTICLE 32  
ASSIGNMENT BY DECLARANT**

Declarant reserves the right to assign, transfer, sell, lease or rent all or a portion of the Property then owned by it and reserves the right to assign all or any of its rights, duties and obligations created under this Declaration; however, such assignment shall not diminish Declarant's duties and obligations, including without limitation all contractual or warranty obligations imposed on the Declarant by the Condominium Statute.

**ARTICLE 33  
PROTECTIONS FOR MORTGAGEES TO FACILITATE MORTGAGE LENDING**

**Section 33.1 Mortgage Approvals.** Notwithstanding any other provision of any of the Condominium Documents, to the extent required or permitted by law, the prior written approval of fifty-one percent (51%) of the Eligible Mortgagees, with each Eligible Mortgagee being counted as having the same percentage of votes in the Association allowed to it as if allocated to the Unit encumbered by its Mortgage, shall be required for any of the following, and without such approval, no person, the Board or the Association shall by either act or omission seek nor can they legally effect:

(a) Any change of a material nature to any of the Condominium Documents, including but not limited to any change respecting:

- (i) decreasing Owner rights;
- (ii) foreclosing assessment liens or the priority of such liens;
- (iii) increasing assessments for maintenance, repair and replacement of the Common Elements;
- (iv) performance or fidelity bonds;
- (v) change of Allocated Interests in or rights to use of any of the Common Elements;
- (vi) increasing assessments for maintenance and repair of the Condominium;
- (vii) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- (viii) relocation of the boundaries of any Unit;
- (ix) conversion of Units into Common Elements or of Common Elements into Units;

(x) imposition of any restrictions on the right of an Owner to sell, transfer or otherwise convey his or her Unit;

(xi) a decision by the Association to establish self-management when professional management had been required previously by the Condominium Documents or any Eligible Mortgagee;

(xii) replacement or repair of the Condominium (after a hazard, damage or partial condemnation) in any manner other than that specified in the Condominium Documents;

(xiii) any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; and

(xiv) any provisions that expressly benefit Mortgagees;

provided, however, that any abandonment or termination of the Condominium for reasons other than substantial destruction or condemnation of the Condominium shall require the consent and approval of at least sixty-seven (67%) of the Eligible Mortgagees and at least seventy-five (75%) of all Institutional Holders of First Mortgages, as set forth in Article 28. Any Eligible Mortgagee who fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, return receipt requested, shall be deemed to have approved and consented to the amendment in question.

(b) Notwithstanding anything to the contrary in this Declaration, no requirement for Mortgagee approval shall operate to (1) deny or delegate control over the general administration of affairs of the Association by the Owners or the Board, or (2) prevent the Association or the Board from commencing, intervening or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to Article 23.

**Section 33.2 Notice to Mortgagees.** Upon a written request sent by any Mortgagee to the Association stating such Mortgagee's name and address and the Unit number or address of the Unit subject to the Mortgage held, guaranteed or insured by such Mortgagee, such Mortgagee shall be entitled to timely written notice without charge of:

(a) Any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit subject to the Mortgage held, insured or guaranteed by such Mortgagee;

(b) Any default in payment of assessments or charges owed by the Owner of a Unit subject to the Mortgage held, insured or guaranteed by such Mortgagee, where the delinquency has not been cured in sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any of the proposed changes referred to in Section 33.1 of this Declaration.



**ARTICLE 34**  
**CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS**

Portions of the Common Elements not necessary for the habitability of a Unit may be conveyed or subjected to a security interest by the Association if approved by the Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated (including eighty percent (80%) of the votes allocated to Units not owned by Declarant or an Affiliate of Declarant), but in order to convey any Limited Common Elements or subject them to a security interest, all of the Owners of the Units to which such Limited Common Elements are allocated must consent in writing. Proceeds of any such sale or financing shall be an asset of the Association. Any 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 Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the Condominium is located. The Association, on behalf of the Owners, may contract to convey Common Elements or subject them to a security interest but the contract shall not be enforceable against the Association until approved as required under this Article 34. Thereafter, the Association shall have all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments. No conveyance or encumbrance of Common Elements pursuant to this Article 34 shall deprive any Unit of its rights of access and support, nor affect the priority or validity of any preexisting encumbrances.

Executed as of the 29 day of April, 2003.

DECLARANT: THE MOORINGS AT COLUMBIA POINT  
LLC, a Washington limited liability company

By: [Signature]  
THOMAS R. MASTERSON JR.  
Its Manager

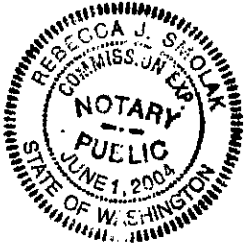
STATE OF WASHINGTON )  
COUNTY OF Benton ) ss.

On this 29<sup>th</sup> day of April, 2003, before me, a Notary Public in and for the State of Washington, personally appeared THOMAS R. MASTERSON JR., to me known to be the person who signed as the Manager of THE MOORINGS AT COLUMBIA POINT LLC, a Washington limited liability company, the 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 and that the seal affixed thereto, if any, is the corporate seal of said corporation.



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

Rebecca Smolak  
NOTARY PUBLIC in and for the State of  
Washington, residing at Kennecook WA  
My appointment expires June 1, 2004  
Print Name Rebecca J. Smolak



**SCHEDULE A**

**THE MOORINGS AT COLUMBIA POINT, A CONDOMINIUM**

**DESCRIPTION OF LAND IN EACH PHASE**

**PHASE 1 (SUBJECT TO THIS DECLARATION):**

LOT 1 OF CITY OF RICHLAND SHORT PLAT NO. 2709, AS RECORDED UNDER AUDITOR'S FILE NO. 2003-018544, RECORDS OF BENTON COUNTY, WASHINGTON, AMENDING SHORT PLAT NO. 2557, AS RECORDED UNDER AUDITOR'S FILE NO. 2001-004291, RECORDS OF BENTON COUNTY, WASHINGTON.

**PHASE 2 (NOT SUBJECT TO THIS DECLARATION UNLESS ADDED IN A SUBSEQUENT PHASE AMENDMENT):**

LOT 2 OF CITY OF RICHLAND SHORT PLAT NO. 2709, AS RECORDED UNDER AUDITOR'S FILE NO. 2003-018544, RECORDS OF BENTON COUNTY, WASHINGTON, AMENDING SHORT PLAT NO. 2557, AS RECORDED UNDER AUDITOR'S FILE NO. 2001-004291, RECORDS OF BENTON COUNTY, WASHINGTON.

**PHASE 3 (NOT SUBJECT TO THIS DECLARATION UNLESS ADDED IN A SUBSEQUENT PHASE AMENDMENT):**

THAT PORTION OF LOT 3, SHORT PLAT NUMBER 2709, AS RECORDED UNDER AUDITOR'S FILE NUMBER 2003-018544, RECORDS OF BENTON COUNTY, SITUATED IN THE CITY OF RICHLAND, BENTON COUNTY, STATE OF WASHINGTON, LYING NORTH OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 3 OF SAID SHORT PLAT NUMBER 2709; THENCE NORTH 17°41'32" EAST ALONG THE WEST LINE OF SAID LOT 3 A DISTANCE OF 211.58 FEET TO THE TRUE POINT OF BEGINNING:

THENCE SOUTH 72°05'32" EAST 241.67 FEET TO A POINT ON THE EAST LINE OF SAID LOT 3, AND THE TERMINUS OF SAID DESCRIBED LINE.

**PHASE 4 (NOT SUBJECT TO THIS DECLARATION UNLESS ADDED IN A SUBSEQUENT PHASE AMENDMENT):**

THAT PORTION OF LOT 3, SHORT PLAT NUMBER 2709, AS RECORDED UNDER AUDITOR'S FILE NUMBER 2003-018544, RECORDS OF BENTON COUNTY, SITUATED IN THE CITY OF RICHLAND, BENTON COUNTY, STATE OF WASHINGTON, LYING SOUTH OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 3 OF SAID SHORT PLAT NUMBER  
2709; THENCE NORTH 17°41'32" EAST ALONG THE WEST LINE OF SAID LOT 3 A  
DISTANCE OF 211.58 FEET TO THE TRUE POINT OF BEGINNING:



**SCHEDULE B**

**THE MOORINGS AT COLUMBIA POINT, A CONDOMINIUM**

**UNIT DESCRIPTION, UNIT LEVEL, UNIT TYPE, APPROXIMATE AREA, AND  
ALLOCATED  
INTERESTS IN COMMON ELEMENTS, COMMON EXPENSES, AND VOTES IN  
ASSOCIATION**

Unit No.	Unit Type	Level	Approximate Area (in square feet)	Bed-rooms	Bath-rooms	Fire-places	Allocated Interest in Common Elements, Common Expenses, and Votes in Association
101	Residential	1	3,351	4	2 1/2	1	6.6666%
	Garage	1	385				
102	Residential	1	3,341	4	2 1/2	1	6.6666%
	Garage	1	383				
103	Residential	1	3,337	4	2 1/2	1	6.6666%
	Garage	1	387				
104	Residential	1	3,341	4	2 1/2	1	6.6666%
	Garage	1	383				
105	Residential	1	3,862	4	2 1/2	1	6.6666%
	Garage	0	523				
201	Residential	2	3,388	4	2 1/2	1	6.6667%
	Garage	0	587				
202	Residential	2	3,382	4	2 1/2	1	6.6667%
	Garage	0	504				
203	Residential	2	3,398	4	2 1/2	1	6.6667%
	Garage	0	505				
204	Residential	2	3,378	4	2 1/2	1	6.6667%
	Garage	0	530				
205	Residential	2	3,400	4	2 1/2	1	6.6667%
	Garage	0	296				
	Garage	0	299				
301	Residential	3	2,978	4	2 1/2	1	6.6667%
	Garage	0	586				



Unit No.	Unit Type	Level	Approximate Area (in square feet)	Bed-rooms	Bath-rooms	Fire-places	Allocated Interest in Common Elements, Common Expenses, and Votes in Association
302	Residential	3	2,967	4	2 1/2	1	6.6667%
	Garage	0	321				
	Garage	0	321				
303	Residential	3	2,970	4	2 1/2	1	6.6667%
	Garage	0	588				
304	Residential	3	2,970	4	2 1/2	1	6.6667%
	Garage	0	297				
	Garage	0	301				
305	Residential	3	2,985	4	2 1/2	1	6.6667%
	Garage	0	561				
<b>Totals</b>			<b>55,267</b>				<b>100.00%</b>