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**AUDITOR/RECORDER'S INDEXING FORM**

<b>Document Title(s):</b>	DECLARATION AND COVENANTS, CONDITIONS AND RESTRICTIONS FOR WESTBROOK LANE, A SUBDIVISION		
<b>Grantor(s):</b>	WESTBROOK LLC		
<b>Grantee(s):</b>	WESTBROOK HOMEOWNERS ASSOCIATION		
<b>Legal Description (abbr)</b>	SE 1/4, NW 1/4, SEC. 35, T. 28 N., R. 4 E		
<input checked="" type="checkbox"/>	Additional legal is on pages	Exhibit A	of document.
<b>Assessor's Property Tax Parcel/Account Number(s):</b>	003733-006-005-03, 003733-006-005-04 and 003733-006-005-05		

DECLARATION  
AND  
COVENANTS, CONDITION AND RESTRICTIONS  
FOR WESTBROOK LANE, A SUBDIVISION

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**DECLARATION AND COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WESTBROOK LANE, A SUBDIVISION**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS** (“Declaration”) is made on this Tuesday day of April, 2020, by Westbrook LLC, a Washington limited liability company, referred to herein as “Declarant”, which is the owner of a portion of certain real property now known as “WESTBROOK LANE, A SUBDIVISION,” situated in Everett, Snohomish County, Washington, and legally described in Exhibit A hereto (“Property”). The Property is a Plat Community as defined in, and is subject to, the Washington Uniform Common Interest Ownership Act, RCW Ch. 64.90.

The Declarant has created a non-profit corporation known as the Westbrook Homeowners Association (“Association”). The Association shall be delegated and assigned the duties and powers of owning, maintaining, and administering any and all Common Elements and related facilities in the Subdivision, administering and enforcing these covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created. The Association shall also have the right and power to promulgate rules and regulations (“Association Rules”) which may further define and limit permissible uses and activities consistent with the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the Property, and shall be binding on all persons having any right, title or interest in all or any portion of the Property, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

**Article 1  
DEFINITIONS**

The following terms shall have the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

**1.1 Act** means the Washington Uniform Common Interest Ownership Act, RCW Ch. 64.90, as may be amended from time to time.

**1.2 Allocated interest(s)** means the common expense liability and the votes in the Association allocated to each Lot.

**1.3 Assessment(s)** shall mean all assessments imposed pursuant this Declaration, including fines or fees levied or imposed by the Association pursuant to the Governing Documents, interest and late charges on any delinquent account, and all costs of collection incurred by the Association in connection with the collection of a delinquent account, including reasonable attorneys' fees.

**1.4 Association** shall mean Westbrook Homeowners Association, which shall be incorporated as a nonprofit corporation in accordance with the Act, its successors and assigns.

**1.5 Association Lien** shall mean a lien in favor of the Association imposed pursuant to this Declaration.

**1.6 Board** shall mean and refer to the Board of Directors of the Association, as provided for in this Declaration.

**1.7 Budget** shall mean the operating budget for the Association adopted pursuant to this Declaration.

**1.8 Building** shall mean any of the detached buildings on the Property.

**1.9 Bylaws** shall mean the bylaws of the Association.

**1.10 Committee** shall refer to any committee of the Association created by the Governing Documents or the Board.

**1.11 Common Elements** shall mean the following tracts, and any Improvements located thereon:

TRACT 991: OPEN SPACE

TRACT 992: OPEN SPACE

TRACT 993: OPEN SPACE

TRACT 994 OPEN SPACE AND PUBLIC DRAINAGE

TRACT 995: ACTIVE RECREATION, OPEN SPACE, PUBLIC DRAINAGE,  
AND UTILITIES

TRACT 996: ACTIVE RECREATION, PUBLIC DRAINAGE, AND OPEN  
SPACE

TRACT 997: ACCESS, UTILITIES AND PUBLIC DRAINAGE

TRACT 998: ACCESS, UTILITIES AND PUBLIC DRAINAGE

TRACT 999: CRITICAL AREA PROTECTION AREA AND PUBLIC  
DRAINAGE.

**1.12 Common Expenses** shall mean all costs and expenses incurred by the Association, including, but not limited to, allocations to reserves allocated to all of the Owners in accordance with common expense liability.

**1.13 County** shall mean the Snohomish County, Washington, including the employees and agents thereof.

**1.14 Declarant** shall mean and refer to Westbrook LLC, a Washington limited liability company; or any Successor Declarant under Section 3.2.

**1.15 Declaration** shall mean this Declaration and Covenants, Conditions and Restrictions.

**1.16 Development Period** shall mean and refer to that period of time defined in Section 3.1 of this Declaration.

**1.17 First Mortgage and First Mortgagee** shall mean, respectively, (a) a recorded mortgage on a Lot that has legal priority over all other Mortgages thereon, and which is held by an Institutional Lender, and (b) the holder of a First Mortgage which is an Institutional Lender.

**1.18 Governing Documents** means this Declaration; the Plat, Association Rules, and the Articles and Bylaws of the Association, all as amended from time to time.

**1.19 Improvement** shall mean all Structures and appurtenances thereto of every kind, whether above or below the land surface, including but not limited to, buildings (including Residences), garages, utility systems, walkways, driveways, parking areas, loading areas, landscaping items, swimming pools, sports courts, fences, walls, decks, stairs, poles, landscaping vegetation including street trees, irrigation systems, stormwater facilities, streets, signs, exterior fixtures, recreational facilities, play structures, lighting including without limitation street lighting, paving, striping, curbs, picnic structures and any other Structure of any kind.

**1.20 Institutional Lender** shall mean one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds or business trusts, including, but not limited to real estate investments trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any private or governmental institution which has insured the loan of such a lender, including Federal Mortgage Agencies, or any combination of any the foregoing entities.

**1.21 Lot** shall mean each of the lots designated any plot of land shown upon any recorded subdivision plat of the Property, but excluding the lettered Tracts. The Subdivision shall consist of 46 Lots.

**1.22 Majority Vote** shall mean a vote of the holders of more than 50% of the total number of votes allocated to the Lots in accordance with Section 2.3 below.

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

**1.24 Mortgagee** shall mean the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a Lot created by a mortgage or deed of trust and shall also mean the vendor, or the designee of a vendor, of a real estate contract for the sale of a Lot.

**1.25 Occupant** shall mean a lessee or licensee of an Owner or any other person or entity, other than an Owner, in lawful possession of a Lot, or a portion of a Lot, with the permission of the Owner.

**1.26 Owner** shall mean and refer to record owner (whether one or more persons or entities) of a fee interest in any Lot, including the Declarant, but excluding Mortgagees or other persons or entities having such interest merely as security for the performance of any obligation. Purchasers or assignees under recorded real estate contracts shall be deemed Owners as against their respective sellers or assignors.

**1.27 Person** shall include natural persons, and legal entities of all kinds.





by the Owner but need not be an Owner. The designation shall be revocable at any time by actual Notice to the Association from the Owner, or by actual Notice to the Association of the death or judicially declared incompetency of the representative. This power of designation and revocation may be exercised by the guardian of a Lot Owner, and the administrators or executors of an Owner's estate. Where no designation is made, or where a designation has been made but is revoked and no new designation has been made, the voting representative of each Lot shall be the group composed of all of its Owners.

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

**2.3.3 Pledged Votes.** If an Owner is in default under a First Mortgage on a Lot for ninety (90) consecutive days or more, the Mortgagee shall automatically be authorized to declare at any time thereafter that the Owner has pledged his or her vote on all issues to the Mortgagee during the continuation of the default. If the Association has been notified of any such pledge to a Mortgagee, or in the event the record Owner or has otherwise pledged its vote regarding special matters to a Mortgagee under a fully recorded mortgage or deed of trust, or to the vendor under a duly recorded real estate contract, only the vote of such Mortgagee or vendor will be recognized in regard to the special matters upon which the vote is so pledged, if a copy of the instrument with this pledge has been filed with the Association. Amendments to this Section shall only be effective upon the written consent of all of the voting Owners of their Lot and their respective Mortgagees and vendors, if any.

**2.3.4 Voting by Ballot.** The Association may conduct a vote by ballot without a meeting as follows:

**2.3.4.1** The Association must deliver to every Owner a Notice stating that:

**2.3.4.1.1** the vote will be taken by ballot;

**2.3.4.1.2** the time and date by which a ballot must be delivered to the Association in order to be counted, which date shall not be fewer than fourteen days after the date of the Notice;

**2.3.4.1.3** the percent of votes necessary to meet the quorum requirements;

**2.3.4.1.4** the percent of votes necessary to approve each matter other than election of Board members; and

**2.3.4.1.5** the time, date, and manner by which Owners wishing to deliver information to all Owners regarding the subject of the vote may do so.

**2.3.4.2** The Association must deliver to every Owner along with the Notice required in in Subsection 2.3.4.1 a ballot that sets forth each proposed action and provides an opportunity to vote for or against the action.

**2.3.4.3** Any action by ballot shall be approved if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, as provided in Section 2.4.3.1. A ballot is not effective until received by the Association.

**2.3.4.4** If an action fails to receive the required number of votes, the Board may extend the deadline for a reasonable period not to exceed eleven months upon further Notice to all Owners as provided in Subsection 2.3.4.1. All votes previously cast on the proposal shall be counted unless subsequently revoked.

**2.3.4.5** A ballot cast pursuant to this Section 2.3.4 may be revoked only by actual Notice to the Association of revocation. A revocation is not effective until received by the Association.

**2.3.4.6** The Association must give notice to Owners of any action taken pursuant to this Section 2.3.4 within a reasonable time after the action is taken. A record of the action, including the ballots or a report of the persons appointed to tabulate such ballots, must be kept with the minutes of meetings of the Association.

## **2.4 Meetings.**

**2.4.1 Annual Meetings.** There shall be an annual meeting of the Owners every calendar year, or such other fiscal year as may be adopted by the Association. The Association shall give Notice to all Owners no less than fourteen days and no more than fifty days prior to the date fixed for such meeting, specifying the date, time and place of the meeting, and an agenda of the matters to be considered, including the text of any proposed amendment to any of the Organizational Documents; any changes in the previously approved Budget that result in a change in Assessment obligations; and any proposal to remove a Board member or Officer.

**2.4.2 Special Meetings.** Special meetings of the Owners may be called at any time for the purpose of considering matters which by the terms of this Declaration require the approval of all or some of the Owners, or for any other reasonable purpose. Special meetings of the Owners may be called by the president, a majority of the Board, or by Owners having twenty percent of the votes in the Association. Notice for specials meetings shall be delivered not less than fourteen or more days and no more than fifty days prior to the date fixed for such meeting. The Notice shall specify the date, time and place of the meeting, and an agenda of the matters to be considered, including the text of any proposed amendment to any of the Organizational Documents; any changes in the previously approved Budget that result in a change in Assessment obligations; and any proposal to remove a Board member or Officer.

**2.4.3 Quorum Requirements for Association Meeting.** At all meetings of the Owners, twenty percent (20%) of the voting Owners present in person or by proxy shall constitute a quorum. A majority of Owners present and entitled to vote, either in person or by proxy, shall be sufficient for the passage of any motion or the adoption of any resolution, except as otherwise specified in the Governing Documents. If the required quorum is not present, another meeting may be called subject to the requirement of written Notice sent to all Owners at least fourteen (14) days in advance of such meeting, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum for the preceding meeting. In the absence of a quorum of at an Owner's meeting, a majority of those present in person or by proxy may adjourn the meeting to another time but may not transact any other business. An adjournment for lack of a quorum shall be to a date not less than five (5) nor more than thirty (30) days from the original meeting date.

**2.4.4** Minutes of all Owner meetings shall be maintained in a record, including the decision on each matter voted upon at such meeting.

**2.5 Bylaws of Association.** Bylaws may be adopted and amended by the Board. The Bylaws may contain provisions which are supplementary to, and consistent with this Declaration and the Act.

**2.6 Powers of the Association.**

**2.6.1 The Association shall:**

**2.6.1.1** Adopt organizational documents;

**2.6.1.2** Adopt Budgets for revenues, expenditures, and reserves, and impose and collect Assessments for Common Expenses from Owners;

**2.6.1.3** Prepare financial statements; and

**2.6.1.4** Deposit and maintain the funds of the Association in accounts in accordance with Section 6.16.

**2.6.2** The Association shall also have the powers enumerated below, any powers reasonably implied from the grant of enumerated powers, any powers necessary and proper for the governance and operation of the Association, and all other powers that may be exercised in Washington state by a plat community:

**2.6.2.1** Purchase policies of liability and property insurance on the Common Elements and the Buildings, directors' and officers' liability insurance and such other insurance as the Board deems advisable, and take all actions which may be necessary or convenient in dealing with any insurance recovery or any insurance company;

**2.6.2.2** Purchase legal and accounting services, if necessary, for the administration of Association affairs, administration of the Common Elements, or the enforcement of this Declaration;

**2.6.2.3** Arrange for the maintenance, repair and replacement of the Common Elements;

**2.6.2.4** If necessary, maintain any Lot if such maintenance is reasonably necessary in the judgment of the Board to preserve the appearance and value of the Subdivision as a whole pursuant to 10.2.

**2.6.2.5** Pay any amount necessary to discharge any lien or encumbrance levied against the entire Property or any part thereof which is claimed or may, in the opinion of the Board, constitute a lien against the Property or a portion thereof and/or against the Common Elements. Where one or more Owners are responsible for the existence of such liens, they shall be jointly and severally liable for the cost of discharging it and any costs or expenses, including reasonable attorneys' fees and costs of title search incurred by the Board by reason of such lien or liens. Such fees and costs shall be assessed against the Owner or Owners and the Lot responsible to the extent of their responsibility.

**2.6.2.6** Pay all utility charges attributable to Common Elements;

**2.6.2.7** The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Owners and Occupants safer than they might otherwise be. However, neither the Association nor Declarant shall in any way

be considered an insurer or guarantor of security within the Property nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken;

**2.6.2.8** Hire and discharge managing agents and other employees, agents, and independent contractors;

**2.6.2.9** Enter any Lot or Common Limited Element, when reasonably necessary, in the event of emergencies or in connection with any maintenance or landscaping for which the Board is responsible. Except in cases of emergencies, the Board, its agents or employees shall attempt to give Notice to the Owner or Occupant twenty-four (24) hours prior to such entry. Such entry must be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Board if the entry was due to any emergency (unless the emergency was caused by the Owner of the Lot entered, in which case the cost shall be specially assessed to the Lot). If the work, repairs or maintenance activities were necessitated by the Owner's neglect of the Lot or the Owner's violation of any of the Governing Documents, the cost of such repair or maintenance activity shall be specially assessed to that Lot. If the emergency or the need for maintenance or repair was caused by another Owner of another Lot, the cost thereof shall be specially assessed against the Owner of the other Lot;

**2.6.2.10** Adopt and publish Association Rules governing the Owners. Occupants, guests and establish reasonable penalties for any infraction thereof;

**2.6.2.11** Employ a property manager, to keep the books of the Association, and take such other actions as the Association may deem appropriate;

**2.6.2.12** Impose Special Assessments to pay for Common Expenses;

**2.6.2.13** Exercise all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of the Governing Documents;

**2.6.2.14** Acquire by gift pledge or otherwise, own, hold, improve, build upon, operate, maintain, insure, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

**2.6.2.15** Borrow money, and with the consent of at least 80% of the Owners, mortgage, pledge, encumber or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

**2.6.2.16** With the consent of at least 80% of the Owners, dedicate, sell, transfer, all or any part of the Common Element to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Board;

**2.6.2.17** Participate in mergers and consolidations with other non-profit corporations created for the same purposes;

**2.6.2.18** Amend organizational documents and adopt and amend Association Rules;

**2.6.2.19** Amend budgets;

**2.6.2.20** Institute, defend, or intervene in litigation or in arbitration, mediation, or administrative proceedings or any other legal proceeding in its own name on behalf of itself or two or more Owners on matters affecting the Subdivision;

**2.6.2.21** Make contracts and incur liabilities as provided in the Governing Documents;

**2.6.2.22** Grant easements, leases, licenses, and concessions through or over the Common Elements, and petition for or consent to the vacation of streets and alleys;

**2.6.2.23** Impose and collect any reasonable payments, fees, or charges for: (a) the use, rental, or operation of the Common Elements, (b) services provided to Owners; (c) moving in, moving out, or transferring title to Lots; (d) recordation of amendments to the declaration, resale certificates required pursuant to Act, lender questionnaires, or statements of unpaid assessments; and

**2.6.2.24** Provide for the indemnification of its officers and board members, to the extent provided in RCW 23B.17.030.

**2.6.3** The Association and Declarant shall have no authority, liability or responsibility with respect to construction defects in any residence, and such issues shall be governed solely by the purchase and sale contract between each Owner and the builder constructing the residence.

**2.7 Records.** The Board shall cause to be kept complete, detailed and accurate records of the following (collectively, "Records"):

**2.7.1** Current budget, detailed records of receipts and expenditures affecting the operation and administration of the Association, and other appropriate accounting records within the last seven years;

**2.7.2** Minutes of all meetings of the Owners and the Board, other than executive sessions; a record of all actions taken by the Owners or Board without a meeting; and a record of all actions taken by a Committee in place of the Board on behalf of the Association;

**2.7.3** The names of current Owners and the addresses used by the Association to communicate with them;

**2.7.4** The original or restated Declaration and Organizational Documents and amendments thereto;

**2.7.5** Current Association Rules;

**2.7.6** All financial statements and tax returns of the Association for the past seven years;

**2.7.7** list of the names and addresses of the current Board members and Officers;

**2.7.8** The Association's most recent annual report delivered to the secretary of state, if any;

**2.7.9** Financial and other records sufficiently detailed to enable to the Association to provide the information required for resale certificates as required by the Public Offering Statement and RCW 64.90.640;

**2.7.10** Copies of contracts to which the Association is or has been a party to within the last seven years;

**2.7.11** Materials relied upon by the Architectural Reviewer to approve or deny any requests for design or architectural approval for a period of seven years after such decision is made;

**2.7.12** Materials relied upon by the Board or any Committee concerning a decision to enforce the Governing Documents for a period of seven years after such decision is made;

**2.7.13** Copies of insurance policies under which the Association is a named insured;

**2.7.14** Any current warranties provided to the Association;

**2.7.15** Copies of all notices provided to Owners or the Association as required by the Governing Documents or the Act; and

**2.7.16** Ballots, proxies, absentee ballots, and other records related to voting by Owners for one year after the election, action, or vote to which they relate.

**2.8 Examination of Records.** Subject to the following, all Records must be made available for examination and copying by all Owners, mortgagees of Lots, and their respective authorized agents:

**2.8.1** Records may be inspected during reasonable business hours at the Association's offices or at a mutually convenient time and location;

**2.8.2** Records retained by an association may be withheld from inspection and copying to the extent that they concern: (a) personnel and medical records relating to specific individuals; (b) contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated; (c) existing or potential litigation, mediation, arbitration, or administrative proceedings; (d) existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the Governing Documents; (e) legal advice or communications that are otherwise protected by the attorney-client privilege or the attorney work product doctrine, including communications with any agents of the Association; (f) information the disclosure of which would violate a court order or law; (g) records of an executive session of the Board; (h) Individual Lot files other than those requested by that Lot Owner; (i) unlisted telephone number or electronic address of any Owner or Occupant; (j) security access information provided to the Association for emergency purposes; and (k) Agreements that for good cause prohibit disclosure to the Owners.

**2.8.3** The Association shall provide copies by photocopy or through electronic transmission, if available, upon request by the person inspecting the Records. The Association may charge a reasonable fee for producing and providing copies of any Records and for supervising the inspection. The Association is not obligated to compile or synthesize any information.

**2.8.4** Records provided for inspection shall not be used for commercial purposes.

**Article 3**  
**MANAGEMENT RIGHTS OF DECLARANT DURING**  
**DEVELOPMENT PERIOD**

**3.1 Development Period.** “Development Period” shall mean that period of time from the date of recording this Declaration until the earlier of: (a) sixty days after Declarant has transferred title to the purchasers of Lots representing 75% of the total lots in the Plat (including all divisions); (b) two years after the last conveyance of a Lot, except to a dealer (as such term is defined by RCW 64.90.010); (c) two years after any right to add new Lots was last exercised; or (d) the date on which Declarant, by written Notice to all Owners, records an amendment to the Declaration voluntarily surrendering all rights to appoint and remove officers and board members.

**3.2 Assignment of Declarant Rights.** Declarant may, at any time, by recorded instrument (a “Declarant Assignment”), assign and/or delegate all or a portion of its rights and obligations under this Declaration to another Person. The scope of the rights assigned and the liability assumed shall be limited solely to those specified in such Declarant Assignment. The original Declarant shall be deemed released from any obligations which is assumed by a Successor Declarant, and shall not be liable for any act or omission by a successor Declarant.

**3.3 Expenditures During Development Period.** During the Development Period, the Board shall have the sole discretion to use and consume all or so much of the dues paid, and initial capital contributions, as in the Board’s judgment is necessary or expedient in maintaining the Common Elements and carrying out the other functions of the Association. Maintenance of Common Elements may include, but are not limited to, (1) replacement of all dead or missing landscaping; (2) irrigation costs and repairs; and (3) costs of repairing damage due to vandalism or other destruction. Other expenditures may include, but are not limited to, any legal fees associated with carrying out any duties during the Development Period, including all costs associated with turning over the Association after the expiration of said Development Period.

**3.4 Special Declarant Rights.** As more particularly provided in this Section, Declarant, for itself and any successor Declarant, has reserved the following Special Declarant Rights, which rights may only be transferred in accordance with RCW 64.90.425:

**3.4.1** to complete any improvements indicated on the Plat, in this Declaration or the Public Offering Statement;

**3.4.2** to exercise any development right;

**3.4.3** to maintain sales offices, management offices, models, and signs advertising the Subdivision and Lots for sale therein;

**3.4.4** to use easements through the Common Elements for the purpose of making improvements within the Subdivision or within real estate that may be added to the Subdivision;

**3.4.5** to make the Association subject to a master association;

**3.4.6** to merge or consolidate the Subdivision or Association with another common interest community of the same form of ownership;



**3.4.7** to appoint or remove any Officer or Board Member of the Association in accordance with Sections 5.2.1, and or to veto or approve a proposed action of the Board or Association;

**3.4.8** to control any construction, design review, or aesthetic standards or process;

**3.4.9** to attend meetings of the Owners, the Association, and, except during an executive session, the Board; and

**3.4.10** to have access to the records of the Association to the same extent as an Owner.

**3.5 Other Declarant Rights.** As more particularly provided in this Section, Declarant, for itself and any successor Declarant, has reserved the following Declarant Rights:

**3.5.1** to subdivide or combine Lots owned by Declarant or convert Lots owned by Declarant into Common Elements. Whenever Declarant exercises a Development Right to subdivide, combine or convert a Lot previously created into additional Lots, Common Elements, or both:

**3.5.1.1** If Declarant converts the Lot entirely to Common Elements, the amendment to this Declaration must reallocate all the Allocated Interests of that Lot among the other Lots as if that Lot had been taken by condemnation under Article 15;

**3.5.1.2** If Declarant subdivides the Lot into two (2) or more Lots, whether or not any part of the Lot is converted into Common Elements, the amendment to this Declaration must reallocate all the Allocated Interests of the Lot among the Lots created by the subdivision in any reasonable and equitable manner prescribed by the Declarant; and

**3.5.1.3** If Declarant combines two (2) or more Lots, the amendment to this Declaration must reallocate to the new Lot all of the Allocated Interests formerly allocated to the Lots so combined;

**3.5.2** Add Real Estate. Add Real Estate or improvements to the Subdivision;

**3.5.3** Create Lots. Create Lots or Common Elements within Real Estate included or added to the Subdivision;

**3.5.4** Withdrawal of Property. Declarant shall have the right to withdraw Property from the Subdivision subject to the following limitations:

**3.5.4.1** If all the Property is subject to withdrawal, and this Declaration or the Plat or amendment thereto, does not describe separate portions of Property subject to that right, none of the Property may be withdrawn if a Lot in that portion of the Property is owned by a Person other than the Declarant; and

**3.5.4.1** If a portion or portions are subject to withdrawal as described in this Declaration or on the Plat or in any amendment thereto, no portion may be withdrawn if a Lot in that portion of the Property is owned by a Person other than the Declarant.

**3.5.5 Different Parcels; Different Times.**

**3.5.5.1** Any Development Right may be exercised with respect to different parcels of Property at different times;

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

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

**3.5.6 Exercise of Declarant's Right.** To exercise any Declarant Right or Special Declarant Right reserved under Section 3.5, the Declarant shall prepare, execute, and record an amendment to this Declaration in accordance with Article 16.

**3.6 Limitation of Declarant's Rights.** It is understood that the total Subdivision shall include Lots not exceeding in number the maximum permitted by law.

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

#### **Article 4**

#### **TRANSITION OF MANAGEMENT TO ASSOCIATION**

**4.1 Notice of Transition Meeting.** Within thirty days following the end of the Development Period, but in no case later than sixty days after Declarant has transferred title to the purchasers of Lots representing 75% of the total lots in the Plat (including all divisions), the Board shall send written Notice to Owners of the transition meeting of the Association ("Transition Meeting"). The Notice shall be given in the manner prescribed by Section 18.1, and specify that the purpose of the Transition Meeting is to elect new Officers and Board members of the Association. Notwithstanding any provision of the Articles or Bylaws to the contrary, for the purpose of this meeting, the presence, either in person or by proxy, of the Owners of 10% of the Lots shall constitute a quorum. The Board of Directors and Officers of the Association may be elected by a majority vote of said quorum. The Owners shall adopt voting procedures designed to assure that the expiration dates for the term of the Board members are staggered. If a quorum shall not be present, the Development Period shall nevertheless terminate on that date specified in said Notice, the term in office of any Board member or Officer appointed by Declarant shall be deemed terminated, and it shall thereafter be the responsibility of the Lot Owners to provide for the operation of the Association.

**4.2 Transfer of Property.** No later than thirty days following the date of the Transition Meeting, Declarant shall deliver or cause to be delivered to the Board elected at the Transition Meeting all Property of the Owners and Association, including but not limited to:

- thereto;
- 4.2.1** The original or a copy of the recorded Declaration and any amendments thereto;
  - 4.2.2** The organizational documents of the Association;
  - 4.2.3** The minute books, including all minutes, and other books and records of the Association;
  - 4.2.4** All current Association Rules as may have been adopted;
  - 4.2.5** Resignations of Officers and members of the Board who were appointed by Declarant and not qualified as Board members;
  - 4.2.6** The financial records, including canceled checks, bank statements, and financial statements of the Association, and source documents from the time of formation of the Association through the Transition Date;
  - 4.2.7** Originals or copies of any recorded instruments of conveyance for Common Elements;
  - 4.2.8** All tangible personal property of the Association;
  - 4.2.9** Except for alterations to a Lot or Residence made by an Owner other than Declarant, a copy of the most recent plans and specifications used in the construction or remodeling of the Property and Structures;
  - 4.2.10** Originals or copies of insurance policies for the Association and Property;
  - 4.2.11** Originals or copies of any certificates of occupancy that may have been issued for the Subdivision;
  - 4.2.12** Originals or copies of any other permits obtained by or on behalf of Declarant for the Subdivision and issued by any governmental agency with jurisdiction over the Subdivision;
  - 4.2.13** Originals or copies of all written warranties that are still in effect for the Common Elements or any other areas or facilities that the Association has the responsibility to maintain and repair, from the contractor, subcontractors, suppliers, and manufacturers and all owners' manuals or instructions furnished to the Declarant with respect to installed equipment or building systems;
  - 4.2.14** A roster of Owners and First Mortgagees, along with their addresses and telephone numbers, if known, as shown on the Declarant's records and the date of closing of the first sale of each Lot sold by the Declarant;
  - 4.2.15** Originals or copies of any leases to which the Association is a party;
  - 4.2.16** Originals or photocopies of any employment contracts or service contracts in which the Association is one of the contracting parties or service contracts in which the Association or the Owners have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service;
  - 4.2.17** Originals or copies of any qualified warranty issued to the Association as provided for in RCW 64.35.505; and

**4.2.18** Originals or copies of all other contracts to which the Association is a party.

**4.3 Transition Audit.** Within sixty days of the Transition Meeting, the Board must retain the services of a certified public accountant to audit the records of the Association as of the date of the Transition Meeting, in accordance with generally accepted auditing standards, unless a majority the Owners, excluding the Declarant, elect to waive the audit. The cost of the audit must be a Common Expense. The accountant performing the audit must examine supporting documents and records, including the cash disbursements and related paid invoices, to determine if expenditures were for Association purposes and the billings, cash receipts, and related records to determine if the Declarant was charged for and paid the proper amount of Assessments.

## **Article 5**

### **BOARD OF DIRECTORS, OFFICERS, AND COMMITTEES**

**5.1 Management of Association.** The Board shall have the power and authority to exercise all the rights, duties and functions and generally exercise all powers necessary to carry out the provisions of this Declaration, including but not limited to enacting Association Rules, contracting for required services, obtaining property and liability insurance, and collecting and expending all Assessments and Association funds. The Board shall have the exclusive right to contract for all goods and services, payment for which is to be made from any monies collected from Assessments.

**5.1.1 Association Rules.** All Association Rules shall be reasonable. Following the adoption or amendment of any Association Rules, the Board shall notify Owners of its action and provide a copy of any new or revised Association Rule.

**5.2 Board Members.** All Board Members other than those appointed by Declarant pursuant to Section 3.4 must be Owners, or the officer, director, or agent of an Owner which is an entity; any Board Member who no longer qualifies shall cease to be a Board Member. Board Members shall serve for two year terms of office unless otherwise provided in the Bylaws.

**5.2.1 During Development Period.** During the Development Period, Declarant may appoint and remove Association Officers and Board members, provided, the Board shall be constituted as follows:

**5.2.1.1** Upon creation of the Association, the Declarant shall have sole authority to appoint all Board members who need not be members of the Association.

**5.2.1.2** Not later than 60 days after conveyance of 25% of the Lots owned by Owners other than Declarant, Owners other than Declarant shall elect at least one Board member, but in no case less than 25% of the total number of Board members.

**5.2.1.3** Not later than 60 days after conveyance of 50% of the Lots owned by Owners other than Declarant, one third of the Board members shall be elected by Owners other than Declarant.

**5.2.1.4** Until such Board members are elected and take office, the existing Board may continue to act on behalf of the Association.

**5.3 Organizational Board Meeting.** The first meeting of a newly-elected Board shall be held immediately following the Transitional Meeting of the Association at which they were

elected, and no Notice shall be necessary to the newly elected Board members in order legally to constitute such meeting.

#### **5.4 Removal of Board Members.**

**5.4.1 By the Board.** The Board may remove a board member if the Board member is more than sixty days delinquent in the payment of Assessments and such delinquency remains uncured for thirty days after receiving Notice of the Board's intent to remove such Board Member.

**5.4.2 By Owners.** At any regular meeting or at any special meeting called for that purpose, at which a quorum is present, the Owners present in person, by proxy, or by absentee ballot may remove any Board Member elected by the Owners, with or without cause, by affirmative vote of the lesser of (a) a majority of all Owners or (b) 2/3 of Owners present at the meeting. Removal may not be voted on unless consideration of such removal was noted on the meeting Notice. Any Board member whose removal has been so proposed by the Owners shall be given an opportunity to be heard at the meeting. Following removal of a Board member, the Owners may immediately elect a successor Board member in accordance with the Governing Documents.

**5.5 Vacancies.** Vacancies in the Board caused by any reason other than the removal of a Board member by a vote of the Association shall be filled by vote of the majority of the remaining Board members, even though they may constitute less than a quorum; and each person so elected shall be a Board member until a successor is elected at the next annual meeting of the Association.

**5.6 Compensation.** No Board member shall receive compensation for any service he may render to the Association as a Board member. However, any Board member may be reimbursed for his or her actual expenses incurred in performance of his or her duties.

#### **5.7 Board Meetings.**

**5.7.1 During Development Period.** During the Development Period, the Board must meet at least four times a year. At least one of those meetings must be held at the Association or at a place convenient to the Owners.

**5.7.2 Following Transition Meeting.** Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Board members, provided:

**5.7.2.1** All Board meetings must be at the Association or at a place convenient to the Owners, unless the Owners amend the Bylaws to vary the location of Board meetings; and

**5.7.2.2** At least one Board meeting shall be held during each fiscal year; and

**5.7.2.3** One such meeting shall be held immediately following the annual meeting of Owners.

**5.7.3 Special Meetings.** Special meetings of the Board shall be called by the President, Secretary or written request by two or more Board members.

**5.7.4 Owner Attendance.** Owners shall have the right to attend meetings of the Board and Committees, except during an executive session; provided, the chair of the meeting may expel or prohibit attendance by any person who, after warning by the chair of the meeting, disrupts the meeting. The Board shall make reasonably available to Owners any materials that were distributed to the Board before the meeting. The Board shall provide a reasonable opportunity at every meeting for Owners to comment regarding matters affecting the Association.

**5.7.5 Electronic conferencing.** One or more Board members may participate in a Board meeting by telephonic, video, or other conferencing process, provided all Board members participating can hear each other during the meeting. The entire Board may participate in a Board meeting by telephonic, video, or other conferencing process, provided the meeting Notice states the conferencing process to be used and provides information explaining how Owners may participate; and the process provides all Owners the opportunity to hear or perceive the discussion and to comment as provided in 5.7.4.

**5.7.6 Unanimous consent.** The Board may act by unanimous consent as documented in a record by all its members. Actions taken by unanimous consent must be kept as a record of the Association with the meeting minutes. After the Transition Meeting, the Board may only act by unanimous consent only to undertake ministerial actions, actions subject to ratification by the Owners, or to implement actions previously taken at a Board meeting.

**5.7.7 Declarant Actions.** During the Development Period, Declarant may veto or approve a proposed action of the Board.

**5.7.8 No Proxies.** Board members may not vote by proxy or absentee ballot.

**5.7.9 Minutes.** Minutes of all Board meetings, excluding executive sessions, must be maintained in a record, including the decision on each matter voted upon at such meeting.

**5.7.10 Notice.** Unless a meeting is called to deal with an emergency, or included in a schedule given the Owners, Notice of meetings of the Board and Committees shall be given to all Board Members and Owners not less than fourteen days prior to the day named for such meeting.

**5.7.11 Waiver of Notice.** Before, at, or after any meeting of the Board, any Board member may, in writing, waive Notice of such meeting and such waiver shall be deemed equivalent to the giving of such Notice. Attendance by a Board member at any meeting of the Board shall be a waiver of Notice by him or of the time and place thereof. If all the Board members are present at any meeting of the Board, no Notice shall be required and any business may be transacted at such meeting.

**5.7.12 Executive Sessions.** The Board and Committees may hold executive session during a regular or special meeting only to (a) consult with the Association's attorney concerning legal matters; (b) discuss existing or potential litigation or mediation, arbitration, or administrative proceedings; (c) discuss labor or personnel matters; (d) discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the Association at a disadvantage; or (e) prevent public knowledge of the

matter to be discussed if the Board or Committee determines that public knowledge would violate the privacy of any person. No final vote or action may not be taken during an executive session.

**5.7.13 Quorum.** At all meetings of the Board, a majority of the members of the Board shall constitute a quorum for the transaction of business, and the acts of a majority of the Board members present at a meeting at which a quorum is present shall be the acts of the Board. If, at any meeting of the Board, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time. An adjournment for lack of a quorum shall be to a date not less than five nor more than thirty days from the original meeting date. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**5.8 Officers.** The Officers of the Association shall consist of president, treasurer, secretary, and any other officers of the Association specified in the Bylaws (“Officer”). During the Development Period, all Officers of the Association shall be appointed by Declarant. After the Transition Meeting, all Officers of the Association shall be elected by the Board. All Officers shall be Owners.

**5.9 Committees.** The Board may, from time to time, establish such Committees as the Board determines is in the best interests of the Association. During the Development Period, all Committee members shall be appointed by Declarant. After the Transition Meeting, all Committee members shall be appointed by the Board, and all Committee members shall be Owners.

**5.10 Fidelity Bonds.** The Board may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

**Article 6  
BUDGETS AND ASSESSMENTS**

**6.1 Budget Preparation.** Not less than thirty days prior to the beginning of each fiscal year, the Board shall adopt a proposed Budget containing:

**6.1.1** The projected income to the Association by category;

**6.1.2** The projected Common Expenses and those specially Allocated Expenses that are subject to being budgeted, both by category;

**6.1.3** The amount of the Assessments per Lot and the date the Assessments are due;

**6.1.4** The current amount of regular Assessments budgeted for contribution to the Reserve Account;

**6.1.5** A statement of whether the Association has a reserve study pursuant to RCW 64.90.550, or is exempt because the cost of the reserve study or update exceeds 10% of the annual Budget;

**6.1.6** If a reserve study has been prepared, a statement of the extent to which the Budget meets or deviates from the recommendations of that reserve study; and

**6.1.7** The current deficiency or surplus in reserve funding expressed on a per Lot basis.

The Budget shall be based on an estimate of the charges for Common Expenses to be paid during the year, which may also make provision for creating, funding and maintaining reserves for contingencies, operations, insurance, and maintenance, improvement, repair, replacement and acquisition of Common Area, including Common Area Structures, and which takes into account any expected income and any surplus available from the prior year's operating fund.

**6.2 Ratification of Budget.** With respect to any Budget adopted after the Transition Date, the Board shall set a date for a meeting of the Owners to consider ratification of the Budget. The date of the meeting shall be not less than ten days and no more than fifty days after a summary of the annual Budget or special assessment supplemental Budget is mailed to each Owner. Unless at that meeting a majority of the Owners reject the Budget, the Budget is ratified, whether or not a quorum is present. If the proposed Budget is rejected or the required Notice is not given, the periodic Budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent Budget proposed by the Board.

**6.3 Supplemental Budget/Special Assessment.** If during the fiscal year the Budget proves to be inadequate for any reason, including nonpayment for any reason of any Owner's Assessment or an unbudgeted Common Expense, the Board may prepare a supplemental Budget for the remainder of the year that includes a special assessment. Any supplemental Budget that results in an increase in the Assessment charged to a Lot must be ratified pursuant to Section 6.2 above. The Board shall have the authority to determine the date payment of any special Assessment is due. The Board has the duty and/or right under various provisions of this Declaration to assess particular sums against specific Owners (and not against all Owners). Such Assessments against particular Owners shall be Assessments for all other purposes under this Declaration.

**6.3.1** In addition, the Association may levy specific Assessments against a particular Lot for the costs incurred by the Association to bring the Owner's Lot into compliance with this Declaration or the other Governing Documents. Special assessments may be levied either before or after the work is done, in the discretion of the Board.

**6.4 Assessment of Budgeted Common Expenses Against Lots.** The annual expenditures contained in the Budget, net of budgeted income, shall be assessed in equal shares against each Lot. Annual Assessments shall commence on and become due and payable in twelve equal monthly installments, due on the first day of each month, or in any other manner as the Board may reasonably require. Each Owner shall be obligated to pay Assessments made pursuant to this Declaration as provided above, or in any other reasonable manner as the Board shall designate. Any Assessment not paid in full when due shall be delinquent and shall bear interest as specified herein until paid. Each Owner of a Lot, for himself or herself, and for his or her heirs, personal representatives, successors and assigns, hereby covenants and agrees, and each subsequent Owner of a Lot by acceptance of a deed therefore, whether or not it shall be so expressed in the deed, is deemed to covenant and agree to pay to the Association for each Lot owned any and all Assessments charged by the Association pursuant to this Declaration. No Owner may exempt himself or herself from liability for payment of Assessments for any reason, including waiver of use or enjoyment of any of the Common Areas or abandonment of the Owner's Lot.



**6.5 Purpose of Assessments.** The Assessments imposed by the Association shall be used (a) to promote the recreation, health, safety, and welfare of the residents of the Property, (b) for the improvement, maintenance, upkeep, repair, replacement, operation, and use of the Common Elements, (c) for legal fees and damages incurred in any action in which the Association or a member of the Board, acting on behalf of the Association is named as a party, (d) for legal fees incurred by the Association, and (e) for any other reasonable expenses incurred by the Association.

**6.6 Commencement of Assessments.** Upon the conveyance of the first Lot, Assessments shall commence on all Lots; provided, Declarant may delay commencement of Assessments for some or all Common Expenses or Specially Allocated Expenses, provided Declarant pays all such expenses that have been delayed in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Board shall designate.

**6.7 Omission of Assessment.** The omission by the Board before the expiration of any year to adopt the Budget and Assessments for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of an Owner from the obligation to pay the Assessments or any installment thereof for that or any subsequent year, but the Assessment established for the preceding year shall continue until a new Assessment is fixed.

**6.8 Capitalization of Association.** Upon acquisition of record title to a Lot by the first Owner thereof, other than Declarant, the Association may assess and collect a working capital contribution for such Lot. The working capital contribution may be collected prior to the commencement of Common Assessments; provided, no working capital contribution may be used to defray expenses that are the obligation of the Declarant.

**6.9 Special Assessments.** In addition to the annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, (a) the cost of any capital improvements to the Common Elements, (b) legal fees and damage costs, or (c) any other reasonable expenses incurred by the Association.

**6.10 Some Lots Benefitted.** The Board may elect that any Common Expense or portion thereof benefitting fewer than all of the Lots must be assessed exclusively against the Lots benefitted.

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

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

**6.13 Assessments for Judgment.** Assessments to pay a judgment against the Association may be made only against the Lots in the Subdivision at the time the judgment was entered in proportion to their Allocated Common Expense Liabilities at the time the judgment was entered.

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

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

**6.16 Association Funds.** The Association shall prepare an annual financial statement in accordance with accrual based accounting practices. If the Association's annual Assessments total fifty thousand dollars or more, the financial statements must be audited annually by a certified public accountant. If the Association's annual Assessments are less than fifty thousand dollars, the audit may be waived on an annual basis by a majority vote of the Owners, excluding the vote for Lots owned by Declarant. The Association shall keep all funds of the Association in the name of the Association with a qualified financial institution. The funds shall not be commingled with the funds of any other person or entity, or kept in any trust account or custodial account in the name of any trustee or custodian.

**6.17 Account Reconciliation.** The Association shall establish and maintain its accounts and records in a manner that enables it to credit Assessments for Common Expenses and Specially Allocated Expenses, including Allocations to Reserves, and other income to the Association, and to charge expenditures, to the account of the appropriate Lots in accordance herewith. Unless the Board determines that a reconciliation would not result in a material savings to any Owner, the accounts must be reconciled at least annually. Any surplus funds remaining after the payment of or provision for Common Expenses and any prepayment of reserves shall be credited to Owners to reduce future Common Expense Assessments.

**6.18 Lien For Assessments.**

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

**6.18.2 Priority.** A lien under Section 6.18.1 shall be prior to all other liens and encumbrances on a Lot except: (a) liens and encumbrances recorded before the recording of this Declaration; (b) a Security Interest on the Lot recorded before the date on which the Assessment sought to be enforced became delinquent; and (c) liens for Real Estate taxes and other governmental Assessments or charges against the Lot.

**6.18.3 Security Interest Priority.** Except as provided in Sections 6.18.4 and 6.18.5, the lien for Assessments shall also be prior to the Security Interests described in Section 6.18.2(b) to the extent of Assessments for Common Expenses, excluding any amounts for capital improvements, based on the periodic Budget adopted by the Association pursuant to Section 6.1, which would have become due during the six months immediately preceding the date of the sheriff's sale in an action for judicial Foreclosure by either the Association or a Mortgagee, the date of a trustee's sale in a non-judicial Foreclosure by a Mortgagee, or the date of recording of this Declaration of forfeiture in a proceeding by the vendor under a real estate contract.

**6.18.4 Mortgagee Notice.** The priority of the Association's lien against Lots encumbered by a Security Interest held by a First Mortgagee or by a Mortgagee which has given the Association a written request for a notice of delinquent Assessments shall be reduced by up to three months if and to the extent that the lien priority under Section 6.18.3 includes delinquencies which relate to a period after such holder becomes a First Mortgagee or has given such request for notice and before the Association gives the holder a written notice of the delinquency. This Section

does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other Assessments made by the Association.

**6.18.5 Recording as Notice.** Recording of this Declaration constitutes record notice and perfection of the lien for Assessments. While no further recording of any claim of lien for Assessment under this Section shall be required to perfect the Association's lien, the Association may record a notice of claim of lien for Assessments under this Section in the real estate records of the County in which the Subdivision is located. Such recording shall not constitute the written notice of delinquency to a Mortgagee referred to in Section 6.18.3.

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

**6.18.7 Foreclosure.** The Association may not commence foreclosure unless unpaid amounts on a Lot being foreclosed total the equivalent of not less than three months of Common Expense Assessments; the Board approves commencement of the foreclosure action that Lot; and methods of collection, foreclosure, sale, or other conveyance under this Section, are commercially reasonable.

**6.18.7.1 Judicial.** The lien arising under Section 6.18 may be enforced judicially by the Association or its authorized representative in the manner set forth in Chapter 61.12 RCW. The Association or its authorized representative shall have the power to purchase the Lot at the Foreclosure sale and to acquire, hold, lease, security interest, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial Foreclosure action, the period of redemption shall be eight months. Nothing in this Section shall prohibit an Association from taking a deed in lieu of Foreclosure.

**6.18.7.2 Non-Judicial.** A lien arising under this Article may be foreclosed non-judicially in the manner set forth in RCW 61.24 for non-judicial foreclosure of deeds of trust. For the purpose of preserving the Association's non-judicial foreclosure option, this Declaration shall be considered to create a grant of each Lot in trust to Chicago Title Insurance Company or its successors or assigns ("Trustee"), to secure the obligations of each Owner ("Grantor") to the Association ("Beneficiary") for the payment of Assessments. Grantor shall retain the right to possession of Grantor's Lot so long as Grantor is not in default of an obligation to pay Assessments. The Trustee shall have a power of sale with respect to each Lot, which becomes operative in the case of a default in a Grantor's obligation to pay Assessments. The Lots are not used principally for agricultural or farming purposes. If the Association forecloses its lien non-judicially pursuant to this section, it shall not be entitled to the lien priority over Security Interests provided in Section 6.18.3.

**6.18.8 Receiver.** From the time of commencement of an action by the Association to foreclose a lien for nonpayment of delinquent Assessments against a Lot that is not occupied by the Owner thereof, the Association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the Lot as and when due. If the rent is not paid, the receiver may obtain possession of the Lot, refurbish it for rental up to a reasonable standard for rental Lots in this type of Subdivision, rent the Lot 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 Lot, then to applicable charges, then to costs, fees, and charges of the Foreclosure action, and then to the payment of the delinquent Assessments. Only a receiver may take possession and collect rents under this section, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Lot.

**6.18.9 Mortgagee Liability.** Except as provided in Section 6.18.3, the holder of a Security Interest or other Purchaser of a Lot who obtains the right of possession of the Lot through Foreclosure shall not be liable for Assessments or installments thereof that became due prior to such right of possession. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Owners, including such Mortgagee or other Purchaser of the Lot. Foreclosure of a Security Interest does not relieve the prior Owner of personal liability for Assessments accruing against the Lot prior to the date of such sale as provided in this Section.

**6.18.10 Lien Survives Sale.** The lien arising under Section 6.18 shall not be affected by the sale or transfer of the subject Lot except in the event of sale through Foreclosure, as provided in Section 6.16.9.

**6.19 Owner Liability.** In addition to constituting a lien on the Lot, each Assessment shall be the joint and several obligation of the Owner of the Lot to which the same are assessed as of the time the Assessment is due. In a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid Assessments against the latter up to the time of the grantor's Conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Suit to recover a personal judgment for any delinquent Assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums. No Owner shall be entitled to assert as a setoff or defense against his or her obligation to pay Assessments for the amount of any obligation or liability due from, or claim asserted against, the Association or any other person.

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

**6.21 Attorneys' Fees.** The Association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent Assessments, whether or not those collection activities result in suit being commenced or prosecuted to judgment. In addition, the prevailing party shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent Assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

**6.22 Assessment Certificate.** The Association, upon written request, shall furnish to an Owner or a Mortgagee a statement signed by an Officer or authorized agent of the Association setting forth the amount of unpaid Assessments or the priority amount against that Lot, or both.

The statement shall be furnished within fifteen days after receipt of the request and is binding on the Association, the Board, and every Owner, unless and to the extent known by the recipient to be false.

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

**6.24 Delinquent Assessment Deposit.**

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

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

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

**Article 7**

**RESERVE STUDY AND ACCOUNTS**

**7.1 Reserve Study.** Unless the cost to prepare or update a reserve study exceeds ten percent of the Association's annual budget, the Association shall:

**7.1.2** Cause to be prepared an initial reserve study and annual updates in accordance with RCW 64.90.545 and 64.90.550 (collectively, "Reserve Study"); and

**7.1.3** Establish one or more income-earning accounts ("Reserve Account") for the deposit of any funds for the replacement costs of reserve components ("Reserve Components") identified in the Reserve Study.

**7.2 Reserve Account.** The Reserve Account shall be administered and under the direct control of the Board.

**7.2.1** The Board may withdraw funds from the Reserve Account to pay for replacement costs of Reserve Components not included in the Reserve Study.

**7.2.3** The Board may withdraw funds from the Reserve Account to pay for unforeseen or unbudgeted costs that are unrelated to replacement costs of the Reserve Components, provided:

**7.2.3.1** The Board shall adopt a schedule to replace the withdrawn reserves within twenty-four months unless the Board determines that repayment within twenty-four months would impose an unreasonable burden on the Owners.

**7.2.3.2** The amount of any such withdrawal, the current deficiency in reserve funding on per Lot basis, and the repayment plan shall be included with the annual Budget provided to Owners.

**7.2.4** All withdrawals from the Reserve Account shall be recorded in the Association's minute books.

**7.3 Owner's Demand for Reserve Study.** Should the Board fail to prepare a required Reserve Study for a period of three years or more, 20% or more of the Owners may issue a written demand, which shall reference RCW 64.90.555, to the Board that the cost of a Reserve Study be included in the next annual Budget and that the Reserve Study be prepared by the end of that Budget year. Upon receipt of the demand, the Board shall include the cost of a Reserve Study in the next Budget and, if that Budget is not rejected by a majority vote of the Owners, arrange for the preparation of a Reserve Study. One or more Owners may bring an action to enforce the requirements of this Article 7. In such an action, a court may order specific performance and may award reasonable attorneys' fees and costs to the prevailing party. An Owner's duty to pay Assessments is not excused because of the Association's failure to comply with this Article 7. A Budget ratified by the Owners is not invalidated because of the Association's failure to comply with this Article 7.

**7.4 Immunity from Liability.** Except for an award for attorneys' fees and costs under Section 7.3, the Association shall not be liable for monetary damages or other liability awarded against or imposed upon the Association, its Officers, or Board members, or upon any person who may have provided advice or assistance to the Association, its Officers, or Board members, for failure to establish or replenish a Reserve Account or have a current Reserve Study prepared or updated, or to include information regarding Reserve Account withdrawals in the Budget.

## **Article 8**

### **COVEYANCE OF COMMON ELEMENTS AND EASEMENTS**

**8.1 Conveyance of Common Elements.** As further described on the Plat, Declarant grants, confirms and conveys to the Association for the common use and enjoyment of the Association and Owners, the Common Elements, subject to the easements on the Plat and described herein.

**8.2 Association to Maintain Common Elements.** The Association shall have the right and the obligation to maintain the Common Elements, (except to the extent such maintenance is required to be provided by utility purveyors) and all expenses relating thereto shall be Common Expenses.

**8.3 Easements.** The following easements are hereby conveyed, established, granted, confirmed and conveyed:

**8.3.1** An irrevocable non-exclusive easement is hereby granted to the Association for the construction, repair, replacement, reconstruction, and maintenance of utilities and drainage facilities in all Common Elements and within all portions of individual Lots which are not covered by the footprint of a building. No structure, planting or other material which may damage or interfere with the installation and maintenance of utilities or facilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through the drainage channels in the easements, shall be placed or permitted to remain within any of these easements, except as otherwise authorized by the Plat.

**8.3.2** Each Lot has an easement in and through each other Lot, the Common Elements for all support elements and utility, wiring, heat and service elements, and for reasonable access thereto, for the maintenance, repair and replacement of all improvements within each Lot. Each Lot as it is constructed is granted an easement (to which each other Lot and all Common Element is subject) for the location and maintenance of all the original equipment and facilities and utilities for such Lot.

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

**8.3.4** There is hereby reserved to the Association, or their duly authorized agents and representatives, such easements and rights of access over, across, under or into the Property (and any part thereof) as are necessary, for repairs, maintenance or replacement and/or to perform the rights, duties and obligations of the Association as are set forth, provided for or authorized in the Governing Documents.

**8.3.5** An easement is granted over, across and under Common Elements for the benefit of Declarant, the Association and the Owners, and their respective heirs and assigns, for ingress and egress to and from the Lots, for emergency vehicle access to the Lots, and for the purposes of exercising all other rights granted in this Declaration. Such easement includes, without limitation, the right to go upon the Lots for the purpose of removing vehicles or other similar objects which are parked or stored in violation of the terms of this Declaration, or otherwise exercise remedial rights under this Declaration.

**8.3.6** Lot and all Common Elements are hereby declared to have an easement over all adjoining Lots and Common Elements, for the purpose of accommodating any encroachment due to engineering errors, or errors in original construction, reconstruction, repair of any portion of the Lot Improvements, or any other similar cause, and any encroachment due to building overhang or Subdivision. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be

altered in any way by said encroachment; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful act or acts with full knowledge of said Owner or Owners. In the event a Lot or Common Element is partially or totally destroyed, and then Repaired or rebuilt, the Owners agree that minor encroachments over adjoining Lots and Common Elements shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any Lot.

**8.3.7** 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.

## **Article 9 ADMINISTRATION, USE AND MAINTENANCE OF COMMON ELEMENTS**

**9.1 Association Responsibility for Maintaining Common Elements.** The Association is responsible for maintaining, repairing and replacing as necessary all Common Elements and Improvements thereon and all expenses related thereto shall be Common Expenses.

**9.2 Use of Common Elements.** Except as otherwise provided herein, each Owner shall have the right to use the Common Elements in common with all other Owners. The right to use the Common Elements extends not only to each Owner, but also to such Owner's agents, servants, tenants, family members, invitees, and licensees. The right to use the Common Elements shall be governed by the provisions of the Governing Documents. The right to use the Common Area private roads includes the right to use such roads to access adjoining public roads. Common drives, walks, corridors, stairways and other general Common Elements shall be used exclusively for normal transit and no obstructions and/or decorations or other items shall be placed thereon or therein except by express written consent of the Board.

**9.3 Repair of Damaged Improvements in Common Elements.** Any damage to Common Elements or Improvements thereon, including landscape plantings, sprinkler systems, fences, etc., if any, by the Owner, Owner's agents, servants, tenants, family members, invitees, and licensees shall be repaired by the Association and the responsible Owner will be obliged to immediately remit funds for the repair. If the Owner fails to promptly make payment for such repairs, the payment due shall be treated as a late Assessment and the Owner shall be subject to the late payment and lien provisions described in Sections 6.18 and 6.20 and as otherwise set forth in this Declaration.

**9.4 Alteration of the Common Elements.** Nothing shall be altered, or constructed in, or removed from the Common Elements, including fences and landscaping, except by the Declarant or the Association. No Structures, vehicle parking, storage of vehicles or storage of materials shall be allowed in Common Elements, except for on-street parking, subject to Association Rules.

**9.5 Dumping in Common Elements.** No trash, plant or grass clippings or other debris of any kind shall be dumped, deposited or placed on or within the Common Elements.



**9.6 Management.** Each Owner expressly covenants that the Association and/or the Declarant, during the Development Period, may delegate all or any portion of their management authority to a managing agent, manager or officer of the Association and may enter into such management contracts or other service contracts to provide for maintenance and the operation of Common Elements and any portion thereof. Any management agreement or employment agreement for the maintenance or management of the Common Elements or any portion thereof shall be terminable by the Association without cause and without payment of penalty upon ninety days' written notice thereof; the term of any such agreement shall not exceed one year, renewable by agreement of the parties for successive one-year periods. Each Owner is bound to observe the terms and conditions of any such management agreement or employment contract, all of which shall be made available for inspection by any Owner on request.

## **Article 10 MAINTENANCE OF LOTS**

**10.1 Maintenance by Owner.** Each Lot and Residence shall be maintained by the Owner in a lawful, neat, clean and attractive condition at all times. Without limiting the generality of the foregoing, each Owner's obligations include the following:

**10.1.1 Exterior Maintenance.** Each Owner shall maintain, repaint, repair and replace the roof, gutters, exterior siding, windows, doors, lighting (including relamping) and other weather protection and related improvements on such Owner's Lot in good condition and repair. All repairs, replacements, or reconstruction shall be completed with materials as near as possible to the quality, type and color of the original improvements.

**10.1.2 Roofs.** Each Owner shall care for the structure on its Lot, including all roof area, decks, parapets, walls, drains, scuppers, and downspouts, and shall conduct regular maintenance on at least an annual basis of all elements of the roof and drainage system. A primary purpose of such maintenance is to avoid water damage to the Lot or structure of the Owner, or damage to the Lot or structure of any other Owner. Any repair or replacement of a roof will be with materials of a similar type, quality and color as the original roof, unless mutually agreed upon by all the Owners. The cost of such repair is the sole responsibility of the individual property Owner(s) making the roof repair or replacement, but (a) in the event of a total roof replacement for a building within the Plat, the costs will be shared equitably between the Lot Owner(s) in proportion to each Owner's area of roof on that building, and (b) if one Owner's failure to repair or maintain any roof or drainage elements causes damage to the structure on another Lot, the Owner failing to properly maintain its roof or drainage structure shall be responsible for the cost to repair the structures on all other Lots damaged by such failure. Roof replacement will be required every 25 years (or as warranted by the roofing material manufacturer) unless delayed by mutual agreement of the Owner(s) of that building.

**10.1.3 Walls, Siding, and Exterior Trim.** All wall, siding and exterior trim shall be cared for and maintained by the Owner(s) of the building on a Lot. The cost of such repair or replacement is the sole responsibility of the Owner(s) making the repair or replacement. Shared wall, siding, and exterior trim shall be cared for and maintained by the Owner(s) of the building on which the shared walls, siding and exterior trim is located. In the event a Lot Owner intends to repair or replace wall, siding, and/or exterior trim (whether shared or not) it is hereby agreed that

the materials will be similar in type, quality and color of the original walls, siding and exterior trim unless mutually agreed by the Owners. The cost of such repair or replacement is the sole responsibility of the Owner(s) making the wall, siding, and/or exterior trim repair or replacement. However, in the event of a total wall, siding, and/or exterior trim replacement for a building, the costs will be shared equitably between the Lot Owner(s) in proportion to each Owner's area of walls, siding, and exterior trim on that building.

**10.1.4 Common Walls.** To the extent not inconsistent with this Declaration, the general rules of law regarding common walls or "party walls" and liability for property damage due to negligent or willful acts or omissions shall apply to walls intended to serve adjoining Lots ("Common Walls").

**10.1.4.1 Use.** Each Owner of a Lot with a Common Wall ("Common Wall Adjoining Lot Owner") shall have the right to joint use of the Common Wall with the Owner of the other Common Wall Adjoining Lot. The use of the Common Wall by each such Owner shall be limited to the portion of the Common Wall inside the structure on such Owner's Lot, and shall not interfere with the use of the Common Wall by the Other Common Wall Adjoining Lot Owner. Except as otherwise expressly permitted in this Declaration, no windows, chimney flues, or openings of any type may be made in any Common Wall, and no Owner may undertake or permit any act which impacts or impairs the use of the Common Wall by the structure on the other Common Wall Adjoining Lot.

**10.1.4.2 Repair and Maintenance.** Except as otherwise provided in this Declaration, the Owners of each pair of Common Wall Adjoining Lots shall share equally the cost of all maintenance and repair of the Common Wall between their Lots, except that any Owner who causes damage to a Common Wall shall be solely responsible for the cost of repairing such damage. If a Common Wall is damaged or destroyed by fire or other casualty or other cause, the Owners of the Lots adjoining that Common Wall shall, except as otherwise provided in this Declaration each be responsible for the cost to restore their own portion of the Common Wall, except that the Owners shall equally share the cost to repair the utilities that are in the Common Wall and used by both structures. The Owner of each Common Wall Adjoining Lot shall maintain the structure on such Owner's Lot and take all other steps reasonably necessary to protect the Common Wall from damage or deterioration from any cause, whether sudden or cumulative, including but not limited to the following: water or moisture intrusion, damage from weather conditions, dry rot and infestation by vermin or insects.

**10.1.4.2 Access to and Modification of Common Wall.** The Owner of each Common Wall Adjoining Lot shall have the right to expose and gain access to the interior of the Common Wall only for purposes necessary for maintaining, repairing, restoring, reconstructing, rebuilding and altering (performing "Work") on such Owner's structure, or any component of that Common Wall, subject to the following provisions, conditions and requirements:

**10.1.4.2.1** Except as otherwise established in this Declaration, all Work shall be done by licensed, bonded, and insured contractors, at the sole cost and responsibility of the Owner exposing the interior of the Common Wall (the "Opening Owner"). No Opening

Owner may do any Work that will cause any lien to be imposed on the Lot of the other Common Wall Adjoining Lot Owner.

**10.1.4.2.2** Except in the event of emergency, the Opening Owner shall give the other Owner at least forty-eight (48) hours written notice of any proposed entry to the Common Wall, with a description of the Work to be undertaken therein. In the event of emergency, notice of such entry shall be given as soon as reasonably possible.

**10.1.4.2.3** No Work may in any way negatively affect the other Common Wall Adjoining Lot or the structure thereon by removing soundproofing or insulation, altering its utility service, or in any other manner.

**10.1.4.2.4** No Work may in any way impair the structural integrity or functioning of the Common Wall, and no Opening Owner may make any penetration or opening of the Common Wall on the other Owner's side for any reason.

**10.1.4.2.5** The Opening Owner shall be responsible for all damage, expense, cost and loss in any way arising out of and/or related to the Work.

**10.1.5 Shared Fences and Plantings.** Each Owner shall cooperate and share equally the responsibility of maintaining any landscaping or fence between such Owner's Lot and any other Owner's Lot. The landscaping between adjacent driveways shall be deemed to be shared landscaping, and the Owners shall cooperate and share equally the responsibility of maintaining such Landscaping.

**10.1.6 Refuse.** Each Lot shall be kept free of accumulations of litter, junk, containers, equipment, building materials and other debris. All refuse shall be kept in sealed sanitary containers obscured from the view of any Lot. The containers shall be emptied regularly and their contents disposed of off the Property. No grass cuttings, leaves, limbs, branches, and other debris from vegetation shall be dumped or allowed to accumulate on any part of the Property, except that a regularly tended compost device shall not be prohibited in any back yard.

**10.1.7 Storage and Parking.** No long term storage of goods, materials, inoperative vehicles, junk, debris, industrial equipment, campers, trailers, motorhomes, or boats shall be permitted in open view from any Lot or right-of-way, including driveway areas.

**10.1.8 Planting Strip.** Each Owner shall maintain the planting strip located in the public right of way in front of such Owner's Lot in the same manner as originally planted by the Declarant, at such Owner's expense. No Owner may remove any tree in the planting strip. The Association may, by decision of the Board, elect at any time to take over maintenance of all planting strips, and assess the cost thereof as a Common Expense.

**10.1.9 Yards.** Each Owner shall maintenance of its yards in a neat, and attractively maintained landscaped or gardened condition. Owners shall water, mow, prune, weed and fertilize gardens and landscaping as may reasonably be required.

**10.1.10 Window Coverings.** All window coverings and treatments on windows visible from any Common Area, sidewalk, or public or private roadway shall be commercial or formal blinds or curtains in good repair; blankets, sheets, bedspreads, newspapers, sheets, aluminum foil, or the like are not permitted as window coverings.

**10.2 Lot Maintenance by the Association.** In the event any Owner fails to perform any obligation required under this Declaration, as determined by the Board in its sole discretion, after reasonable written Notice to the Owner, the Association may enter upon the Lot to perform the required obligation. All costs related to the performance of such obligation shall be specially assessed to such Owner, plus an administrative fee equal to 20% of such cost.

## **Article 11 ARCHITECTURAL CONTROL AND LAND USE RESTRICTIONS**

**11.1 Land Use Restrictions.** Notwithstanding the following, each person who occupies a Lot within the Subdivision as an Owner, guest or Occupant, shall comply strictly with all Governing Documents and all applicable laws and regulations of all government agencies (“Governing Laws”).

**11.1.1 Residential Restrictions.** All Lots within the Property shall be used solely for private single-family residential purposes, provided home businesses are allowed if the use receives prior written approval of the Board, there is no outdoor storage of any materials associated with the business, no customers, business invitees, or guests of the business come to the residence in which the use is located, the only on-site employees of the business reside on the Lot, applicable state and local permits and licenses are obtained and maintained by the Owner, no sign advertising the business is located on the Lot, the use is permitted under Governing Laws, and no noise, odor or adverse environmental impact of the business is allowed outside the confines of the residence on the Lot. The Board reserves the right to revoke approval for any home business which violates the terms and conditions of this Subsection or otherwise is deemed by the Board to constitute a nuisance. Private single-family residences shall consist of no less than one Lot. A garage may be converted to living area only if at least one enclosed parking stall remains usable on the Lot. No single Residence shall be altered to provide a residence for more than one family.

**11.1.2 Property Use Restrictions.** No Lot shall be used in a fashion which unreasonably interferes with any Owner’s right to use and enjoy their respective Lots or Common Elements. The Board, the Architectural Reviewer, or any Committee designated by the Board, or the Declarant during the Development Period, shall determine whether any given use of the Site unreasonably interferes with those rights. Such determinations shall be conclusive.

**11.1.3 Prohibition of Nuisances and Untidy Conditions.** No noxious or offensive activity shall be conducted on any Lot or Common Element, nor shall anything be done or maintained on the Property which may be or become an activity or condition which unreasonably interferes with the right of other Owners to use and enjoy any part of the Property. No activity or condition shall be conducted or maintained on any part of the Property which detracts from the value of the Property as a residential community.

**11.1.4 Fences, Walls & Shrubs.** Fences, walls or shrubs are permitted to delineate the lot lines of each Lot, subject to the approval of the Board or Architectural Reviewer and determination whether such fences, walls or shrubs would interfere with utility easements reflected on the face of the Plat and other easements. All fences constructed in the Plat must be the same as

the fences constructed by the Declarant, unless otherwise authorized by the Declarant or Architectural Reviewer.

**11.1.5 Temporary Structures.** No structure of a temporary character or trailer, recreational vehicle or other out buildings shall be used on any Lot at any time, either temporarily or permanently for residential purposes, except for such structure or trailer used by Declarant or a contractor working for the Declarant during the construction or sale of Residences. All such structures shall be removed at the expense of the Owner of the Lot on which the structure is located.

**11.1.6 Signs.** No signs, billboards, or other advertising structure or device shall be displayed to the public view on any Lot or Common Element, except one sign not to exceed five square feet in area, may be placed on a Lot to offer the property for sale or rent. Signs also may be used by a builder to advertise the Property during the construction and sale period. All such signs shall be of a quality equivalent to those used by Declarant. One sign will be allowed at the entry to the Plat, unless otherwise authorized and approved by Declarant. Political yard signs of a temporary nature, and not more than five square feet in size, will be allowed on Lots during campaign periods. Within five days of the occurrence of the election, such signs must be removed from Lots. The Board may cause any sign placed on Property in violation of this provision to be removed or destroyed. Notwithstanding the foregoing, the Declarant shall have the right to maintain such signage on the Property as it deems necessary in its sole discretion incident to the sales process.

**11.1.7 Animals.** No animals, (including pigs), other than dogs, cats, caged birds, and tanked fish, may be kept on any Lot. Notwithstanding the foregoing, no fighting dogs shall be allowed as pets, no commercial animals (other than medical service animals such as guide dogs) may be kept, and no animals shall be bred on any Lot. No more than four pets (other than from fish for which there is no limit) may be kept on any Lot. Dogs shall not be allowed to run at large. Leashed animals are permitted within roadways and Tracts. Owners and Occupants are responsible for ensuring that animal waste deposited on lawns and rights-of-way is picked up promptly. All pens and enclosures must be approved by the Architectural Reviewer prior to construction and shall be kept clean and odor free at all times. If the investigation of the Board indicated that animals are kept in violation of this Section, the Board will give the Owner ten days' written Notice of the violation. Such violations must be remedied by the Owner within ten days following Notice. Failure to comply with the written Notice will result in a fine of \$25 per day which may be enforced in accordance with this Declaration. The Association shall be entitled to reimbursement of all attorneys' fees and associated costs for any action taken to collect such fines. If an Owner or Occupant violates provisions of this section regarding pens and enclosures on more than two occasions, the Board may require the Lot Owner to remove such structure. Persistent disturbances caused by an Owner's or Occupant's barking dog may be considered an unreasonable interference with the right of other Owners to use and enjoy their property, and the Board may require the Owner or Occupant to keep the barking dog indoors.

**11.1.8 Protection of Trees.** Owners and Occupants shall not cut down trees located on Lots within the Plat unless such trees are dead. It shall be necessary for homeowners to obtain the permission of the Board before cutting or pruning such trees. This provision only applies to trees in the Plat as developed by Declarant and trees planted prior to Declarant's

development and shall not apply to trees which owners plant on their Lots. Any removal of trees shall comply strictly with all Governing Laws.

**11.1.9 Trash Containers and Debris.** All Owners and Occupants shall place their trash in the trash containers, their yard waste in the yard waste containers and their recycled materials in the recycling containers. Waste and recycling containers may not be left on the street except on pickup days.

**11.1.10 Noise and Offensive Activity.** Owners and Occupants shall refrain from making loud noises or playing musical instruments, radios, televisions, electronic music or using amplifiers at noise levels that may disturb other Occupants of the Property or disturb surrounding property owners in the neighborhood. Any disputes regarding such matters may at the request of any Owner be resolved by the Board in the same manner as provided in Section 11.1.11 for resolution of disputes concerning Lot maintenance.

**11.1.11 Owner Disputes Regarding Maintenance.** Any dispute over whether maintenance or repair is necessary or prudent, the costs of such work, or any other issue related to the application of this Section, shall be submitted to the Architectural Reviewer for review and a decision. After Notice and opportunity to be heard, the Architectural Reviewer's decision shall be final and binding on all parties. The Architectural Reviewer may authorize the work to be done and levy a special Assessment against the Owner for that Owner's share of the cost.

**11.1.12 Vehicle Parking Restrictions.**

**11.1.1** Parking on all streets must comply with all applicable governmental laws, rules and regulations, the provisions of this Declaration and the Association's rules and regulations. Parking shall be prohibited in fire lanes.

**11.1.2** Off-street parking spaces (including garages and driveways) within shall be maintained in perpetuity for and used only by residents, or guests or invitees of residents, for parking of operable and licensed motor vehicles. Occupants shall first use garages and then driveways for parking, and shall not use such parking spaces in any manner that precludes use for off-street parking at any time of operable motor vehicles regularly used by occupants of dwellings. No garage shall be used for a storage, work or shop area if such use impairs the ability of an Occupant to park a motor vehicle therein. Garages may not be converted to living space without the approval of the Board.

**11.1.3** Use of guest parking spaces on Tract 998 shall be limited to eight hours.

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

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

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

**11.2 Architectural Review. Other than the initial construction of Residences by the Declarant, no Lot, Common Limited Element, dwelling, Residence, outbuilding, fence, wall, building, pool, deck, substantial landscaping, change in exterior paint color or other Structure or other Improvement shall be erected, altered, placed or maintained on any Lot without prior review and approval by an architectural reviewer (“Architectural Reviewer”) who shall be: (i) during the Development Period, the Declarant or its designee; and (ii) after the Development Period, the Board or a committee formed by the Board for such purpose.**

**11.2.1 Standards.**

**11.2.1.1** The Board shall have the authority to adopt Association Rules governing aesthetic considerations of harmony of construction and color of Structures which it determines to be in the best interest of providing for attractive development of the Subdivision, which authority shall include, but not be limited to, determining the height, configuration, design and appearance of the home, fences, walls, outbuildings, pools, and other Structures and Improvements appurtenant to the use of the Lot. The Board may adopt Association Rules governing the installation, maintenance and watering of landscaping, including lawns, as the Board determines are reasonably necessary to maintain the general appearance and value of the Properties within the Subdivision.

**11.2.1.2** The Architectural Reviewer shall have the sole, exclusive, and final authority, in its sole discretion, to interpret, apply, and enforce the Association Rules and the requirements herein. Such determinations shall be binding on all persons having any interest in the Lot. Owners shall be responsible for informing contractors, agents and others working on the Lot of the standards and conditions of all approvals issued by the Architectural Reviewer and shall be responsible for compliance with and correction of any and all violations of those standards and conditions.

**11.2.1.3** No exterior aerials, antennas, microwave receivers or satellite dishes for television or other purposes shall be permitted on any Lot except as follows:

**11.2.1.3.1** The Architectural Reviewer will not require prior approval as to placement and screening from Owners who wish to install satellite dishes which are exempt from regulation by homeowners’ associations based on current FCC rulings. The Architectural Reviewer recognizes the need to locate these dishes in a place that will allow the best reception possible, however, Owners are encouraged to consider aesthetics as well. Owners wishing to install satellite dishes which are not exempt from regulation by homeowners’ associations based on current FCC rulings are required to obtain approval from the Architectural Reviewer prior to installation.

**11.2.2 Approval or Disapproval Process.**

**11.2.2.1 Submission of Proposal.** Prior to placing any such Structure or making such Improvement on the Lot, the proposed plans and specifications for the

Structure or Improvement and a request for approval shall be submitted to the Architectural Reviewer for approval.

**11.2.2.2** The submission shall be in writing, shall contain a written request for approval and the name and address of the person submitting the same and the Lot involved, and shall set forth the following with respect to a proposed Structure or Improvement: The location of the Structure or Improvement upon the Lot, the elevation of the Structure or Improvement with reference to the existing and finished lot grade, the general design, the interior layout, the exterior finish materials and color including roof materials, the landscape plan, and such other information as may be required to determine whether such Structure or Improvement conforms with the restrictions established by the Governing Documents and any Association Rules adopted by the Association. The Architectural Reviewer may require applicants to notify adjacent Lot Owners of request for approval.

**11.2.2.3** A reasonable fee may be required for review and approval of submissions by the Architectural Reviewer other than applications by the original Declarant. The fee amount shall be determined by the Board from time to time and may include costs of retaining outside advisors (architects, engineers, etc.) pursuant to Section 11.2.8 who may, in the Architectural Reviewer's discretion, be necessary to provide expert advice to the Architectural Reviewer.

**11.2.3 Evaluation.** The Architectural Reviewer shall approve or reject the plans submitted to it within thirty (30) days from the date of the submission of the plans to the Architectural Reviewer, unless the person submitting the plans consents to an extension of the time for a decision. If the Architectural Reviewer does not issue a decision within thirty (30) days from the date of the submission of the plans for the proposal, or applicable extension, then the plans shall be deemed to be approved.

**11.2.4 Criteria.** The Architectural Reviewer shall review the proposal based upon:

**11.2.4.1** The harmony of the external design, color and appearance of the proposal in relation to the Properties;

**11.2.4.2** The other effects of the proposal on adjacent Lots and Common Areas, including but not limited to potential view blockage;

**11.2.4.3** The compliance of the proposal with this Declaration and Association Rules; and

**11.2.4.4** The compliance of the proposal with the spirit, intent and provisions of applicable laws, rules and regulations.

**11.2.5 Decision.** The Architectural Reviewer's decision shall be in writing and if a proposal is not approved, the decision shall include a brief statement of the reasons for the Architectural Reviewer's action. The Architectural Reviewer shall have the right to approve a proposal subject to compliance with any conditions as may be established by the Architectural Reviewer.



**11.2.6 Variation.** The Architectural Reviewer shall have the authority to approve proposals that do not conform to these restrictions in order to overcome practical difficulties or prevent undue hardship from being imposed on an Owner as a result of applying these restrictions. However, such variations may only be approved in the event that the variation will not make a detrimental impact on the overall appearance of the Plat, impair the attractive development of the Plat, or adversely affect the character of nearby Lots or Common Areas. Granting such a variation shall not constitute a waiver of the restrictions articulated in this Declaration. Variations shall only be granted if the Architectural Reviewer determines that the variation would further the purposes and intent of these restrictions. Variations shall only be granted in extraordinary circumstances.

**11.2.7 Completion.** Once started, the work of constructing, altering, repairing, or reconstructing any Structure or Improvement on a Lot shall be diligently prosecuted until completion thereof and in any event the exterior of the Structure shall be completed and finished within six months after the work first commences. In the case of landscaping Improvements or modifications, the work shall be completed within two months after the work first commences. When constructed or placed on the Lot, the Structure or Improvement shall substantially conform to the plans and specifications approved by the Architectural Reviewer and shall be generally consistent with the size, quality and value of the existing homes in the Subdivision.

**11.2.8 Advisors.** The Architectural Reviewer may appoint advisors or advisory Architectural Reviewers from time to time to advise on matters pertaining to the Subdivision.

**11.2.9 Compliance with Governing Laws.** In all cases, ultimate responsibility for compliance with all Governing Laws rests with the Owner and any agents employed by the Owner. The Architectural Reviewer and its advisors have no responsibility for ensuring that any Development it reviews complies with any Governing Laws. The Architectural Reviewer and its advisors shall not be responsible for any defect in any proposals which are approved by the Architectural Reviewer nor shall any member of the Architectural Reviewer nor any advisor be responsible for any defect in a Structure which was built pursuant to plans and specifications approved by the Architectural Reviewer. The Architectural Reviewer, its advisors, and the Association shall not be liable, and Owner shall indemnify, defend and hold the Architectural Reviewer, its advisors, and the Association harmless from all liability arising from any defects or Owner's or its agents' failure to comply with any Governing Laws.

## **Article 12**

### **COMPLIANCE WITH GOVERNING DOCUMENTS**

**12.1 Strict Compliance.** Each person who occupies a Lot within the Development as an Owner, guest or Occupant, shall comply strictly with the provisions of the Governing Documents and with all Association Rules and decisions of the Board, including a decision made after a hearing required under this Declaration. The acceptance of a deed, conveyance, or lease, or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Governing Documents, are accepted and ratified by that Owner and its Occupants and all provisions of the Governing Documents shall be deemed and taken to be covenants running with the land and shall bind any Person having at any time any interest or estate in the Lot, as though the provisions were recited and stipulated at length in each and every deed, conveyance or lease of the Lot.

**12.2 Failure to Insist on Strict Performance Not a Waiver.** The Board shall exercise its business judgment in determining what actions to take in the enforcement of the Governing Documents. The failure of the Board to insist upon the strict performance of any of the terms, covenants, conditions or restrictions of the Governing Documents, or to exercise any right or option contained in the Governing Documents, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of that term, covenant, condition or restriction, but the term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Board of any Assessment from an Owner with knowledge of any breach shall not be deemed a waiver of a breach, and no waiver by the Board of any provision of the Governing Documents shall be deemed to have been made unless expressed in writing and signed by the appropriate Officers on behalf of the Board.

**12.3 Enforcement Procedures.** In the event of any violation by an Owner or Occupant, the Association and any aggrieved Owner shall have all of the rights and remedies which may be provided for in the Governing Documents, or which may be available at law or in equity.

**12.4 Internal Enforcement Procedures.**

**12.4.1 Complaint Review Panel.** Except as hereinafter provided, the Board or committee appointed by the Board shall serve as the Complaint Review Panel ("Panel") and shall investigate, hear and determine all complaints concerning violations by any Owner or Occupant pursuant to procedures set forth in reasonable policies adopted by the Board from time to time. The Panel is authorized to order compliance with the applicable provision of the Governing Documents. Any member of the Panel who is incapable of impartial, disinterested and objective consideration of the case shall disclose this to the Panel and shall remove himself or herself from participation in the proceedings and have it so recorded in the minutes of the Panel.

**12.4.2 Informal Dispute Resolution Procedure.** The Association and Owners intend that an informal process be followed prior to the initiation of a formal hearing process against any party subject to the Governing Documents. To that end, any Owner, employee or agent of the Association has the authority to request that an Owner or Occupant cease or correct any act or perform any omission which appears to be in violation of the Governing Documents. The informal request must be made, either verbally or in writing, prior to initiation of the formal hearing process.

**12.5 Judicial Enforcement.** Failure to comply with a provision of the Governing Documents, or a decision of the Board or Panel shall be grounds for an action to recover sums due for damages, fines and any costs incurred by the Association in connection with the proceedings before the Panel, including reasonable attorney's fees incurred by the Association. Such action shall be maintainable by the Association (acting through the Board) on behalf of the Owners. Such Violation shall further be sufficient grounds for the granting of injunctive relief in such an action and a showing of irreparable harm shall not be a prerequisite to issuance of such injunctive relief. Nothing contained in this Declaration shall be deemed or construed as a waiver of the Association's right to bring a judicial action without first exhausting the Association's internal enforcement procedures in cases where the Board deems immediate judicial action to be necessary or appropriate. In the event that the Board fails or refuses, after demand by an aggrieved Owner, to take appropriate action to enforce compliance with any provision of the Governing Documents or

any Board or Panel Decision, an aggrieved Owner on his or her own may maintain an action for damages or injunctive relief against the party failing to comply. In any judicial action to enforce compliance with the Governing Documents, or a decision of the Board, or Panel, the prevailing party, including the Association, shall be entitled to recover from the non-prevailing party, whether or not the action proceeds to judgment, its costs and a reasonable sum for attorneys' fees incurred in connection with the action, in addition to actual costs.

**12.6 Imposition of Fines.**

**12.6.1 Authority to Impose Fines.** The Association shall have the right to impose monetary penalties against the Owner and/or Occupant who violates the Governing Documents or other rules and restrictions adopted by the Association. The Board shall, from time to time, adopt a schedule for such monetary penalties. The schedule may provide for penalties that are assessed a single flat rate and may provide for penalties which are incurred on a periodic (daily, weekly, etc.) basis and which accrue until violations are corrected.

**12.6.2 Procedure for Imposition of Fines.** If the Association determines that a violation of the Governing Documents or other rules and restrictions adopted by the Association has occurred, the Association shall send a written notice of violation ("Notice of Violation") to the Owner and Occupant of the Lot determined to be responsible for the violation. The Notice of Violation shall identify (1) the location where the violation has occurred, (2) the name of the person responsible for the violation, (3) the nature of the violation, (4) the action or actions required in order to cure the violation and a deadline for compliance, and (5) the rate or amount of the fine that will be assessed if the violation is not cured by the compliance deadline. In addition, the Notice of Violation shall indicate that the Owner or Occupant deemed responsible for the violation shall be entitled to request a hearing before the Panel, provided a written request for such a hearing is submitted to the Panel within fourteen calendar days after the issuance of the Notice of Violation.

**12.6.3 Hearing by Complaint Review Panel.** If a request for a hearing is submitted, the Panel shall conduct a factual hearing and allow interested parties to present evidence relevant to the issues of whether or not a violation has occurred and what action is required to cure the violation. The Panel shall issue a written decision after the conclusion of the factual hearing. All Notices of Violation become final either fourteen days after they are issued if no request for a hearing is submitted, or on the date that the Panel issues its decision following a hearing.

**12.6.4 Collection of Fines, Lien on Title.** Unpaid fines assessed pursuant to this Section shall constitute liens against the Lot, and shall be subject to the terms and conditions of this Declaration regarding liens for Assessments and attorney's fees.

**12.7 Enforcement Against Occupants.** The occupation of a Lot by a tenant, and every lease, shall be subject to the Governing Documents. By entering into occupancy of a Lot, an Occupant agrees to be bound by the Governing Documents. A breach of the Governing Documents by an Occupant shall be deemed to be a breach of his or her lease. In the event of a violation by an Occupant, the Board shall notify the Owner and Occupant of the violation and demand that the violation be remedied through the Owner's efforts within twenty days' after the Notice of Violation. The Owner shall, within five days of such notice, serve upon the Occupant in the manner provided by law, a notice to comply or quit the premises. If the violation is not remedied within the twenty day period, then the Owner shall immediately thereafter, at his or her own cost and expense,

institute and diligently prosecute an unlawful detainer action. The unlawful detainer action shall not be compromised or settled without the prior written approval of the Board. If the Owner fails to fulfill the foregoing obligation, then the Board shall have the right, but not the duty, to institute and prosecute an unlawful detainer action as attorney-in-fact for the Owner and at the Owner's sole cost and expense, including all legal fees incurred. The costs and expenses of the action shall be deemed to constitute Assessments secured by a lien on the Lot involved as well as the personal obligation of the Owner, and collection thereof may be enforced by the Board in the same manner as any other Assessment. Each and every Owner does hereby automatically and irrevocably name, constitute, appoint and confirm the Association as his or her attorney-in-fact for the purposes described in this section.

### **Article 13 LIMITATION OF LIABILITY**

**13.1 Liability for Utility Failure, Etc.** Except to the extent covered by insurance obtained by the Board pursuant to Article 14, the Association, Board members (including the Declarant if a Board member), Officers, and Committee members shall not be liable for: (i) any failure of any utility or other service to be obtained and paid for by the Board; (ii) for injury or damage to Person or Property caused by the elements, or resulting from electricity, noise, smoke, water, rain (or other liquid), dust or sand which may leak or flow from outside or from any parts of the Buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other places; or (iii) for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance or orders of a governmental authority. No diminution or abatement of Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

**13.2 No Personal Liability.** So long as the Association, Board members (including the Declarant if a Board member), Officers, and Committee members have acted in good faith, without willful or intentional misconduct, upon the basis of such information as may be possessed by such Person and such Person's evaluation of such information, no such Person shall be personally liable to any Owner, or other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence, including any discretionary decision, or failure to make a discretionary decision, by such Person in such Person's official capacity. Without limiting the generality of the foregoing, the term "discretionary decisions" shall include evaluating and deciding whether or not to act in response to reports, investigations or recommendations received by such Person, and shall include deciding whether or not to commence, defend, continue, or settle lawsuits or arbitration/mediation or other legal proceedings involving the Association or Subdivision (or any part thereof). Provided, that this Section shall not apply where the consequences of such act, omission, error or negligence are covered by insurance obtained by the Board pursuant to Article 14.

**13.3 Indemnification of Board Members.** Each Board member, Committee member, and Officer (including Declarant in its capacity as a Board or Committee member or Officer), shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of being or having held such position at the time

such expenses or liabilities arose or are incurred, except in such cases wherein such Person is adjudged guilty of either willful or intentional misconduct, a knowing violation of the law in the performance of his duties and except in such cases where such Person has participated in a transaction from which said Person will personally receive a benefit in money, Property or services to which said Person is not legally entitled. Provided, that, in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interest of the Association.

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

## **Article 14 INSURANCE**

**14.1 General Requirements.** Commencing not later than the time of the first conveyance of a Lot to a Person other than the Declarant, the Association shall maintain, in its name, to the extent reasonably available, a policy or policies and bonds necessary to provide: (a) commercial general liability insurance; (b) property insurance; (c) fidelity bonds; (d) workers' compensation insurance to the extent required by applicable laws; (e) directors and officers liability insurance; and (f) such other insurance as the Board deems advisable. The Board shall review at least annually the adequacy of the Association's insurance coverage. All insurance shall be obtained from insurance carriers with a minimum A VIII Best's financial rating and authorized to do business in the state of Washington, and, if required, meet the specific requirements of any Federal Mortgage Agency regarding the qualifications of insurance carriers. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect liability insurance and fidelity bonds that meet any applicable requirements established by any Federal Mortgage Agency so long as any of them is a holder of a Mortgage or Owner of a Lot, except to the extent such coverage is not available or has been waived in writing by them. All such insurance policies and fidelity bonds shall provide that coverage may not be canceled or substantially modified without at least thirty days' (ten days' cancellation for nonpayment of premium) prior written notice to any and all insureds named therein, including Owners, Mortgagees, and designated servicers of Mortgages.

**14.2 Property Insurance.** The policy for property insurance shall insure the Common Elements, insuring against risks of direct physical loss commonly insured against, which insurance, after application of any deductibles, must be not less than 80% of the actual cash value of the insured Property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies

**14.3 Liability Insurance.** The policy of public liability insurance, including medical payments insurance, shall insure the Board, the Association, the Owners, and any managing agent, and cover all of the Common Elements in the Subdivision with a "Severability of Interest Endorsement" or equivalent coverage which 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 cover

liability of the insureds for property damage and bodily injury and death of persons arising out of the operation, maintenance, and use of the Common Elements, liability in connection with employment contracts of the Association, host liquor liability, employers' liability (stop gap) insurance, non-owned and hired automobile liability insurance, and such other risks as are customarily covered with respect to projects of similar construction, location and use. The limits of liability shall be in amounts generally required by mortgagees for projects of similar construction, location and use but shall be at least \$1,000,000 bodily injury and property damage per occurrence and \$2,000,000 general aggregate.

**14.4 Insurance Trustee; Power of Attorney.** The named insured under the policies referred to above shall be the Association, as trustee for each of the Owners. The insurance proceeds may be made payable to any trustee with which the Association enters into an insurance trust agreement, or any successor trustee, who shall have exclusive authority to negotiate losses under the policies. Each Owner appoints the Association, or any insurance trustee or successor trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to accomplish such purposes.

**14.5 Additional Policy Provisions.** The insurance obtained shall contain the following provisions and limitations:

**14.5.1** Each Lot Owner is an insured Person under the policy with respect to liability arising out of the Owner's interest in the Plat or membership in the Association.

**14.5.2** 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. If, at the time of the loss under the policy, there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

**14.5.3** Coverage shall not be prejudiced by (a) any act, omission or neglect of the Owners when such act or neglect is not within the scope of the Owner's authority on behalf of the Association, or (b) failure of the Association to comply with any warranty or condition with regard to any portion of the premises over which the Association has no control.

**14.5.4** A waiver of subrogation by the insurer as to any and all claims against the Association, the Owner, and/or their respective agents, members of the Owner's household, employees, or lessees, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

**14.5.5** A standard mortgagee clause which shall:

**14.5.1.1** Provide that any reference to a mortgagee in the policy shall mean and include all holders of Mortgages of any Lot or Lot lease or sublease in their respective order of preference, whether or not named therein;

**14.5.1.2** Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board or Owners or any Persons under any of them;

**14.5.1.3** Waive any provision invalidating such mortgagee clause by reason of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the Mortgagee pay any premium thereon, and any contribution clause; and

**14.5.1.4** Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to the Association or the insurance trustee.

**14.6 Fidelity Bond/Directors and Officers Insurances.** The required fidelity bonds shall afford coverage to protect against dishonest acts on the part of Officers, Board members, trustees, and employees of the Association and all other Persons who handle or are responsible for handling funds of, or funds administered by the Association. All managers hired by the Association shall maintain fidelity bonds for its officers, employees, and agents who handle or who are responsible for handling funds of, or funds administered by the Association. All such fidelity bonds shall name the Association as an obligee and shall be not less than three months' aggregate Assessments. The bonds shall contain waivers of any defense based upon the exclusion of Persons who serve without compensation from any definition of "employee" or similar expression. The Association shall obtain directors and officers liability insurance which shall at a minimum insure each Board member and Officer of the Association against any loss arising from any claim for any alleged wrongful act made by such person while acting in his/her capacity as Board member or Officer of the Association.

**14.7 Owner's Insurance.** Each Owner shall maintain property insurance in reasonable amounts on all Improvements located on its Lot. The Board shall have the authority to further define or expand such requirement by rule, and to prescribe enforcement mechanisms.

## **Article 15 DAMAGE OR DESTRUCTION; CONDEMNATION**

**15.1 Common Elements.** If all or any portion of any Common Element is damaged, the Association shall rebuild, repair and replace the same, unless (a) rebuild, repair or replacement would be illegal; (b) 80% of the Owners vote not to rebuild, repair and replace or (c) the Association is terminated. Any uninsured portion of the cost of rebuild, repair and replacement shall be a Common Expense.

**15.2 Residence.** If any Residence is damaged or destroyed by fire or other casualty, the Owner thereof shall repair or reconstruct the Residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty and in compliance with the Architectural Review provisions of the Governing Documents, acting with all reasonable diligence and as soon as reasonably possible.

**15.3 Condemnation.** In the event any part of the Common Elements is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, the Association shall give prompt notice of any such proceeding or proposed acquisition to the Owners and to the holders of all First Mortgages who have requested from the Association notification of any such proceeding or proposed acquisition. All compensation, damages, or other proceeds therefrom, shall be payable to the Association.

**15.2 Common Element Condemnation.** If part of the Common Elements is acquired by condemnation, the portion of the award attributable to the Common Elements taken must be paid to the Association. A court may award damages to a Lot owner or owners for particular damage to the Owner's Lots arising from condemnation.

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

## **Article 16 AMENDMENTS TO GOVERNING DOCUMENTS**

The Declaration and other Governing Documents may be amended as follows:

**16.1 By Declarant.** Without approval of the Owners or the Board, the Declarant may amend this Declaration and other Governing Documents:

**16.1.1** Upon the exercise of any Development Right or Special Declarant Right reserved in Article 3, or a reallocation being made pursuant thereto, along with recording a new or amended declaration as may be required by RCW 64.90.240 through 64.90.250, and RCW 64.90.285;

**16.1.2** Upon giving notice to Owners that the Development Period has ended, and the voluntary surrender of Declarant's rights to appoint and remove officers and board members pursuant to Sections 3.1 and 4.1; or

**16.1.3** Upon thirty days' advance notice to Owners, to unilaterally adopt, execute, and record a corrective amendment or supplement to the Governing Documents to correct a mathematical mistake, an inconsistency, or a scrivener's error, or to clarify an ambiguity in the Governing Documents with respect to an objectively verifiable fact including, without limitation, recalculating the liability for Common Expenses, or the number of votes in the Association appertaining to a Lot, within five years after the recordation or adoption of such Governing Document; provided, that any such amendment or supplement may not materially reduce what the obligations of the Declarant would have been if the mistake, inconsistency, error, or ambiguity had not occurred.

**16.2 By the Board.** Without approval of the Owners, the Board may amend or supplement the Governing Documents, by a vote of two-thirds of the Board members, and upon thirty days' advance notice to Owners:

**16.2.1** For any reason set forth in Section 16.1.3 above; or

**16.2.2** To remove any other language and otherwise amend as necessary the Declaration to remove of language purporting to limit the rights of the Association or Owners in direct conflict with the Act.



**16.3 By Owners.** The Association may amend the Declaration upon the vote or agreement of no less than 51% of the Owners, subject to the following:

**16.3.1** Any amendment that would reallocate a common element to become a limited common element or to incorporate a common element or a limited common element into an existing Lot must include the affirmative vote of Owner of the Lot to which the common element or limited common element will be assigned or incorporated;

**16.3.2** Any amendment to extend the time limits within which Development Rights must be exercised, or additional development rights may be created, must be approved by vote or agreement of no less than eighty percent (80%) of the votes not allocated to Lots owned by Declarant;

**16.3.3** Any amendment to create or increase Special Declarant Rights, increase the number of Lots or change the allocated interests of a Lot must be approved by vote or agreement of no less than ninety percent (90%) of the Owners, which vote must include the affirmative vote of the Owner of any Lot whose allocated interest is changed by the amendment; and

**16.3.4** Any amendment that to Special Declarant Rights that have not terminated pursuant to Section 3.7 may not be amended without the consent of the Declarant.

Once an amendment has been adopted by the Association, the amendment will become effective when a certificate of the amendment, executed by the President of the Board, has been recorded in the county where the Property is located.

## **Article 17 MORTGAGEE PROTECTION**

**17.1 Notices.** The Association shall provide to any First Mortgagee which has requested the same, written notice of (i) casualty or condemnation, (ii) the fact an Owner has for more than thirty days failed to meet any obligation under the Governing Documents, or (iii) lapse of insurance. Any First Mortgagee shall, upon request, be entitled to receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

**17.2 Effect of Declaration Amendments.** No amendment to this Declaration shall be effective to modify, change, limit or alter the rights expressly conferred upon First Mortgagees in this instrument with respect to any unsatisfied mortgage duly recorded unless the amendment shall be consented to in writing by such First Mortgagee. Any provisions of this Declaration conferring rights upon First Mortgagees which are inconsistent with any other provisions of this Declaration shall control over such inconsistent provisions.

**17.3 Inspection of Books.** First Mortgagees shall be entitled to inspect, during normal work hours on weekdays, all of the books and records of the Association, and, upon request, to receive the annual financial statement of the Association within ninety days following the end of the fiscal year of the Association.

**17.4 Priority.** A breach of any of the provisions, covenants, restrictions or limitations hereof or the recordation of any Association Lien or the pursuit of any remedy hereunder shall not defeat or render invalid the lien of any Mortgage of Record. As provided in Section 6.18.9, each

First Mortgagee which obtains title to a Lot by judicial or non-judicial foreclosure or by deed in lieu of foreclosure, shall take title to such Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such First Mortgagee acquires title to such Lot.

**Article 18**  
**MISCELLANEOUS**

**18.1 Notices for All Purposes.**

**18.1.1 Delivery of Notice.** Any notice (“Notice”) permitted or required to be delivered under the provisions of Governing Documents may be delivered by mail, private carrier, or personal delivery; telegraph or teletype; telephone, wire, or wireless equipment that transmits a facsimile of the notice; or by email if the recipient has consented in writing to receipt of Notice by email and provided a valid email address. Notice to the Association shall be addressed to the Association, or the Association’s registered agent, president or secretary, at the Association’s registered office or principal office shown in its most recent annual report or provided by notice to Owners. Notice to Owners or Board Members shall be addressed to such person’s Lot address unless such person has requested in writing that notices be sent to an alternate address. Notice to be given to the Board shall be given to Declarant until the Board has been constituted and thereafter shall be given to the president or secretary of the Board. Mailing addresses may be changed from time to time by notice in writing to the Board. Notice shall be deemed to have been delivered as of the date it was sent.

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

**18.2 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 affects the common plan. This Declaration shall be effective upon recording.

**18.3 Assignment by Declarant.** Declarant reserves the right to assign or delegate all or any of its rights, duties, and obligations created under this Declaration.

DATED as of the date first written above.

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

Dated this 22<sup>nd</sup> of April, 2020.

**DECLARANT:** WESTBROOK LLC, a Washington limited liability company

By: SAGE HOMES NORTHWEST LLC, a Washington limited liability company

Its: Manager

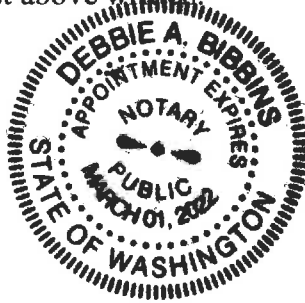
By: Alan A. Boeker  
Its: President

STATE OF WASHINGTON )

Snohomish ) ss.  
COUNTY OF KING )

On this 22<sup>nd</sup> day of April, 2020, before me personally appeared Alan Boeker, to me known to be the President of the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.



Debbie A. Bibbins (Print Name)  
Notary Public, Residing at Everett  
My appointment expires: 3/1/22

01-1951-4 Westbrook CCRS 11-14-19

**WESTBROOK LANE, A SUBDIVISION**

**EXHIBIT A TO THE DECLARATION**

**DESCRIPTION OF REAL ESTATE**

LOTS 2, 3 AND 4 OF SNOHOMISH COUNTY SHORT PLAT NO. 373 (12-83) RECORDED UNDER AUDITOR'S FILE NO. 8405070101, BEING A PORTION OF LOT 5, BLOCK 6, ALDERWOOD MANOR NO. 7, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9 OF PLATS, PAGES 100 THROUGH 102, INCLUSIVE, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.