

AMENDED AND RESTATED BYLAWS OF SUNDAY HARBOR COMMUNITY ASSOCIATION

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**AMENDED AND RESTATED BYLAWS OF SUNDAY HARBOR COMMUNITY ASSOCIATION**

## **1. IDENTIFICATION OF THE COMMUNITY AND ASSOCIATION.**

The name of the Community is: Sunday Harbor, which is situated in Blaine in Whatcom County, Washington. The name of the Association is: Sunday Harbor Community Association, which will hereinafter be referred to as the "Association."

## **2. DEFINITIONS.**

All terms used in these Bylaws shall have the same meanings ascribed to them in the Washington Uniform Common Interest Act ("the Governing Law"), and/or in the Declaration of Covenants for the Community (hereinafter "the Declaration") recorded in the office of the Auditor of the County in which the Community is located.

## **3. PURPOSE AND APPLICABILITY OF BYLAWS.**

This document is intended to entirely replace the existing Bylaws for the Association that are dated April 25, 2009. It has been amended in compliance with the provisions of Article IV of the existing Bylaws. These Amended and Restated Bylaws are promulgated to provide for the selfgovernment of the Community and to promote the safety, health, well-being and enjoyment of its Members. The administration and management of the Community and the actions of the Owners, the Association and its Board of Directors and Officers shall be governed by these Bylaws. All present and future Owners and their family members, tenants, licensees, invitees, servants, agents, employees and any other person or persons who are permitted to occupy or use the common property of the Community property shall be subject to these Bylaws and to the Governing Documents of the Association. Acquisition, rental or occupancy of a Lot shall be deemed conclusive evidence of the Owner's, tenant's or Occupant's acceptance and ratification of, and agreement to comply with, these Bylaws, the Declaration, and any Rules now existent or hereafter adopted.

## **4. COMMUNITY ASSOCIATION.**

### *4.1. Form of Association.*

The Association has been or will be incorporated by counsel for the Declarant as a Nonprofit Miscellaneous and Mutual Corporation under chapter 24.06 of the Revised Code of Washington (hereinafter known as the "Corporation law"). The Association shall remain organized as a nonprofit corporation.

### *4.2. Law Governing Association.*

The rights and duties of the Members and of the Association shall be governed by the provisions of the Declaration, the Governing Law and the Corporation Law. In case of any conflict between any of the foregoing, the Governing Law shall control, and with respect to any conflicts between the Declaration and the Bylaws, the Declaration shall control.

#### *4.3. Registered Agent and Registered Office.*

The Association shall maintain a Registered Agent to receive legal process and official notices on behalf of the Association, as required by the Corporation Law. The Registered Agent shall be appointed by the Board and shall have a business office identical with such Registered Office. The Registered Office of the Association shall be located in the State of Washington at such place as may be fixed from time to time by the Board of Directors upon filing of such notices with the Secretary of State and elsewhere as may be required by the Corporation Law.

#### *4.4. Powers and Duties of the Association.*

##### *4.4.1. Mandatory Duties of the Association.* The Association must:

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

##### *4.4.2. Additional Powers and Authority.* Except as provided otherwise in RCW 64.90.405(4) and subject to the provisions of the Declaration, the Association may:

- (a) Amend Organizational Documents subject to Section 10 of these Bylaws and adopt and amend Rules in accordance with Section 5.14 of these Bylaws;
- (b) Amend Budgets under RCW 64.90.525;
- (c) Hire and discharge Managing Agents and other employees, agents, and independent contractors;
- (d) Institute, defend, or intervene in litigation or in arbitration, mediation, or administrative proceedings or any other legal proceeding in its own name on behalf of itself or two or more Lot Owners on matters affecting the Community;
- (e) Subject to the provisions of RCW 64.90.405(4), make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement, and modification of Common Elements;
- (g) Cause additional improvements to be made as a part of the Common Elements;



- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but Common Elements may be conveyed or subjected to a security interest only pursuant to RCW 64.90.465;
- (i) Grant easements, leases, licenses, and concessions through or over the Common Elements and petition for or consent to the vacation of streets and alleys;
- (j) Impose and collect any reasonable payments, fees, or charges for: (i) The use, rental, or operation of the Common Elements, other than Limited Common Elements described in RCW 64.90.210 (1)(b) and (3); (ii) Services provided to Lot Owners; and (iii) Moving in or moving out, as provided for in the Declaration;
- (k) Collect Assessments and impose and collect reasonable charges for late payment of Assessments;
- (l) Enforce the Governing Documents and, after notice and opportunity to be heard, impose and collect reasonable fines for violations of the Governing Documents in accordance with a previously established schedule of fines adopted by the Board of Directors and furnished to the Owners;
- (m) Impose and collect reasonable charges for the preparation and recordation of amendments to the Declaration, Resale Certificates required under RCW 64.90.640, lender questionnaires, or statements of unpaid Assessments;
- (n) Provide for the indemnification of its Officers and Board members, to the extent provided in RCW 23B.17.030;
- (o) Maintain directors' and officers' liability insurance;
- (p) As provided in the Declaration, assign its right to future income, including the right to receive Assessments;
- (q) Join in a petition for the establishment of a parking and business improvement area, participate in the ratepayers' board or other advisory body set up by the legislative authority for operation of a parking and business improvement area, and pay special assessments levied by the legislative authority on a parking and business improvement area encompassing the common property of the Community for activities and projects that benefit the Community directly or indirectly;
- (r) Establish and administer a Reserve Account as described in RCW 64.90.535;
- (s) Prepare a Reserve Study as described in RCW 64.90.545;
- (t) Exercise any other powers conferred by the Declaration or Organizational Documents;
- (u) Exercise all other powers that may be exercised in this State by the same type of entity as the

Association;

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

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

(x) Suspend any right or privilege of a Lot Owner who fails to pay an Assessment, but may not: (i) Deny a Lot Owner or other Occupant access to the Owner's Lot; (ii) Suspend a Lot Owner's right to vote; or (iii) Withhold services provided to a Lot or a Lot Owner by the Association if the effect of withholding the service would be to endanger the health, safety, or property of any person.

#### 4.5. Membership.

*4.5.1. Basic Provisions.* Each fee Owner or real estate contract vendee of a Lot in the Community shall be a Member of the Association. Ownership of a Lot shall be the sole qualification for membership in the Association, and the membership of the Association at all times shall consist exclusively of all the Lot Owners. The ownership of an interest in a Lot solely as security for the performance of an obligation does not entitle the owner of such interest to membership in the Association. The term "Lot Owner" or "Owner", as used in the remainder of these Bylaws, shall be deemed the equivalent of the term "Member," as used in the Corporation Law, unless the context otherwise clearly requires, such as in the term "Board member," where by virtue of RCW 64.90.410(2)(a), such person need not be a Lot Owner or Member.

*4.5.2. Member in Good Standing.* A Member shall be considered a "Member in Good Standing" when such Member has paid all lawful Assessments owing by such Member, and is not subject to unpaid fines or unsatisfied monetary sanctions following a hearing convened under Section 7.10 hereof.

*4.5.3. Rights and Privileges of Membership.* Members in Good Standing shall have the rights to run for and hold positions as Directors or Officers of the Association. Members in Good Standing, their immediate family members, well-behaved guests and lawful tenants of Owners shall also have the privilege of using any special services and/or facilities provided by the Association for use by its Members. Such rights and privileges are subject to payment of all dues, charges or Assessments as may be lawfully imposed by the Board of Directors from time to time, and are further subject to remaining in compliance with all other provisions of the Governing Documents. Basic rights of ingress, egress and support are not dependent upon Good Standing status and may not be withheld, and the Association may not withhold services provided to a Lot or a Lot Owner by the Association if the effect of withholding the service would be to endanger the health, safety, or property of any person,. A Member who fails to pay all required dues, charges or Assessments, or who is found to have violated other provisions of the Governing Documents in a proceeding conducted under Section 7.10 hereof, shall cease to be a Member in Good Standing and may lose any or all of the foregoing rights and privileges of

membership, at the option of the Board, until such time as the Member shall make all required payments and/or satisfy any other conditions required of the Member in such proceeding.

#### *4.6. Transfer of Membership.*

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

#### *4.7. Meetings of the Association.*

*4.7.1. Annual Meeting Required.* A Meeting of the Association must be held at least once each year, in the month of April. The Annual Meeting of the Association shall be held for the election of Directors and the conduct of such other business as may be properly brought before the Meeting. At the Annual Meeting, there shall be presented a report containing the following information:

(a) A balance sheet and a revenue and expense statement of the Association prepared on an accrual basis, which shall be current to sixty days - the balance sheet should show the condition of the Association's reserve account;

(b) The annual financial statement of the Association, including the audit report required by Section 8.5 hereof, if it has been prepared, for the year immediately preceding the current year; and

(c) A statement of any unsatisfied judgments against the Association and the status of any pending suits to which the Association is a party.

Failure to hold an Annual Meeting does not cause a forfeiture or give cause for dissolution of the Association and does not affect otherwise valid Association acts.

*4.7.2. Special Meetings Authorized.* The Association must hold a Special Meeting of Lot Owners to address any matter affecting the Community or the Association if its President, a majority of the Board, or Lot Owners having at least twenty percent of the votes in the Association request that the Secretary call the Meeting.

*4.7.3. Notice of Meetings Required.* The Association must provide Notice to Lot Owners of the time, date, and place of each Annual and Special Lot Owners Meeting not less than fourteen days and not more than fifty days before the Meeting date. Notice shall be accomplished as described in RCW 64.90.515, the text of which appears in Section 19 of the Declaration. The Notice of any Meeting must state the time, date, and place of the Meeting and the items on the Agenda, including:

(a) The text of any proposed amendment to the Declaration or Organizational Documents, in which case

the Notice must be given at least 30 days prior to the Meeting;

(b) Any changes in the previously approved Budget that result in a change in the Assessment obligations; and

(c) Any proposal to remove a Board member.

*4.7.4. Special Provisions for Notice of Special Meetings.* If the Association does not provide Notice to Lot Owners of a Special Meeting within thirty days after the requisite number or percentage of Lot Owners request the Secretary to do so, the requesting Members may directly provide Notice to all the Lot Owners of the Meeting. Only matters described in the Meeting Notice required in Subsection 4.7.3 may be considered at a Special Meeting.

*4.7.5. Notice Period may be Reduced or Waived.* The minimum time to provide Notice required in Subsection 4.7.3 may be reduced or waived for a Meeting called to deal with an emergency. Whenever any Notice to an Owner is required to be given by the Association, a Waiver thereof in a Record signed by the Owner, whether made before or given after the time stated therein, shall be equivalent to the giving of such Notice.

*4.7.6. Lot Owners Have Opportunity to Comment.* Lot Owners must be given a reasonable opportunity at any Meeting to comment regarding any matter affecting the Community or the Association.

*4.7.7. Electronic Meetings Authorized.* If deemed useful and feasible by the Board and the Association's Manager, Meetings of Lot Owners may be conducted by telephonic, video, or other conferencing process, if the process is consistent with RCW 64.90.445(2)(i), the text of which is summarized below in Section 5.3.10 hereof.

*4.7.8. Place of Meetings.* Meetings of the Association shall be held at such place within the County within which the Community is situated as may be designated by the Board of Directors and stated in the Notice of the Meeting.

*4.7.9. Quorum of Owners.* a Quorum is present throughout any Meeting of the Lot Owners if persons entitled to cast twenty percent of the votes in the Association: (a) Are present in person or by proxy at the beginning of the Meeting; (b) Have voted by Absentee Ballot; or (c) Are present by any combination of (a) and (b) of this Subsection.

*4.7.10. Order of Business.* The order of business at an Annual Meeting of the Association shall be as follows: (i) proof of Notice of the Meeting; (ii) determination of the presence of a Quorum; (iii) approval of the Agenda for the Meeting; (iv) approval of Minutes of the previous Meeting of the Association; (v) appointment of inspectors of election if applicable; (vi) election of Directors, if applicable; (vii) reports of the Board of Directors, Officers and Committees; (viii) unfinished business, if any; and (ix) new business, including whether to conduct or waive the Annual Audit generally required under the provisions of Section 8.5 hereof. Items (iv), (viii) and (ix) shall be omitted from the order of business of a Special Meeting held for the sole purpose of electing a Director. Only matters described in the Notice of a

Special Meeting may be considered at such a Meeting, and the order of business at a Special Meeting shall generally conform to the order specified in the Notice of such Meeting.

*4.7.11. Conduct of Meeting.* The President shall preside at Meetings of the Association and the Secretary shall keep the Minutes of Meetings, for inclusion in the Association's permanent Minute Book. Until changed by resolution of the Board of Directors, Roberts Rules of Order, latest edition, shall govern the conduct of all Meetings of the Association when not in conflict with the Governing Law, the Declaration or these Bylaws.

#### *4.8. Voting.*

*4.8.1. Voting Rights - Generally.* Lot Owners may vote at a Meeting in person, by Absentee Ballot pursuant to Subsection 4.8.3(d), or by a proxy pursuant to Subsection 4.8.5. Each Lot in the Community has been allocated an equal vote in the Association that is known as the Lot's Allocated Interest for voting, or "vote", as described in Section 7.4.2 of the Declaration.

*4.8.2. Vote Conducted without a Meeting.* When a vote is conducted without a Meeting, Lot Owners may vote by Ballot pursuant to Subsection 4.8.6 below.

*4.8.3. Voting at Meetings of the Lot Owners.* At a Meeting of Lot Owners the following requirements apply:

(a) *Voting Methods.* Lot Owners or their proxies who are present in person may vote by voice vote, show of hands, standing, written Ballot, or any other method for determining the votes of Lot Owners, as designated by the person presiding at the Meeting.

(b) *Joint Owner Disputes.* If only one of several Co-Owners of a Lot is present, that Lot Owner is entitled to cast all the votes allocated to that Lot. If more than one of the Lot Owners are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of such Co-Owners. There is a majority agreement if any one of the Co-Owners casts the votes allocated to the Lot without protest being made promptly to the person presiding over the Meeting by any of the other Co-Owners of the Lot. An absence of majority agreement shall be treated as an abstention from voting on the part of the Lot and its Owners.

(c) *Plurality Vote Determines Outcome.* Unless a greater number or fraction of the votes in the Association is required under the Governing Law or the Declaration or Organizational Documents, a majority of the votes cast determines the outcome of any action of the Association. Cumulative voting is not permitted.

(d) *Use of Absentee Ballot.* Whenever proposals are to be voted upon or Board members are to be elected at a Meeting, a Lot Owner may vote by duly executed Absentee Ballot if: (i) The name of each candidate and the text of each proposal to be voted upon are set forth in a writing accompanying or contained in the Notice of Meeting; and (ii) A Ballot is provided by the Association for such purpose.

*4.8.4. Verification of Right to Vote by Absentee Ballot.* When a Lot Owner votes by Absentee Ballot, the Association must be able to verify that the Ballot is cast by the Lot Owner having the right to do so.

*4.8.5. Voting by Proxy.* The following requirements apply with respect to proxy voting:

- (a) Votes allocated to a Lot may be cast pursuant to a directed or undirected proxy duly executed by a Lot Owner in the same manner as provided in RCW 24.06.110.
- (b) If a Lot is owned by more than one Person, each Co-Owner of the Lot may vote or register protest to the casting of votes by the other Co-Owners of the Lot through a duly executed proxy; the absence of majority agreement among such CoOwners shall be treated as an abstention from voting on the part of the Lot and its CoOwners.
- (c) A Lot Owner may revoke a proxy given pursuant to this Subsection 4.8.5 only by actual Notice of revocation to the Secretary or the person presiding over a Meeting of the Association or by delivery of a subsequent proxy. The death or disability of a Lot Owner does not revoke a proxy given by the Lot Owner unless the person presiding over the Meeting has actual notice of the death or disability.
- (d) A proxy is void if it is not dated or purports to be revocable without Notice.
- (e) Unless stated otherwise in the proxy, a proxy terminates eleven months after its date of issuance.

*4.8.6. Conducting a Vote without a Meeting.* The Association may conduct a vote without a Meeting. In that event, the following requirements apply:

- (a) The Association must notify the Lot Owners that the vote will be taken by Ballot.
- (b) The Notice must state:
  - (i) The time and date by which a Ballot must be delivered to the Association to be counted, which may not be fewer than fourteen days after the date of the Notice, and which deadline may be extended in accordance with (g) of this Subsection;
  - (ii) The percent of votes necessary to meet the Quorum requirements;
  - (iii) The percent of votes necessary to approve each matter other than election of Board members; and
  - (iv) The time, date, and manner by which Lot Owners wishing to deliver information to all Lot Owners regarding the subject of the vote may do so.
- (c) The Association must deliver a Ballot to every Lot Owner with the Notice.

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

(e) A Ballot cast pursuant to this Subsection 4.8.6 may be revoked only by actual Notice to the Association of revocation. The death or disability of a Lot Owner does not revoke a Ballot unless the Association has actual notice of the death or disability prior to the date set forth in (b)(i) of this Subsection.

(f) Approval by Ballot pursuant to this Subsection is valid only if the number of votes cast by Ballot equals or exceeds the Quorum required to be present at a Meeting authorizing the action.

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

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

(i) The Association must give Notice to Lot Owners of any action taken pursuant to this Subsection within a reasonable time after the action is taken.

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

*4.8.7. Votes Allocated to Lot Owned by the Association.* In any vote of the Lot Owners, votes allocated to a Lot owned by the Association must be cast in the same proportion as the votes cast on the matter by Lot Owners other than the Association.

*4.8.8. Additional Procedures for Voting & Obtaining the Consent of Owners.* The Board may by resolution adopt additional procedures, not inconsistent herewith, to assist the Board in maintaining the integrity of the voting processes of the Association.

*4.9. Action by Members without a Meeting.* Any action required or permitted to be taken may be taken without a Meeting if all of the Members of the Association consent in Record such action. Such written consent or consents shall be filed with the Minutes of the proceedings of the Association.

*4.10. Minutes of Meetings Required.* Minutes of all Lot Owner Meetings must be maintained in a record. The decision on each matter voted upon at a Lot Owner Meeting must be recorded in the Minutes.

## **5. BOARD OF DIRECTORS.**

## *5.1. Management by Owners' Board, Qualifications.*

*5.1.1. Number of Directors.* The Board of Directors shall be comprised of seven (7) members elected by the Ownership. The number of Directors on the Board may be increased or decreased as provided in these Bylaws. Newly elected Board members shall take office following adjournment of the Meeting at which they were elected, whereupon the Board shall elect or appoint the Officers of the Association described in Article 6 hereof.

*5.1.2. Qualifications.* At least a majority of the Directors elected by the Lot Owners shall be Lot Owners, who must remain in Good Standing as a condition of holding office. The term "Lot Owner" in such context shall, pursuant to RCW 64.90.410(2)(d), be deemed to include any board member, officer, member, partner, or trustee of any person who is, either alone or in conjunction with another person or persons, a Lot Owner. Any Officer or Board member of the Association who would not be eligible to serve as such if he or she were not a director, officer, partner in, or trustee of such an entity is disqualified from continuing in office if he or she ceases to have any such affiliation with that entity, or if that entity would have been disqualified from continuing in such office as a natural person.

*5.1.3. Term.* A Director shall serve for a term of two (2) years, and until his or her successor is elected and takes office. Newly elected Board members shall take office following adjournment of the Meeting at which they were elected.

## *5.2. Meetings.*

*5.2.1. Annual Meeting.* An annual organizational Meeting of the Board of Directors may immediately follow the Annual Meeting of the Association, but in any event shall occur within 30 days after the Annual Meeting. No Notice shall be necessary to the newly elected Directors or to the Lot Owners in order legally to constitute such Meeting if the Annual Meeting is held immediately following the Annual Association Meeting and if a majority of the entire Board is present at the Board Meeting.

*5.2.2. Regular Meetings.* Regular Meetings of the Board of Directors shall be held at such times as shall be determined by the Board of Directors, but at least one Meeting should be held in each quarter of each fiscal year. Any lawful business may be transacted at a Regular Meeting at which a Quorum is present.

*5.2.3. Special Meetings.* Special Meetings of the Board of Directors may be called by the President and shall be called by the President or Secretary on the written request of at least two Directors.

*5.2.4. Location of Meetings.* After the Transition Meeting, all Board Meetings must be at the Community or at a place convenient to the Community unless the Lot Owners amend these Bylaws to vary the location of those Meetings.

*5.2.5. Notice of Board Meetings to Board Members & Lot Owners.* Notice of Regular Meetings shall be given by providing each Board member and the Lot Owners a written schedule of Regular Meetings adopted for the ensuing year at any time after the Annual Meeting and at least fourteen days prior to



the next succeeding Regular Meeting. Unless the Meeting is included in such schedule of Regular Meetings, or if the Meeting is called to deal with an emergency, the Secretary must provide Notice of each Board Meeting to each Board member and to the Lot Owners. The Notice must be given at least fourteen (14) days before the Meeting and must state the time, date, place, and Agenda of the Meeting. Notice may be provided by any manner permitted by RCW 64.90.515, the text of which appears in Declaration Section 19.

*5.2.6. Copies of Materials distributed before Meeting.* If any materials are distributed to the Board before the Meeting, the Board must make copies of those materials reasonably available to the Lot Owners, except that the Board need not make available copies of unapproved Minutes or materials that are to be considered in Executive Session.

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

*5.2.8. Conduct of Meeting.* The President shall preside at Meetings of the Board of Directors and the Secretary shall keep the Minutes of the proceedings. Following proof of Notice, or waiver thereof, and determination of the presence of a Quorum, any lawful business may be transacted, consistent with any Agenda required to accompany the Meeting.

*5.2.9. Electronic Participation Options for fewer than all Board Members.* Fewer than all Board members may participate in a Regular or Special Meeting by or conduct a Meeting through the use of any means of communication by which all Board members participating can hear each other during the Meeting. A Board member participating in a Meeting by these means is deemed to be present in person at the Meeting.

*5.2.10. Participation Option for Electronic Meeting by all Board Members.* Unless changed by amendment of these Bylaws following the Transition Meeting, the Board may meet by participation of all Board members by telephonic, video, or other conferencing process if:

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

(b) The process provides all Lot Owners the opportunity to hear or perceive the discussion and to comment as provided in Subsection 5.2.14 below.

*5.2.11. Voting by Directors – Proxy Voting Prohibited.* Each Director shall have one vote, which must be cast by such person during the Meeting. A Board member may not vote by proxy or by Absentee Ballot. The votes of a majority of the Directors present at a Meeting at which a Quorum is present shall constitute the decision or act of the Board of Directors. If less than a Quorum is present at a Meeting,

the majority of those present may recess the Meeting to a designated time and place. A recessed Meeting may be held as designated upon further Notice to the Directors and Lot Owners; when a Quorum is present any business may be transacted that might have been transacted at the Meeting as originally called.

*5.2.12. Assent of Director Presumed through Attendance.* A Board member who is present at a Board Meeting at which any action is taken is presumed to have assented to the action taken unless the Board member's dissent or abstention to such action is lodged with the person acting as the Secretary of the Meeting before adjournment of the Meeting or provided in a record to the Secretary of the Association immediately after adjournment of the Meeting. The right to dissent or abstain does not apply to a Board member who voted in favor of such action at the Meeting.

*5.2.13. Open Meetings and Executive Sessions.* The following requirements apply to Meetings of the Board of Directors and any Committees authorized to act for the Board:

(a) Open Meetings. Meetings must be open to the Lot Owners except during Executive Sessions, but the Board may expel or prohibit attendance by any person who, after warning by the chair of the Meeting, disrupts the Meeting. The Board and those Committees may hold an Executive Session only during a Regular or Special Meeting of the Board or a Committee. A final vote or action may not be taken during an Executive Session.

(b) Executive Sessions. An Executive Session may be held only to: (i) Consult with the Association's attorney concerning legal matters; (ii) Discuss existing or potential litigation or mediation, arbitration, or administrative proceedings; (iii) Discuss labor or personnel matters; (iv) 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 (v) 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. A motion to convene in closed Executive Session shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the Minutes. The Board shall restrict its consideration of matters during the closed portions of the Meeting to only those purposes specifically exempted and stated in the motion. No motion, or other action adopted, passed, or agreed to in closed session may become effective unless the Board, following the closed session, reconvenes in open session, reasonably identifies the motion or other action considered in Executive Session, and votes again in the open session on such motion or other action.

(c) Private Gatherings Do Not Constitute Meetings. For purposes of this Subsection, a gathering of members of the Board or Committees at which the Board or Committee members do not conduct Association business is not a Meeting of the Board or Committee. Board members and Committee members may not use incidental or social gatherings to evade the Open Meeting requirements of subpart (a) hereof.

*5.2.14. Lot Owners Have Opportunity to Comment.* At each Board Meeting, the Board must provide a reasonable opportunity for Lot Owners to comment regarding matters affecting the Community or the

Association.

*5.2.15. Action by Directors without a Meeting.* Instead of holding a Meeting, the Board may act by unanimous consent as documented in a Record by all its members. Actions taken by unanimous consent must be kept as a Record of the Association with the Meeting Minutes. After the Transition Meeting, the Board may act by unanimous consent only to undertake ministerial actions, actions subject to ratification by the Lot Owners, or to implement actions previously taken at a Meeting of the Board.

*5.2.16. Minutes of Meetings Required.* Minutes of all Lot Owner Meetings and Board Meetings, excluding Executive Sessions, must be maintained in a Record. The decision on each matter voted upon at a Board Meeting or Lot Owner Meeting must be recorded in the Minutes.

*5.2.17. Effects of Procedural Irregularity on Validity of Action.* Even if an action by the Board is not in compliance with the provisions hereof, it is valid unless set aside by a court. A challenge to the validity of an action of the Board for failure to comply with this Section 5.2 may not be brought more than ninety days after the Minutes of the Board of the Meeting at which the action was taken are approved or the Record of that action is distributed to Lot Owners, whichever is later.

### *5.3. Right of Lot Owners to Remove Directors.*

*5.3.1. Right to Remove Directors.* Lot Owners present in person, by proxy, or by Absentee Ballot at any Meeting of the Lot Owners at which a Quorum is present may remove any Board member, with or without cause, if the number of votes in favor of removal cast by Lot Owners entitled to vote for election of the Board member proposed to be removed is at least the lesser of (a) a majority of the votes in the Association held by such Lot Owners or (b) two-thirds of the votes cast by such Lot Owners at the Meeting, but:

(a) A Board member appointed under RCW 64.90.420(3) may be removed only by the Person that appointed that member; and

(b) The Lot Owners may not consider whether to remove a Board member at a Meeting of the Lot Owners unless that subject was listed in the Notice of the Meeting.

*5.3.2. Opportunity to Speak in Defense.* At any Meeting at which a vote to remove a Board member is to be taken, the Board member being considered for removal must have a reasonable opportunity to speak before the vote.

*5.3.3. Successor may be Elected Immediately.* At any Meeting at which a Board member is removed, the Lot Owners entitled to vote for the Board member may immediately elect a successor Board member.

*5.3.4. Circumstances Justifying Removal of Director without Owner Vote.* The Board may, without a Lot Owner vote, remove from the Board a Board member if (a) the Board member is delinquent in the payment of Assessments more than sixty days and (b) the Board member has not cured the delinquency within thirty days after receiving Notice of the Board's intent to remove the Board member.

#### *5.4. Vacancies.*

A vacancy on the Board of Directors caused by any reason, other than removal of a Director by a vote of the Association, may be filled by a vote of the majority of the remaining Directors, even though they may constitute less than a Quorum. Each person so selected shall serve for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of board members, and until his or her successor is takes office. A vacancy occurring on the Board of Directors by reason of an increase in the number of Directors constituting the entire Board of Directors shall be filled by the Association at an Annual Meeting or at a Special Meeting called for that purpose. A vacancy occurring on the Board of Directors by reason of the removal of a Director by a vote of the Association shall be filled by the Association at an Annual Meeting or at a Special Meeting called for that purpose unless the vacancy was filled at the Meeting of the Association at which the former Director was removed.

#### *5.5. Compensation.*

A Director shall not receive compensation from the Association for serving on the Board of Directors, but a Director may be reimbursed for reasonable mileage and out-of-pocket expenses incurred by him or her in the proper performance of his or her duties.

#### *5.6. Duty of Care.*

A Director shall perform the duties of a Director, including duties as a member of any Committee of the Board upon which the Director may serve, in good faith, in a manner such Director believes to be in the best interests of the Association, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. A Director's conduct shall also conform to any "Code of Conduct" or similar resolution adopted by the Board to govern the behavior of Directors. In performing the duties of a Director, a Director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by (a) one or more Officers or employees of the Association whom the Director reasonably believes to be reliable and competent in the matter presented; (b) legal counsel, public accountants, or other persons as to matters that the Director reasonably believes are within such person's professional or expert competence; or (c) a Committee of the Board upon which the Director does not serve, duly designated in accordance with a provision in the Bylaws, as to matters within its designated authority, which Committee the Director believes to merit confidence; so long as, in any such case, the Director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances, and without knowledge that would cause such reliance to be unwarranted.

#### *5.7. Duty of Loyalty - Conflict of Interest.*

The Directors shall exercise their powers and duties in good faith, in a manner the Director reasonably believes to be in the best interests of the Association. No contract or other transaction between the Association and any Director, or between the Association and any corporation, firm entity or association in which the Director is an officer or director or is financially or otherwise interested, shall be either void

or voidable because such Director is present at the Meeting of the Board of Directors that authorizes or approves the contract or transaction, if the fact of the common directorate or other interest is disclosed or known to the Board of Directors or a majority thereof and noted in the Minutes, and the Board of Directors authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for such purpose with the conflicted Director abstaining. Directors who have a financial interest or other personal interest in the transaction may be counted in determining the presence of a Quorum at any Meeting of the Board of Directors or Committee thereof that authorizes, approves or ratifies any contract or transaction, but such Directors must abstain from voting. If disclosures and decisions are not made as required by this Subsection, the contract or transaction may be voidable at the instance of the Association, and the affected Director may not be insulated from liability for any harm suffered by the Association as a result of entering into the contract or transaction.

#### *5.8. Right to Indemnification.*

The Association shall indemnify and hold harmless each of the Directors and Officers from and against all contractual liability to others arising out of contracts made by the Board of Directors or Officers on behalf of the Association or the Owners unless such contract was made in bad faith or contrary to the provisions of the Governing Documents. The Directors and Officers shall not be personally liable for contracts made by them on behalf of the Association. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that (s)he is or was a Director or Officer of the Association against amounts paid in settlement incurred by him or her in connection with such action, suit or proceeding if (s)he acted in good faith and in a manner (s)he reasonably believed to be in, or not opposed to, the best interests of the Community or the Association, to the fullest extent authorized by RCW 23B.08.320, and 23B.08.500 through 23B.08.600, and any amendments thereto, irrespective of the fact that the Association is not incorporated under RCW 23B. See RCW 23B.17.030.

#### *5.9. Board of Directors as Attorney-In-Fact.*

The Board of Directors is hereby irrevocably appointed as attorney-in-fact for the Owners of all of the Lots and for each of them, to manage, control and deal with the interests of such Owners as to all matters affecting the Community other than those as to which Owners' direct participation is required under the Governing Law, so as to permit the Board of Directors to fulfill all of its powers, functions and duties under the provisions of the Governing Law, the Declaration and these Bylaws, and to exercise all of its powers thereunder and to deal with the Property upon its destruction or condemnation and with the proceeds payable under any insurance policy benefitting the Association. This power shall include, but shall not be limited to, the power to grant easements and licenses from time to time affecting the Common Elements, telephone cables, gas lines, storm drains, underground conduits, or such other purposes related to the provision of public utilities or as may be considered necessary or appropriate by the Board of Directors for the preservation of the health, safety, convenience, or welfare of the Owners, or any of them. The foregoing shall be deemed to be a power coupled with an interest, and the acceptance by any person or entity of any interest in any Lot shall constitute an appointment of the Board of Directors as such attorney-in-fact. This power shall be in addition to any authority to grant easements or licenses given to the Board of Directors by the Governing Law, the Declaration or these

Bylaws.

*5.10. Committees of the Association.*

*5.10.1. General Statutory Provisions.* All Committees of the Association must be appointed by the Board. Committees authorized to exercise any power reserved to the Board must include at least two Board members who have exclusive voting power for that Committee. Committees that are not so composed may not exercise the authority of the Board and are advisory only.

*5.10.2. Specific Authority for Establishment of Committees.* The Board of Directors may by resolution establish and appoint the members of one or more Committees each of which shall consist of two or more Directors and, if desired, one or more Owners who are not members of the Board, which Committees, to the extent provided in such resolution, or in the Organizational Documents of the Association, shall have and exercise specifically-described portions of the authority of the Board of Directors in the management of the Association: Provided, that the Directors on any such Committee shall hold all the voting power on such Committee and no such Committee shall have the authority of the Board of Directors in reference to: (a) any matter as to which the Board itself has no authority under RCW 64.90.410(4), or (b) electing, appointing, or removing any member of any such Committee.

*5.10.3. Appeal Rights and Miscellaneous.* Any decision of any such Committee may be appealed to the Board of Directors by any Lot Owner affected by a decision of such Committee. The designation and appointment of any such Committee and the delegation thereto of authority shall not operate to relieve the Board of Directors or any individual Director of any responsibility imposed upon it or him or her by law.

*5.11. Advisory Committees.*

*5.11.1. General Provisions.* The Board of Directors may by resolution establish and appoint the members of one or more Committees intended to obtain information for and provide advice to the Board, but not to exercise any of the powers of the Board, with respect to such matters as from time to time may be deemed useful by the Board. The members of any such Committee may be Board members, or Lot Owners, or other persons whose participation is deemed useful by the Board, in its discretion.

*5.11.2. Optional Standing Advisory Committees.* The Board may designate the further functions and members of one or more of the following Advisory Committees: a Budget and Finance Committee, a Grounds and Maintenance Committee, and a Clubhouse Committee. If so constituted by specific resolution of the Board of Directors, any such Committee shall have one member whose role shall be that of liaison to the Board, who shall periodically provide reports to the Board of the activities of the Committee, at such times or with such frequency as may be established by resolution of the Board. Unless modified by the resolution of the Board of Directors which specifically establishes a Committee, such Committees will have the following functions and attributes:

(a) Budget and Finance Committee. The Budget and Finance Committee shall consist of persons designated by the Board, at least one of whom shall be a Director, each to serve for a term of one

year. The charter and purpose of the Committee shall be to assist the Board in developing the Association's annual budget, to work with the Grounds and Maintenance Committee to help the Board develop reasonable reserves for repairs, replacements and capital improvements, and to monitor trends in income and expenditures to ensure the integrity of the Association's financial status. The Budget and Finance Committee will work with the Association's Treasurer and Manager to ensure that the Board receives timely information regarding the financial status of the Association. The Board may by resolution prescribe additional duties for this Committee.

(b) Grounds and Maintenance Committee. The Grounds and Maintenance Committee shall consist of persons designated by the Board, at least one of whom shall be a Director, each to serve for a term of one year. The charter and purpose of the Committee shall be to monitor the condition and appearance of the Common Areas of the Planned Community, to help the Board determine routine maintenance and work schedules for portions of the Common Areas that require periodic attention, and to work with the Budget and Finance Committee to help the Board to develop reasonable reserves for repairs, replacements and capital improvements. The Board may by resolution prescribe additional duties for this Committee.

#### *5.12. Adoption of Rules and Regulations.*

*5.12.1. General Authority to Adopt Rules.* The Board has the power and authority to adopt Rules and regulations, subject to the provisions that follow.

*5.12.2. Rules Affecting Use, Occupancy, Behavior or Leasing.* The Board may adopt Rules that affect the use or occupancy of or behavior in Lots that may be used for residential purposes, only to: (a) Implement a provision of the Declaration; (b) Regulate any behavior in or occupancy of a Lot that violates the Declaration or adversely affects the use and enjoyment of other Lots or the Common Elements by other Occupants; and (c) Restrict the leasing of residential Lots to the extent those Rules are reasonably designed to meet underwriting requirements of institutional lenders that regularly make loans secured by first mortgages on Lots in comparable common interest communities or that regularly purchase those mortgages.

*5.12.3. Adopting or Amending Rules – Lot Owner Involvement.* The Board must, before adopting, amending, or repealing any Rule, give all Lot Owners Notice of: (a) Its intention to adopt, amend, or repeal a Rule and provide the text of the Rule or the proposed change; and (b) A date on which the Board will act on the proposed Rule or amendment after considering comments from Lot Owners. Following adoption, amendment, or repeal of a Rule, the Association must give Notice to the Lot Owners of its action and provide a copy of any new or revised Rule.

*5.12.4. Reasonableness. Every Rule must be reasonable.*

## 6. OFFICERS.

### 6.1. Principal Officers.

The principal Officers of the Association are a President, a Vice President, a Secretary and a Treasurer. All the principal Officers of the Association must be members of the Board of Directors, and unless excused, each Board member shall accept appointment to be an Officer of the Association. Two or more offices may be held by the same person, except the offices of President and Secretary. Presumptively, the Treasurer shall serve as Vice President if another person has not been appointed by the Board to serve as Vice President. The Board of Directors may, in its discretion, also elect or appoint such other Officers and assistant Officers as may be deemed necessary. Officers are charged, in general, with responsibility for implementing policy decisions formulated or adopted by the Board of Directors.

#### 6.2. Appointment of Officers.

The Officers of the Association shall be elected or appointed annually by the Board of Directors at its annual organizational Meeting.

#### 6.3. Removal of Officers by Board.

The Board may remove an Officer at any time, with or without cause. The removal must be recorded in the Board's Minutes of the Meeting. A successor may be elected at any Regular Meeting of the Board of Directors or at any Special Meeting called for that purpose.

#### 6.4. President.

The President is the chief executive Officer of the Association; (s)he shall preside at Meetings of the Association and shall serve as Chair of the Board of Directors; (s)he shall oversee the business of the Association such that the orders and resolutions of the Board of Directors may be carried into effect. The President shall be the Officer authorized and empowered to prepare, execute, certify, and record amendments to the Declaration and Plat on behalf of the Association.

#### 6.5. Vice President.

The Vice President shall perform the duties and exercise the powers of the President in the absence or disability of the President and shall perform such other duties as the Board of Directors may prescribe.

#### 6.6. Secretary.

The Secretary shall attend all Meetings of the Board of Directors and the Association, and shall record the voting and the Minutes of all proceedings in a book to be kept for that purpose. (S)he shall give Notice of Meetings of the Association and the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the President. The Secretary, with the assistance of the Treasurer, shall compile and keep current at the principal office of the Association all Records required by Section 8.4 hereof. The Secretary shall keep current and retain custody of the Minutes of the proceedings of the Association and the Board of Directors, and should consider maintaining a separate Book of Resolutions containing copies of resolutions of the Board intended to have ongoing or



permanent effect. An Assistant Secretary may perform the duties and exercise the powers of the Secretary in the absence or disability of the Secretary and/or shall perform such other duties as the Board of Directors may prescribe.

#### 6.7. Treasurer.

The Treasurer shall exercise control over all funds and securities of the Association except those which are placed under the control of a Manager; no Manager shall manage or exercise control over funds held in the Association's Reserve Accounts. The Treasurer or Manager shall deposit all funds of the Association in such federally insured financial institution(s) as may be designated by the Board of Directors. (S)he shall cause funds to be disbursed in accordance with the Association's Budget and as ordered by the Board of Directors. With the assistance of any accountant or Manager employed by the Association, the Treasurer shall cause the books of the Association to be kept on an accrual basis, with detailed accounts of the receipts and expenditures affecting the Association, in at least the detail required by Section 8.4 hereof. The books and supporting vouchers and Records shall be available for examination by the Owners, Mortgagees and their duly authorized agents or accountants or attorneys, during regular business hours in the manner prescribed by the Board of Directors. All books and Records shall be kept in accordance with generally accepted accounting principles and shall be sufficiently detailed to enable the Association to comply with the provisions of Article 9 of these Bylaws, which are mandatory under the Governing Law. An Assistant Treasurer may perform the duties and exercise the powers of the Treasurer in the absence or disability of the Treasurer and/or shall perform such other duties as the Board of Directors may prescribe.

#### 6.8. No Compensation of Officers.

No Officer shall receive any compensation from the Association for acting as such unless such compensation is approved by a vote of Owners at a Meeting of the Association that is duly recorded in the Minutes of the Meeting and unless the Association properly reports such compensation annually to the IRS and any other taxing authority with jurisdiction. An Officer shall be reimbursed for reasonable out-of-pocket expenses incurred in the performance of duties on behalf of the Association.

#### 6.9. Liability of Officers and Indemnification.

See Sections 5.6, 5.7 and 5.8 of these Bylaws, which also apply to the Association's Officers.

### 7. ENFORCEMENT OF GOVERNING DOCUMENTS.

#### 7.1. Authority of the Board.

The Board of Directors shall have primary responsibility for maintaining and enforcing compliance with the Governing Documents. Without limiting the authority and powers conferred upon the Board by the Governing Law, the Board shall have the power and authority specified in this Section 7 of these Bylaws.

#### 7.2. No Abatement of Violations.

No violation or breach of any provision of the Governing Documents or the Governing Law shall give the Association the right to enter a Lot or any Limited Common Element in which, or as to which, a violation or breach exists or may exist, except in the case of a bona fide emergency caused by such violation, and provided that such entry is otherwise conducted in accordance with the provisions of Section 8.4 of the Declaration. FURTHER PROVIDED, that this remedy shall not be utilized when a breach of the peace may ensue or if any items of construction within the Lot or any of the Common Elements will be altered or demolished.

### 7.3. Legal Proceedings.

7.3.1. General Provisions. Failure to comply with any of the terms of the Governing Documents shall be grounds for legal relief, including without limitation, actions to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of Assessments, any other relief provided for in these Bylaws or any combination thereof and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Association through its Board of Directors or by its Manager, and shall not constitute an election of remedies. 7.3.2. Notice to Lot Owners Required. (i) The Association must comply with chapter 64.50 RCW, if applicable, before instituting any proceeding described in chapter 64.50 RCW in connection with construction defects; and (ii) The Board must promptly provide Notice to the Lot Owners of any legal proceeding in which the Association is a party other than proceedings involving enforcement of Governing Documents or to recover unpaid Assessments or other sums due the Association.

7.3.3. Alternative Dispute Resolution Authorized or Required. See Section 7.9 hereof.

7.3.4. Lot Owners Retain Rights to Legal Proceedings. The rights of the Association to pursue legal proceedings or other remedies available to the Association shall not deprive an aggrieved Lot Owner of any rights to pursue legal proceedings on such Owner's own behalf.

### 7.4. Costs and Attorney's 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 such collection activities result in suit being commenced or prosecuted to judgment. In addition, the Association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment. In any other proceeding arising out of an alleged default by an Owner under terms of the Governing Documents, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be determined by the court. In the event that the prevailing party is the Association, the costs and attorney's fees so awarded shall constitute a Specially Allocated Assessment against the Owner's Lot.

### 7.5. Late Charges and Interest.

The Board may impose and collect reasonable late charges to encourage prompt payment of Assessments. Until changed by resolution of the Board with advice of counsel, the Board may collect a late charge: (a) when any Assessment or installment thereof is received by the Association more than ten (10) days beyond the due date of such Assessment or installment; (b) in an amount not to exceed the greater of \$50.00 or ten percent (10%) of the amount of said Assessment or installment. A delinquent Assessment shall bear interest from the date on which it was due at the rate of 12% per annum or the maximum rate permitted under RCW 19.52.020 on the date on which the Assessment was due.

#### 7.6. Fines or other Charges against Owners and/or Tenants.

7.6.1. Fines against Owners and/or Tenants. The Board may impose and collect reasonable fines against Owners or Tenants for violations of the Governing Law or the Governing Documents. PROVIDED, however, that no fine may be levied unless (1) the Board has by resolution established a schedule of fines that has been furnished to all Owners prior to the alleged violation, and (2) the allegedly offending party has been provided with Notice of and an opportunity to be heard at a hearing to be conducted pursuant to Section 7.10 of these Bylaws. If the allegedly offending party is the Tenant, Notice shall be provided to both the Tenant and the Owner. Until changed by resolution of the Board with advice of counsel, the amount of any fine so assessed shall not exceed the greater of one hundred dollars or 25% of the regular monthly Common Expense Assessment against the affected Lot for a single offense, or twenty dollars or 5% of the regular monthly Common Expense Assessment against the affected Lot per diem for any offense of a continuing nature.

7.6.2. Other Charges imposed on Owners. In the event that the Board seeks to recover from an Owner any expense of the Association caused by the negligence or willful misconduct or gross negligence of such Owner under Declaration Sections 10.8.4 or 10.8.5 respectively, the Association shall provide Notice to such Owner of a hearing to be held under the provisions of Section 7.10 hereof prior to assessing such expense against the Owner's Lot.

7.6.3. Specially Allocated Assessments. A fine or other charge imposed under the provisions of Section 7.10 hereof shall be treated as a Specially Allocated Assessment against the Owner's Lot.

#### 7.7. No Waiver of Rights.

The failure of the Association, the Board of Directors or of an Owner to enforce any right, provision, covenant or condition that may be granted by the Governing Documents or the Governing Law, shall not constitute a waiver of the right of the Association, the Board or the Owner to enforce such right, provision, covenant or condition in the future.

#### 7.8. Remedies Cumulative.

A suit to recover a money judgment for unpaid Assessments may be maintained without foreclosing or waiving the lien securing the same. All rights, remedies and privileges granted to the Association, the Board of Directors or any Owner pursuant to any term, provision, covenant or condition of the Governing Documents or the Governing Law shall be deemed to be cumulative, and the exercise of any

one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other rights or privileges as may be granted to such party by the Governing Documents or the Governing Law or at law or in equity.

#### 7.9. Alternative Forms of Dispute Resolution Authorized.

Pursuant to RCW 64.90.685(2), parties to a dispute, including the Association, the Declarant or any Lot Owner, arising under the Governing Law or the Governing Documents may agree at any time to resolve the dispute by any form of binding or nonbinding alternative dispute resolution. Further, the Board may require, pursuant to RCW 64.90.405(2)(w), that disputes between the Association and Lot Owners or between two or more Lot Owners regarding the Community, other than those governed by chapter 64.50 RCW, be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding.

#### 7.10. Pre-Sanction Notice and Hearing Procedures.

In any cases under Sections 7.6 of these Bylaws, where a fine or Assessment for damage or harm from negligence or misconduct is proposed, or where the Board proposes to suspend an Owner's Membership in Good Standing status, or in any other case where the Board, in its discretion, deems necessary or advisable, an allegedly offending party shall be afforded the opportunity for a hearing by the Board to determine the appropriateness of the action proposed to be taken, in accordance with the following procedures:

7.10.1. Notice of Violation. A written Notice of Violation shall be prepared and hand-delivered or mailed by registered or certified mail, return receipt requested, to such Owner and, if a Tenant is involved, also to such Tenant, at his, her or their last known mailing address(es). The Notice of Violation shall include:

- (a) A statement, in reasonable detail, of the factual nature of any alleged violations, along with the Section number of any portion of the Governing Documents allegedly violated;
- (b) The nature of the action proposed to be taken by the Association, including the dollar amount of any fine that could be imposed under the Schedule of Fines;
- (c) A date by which the party must mail or deliver a written Request For Hearing to the Association to contest the imposition of the proposed sanction (which date must be not less than 14 days following the delivery of the Notice of Violation) along with the address to which such Request For Hearing must be sent; and
- (d) A date that is not less than 30 days following the delivery of the Notice of Violation, upon which the sanction would be imposed in the event that no hearing is requested by the party.

7.10.2. Form and Contents of Request for Hearing. The Request for Hearing shall be made in a Record, shall be signed by or on behalf of the affected party, and shall contain a brief statement of any reasons known to the party that the proposed sanction should not be imposed.

7.10.3. Establishment of a Hearing Date. In the event that a hearing is requested, no sanction may be imposed until the requested hearing is held or the affected party defaults or fails to attend the hearing. Upon receipt of a Request for Hearing, a Notice of Hearing shall be prepared and hand-delivered, or mailed to such party by registered or certified mail, return receipt requested. The Notice of Hearing shall include the location, date and time of the hearing.

7.10.4. Hearing Procedures. At the hearing, the President or his or her designee, shall preside. The hearing shall be conducted generally in accordance with the requirements for Meetings of the Board as provided in Section 5.3 of these Bylaws. Any Director who feels that it would be impossible to be fair, objective and unbiased in the proceedings shall disqualify himself or herself from voting prior to the commencement of the hearing. Both the party who is the subject of the hearing and the Association may be represented by counsel. Minutes shall be taken and, if requested by either the Association or the Owner, the hearing may be recorded either stenographically, or by audio or video tape or equivalent means. After receiving proof of the giving of the two Notices required by Sections 7.10.1 and 7.10.3 of these Bylaws, factual evidence in support of the allegation that a violation has occurred will be received. Live testimony from witnesses with personal knowledge shall be received where practicable. Affidavits or declarations in the form required by RCW 9A.72.085 may, however, be received in lieu of live testimony as the interests of justice may require, and formal adherence to legal rules of evidence shall not be required. Thereafter, evidence from the affected party, in defense or toward mitigation, shall be received. Any rebutting evidence may then be received. Legible copies of all documentary evidence received shall be attached to the Minutes of the hearing. At the close of the evidence, both sides shall have the opportunity for legal argument.

7.10.5. Default. In the event that the affected party fails to appear at the hearing, (s)he may be deemed to be in default, and upon receipt of proof of delivery of both of the Notices required under Sections 7.10.1 and 7.10.3 of these Bylaws, the Board may render its decision forthwith.

7.10.6. Continuances. In its discretion, if the interests of justice appear to require, the Board may continue the hearing at the request of any affected party, including the Association, for such reasonable period not to exceed thirty (30) days, as may be deemed necessary.

7.10.7. Decision. The Board may issue its decision at the close of the hearing, or may adjourn and render its decision at a later date, not to exceed thirty (30) days following the date of the hearing or any continuation thereof. The decision shall be in a Record, but need not contain detailed findings of fact or conclusions of law, and shall be delivered or mailed to each affected party and his or her attorney on the date of issuance. The original copy of the decision shall be dated and signed by the presiding Officer, and filed among the Minutes of the Board of Directors.

7.10.8. Assurance of Voluntary Compliance in Lieu of Hearing. The Board may, with or without holding a hearing and at any time prior to rendering its Decision, accept from the affected party an Assurance of Voluntary Compliance in lieu of further proceedings, subject to such terms and conditions as may appear reasonable.

## 8. MANAGEMENT OF COMMUNITY AND ASSOCIATION.

### 8.1. Management by Board of Directors.

The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by the Governing Law or the Governing Documents required to be exercised or accomplished by the Association through a vote of the Owners. The Board of Directors is charged with the responsibility for formulating and adopting all policy decisions affecting the Community.

### 8.2. Professional Management.

8.2.1. Manager. The Board of Directors should employ or otherwise engage the services of a "Managing Agent" or "Manager" (which terms shall be synonymous herein) at a compensation to be established by the Board.

(a) Requirements. Any Manager shall be a bona fide business enterprise that manages common interest residential communities. Such firm or its principals shall have a minimum of two years' experience in real estate community management and shall employ persons possessing a high level of competence in the technical skills necessary to proper management of the Association and the common property of the Community. The Manager must be able to advise the Board of Directors regarding the corporate and administrative operations of the Association and shall employ or retain personnel knowledgeable in the areas of common interest community insurance and accounting, contract negotiations, and maintenance of corporate records.

(b) Duties. The Manager shall perform such duties and services as the Board of Directors shall direct. The Manager shall perform all such duties and services relating to the management of the Property, maintaining the Association's Records and finances, observing the rights of Mortgagees, administering reserve funds and any and all other management obligations, in compliance with the provisions of the Declaration and these Bylaws.

8.2.2. Management Standards. The Board of Directors shall impose appropriate standards of performance upon the Manager. Unless the Manager is instructed otherwise by the Board of Directors, the following minimum standards apply:

(a) the accrual method of accounting shall be employed, and expenses required by the Declaration or these Bylaws to be charged to one or more, but fewer than all Owners, shall be accounted for separately as required under Subsection 8.4.1 hereof;

(b) two or more persons shall be responsible for handling cash to maintain adequate financial control procedures;

(c) cash accounts of the Association shall be maintained in insured accounts maintained in the name of the Association in financial institutions located within the State of Washington, and shall not be

commingled with accounts of any other person or party;

(d) the bank in which the Association's funds are deposited shall send copies of the monthly bank statements directly to the Association and not to the Manager;

(e) no remuneration shall be accepted by the Manager from vendors, independent contractors or others providing goods or services to the Association whether in the form of commissions, finders fees, service fees or otherwise; any discounts received shall benefit the Association;

(f) any financial or other interest that the Manager may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(g) a financial report shall be prepared for the Association at least quarterly containing the information required under Section 8.4.1 of these Bylaws;

(h) the Manager shall maintain separate records and bank accounts for each condominium association or other common interest community owners' association that uses its services, and shall not have the authority to draw checks upon or to transfer funds from this Association's reserve accounts, except as provided in Section 8.3.3 hereof; and

(i) the Manager shall assist the Board in preparation of its Annual Budget for operating expenses and reserves, and shall periodically advise the Board on the adequacy of the Association's reserves for repair, renovation and replacement of the Common Elements and other capital expenditures.

8.2.3. Scope of Delegation. The Board of Directors may delegate to the Managing Agent all of the powers granted to the Board of Directors of the Association by law EXCEPT the powers to amend the Governing Documents, to make Assessments against Lot Owners or determine the manner for doing so, to open bank accounts for the Association or to designate the signatories thereon, to borrow money on behalf of the Association, or to acquire any real property, or any personal property with a value in excess of Five Hundred Dollars, in absence of a special resolution of the Board.

8.2.4. Management Agreement. In the event that the Board enters into a management agreement with a professional Manager or Managing Agent, said agreement shall be in writing, shall contain reasonable terms and conditions for management and compensation therefor, and shall contain provisions authorizing termination of the agreement without penalty by the Association upon sixty (60) days' written Notice for convenience or thirty (30) days' written Notice for cause, and shall not exceed a term of one (1) year, renewable by agreement of the parties for successive one-year periods. No management agreement shall contain provisions that ignore or contradict the language of this Subsection – any such provisions are void.

8.2.5. Indemnity. Any Manager engaged by the Association shall agree to indemnify the Association for loss or damage resulting from the sole or concurrent negligence or wrongful conduct of the Manager.

8.3. Bank Accounts for Operations and Reserves.

8.3.1. Insured Accounts - Maintained Within State. The Board of Directors shall promptly deposit all sums collected for operating expenses or reserves in insured accounts with reputable financial institutions. Accounts in the name of the Association over which a Managing Agent has any control must be maintained in a financial institution located in the State of Washington.

8.3.2. Commingling Prohibited. Amounts collected by the Board of Directors as Assessments against the Lots for operating expenses or Reserves shall not be commingled with funds of any other common interest community owners' association, nor with the funds of any Manager or any other person, or be kept in any trust account or custodial account in the name of any trustee or custodian.

8.3.3. Reserve Accounts. Any reserve funds shall be kept in one or more segregated, interest bearing accounts, and any transaction affecting such funds, including the issuance of checks, shall require the signatures of at least two persons who are Officers or Directors of the Association. Deposits may be made by the Manager into the reserve account, but withdrawals may not be made by a Manager.

#### 8.4. Association Records.

8.4.1. Financial Records. The Treasurer, with the assistance of the Association's Manager and accountant, shall keep financial Records in accordance with generally accepted accounting principles, sufficiently detailed to enable the Association to fully satisfy its obligations to provide standard "resale certificates" to prospective purchasers of Lots in the Community, as required by the Governing Law and to comply with Section 9.1 of these Bylaws. The Association must establish and maintain its accounts and Records in a manner that will enable it to credit Assessments for Common Expenses and Specially Allocated Expenses, including allocations to reserves, and other income to the Association, and to charge expenditures to the accounts of the appropriate Lots in accordance with the provisions of the Declaration. At minimum, such Records shall include:

(a) an "income statement" reflecting all income and expense activity for the preceding quarter on an accrual basis;

(b) an "account activity statement" reflecting all receipt and disbursement activity for the preceding quarter on a cash basis;

(c) an "account status report" reflecting the status of all accounts in a "budget versus actual" format;

(d) a "balance sheet" reflecting the financial condition of the Association on an unaudited accrual basis;

(e) a "budget report" reflecting any actual or pending obligations that are in excess of budgeted amounts by an amount exceeding the operating reserve or ten percent of a major budget category (as distinct from a specific line item in an expanded chart of accounts); and

(f) a "delinquency report" listing all Owners who are delinquent in paying Common Expense Assessments and describing the status of any actions to collect such Assessments.



8.4.2. Other Records. The Secretary, with the assistance of the Association's Manager, shall compile and maintain the following additional Records, documents and things of the Association:

- (a) The 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;
- (b) Minutes of all Meetings of its Lot Owners and Board other than Executive Sessions, a Record of all actions taken by the Lot Owners or Board without a Meeting, a Record of all actions taken by a Committee in place of the Board on behalf of the Association and, if applicable, the separate Book of Resolutions described in Section 6.6 hereof;
- (c) The names of current Lot Owners, addresses used by the Association to communicate with them including physical addresses, telephone numbers, emergency contact information and e-mail addresses, if known, and the number of votes allocated to each Lot;
- (d) Its original or restated Declaration, Plat Map, Organizational Documents, all amendments to the Declaration, Plat Map and Organizational Documents, and all Rules currently in effect;
- (e) All financial statements and tax returns of the Association for the past seven years;
- (f) A list of the names and addresses of its current Board members and Officers;
- (g) Its most recent annual report delivered to the Secretary of State, if any;
- (h) Financial and other Records sufficiently detailed to enable the Association to comply with RCW 64.90.640;
- (i) Copies of contracts, including leases, to which it is or was a party within the last seven years;
- (j) Materials relied upon by the Board or any Committee to approve or deny any requests for design or architectural approval for a period of seven years after the decision is made;
- (k) Materials relied upon by the Board or any Committee concerning a decision to enforce the Governing Documents for a period of seven years after the decision is made;
- (l) Copies of insurance policies under which the Association is a named insured;
- (m) Any current warranties provided to the Association;

(n) Copies of all Notices provided to Lot Owners or the Association in accordance with the Governing Law or the Governing Documents; and

(o) Ballots, proxies, Absentee Ballots, and other Records related to voting by Lot Owners for one year after the election, action, or vote to which they relate.

(p) An inventory of all tangible personal property of the Association;

(q) A copy of the Declarant's plans and specifications utilized in the construction of the Community, if available;

(r) A roster of all known tenants and their respective addresses, telephone numbers, emergency contact information and e-mail addresses, if known;

(s) The Association's current Reserve Study and all updates thereto;

(t) A roster of all Eligible Mortgagees and their addresses, telephone numbers and e-mail addresses, if known.

8.4.3. Ownership of Records, Inspection. Subject to the provisions of Subsections 8.4.4 and 8.4.5, all Records required to be retained by the Association must be made available for examination and copying by all Lot Owners, holders of mortgages on the Lots, and their respective authorized agents as follows, unless agreed otherwise: (a) During reasonable business hours or at a mutually convenient time and location; and (b) At the offices of the Association or its Managing Agent.

8.4.4. Exemptions from Disclosure. Records retained by the 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 or 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 the Managing Agent or other agent 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 of the requesting Lot Owner;
- (i) Unlisted telephone number or electronic address of any Lot Owner or resident;
- (j) Security access information provided to the Association for emergency purposes; or
- (k) Agreements that for good cause prohibit disclosure to the Members.

8.4.5. Additional Requirements Associated with Disclosure. (a) The Association may charge a reasonable fee for producing and providing copies of any Records under this Section 8.4 and for supervising the Lot Owner's inspection; (b) A right to copy Records under this Section includes the right to receive copies by photocopying or other means, including through an electronic transmission, if available, upon request by the Lot Owner. (c) The Association is not obligated to compile or synthesize information; and (d) Information provided pursuant to this Section may not be used for commercial purposes.

8.4.6. Records in Possession of Manager. The Association's Managing Agent must deliver all of the Association's original books and Records to the Association immediately upon termination of its management relationship with the Association, or upon such other demand as is made by the Board. A Managing Agent may keep copies of the Association's Records at its own expense.

#### 8.5. Audit of Records and Reconciliation of Accounts Required Annually.

8.5.1. Annual Audit. The Association must prepare, or cause to be prepared, at least annually, a financial statement of the Association in accordance with accrual based accounting practices. The financial statements of associations with annual Assessments of fifty thousand dollars or more must be audited at least annually by a certified public accountant. In the case of an association with annual Assessments of less than fifty thousand dollars, an Annual Audit is also required but may be waived annually by Lot Owners, other than the Declarant, of Lots to which a majority of the votes in the Association are allocated, excluding the votes allocated to Lots owned by the Declarant. In the event the Lot Owners lawfully vote to waive the Annual Audit, the Association may employ an accountant or a Committee of the Members to conduct a review of the Association's financial Records.

8.5.2. Annual Reconciliation of Accounts. To assure that the Lot Owners are correctly assessed for the actual expenses of the Association, the accounts of the Association must be reconciled at least annually unless the Board determines that a reconciliation would not result in a material savings to any Lot Owner.

### 9. RESALE OF LOTS.

9.1. Resales of Lots – Obligation to Furnish Resale Certificate.

9.1.1. Resale of Lot by Lot Owner. Except in the case of a sale when delivery of a public offering statement is required, or unless exempt under RCW 64.90.600(2), a Lot Owner must furnish to a purchaser before execution of any contract for sale of a Lot, or otherwise before conveyance, a resale certificate, signed by an Officer or authorized agent of the Association and based on the books and records of the Association and the actual knowledge of the person signing the certificate, containing all information required under RCW 64.90.640(1).

9.1.2. Association's Obligations. The Association, within ten days after a request by a Lot Owner, and subject to the payment of any fees described below in Section 9.2 hereof, must furnish a resale certificate signed by an Officer or authorized agent of the Association and containing the information necessary to enable the Lot Owner to comply with this Section 9.1. A Lot Owner is not liable to the purchaser for any erroneous information provided by the Association that is included in the certificate.

9.1.3. Liability for Errors. An Owner providing a certificate pursuant to Subsection 9.1.1 is not liable to the purchaser for any erroneous information provided by the Association and included in the certificate.

9.1.4. Limitation of Parties' Liability. A purchaser is not liable for any unpaid Assessment or fee greater than the amount set forth in the certificate prepared by the Association. An Owner is not liable to a purchaser for the failure or delay of the Association to provide the certificate in a timely manner, but the purchaser's contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever occurs first.

## 9.2. Fee for Preparation of Certificate.

The Board of Directors may impose a reasonable fee, not to exceed \$275.00 or any higher amount permitted by law as provided in Section 13.5 hereof, to furnish all the information required in accordance with Section 9.1.1, and payment thereof shall be a prerequisite to the issuance of any such statement. The Association may charge a Lot Owner a nominal fee not to exceed one hundred dollars for updating a resale certificate within six months of the Lot Owner's initial request.

## 10. AMENDMENT OF BYLAWS.

### 10.1. Amendment of Bylaws.

Amendments to the Bylaws may be adopted by the vote of at least two-thirds of the Owners present, in person or by proxy, at a duly constituted Meeting of the Association at which a Quorum is present, or without any Meeting if all Owners have been duly notified and Owners holding at least a majority of the total votes in the Association consent in writing to such amendment. All proposed amendments shall be submitted to the Owners for consideration in a Record. Amendments may be proposed by the Board of Directors or by petition signed by Owners holding at least forty percent (40%) of the votes in the Association.

## 10.2. Consent of Mortgagees.

No amendment to these Bylaws, the object of which is to change any of the rights, obligations or duties of the Association or Owners as to any matters for which the consent of any Mortgagee is required under Article XV of the Declaration, shall be valid absent the consent of such Mortgagees as may be required thereby.

## 11. NOTICE.

### 11.1. Manner of Notice.

Notice to Owners shall be provided in the manner described in Section 4.7.3 hereof. Notice of Directors' Meetings shall be given as prescribed in Section 5.3.5 hereof. Eligible Mortgagees may be entitled to Notice by certified or registered mail pursuant to Schedule 15.2(d) to Exhibit D to the Declaration.

### 11.2. Waiver of Notice.

Whenever any Notice is required to be given under the provisions of the Governing Law, the Declaration or these Bylaws, a Waiver thereof, in a Record signed by the person or persons entitled to such Notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto pursuant to RCW 24.06.505.

## 12. MISCELLANEOUS.

### 12.1. Compliance with Law.

These Bylaws are set forth in compliance with the Governing Law, the Corporation Law and the Declaration.

### 12.2. Severability.

All provisions of the Bylaws are severable. If any provision of these Bylaws or of the Governing Documents, or its application to any person or circumstances, is held invalid, the remainder of the affected document or application to other persons or circumstances is not affected.

### 12.3. Captions.

The captions (Section headings) of these Bylaws are for convenience only and are not a part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

### 12.4. Gender, Number.

Whenever in these Bylaws the context so permits, the use of the singular shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

12.5. Adjustment of Dollar Amounts.

From time to time the dollar amount specified in Subsection 9.2 hereof must change, as provided in RCW 64.90.065(1), according to and to the extent of changes in the consumer price index for urban wage earners and clerical workers: U.S. city average, all items 1967 = 100, compiled by the bureau of labor statistics, United States department of labor, (the "index"). The index for December 1979, which was 230, is the reference base index. Such dollar amount must change on July 1st of each year if the percentage of change, calculated to the nearest whole percentage point, between the index at the end of the preceding year and the reference base index, is ten percent or more, but: (a) The portion of the percentage change in the index in excess of a multiple of ten percent must be disregarded and the dollar amount may only change in multiples of ten percent of the amount appearing in the Governing Law on the effective date of this Section 13.5; (b) the dollar amount must not change if the amount required under this Section is that currently in effect pursuant to the Governing Law as a result of earlier application of this Section 13; and (c) the dollar amount must not be reduced below the amount appearing in RCW 64.90.065 as of July 1, 2018.

[signature on following page]

IN WITNESS WHEREOF, Sunday Harbor Community Association, a Washington Nonprofit Miscellaneous and Mutual corporation, has caused this instrument to be adopted as the Association's Bylaws by resolution of its Board of Directors, as attested by its Secretary this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

ATTEST:

\_\_\_\_\_ Secretary

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## ARTICLE I INITIAL MATTERS

### 1. INITIAL MATTERS – PURPOSES OF COVENANTS. 1.1. Name and Type of the Community and its Association.

The name of the Community is Sunday Harbor. The Community is a Plat Community, as defined in the Governing Law. The Community's Association, described with greater particularity in Section 7.1 hereof, is a Washington Nonprofit Miscellaneous and Mutual Corporation known as Sunday Harbor Community Association. 1.2. Identification of Original Declaration and Prior Amendments.

A certain declaration of Restrictions, Easements and Reservations for (the "Covenants") for Sunday Harbor (the "Community") in Whatcom County, Washington, was recorded by its Declarant at Whatcom County Auditor's File No. 1063183. The Covenants were previously amended by document recorded at Whatcom County Auditor's File No. 1189905.

### 1.3. Reference to Plat Map & Legal Description of Property Included in Community.

1.3.1. Reference to Plat Map. The subdivision plat map showing the location and dimensions of various lots and/or tracts within the Property, together with other necessary information, together with any and all amendments thereto, are hereinafter referred collectively to as the "Plat"; the Plat is recorded at Volume 10 of Plats, page 22, in the Auditor's Office of Whatcom County, Washington.

1.3.2. Legal Description of Real Property Included in the Community. The real property included within the Community consists of the following described Lots and/or tracts:

Lots 1-112, inclusive, and Tract A inclusive, Plat of Sunday Harbor, as per the Map thereof recorded in Volume 10 of Plats, Page 22, records of Whatcom County, Washington. 1.4. Purposes of the Amendment.

1.4.1. General Purpose of Plat. The original Covenants for Sunday Harbor were recorded many years ago, at a time when the character of the Sunday Harbor Community and its surrounding areas were quite different from the circumstances prevailing now. This Amendment is intended to restore relevance and certainty to the covenants governing the uses and purposes of the property within the Plat of Sunday Harbor and to adopt the Washington Uniform Common Interest Ownership Act, RCW Chap. 64.90. It is intended that the covenants, conditions, restrictions, and plan hereinafter set forth, shall be binding upon all real property within Sunday Harbor (known herein as the "Property") and upon each Lot or parcel therein, and upon their respective Owners and their family members, heirs, personal representatives, tenants, licensees, successors and assigns, through all successive transfers of a Lot or of any other part of the Property, irrespective of whether specifically referred to in deeds, contracts or security instruments, and regardless of any subsequent forfeitures, foreclosures, or sales of Lots under security instruments, or of any forfeitures, foreclosures, or sales instituted for nonpayment of government tax, levy or assessment of any kind.

1.4.2. Covenants are Legally Binding. The covenants, conditions, restrictions, reservations, including

without limitation the statutory lien for Assessments described at Subsection 10.16 hereof, that may be foreclosed by the Association nonjudicially under the Power of Sale granted herein, are binding upon all real property within the Community and upon each such Lot therein as a parcel of realty and upon its Owners and their heirs, personal representatives, family members and other Occupants, guests, invitees, tenants, licensees, successors and assigns, through all successive transfers of a Lot or of any other part of the Property, irrespective of whether specifically referred to in deeds, contracts or security instruments, and regardless of any subsequent forfeitures, foreclosures, or sales of Lots under security instruments, or of any forfeitures, foreclosures, or sales instituted for nonpayment of government tax, levy or assessment of any kind.

1.4.3. Specific Purpose – Governance of Community for Benefit of Lot Owners. The specific purpose of this Declaration of Covenants is two-fold: (1) to adopt the provisions of the Washington Uniform Common Interest Ownership Act, RCW Chap. 64.90; and (2) to develop and maintain an effective governance structure for the Community, consistent with the terms of the Governing Law, to facilitate the perpetual existence of the Community so that goods and services essential to the Upkeep of common property and to the well-being of the Occupants of the Community may be assured. The Community shall be governed in perpetuity by the community association described at Section 7.1 of this Declaration of Covenants.

1.4.4. Statement of Compliance; Effective Date of Amendment. Pursuant to Article V, subsection 4, of the Covenants, the Covenants may be amended by the written agreement of sixty (60%) percent of the Owners of Lots in the Community. The Association having obtained the required agreement of Owners, the Association now adopts this Amended and Restated Declaration of Covenants for the Community, intending and declaring that the provisions of this document shall entirely supersede the original Covenants as to all events and circumstances occurring after the date of the recordation of this Amendment, which shall be deemed to be the effective date hereof.

## ARTICLE II DEFINITIONS

### 2. DEFINITIONS.

2.1. "Allocated Interest" means the Common Expense liability and votes in the Association allocated to each Lot pursuant to RCW 64.90.235 and, if so provided in Section 5.3 hereof, also an undivided interest in the Common Elements. See Sections 5.3, 7.4.2 and 10.6 of this Declaration.

2.2. "Assessment" means all sums chargeable by the Association against a Lot including, without limitation: (a) Regular and Special Assessments for Common Expenses, and Specially Allocated Assessments for other expenses, charges, or fines imposed and levied by the Association; (b) interest and late charges on any delinquent account; and (c) all costs of collection, including reasonable attorneys' fees, incurred by the Association in connection with the collection of a delinquent Owner's account.

2.3. "Association" or "Lot Owners' Association" means the property owners association that is described

in Article VII of this Declaration.

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

2.5. "Board" means the body with primary authority to manage the affairs of the Association, as provided in RCW 64.90.410(1).

2.6. "Common Elements" means all portions of the Community other than the Lots. The term "General Common Elements" is sometimes used herein to describe Common Elements that are not or have not yet been allocated as Limited Common Elements.

2.7. "Common Expense" means any expense of the Association, including allocations to Reserves, allocated to all of the Lot Owners in accordance with common expense liability. The term "General Common Expenses" is sometimes used herein to describe Common Expenses other than Specially Allocated Expenses.

2.8. "Common Expense liability" means the liability for Common Expenses allocated to each Lot pursuant to the Governing Law and Section 10.6 of this Declaration.

2.9. "Community" means all the Property depicted within the Plat, along with all the improvements constructed therein, and all other institutions and things serving the Owners of Lots therein governed by the Association.

2.10. "Declarant" means the entity or individual(s) which were described as the "owners" in the original Declaration.

2.11. "Declarant control" means the right of the Declarant to control the Community under the original Covenants. The period of Declarant Control has expired.

2.12. "Declaration" means this document, which facilitates the creation of the Community by setting forth the information required by Governing Law, and any amendments to this document.

2.13. "Development Rights" means any right or combination of rights reserved by the Declarant in the Declaration: (a) to add real property or improvements to the Community; (b) to create Lots, Common Elements, or Limited Common Elements within real property included in or added to the Community; (c) to subdivide or combine Lots or convert Lots into Common Elements; (d) to withdraw real property from the Community; or (e) to reallocate Limited Common Elements with respect to Lots that have not been conveyed by the Declarant. Development rights are personal to the Declarant and may be exercised, or not exercised, at the sole discretion of the Declarant. In this Community, there are no Development Rights.

2.14. "Design Guidelines" means the standards developed by the Board of Directors or a Committee pursuant to Article IX hereof.



2.15. "Development Plan" means any formal plan of development of the Community approved by the municipality with jurisdiction, described in greater detail in Section 3.3 hereof. The term also includes any amendments thereto approved by such municipality.

2.16. "Dwelling" or "Dwelling Unit" means an improved portion of the Property designed for separate ownership and intended to serve as a personal residence.

2.17. "Effective age" means the difference between the useful life and remaining useful life.

2.18. "Electronic transmission" or "electronically transmitted" means any electronic communication (a) not directly involving the physical transfer of a Record in a tangible medium and (b) that may be retained, retrieved, and reviewed by the sender and the recipient of the communication, and that may be directly reproduced in a tangible medium by a sender and recipient.

2.19. "Eligible Mortgagee" means the holder of a mortgage on a Lot that has filed with the Secretary of the Association a written request that it be given copies of notices of any action by the Association that requires the consent of mortgagees. The term "Eligible Mortgagee" also includes the "servicer" of a mortgage that has been acquired by a secondary mortgage market entity such as the Federal National Mortgage Association ("FNMA" or "Fannie Mae") or the Federal Home Loan Mortgage Corporation ("FHLMC" or "Freddie Mac") or the like.

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

2.21. "Full funding plan" means a reserve funding goal of achieving one hundred percent fully funded Reserves by the end of the thirty-year study period described under RCW 64.90.550, in which the Reserve Account balance equals the sum of the estimated costs required to maintain, repair, or replace the deteriorated portions of all Reserve Components.

2.22. "Fully funded balance" means the current value of the deteriorated portion, not the total replacement value, of all the Reserve Components. The fully funded balance for each Reserve Component is calculated by multiplying the current replacement cost of that Reserve Component by its effective age, then dividing the result by that Reserve Component's useful life. The sum total of all Reserve Components' fully funded balances is the Association's fully funded balance.

2.23. "Governing Documents" means the Declaration, the Plat, any Rules or resolutions adopted by the Board of Directors, and any amendments to any such instruments.

2.24. "Governing Law" means the Washington Uniform Common Interest Ownership Act (Chapter 64.90 RCW) or any successor statute, and any amendments thereto.

2.25. "Identifying number" means a symbol or address that represents the designation of each Lot or, in some cases, a Common Element component, in the Community.

2.26. "Limited Common Element" means a portion of the Common Elements allocated by Article VI of the Declaration or by operation of RCW 64.90.210(1)(b) and/or (3) for the exclusive use of one or more but fewer than all of the Lots.

2.27. "Lot" means a physical portion of the Community that is created by a municipal subdivision process and that is designated for separate ownership; the term "Lot" is intended to be coextensive with the term "Unit" as defined in the Governing Law, unless the context clearly evidences a different intent. The term "Lot" may also include the term "tract," where a parcel so designated on the Plat is susceptible to private as opposed to common ownership.

2.28. "Lot Owner" means any Person who owns a Lot, but does not include a Person who has an interest in a Lot solely as security for an obligation. "Lot Owner" means the vendee and not the vendor of a Lot under a real estate contract.

2.29. "Master association" means an organization described in RCW 64.90.300, whether or not it is also an association described in RCW 64.90.400. Any master association with jurisdiction over any portion of this Community is described in Section 3.4 of this Declaration.

2.30. "Manager" or "Managing Agent" shall mean a natural person or business entity regularly engaged in the business of managing common interest communities.

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

2.32. "Nominal reserve costs" means that the current estimated total replacement costs of the Reserve Components are less than fifty percent of the Annual Budgeted expenses of the Association, excluding contributions to the Reserve Fund.

2.33. "Notice" means a notice provided under the provisions of RCW 64.90.515.

2.34. "Occupant" means a natural Person lawfully occupying any portion of any Lot; the term includes without limitation Lot Owners, and family members, employees and tenants of Lot Owners.

2.35. "Ordinance" or "the Subdivision Ordinance" means the municipal law, ordinance or code provision authorizing the creation of this Community in the jurisdiction in which the Property is situated, along with any administrative regulations implementing same. The term includes any changes, revisions, substitutions and/or deletions in such law or regulations which may exist from time to time.

2.36. "Organizational Documents" means the instruments filed with the Secretary of State to create the Association and the instruments governing the internal affairs of the Association including, but not limited to, its Articles of Incorporation and Bylaws.

2.37. "Person" means an individual, corporation, business trust, estate, the trustee or beneficiary of a trust that is not a business trust, partnership, limited liability company, association, joint venture, public

corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal entity.

2.38. "Phasing Amendment" means an amendment to the Declaration recorded by the Declarant unilaterally pursuant to RCW 64.90.250(a) to exercise a Development Right.

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

2.40. "Plat" means the plat, as defined in RCW 58.17.020, for the Community approved by the City or County in which the Community is located, in accordance with an approval process described in Article III hereof and any amendment thereto. Pursuant to RCW 64.90.245(1), the Plat is to be construed as comprising a part of this Declaration.

2.41. "Preventative Maintenance" means such Upkeep as shall be necessary from time to time to prevent premature failure of any component of a Lot or the Common Elements.

2.42. "Principal Common Amenities" consist of significant portions of the Common Elements that periodically require significant Upkeep by the Association.

2.43. "Property" or "the Property" means the real property depicted on the Plat and legally described thereon.

2.44. "Purchaser" means any Person who or which by means of a voluntary transfer acquires a legal or equitable interest in a Lot other than as security for an obligation.

2.45. "Qualified Financial Institution" means a bank, savings association, or credit union the deposits of which are insured by the federal government.

2.46. "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

2.47. "Remaining useful life" means the estimated time, in years, before a Reserve Component will require major maintenance, repair, or replacement to perform its intended function.

2.48. "Replacement cost" means the estimated total cost to maintain, repair, or replace a Reserve Component to its original functional condition.

2.49. "Reserve" or "Reserves," when used as a noun, means money on deposit in a Reserve Fund or Reserve Account, which terms are synonymous, established pursuant to RCW 64.90.535.

2.50. "Reserve Component" means a physical component of the Community which the Association is obligated to maintain, repair, or replace, which has an estimated useful life of less than thirty years, and

for which the cost of such maintenance, repair, or replacement is infrequent, significant, and impractical to include in an Annual Budget.

2.51. "Reserve Study Professional" means an independent Person who is suitably qualified by knowledge, skill, experience, training, or education to prepare a Reserve Study in accordance with RCW 64.90.545 and 64.90.550. For the purposes of interpreting this definition, "independent" means a person who is not an employee, Officer, or Director, and has no pecuniary interest in the Association, or any other party for whom the Reserve Study is prepared.

2.52. "Reserved Common Element" means a portion of the Common Elements that is designed for temporary parking, storage or other purposes by one or more Owners or Occupants, upon payment to the Association of such user fees and upon satisfaction of such other conditions as the Board, by resolution, may deem appropriate; the right to use a Reserved Common Element shall be deemed to be a revocable license to use rather than a legal interest in the property so reserved.

2.53. "Residential purposes" means use for dwelling and human habitation, and for reasonable social, recreational or other uses normally incident to such purposes.

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

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

2.56. "Special Declarant Rights" means rights that are reserved for the benefit of the Declarant. This Community does not have any Special Declarant Rights

2.57. "Specially Allocated Expense" means any expense of the Association, including allocations to Reserves, allocated to some or all of the Lot Owners and assessable against their respective Units pursuant to RCW 64.90.480 (4) through (8).

2.58. "Specially Allocated Assessment" means an Assessment made or deemed to be made by the Association against Lots to which Specially Allocated Expenses are allocated under Section 10.8 of this Declaration.

2.59. "Tangible medium" means a writing, copy of a writing, facsimile, or a physical reproduction, each on paper or on other tangible material.

2.60. "Timeshare" shall have the same meaning specified in the timeshare act, RCW 64.36.010(11).

2.61. "Upkeep" means any care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction that is necessary to maintain property in a decent, safe and sanitary condition, in keeping with standards established in the Governing Documents of the Community.

2.62. "Useful life" means the estimated time during which a Reserve Component is expected to perform its intended function without major maintenance, repair, or replacement.

2.63. "Writing" does not include an electronic transmission.

2.64. "Written" means embodied in a tangible medium.

### ARTICLE III DESCRIPTION OF PROJECT, DEVELOPMENT SCHEME & DEVELOPMENT RIGHTS

#### 3. Description of Development Plan. 3.1. Community Attributes.

3.1.1. Project Type. This Community contains Lots that are generally designed for residential use, as described with greater particularity in Subsections 3.1.2, 9.1.1 and 9.1.2 of this Declaration.

3.1.2. Zoning and Housing Types. The Community is zoned residential. The project consists of single-family detached homes on fee-simple lots.

3.1.3. General Vicinity. The Community is located in Whatcom County, Washington.

3.1.4. Principal Common Amenities. The Community's Principal Common Amenities currently include the Community's identification signage, a community recreational area located on Tract A, along with common landscaping, common driveway and parking area thereon. The Association shall always include in its Budget funds to support necessary Upkeep of the Common Amenities.

3.1.5. Utilities and Related Services Serving Community. The County of Whatcom provides police and fire protection, along with water, sewer, and garbage collection. Electric power is provided by Puget Sound Energy. Cascade Natural Gas supplies natural gas service. Telephone and communications cable service will be available.

3.1.6. Association Maintains Common Amenities. An incorporated property owners' association described in Article VII hereof [the "Association"] has been formed to maintain, repair, replace, manage and insure the Common Amenities described herein. All Lot Owners will be members of the Association; all Owners will have the right to elect the members of the Association's Board of Directors; and all Owners will be obligated to pay Common Expense Assessments to the Association so that the Association may properly perform its obligations to the Community described more fully hereinafter.

3.2. Development Rights. There are no Development Rights in this Community.

## ARTICLE IV LOTS, DWELLINGS & OTHER STRUCTURES.

### 4. LOTS, DWELLINGS & OTHER STRUCTURES.

#### 4.1. Number and Location of Lots

The Community contains 112 Platted Lots and Tract A comprising Common Elements legally described in Section 1.3 hereof. The locations and dimensions of the existing Lots and Tracts are shown on the Platting Documents.

#### 4.2. Initial Construction of Dwellings & Other Improvements within Lots.

As provided in greater detail below in Section 4.4.2 hereof, any addition, alteration or improvement upon any Lot shall be consistent with this Declaration and shall be constructed in accordance with the building code and other ordinances of Whatcom County.

#### 4.3. Subdivision and Combination of Lots.

4.3.1. Subdivision of Lots Prohibited. Subdivision of Lots is prohibited in this Community, except when the Lot Owner of any Lot that has been previously combined with another Lot, or that has had its common boundary adjusted with another, later desires to cause such adjustment to be reversed with the consent of the Owner(s) of any other Lot(s) affected thereby, in the manner provided in the Governing Law and the Subdivision Ordinance.

4.3.2. Combination of Lots. Two or more Lots may be combined into a lesser number of Lots upon application to the Association by the Owners of those Lots and upon approval by the Board pursuant to this Section 4.3, followed by approval by Whatcom County under its Subdivision Ordinance. The application to the Board must include plans showing the relocated boundaries, a reallocation of the Allocated Interests of the Lots being combined among the Lots resulting from the combination, and such other information as the Board may require. Unless the Board determines, after receipt of all required information, that the reallocations are unreasonable or that the proposed boundary relocation does not comply with the Declaration, RCW 64.90.265 and other provisions of law, the Board shall approve the application, subject to approval by the City. Following receipt of approval by the City, the Board shall prepare any amendments to the Declaration and Plat required under the requirements of Subsection 4.3.3.

4.3.3. Amendments to Declaration and Plat. In any circumstance permitted in this Section 4.3, the Association shall (i) prepare an amendment to the Declaration that identifies the Lot(s) involved, assigns an identifying number to each resulting Lot, is executed by those Lot Owners and the Association, contains words of conveyance between them, and reallocates the Allocated Interests for Common Expense Liability formerly allocated to the Lot from which a combination was derived to the new Lot or, if two or more Lots are derived from such combination, among the new Lots in any reasonable manner prescribed by such Owners or on any other basis the Declaration requires; since voting rights are equally

allocated among the Lots, each resulting combined Lot will have only one vote; see Section 7.4.2 hereof for further details. The Declaration Amendment shall be recorded in the name of the grantor, the grantee and the Association as appropriate and as required under RCW 64.90.285(3), in the Office of the County Auditor; and (ii) obtain and record the amendment to the Plat approved by the City, showing the altered boundaries between adjoining Lots and their dimensions and identifying numbers. The amendments are effective upon recording. 4.3.4. Costs to be assessed to affected Lot Owners. All costs, including reasonable attorneys' fees, incurred in preparing and recording amendments to the Governing Documents shall be paid to the Association by the Owners of the affected Lots prior to recordation of the required amendments to the Governing Documents.

4.3.5. Payment of Other Fees or Charges. The Association may require payment to the Association of a one-time fee or charge, or continuing fees or charges, payable by the Lot Owners on whose behalf the boundaries are relocated, if reasonably necessary to protect the interests of the Association and its other Members.

#### 4.4. Architectural and Design Review.

4.4.1. Design Guidelines. Design for improvements constructed within the Lots within this Community shall be consistent with the theme of the Community established by the original structures and pursuant to Design Guidelines that may be established by the Board of Directors. Regulated design features in the Design Guidelines include general architectural design, site development, siding materials, painting scheme, roofing materials, the color and pitch of roofing, along with fencing and accessory structures. All construction must be approved in writing in advance by the Architectural Review Coordinator ("ARC"), as provided in Sections 4.4.2 and 9.2 below.

4.4.2. Time for Approval - No Construction Prior to Approval. The ARC shall approve or disapprove plans, specifications and details within the time described in Section 9.2 hereof. No construction activity by any Person may commence prior to such approval.

#### 4.5. Construction on Lots.

4.5.1. No Deviation from Plans - Noncompliance Deemed a Nuisance. Any person obtaining approval of the ARC shall not deviate materially from the approved plans and specifications without the prior written consent of the ARC. Such person shall notify the ARC when the alterations or improvements are complete. Approval of any particular plans and specifications or design does not waive the right of the ARC to disapprove such plans and specifications, or any elements or features thereof, if such plans and specifications are subsequently submitted for use in any other instance or by any other person. Any addition, alteration or improvement upon any Lot existing in violation of the Governing Documents shall constitute a nuisance and shall be removed or altered to conform to the Governing Documents by the Lot's Owner within thirty days after delivery of notice of the violation to the Owner by the ARC.

4.5.2. Governmental Permits. Approval by the ARC shall not relieve an Owner from the obligation to obtain any required governmental permits. The Owner shall deliver all approvals and permits required by law to the ARC prior to the commencement of any construction requiring such approval or permit. If

any application to any governmental authority for a permit to make any such structural addition, alteration or improvement to any Lot or improvement located on any Lot requires execution by the Association, and provided consent has been given by the ARC, then the application shall be executed on behalf of the Association by an Officer, without incurring any liability on the part of the Association to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having a claim for personal injury or property damage arising therefrom.

4.5.3. Timing of Construction. Any person obtaining approval of the ARC for construction of improvements on a Lot shall commence construction or alteration in accordance with plans and specifications approved within six (6) months after the date of approval and shall substantially complete any construction or alteration within eight (8) months after start of excavation/construction, or within such other period as specified in the approval. Construction shall not be deemed to be completed until the improvement is finished, the Lot has been cleaned of construction debris and the Lot has been landscaped. Notwithstanding the foregoing, the ARC's approval may provide for a different period during which to commence or complete construction. If any such person does not commence work within six months after approval, or such other time period determined by the ARC, then approval shall lapse.

4.5.4. No Permanent Construction within Easements. No permanent building, deck, fencing or other structure shall be constructed within the easements on the Lots depicted on the Platting Documents.

4.5.5. Landscaping Installation. Landscaping shall be maintained in conformance with standards established by the Board of Directors.

4.6. Upkeep of Lots and Dwellings.

4.6.1. Owners' General Responsibility. Each Lot Owner, at his or her sole expense, shall have the right and the duty to keep the Dwelling and its equipment, appliances, and fixtures contained therein in good order, condition and repair and shall do all interior redecorating at any time necessary to maintain the good appearance and condition of the Dwelling. Each Owner shall also be responsible for the Upkeep of decks and any and all other exterior portions of the Dwelling not maintained by the Association, along with individual heating, ventilating or air-conditioning equipment, wherever located, installed for the sole and exclusive use of the Lot, and of any hot tub or other structure, device or equipment lying outside the Dwelling but lying within the Lot. This Section shall not be construed as permitting any interference with or damage to the structural integrity of either the Common Elements or of any other Lot(s), nor shall it be construed to limit the powers or obligations of the Association hereunder. See also Section 8.4 hereof.

4.6.2. Owners' Responsibility With Abandoned or Vacated Lots. In addition to the responsibilities outlined in Section 4.6.1 hereof, each Lot Owner shall keep their Lot in a neat and tidy condition, maintaining the yard and landscaping to assure it is not overgrown and in line with neighborhood standards, or those as may be adopted by the Board pursuant to rules and regulations. All vacant or abandoned Lots must be posted as private property and further posted with "no trespassing" signs. Further, the Owner of any vacant or abandoned Lot shall erect a barrier to prevent unauthorized



individuals from accessing and “squatting” on such Lot. Such posting and installation of appropriate barriers shall be done within fifteen (15) days of the Lot being abandoned or vacant.

4.6.3. Upkeep by Association. If Upkeep to portions of a Lot for which the Owner is responsible, is reasonably necessary, in the opinion of the Board, to protect the Common Elements or to preserve the appearance and value of the Community, and the Owner of said Lot has failed or refused to perform said maintenance or repair as required by Section 4.6.1 of this Declaration of Covenants, within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board to the Owner, the Association may, but is not obligated, to perform such Upkeep, provided no breach of the peace is likely to ensue. If responsibilities required by Section 4.6.2 of this Declaration of Covenants are not performed within a reasonable time after written notice of the necessity of said obligation(s) has been delivered by the Board to the Owner, the Association may, but is not obligation, to perform such obligations. The costs of such Upkeep and obligations shall constitute a Specially Allocated Assessment against such Lot, pursuant to Section 10.8 of this Declaration of Covenants.

4.6.4. Association’s Responsibility. Subject to the provisions of Section 10.8.1 hereof, the Association shall have primary responsibility to provide:

(a) Upkeep to any other portions of all the Dwellings or Lots in the Community that the Association, by resolution adopted by its members at a duly constituted Meeting, may hereafter elect to maintain, or as to which an individual Lot Owner may request from the Association.

4.7. Alterations of Dwellings and Lots.

Subject to the provisions of this Declaration of Covenants and other provisions of law, a Lot Owner:

(a) May make any lawful improvements or alterations to the interior portions of a Dwelling constructed within an Owner's Lot that do not directly affect any other Lot or the Common Elements;

(b) May not change the exterior appearance of any Dwelling or other structure constructed within the Lot, nor construct or erect any additional improvements within the Lot without permission of the ARC; and (c) Any reconstruction of the exterior portions of any Dwelling or other structure constructed within a Lot, and the construction of additional improvements within the Lot which receives the permission of the ARC, shall be performed in a manner consistent with the provisions of Sections 4.6 and 4.8 hereof.

4.8. Damaged Improvements.

If a Dwelling or other major improvement located upon a Lot is damaged or destroyed, the Owner thereof shall restore the site either (i) by repairing or reconstructing such building or improvement or (ii) by clearing away the debris and restoring the site to an acceptable condition compatible with the remainder of the Community. Unless the Board of Directors permits a longer time period, such work must be commenced within four months after the casualty and be substantially completed within twelve months after the casualty. The four-month period may be extended for a reasonable period

thereafter in the event that repairs or reconstruction have not commenced because of factors beyond the control of the Owner, provided that the Owner has exercised and does thereafter continue to exercise due diligence in an effort to commence required work.

#### 4.9. Installation of Solar Panels to be Consistent with State Law.

4.9.1. General Provisions. A Lot Owner may install a solar energy panel as defined in RCW 64.90.510(6) on or within a Lot so long as the solar panel:

(a) Meets applicable health and safety standards and requirements imposed by Washington State and local permitting authorities;

(b) If used to heat water, is certified by the Solar Rating & Certification Corporation or another nationally recognized certification agency. Certification must be for the specific type of solar energy panel and for the proposed type of installation; and

(c) If used to produce electricity, meets all applicable safety and performance standards established by the National Electric Code, the Institute of Electrical and Electronics Engineers, accredited testing laboratories, such as Underwriters Laboratories, and, where applicable, rules of the State Utilities and Transportation Commission regarding safety and reliability.

4.9.2. Restrictions Applicable to Installation of Solar Energy Panels. The following restrictions apply to such installations:

(a) No part of a roof-mounted solar energy panel may be visible above the roof line of the Dwelling on the Lot;

(b) A solar energy panel may be attached to the slope of a roof facing a street only if:

(i) The solar energy panel conforms to the slope of the roof; and

(ii) The top edge of the solar energy panel is parallel to the roof ridge; and

(c) Additional Requirements:

(i) A solar energy panel frame, a support bracket, or any visible piping or wiring shall be painted to coordinate with the roofing material;

(ii) The Lot Owner or resident shall, if applicable, shield a ground-mounted solar energy panel if shielding the panel does not prohibit economic installation of the solar energy panel or degrade the operational performance quality of the solar energy panel by more than ten percent; and

(iii) Lot Owners or residents who install solar energy panels shall indemnify or reimburse the Association

or its members for loss or damage caused by the installation, maintenance, or use of a solar energy panel.

4.9.3. No Solar Panels in Common Elements. No solar energy panel may be installed in the Common Elements unless approved in advance by the Board of Directors. 4.9.4. Further Rules and Regulations Possible. The Board may adopt Rules containing further Rules regarding the placement and manner of a solar energy panel.

## ARTICLE V COMMON ELEMENTS

### 5. COMMON ELEMENTS.

#### 5.1. Description of Common Elements.

Except as otherwise specifically reserved, assigned or limited by the provisions of Article VI hereof, the Common Elements of the Community, that may also be referred to as "General Common Elements," consist of the following:

5.1.1. The Community's identification signage facilities and associated entry landscaping located off at 4504 California Trail Road, which is presently leased by the Community from the owner of such property.

5.1.2. Tract A, which is a park that is designed to perform various functions.

5.1.3. Street lights, which PSE maintains at its cost but the Community pays the electric bill associated therewith.

#### 5.2. Partition, Conveyance, or Encumbrance.

5.2.1. Generally no Sale or Encumbrance. Except as provided below, the Common Elements of the Community shall remain undivided and shall not be abandoned by act or omission, and no Lot Owner or other person may bring any action for partition or subdivision of the Common Elements.

5.2.2. Conveyance or Encumbrance by Association. Portions of the Common Elements not essential to the habitability of any Lot may be conveyed or encumbered by the Association, as provided in RCW 64.90.465, provided that the consent of the City must be obtained before Common Elements are sold or conveyed. The consent of the City is not necessary with respect to an encumbrance of Common Elements.

5.2.3. Conveyance Void. Any purported conveyance, encumbrance, or other voluntary transfer of Common Elements is void. A conveyance or encumbrance of Common Elements pursuant to this Section 5.2 shall not deprive any Lot of its rights of access and support.

5.3. Allocated Interests in Common Elements. In this Community, there is no designation of an

undivided interest in the Common Elements to each Lot in the Community.

#### 5.4. Maintenance, Repair and Replacement – Association.

5.4.1. General Responsibility of Association. The Association is generally responsible for maintenance, repair, and replacement of the Common Elements, including the Limited Common Elements, except as may be provided in Subsection 6.2 hereof.

#### 5.5. Schedules for Preventative Maintenance.

The Board, with the assistance of the Association's Manager and/or other competent professionals, shall develop a schedule of routine Preventative Maintenance for all components of the Common Elements that require same, establishing appropriate times during each year when such maintenance should occur, and identifying qualified contractors to perform such inspections and Preventative Maintenance.

#### 5.6. Reserves for Major Repairs and Replacement.

The Board shall maintain reserves to repair and replace components of the Community, including portions of the Lots described in Section 4.6.3 hereof, that are subject to Upkeep by the Association. Periodically, the Association must conduct a Reserve Study in accordance with requirements of the Governing Law, as described in Subsection 10.3.3 hereof. In general, such a Reserve Study reasonably attempts to (i) ascertain the probable remaining useful life of each significant component of the Common Elements that will require replacement or major repairs, (ii) estimate the probable cost of such replacement or repair for each such component, (iii) establish an annual reserve Budget that would, when funded, minimize the necessity for the imposition of a Special Assessment upon the Owners within the foreseeable future.

#### 5.7. Rights of Use and Access.

5.7.1. Owners' Rights of Use of Common Elements. Subject to the other provisions of this Section 5.7 below and other provisions of the Governing Documents, the Lot Owners have a right to use the Common Elements that are not Limited Common Elements for the purposes for which the Common Elements were intended.

5.7.2. Right of Peaceful Assembly. Lot Owners may peacefully assemble on or in the Common Elements to consider matters related to the Community, but the Association may adopt Rules governing the time, place, and manner of those assemblies.

5.7.3. Lots Subject to Rights of Access. Each Lot Owner shall afford to the Association and, as needed, to other Lot Owner(s), and to their respective agents or employees, access through such Owner's Lot and any appurtenant Limited Common Elements as may be reasonably necessary for the purposes stated in Subsection 8.4.1 hereof, including for necessary inspections by the Association. If damage is inflicted on the Common Elements, or on any Lot through which access is

taken, the Lot Owner responsible for the damage, or the Association if it is responsible, shall be liable for the repair thereof, as provided in Section 8.4 hereof.

5.7.4. Limitations to Reduce Overuse. The Association may promulgate Rules designed to restrict the numbers and/or classes of persons [Owners vs. Occupants and/or guests, Owners within only certain Neighborhoods or other geographic areas of the Planned Community, or etc.] using Common Elements, and/or limiting the times of use of portions of the Common Elements, to maximize the quality of enjoyment of such Common Elements by persons lawfully using same.

5.8. No Interference with Common Elements.

No Person shall obstruct any of the Common Elements nor shall any Person place or cause or permit anything to be placed or stored on or in any of the Common Elements (except those areas designated for storage by the Governing Documents) without the approval of the Board. Nothing shall be damaged, altered, constructed in, or removed from the Common Elements except with the prior written consent of the Board of Directors. Subject to rules and regulations established by the Board, no kayaks, canoes or recreational flotation devices shall be stored within the Park/Tract A area.

5.9. Limited Common Elements and/or Reserved Common Elements.

5.9.1. Description of Limited Common Elements. There are no Limited Common Elements within this Community.

5.9.2. Initial Installation of Limited Common Elements. Only the Association may install Limited Common Elements. An Owner who attempts to construct or install a Limited Common Element without the consent of the Association will be deemed guilty of willful misconduct because of the associated risks of harm to common property coupled with the risk of having the Association held liable to a contractor hired but unpaid by such Owner.

5.9.3. Costs of Upkeep constitute Specially Allocated Expenses. Costs of Upkeep performed by the Association related to Limited Common Elements or Reserved Common Elements constitute Specially Allocated Expenses to be Assessed to the Lots served thereby, under the provisions of Section 10.8 hereof.

5.9.4. Permanent Reallocation of Limited Common Element. Where practical, a Limited Common Element may be reallocated between Lots, but only with the approval of the Board of Directors and by an amendment to the Declaration executed by the Owners of the Lots to which the Limited Common Element was and will be allocated, respectively. The Board of Directors shall approve the request of the Owner or Owners under this Subsection within thirty days, unless the proposed reallocation does not comply with the Governing Law or this Declaration. The failure of the Board of Directors to act upon a request within such period shall be deemed approval thereof. The amendment shall be recorded in the names of the parties and of the Community.

5.9.5. Temporary Exchange or Rental of Limited Common Element. An Owner may rent a Limited

Common Element parking space or storage area allocated to the Owner's Lot, or exchange such Limited Common Element with another Owner but (a) the affected Lot Owners shall provide Notice to the Board of the rental or exchange, and (b) such rental or exchange shall be terminated automatically and without notice upon the transfer of title of the Lot to which such space or area is allocated in the Governing Documents. For security purposes, no rental of a parking space or storage area may be made to a Person who is not an Owner, tenant or other lawful Occupant of a Lot in the Community.

## ARTICLE VI SPECIAL UPKEEP AND USE PROVISIONS

### 6. SPECIAL UPKEEP AND USE PROVISIONS.

#### 6.1. Description of Principal Common Amenities to be maintained by Association.

The Principal Common Amenities of this Community are significant portions of the Common Elements that periodically require significant Upkeep by the Association. This Community does not have any Principal Common Amenities.

#### 6.2. Association's Special Maintenance Responsibilities.

6.2.1. Upkeep of Common Facilities. The Association will provide necessary Upkeep for any recreational facilities installed on Tract A.

6.2.2. Prohibition against Dumping. The dumping of solvents, oil, concrete or concrete residue, or water that is heavily laden with sediments, is expressly prohibited anywhere in the Community.

## ARTICLE VII LOT OWNERS ASSOCIATION

### 7. LOT OWNERS ASSOCIATION.

#### 7.1. Name and Form of Association.

The name of the Association is "Sunday Harbor Community Association." The Association has been incorporated as a non-profit corporation under the laws of the State of Washington. The rights and duties of the members and of said corporation shall be governed by the provisions of the Governing Law and of this Declaration. The Association shall remain organized as a nonprofit corporation. In case of any conflict between Chapter 24.06 RCW, the Nonprofit Miscellaneous and Mutual Corporations Act, and the Governing Law, the Governing Law shall control.

#### 7.2. Powers & Duties of Association.

7.2.1. Duties & Responsibility of Association. The purposes for which the Association was formed are to maintain, repair, replace and manage the Common Elements of the Community, to provide necessary insurance coverage, and to enforce provisions of the Governing Documents, so as to protect the safety and well-being of Occupants of the Community and preserve the longterm value of the Lots and other

real property within the Community, for the benefit of the Lot Owners. The Board shall consistently adopt Budgets for the Association for operations and Reserves that are reasonably calculated to assure that these essential purposes are realized each year of its existence, on into the indefinite future.

7.2.2. Statutory Powers Exercised by Board of Directors. Except for rights of Lot Owners explicitly reserved in the Governing Law or as elsewhere provided in the Governing Documents, the Board of Directors shall have the exclusive right and power to govern the Association and shall have all powers available to community associations under the Governing Law in order to do so. Such powers are set forth with particularity in the Bylaws of the Association and, except as otherwise expressly provided herein are not limited in this Declaration.

7.2.3. Power to Assign Future Income. Without limiting the foregoing, the Association also shall have the power to assign its right to future income (including the right to collect and receive Common Expense Assessments), provided that any specific assignment is ratified in advance by the Lot Owners under the following procedures authorized by the Governing Law:

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

(b) In the Notice, the Board must set a date for a Meeting of the Lot Owners, which must not be less than fourteen and no more than sixty days after providing the Notice, to consider ratification of the borrowing.

(c) Unless at that Meeting, whether or not a quorum is present, Lot Owners holding a majority of the votes in the Association reject the proposal to borrow funds, the Association may proceed to borrow the funds in substantial accordance with the terms contained in the Notice.

7.2.4. Rights of Association Lenders. A lender who has extended credit to the Association secured by an assignment of income or an encumbrance on the Common Elements may enforce its security agreement in accordance with its terms, subject to the requirements of the Governing Law and other law. A requirement that the Association must deposit its periodic common charges before default with the lender to which the Association's income has been assigned, or increase its common charges at the lender's direction by amounts reasonably necessary to amortize the loan in accordance with its terms, does not violate the prohibitions on lender approval contained in RCW 64.90.295(1), but lender requirements for deposits of Association income must be consistent with the provisions of RCW 64.90.530(3) and (4); see Subsection 10.9.1 hereof for details.

### 7.3. Membership in Association.

Membership in the Association is automatically associated with and appurtenant to the ownership of a Lot in the Community under the Governing Law. Except in the case of a termination of the Community, the membership of the Association at all times consists exclusively of all Lot Owners. Rights and privileges of membership are specified in the Bylaws of the Association.

#### 7.4. Voting.

7.4.1. Voting Process. The manner of voting shall be as prescribed in the Bylaws.

7.4.2. Allocated Interests for Voting. Each Lot in the Community has been allocated an equal vote in the Association that is known as the Lot's Allocated Interest for voting, or "vote."

#### 7.5. Bylaws of Association.

7.5.1. Bylaws – Consistent with RCW 64.90.410. Bylaws for the administration of the Association and for other purposes not inconsistent with this Declaration have been or will be prepared by the Association. Such Bylaws are designed to be consistent with the terms and conditions of the Governing Law including, but not limited to, RCW 64.90.410 dealing with Board members, Officers, and Committees; the Bylaws are subject to the approval of the Board of Directors and Owners of the Association.

7.5.2. Continued Compliance of Bylaws with Governing Law. The Bylaws shall be continuously maintained in compliance with the Governing Law, and shall not be amended so as to become out of compliance. 7.5.3. Hierarchy of Authority. If a conflict ever exists between the Declaration and the Bylaws or other Organizational Documents, the Declaration prevails except to the extent the Declaration is inconsistent with the Governing Law.

### ARTICLE VIII MANAGEMENT OF THE ASSOCIATION

#### 8. MANAGEMENT OF THE ASSOCIATION.

8.1. Management by Declarant – Period of Declarant Control. Any Declarant Control Period has expired.

#### 8.2. Professional Management.

Standards for professional management of the Association are specified in Section 8.2 of the Bylaws.

#### 8.3. Authority of the Board.

8.3.1. General Authority. The Board, for the benefit of the Community and the Lot Owners, shall have the authority to manage the Community and enforce the provisions of the Governing Documents and Bylaws. The Board has all powers and authority granted to the Association under the Governing Law and this Declaration that are not expressly subject to the approval of Lot Owners.

8.3.2. Common Expenses. The Board shall acquire and shall pay for, as Common Expenses, all goods and services requisite for the proper functioning of the Community, along with appropriate allocations to the Reserves of the Association.



8.3.3. Liens or Encumbrances. The Board may also pay any amount necessary to discharge any lien or encumbrance that is claimed to constitute a lien against Common Elements or any portion thereof in violation of RCW 64.90.490(1). Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally guilty of willful misconduct or gross negligence and thus liable for the cost of discharging it, and any costs and expenses incurred by the Board by reason of such lien or liens shall constitute Specially Allocated Assessments against the Lots responsible, to the extent of their responsibility.

8.3.4. Acquisition of Property. The Board may acquire and hold in the name of the Association, for the benefit of the Owners, tangible and intangible personal property and real property and interests therein, and may dispose of the same by sale or otherwise. Except as may be otherwise required under the Governing Law, such property shall thereafter be held, sold, leased, rented, mortgaged or otherwise dealt with for the benefit of the Association as the Board may direct.

8.3.5. No Business Authority. Nothing herein contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all of the Owners or any of them.

8.3.6. Restrictions on Regulatory Authority. Pursuant to RCW 64.90.510, the Board may:

(a) Rules Regarding Flags and Political Signage. Adopt reasonable Rules governing the time, place, or manner of displaying the flag of the United States necessary to protect a substantial interest of the Association, and may also adopt Rules governing the time, place, size, number, and manner of the display of signs regarding candidates for public or Association office, or ballot issues, on or within a Lot or Limited Common Element. See Subsection 9.1.4 hereof for further details; and

(b) Rules Regarding Uses of or Leasing of Lots. Adopt Rules that affect the use or occupancy of or behavior in Lots that may be used for residential purposes, only to:

(i) Implement a provision of the Declaration;

(ii) Regulate any behavior in or occupancy of a Lot that violates the Declaration or adversely affects the use and enjoyment of other Lots or the Common Elements by other Occupants; and

(iii) Restrict the leasing of residential Lots to the extent those Rules are reasonably designed to meet underwriting requirements of institutional lenders that regularly make loans secured by first mortgages on Lots in comparable Community projects or that regularly purchase those mortgages.

8.3.7. Further Restrictions on Board's Authority. Pursuant to RCW 64.90.410(4), the Board may not, without the vote or agreement of the Lot Owners:

(a) Amend the Declaration, except as provided in RCW 64.90.285;

(b) Amend the Organizational Documents of the Association;

(c) Terminate the Community;

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

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

#### 8.4. Right of Entry - Allocation of Responsibility for Damage to Lot upon Entry.

8.4.1. Right of Entry - Notice Generally Required. The Board and its agents, contractors or employees may enter any Lot or Limited Common Elements appurtenant thereto when necessary in connection with any maintenance, landscaping or construction for which the Board is responsible and/or any necessary inspections by the Association under Subsections 4.6.2 or 4.6.3 hereof or elsewhere in this Declaration, or in the event of a bona fide emergency. Except in the case of an emergency, reasonable advance Notice shall be given to the Lot Owner and, if applicable, to any lawful tenant in the Lot. Such entry shall be made with as little inconvenience to the Owner and/or Occupant as practicable.

8.4.2. Allocation of Responsibility for Damage to Lot upon Entry. Any damage caused by such entry shall be repaired by the Association out of the Common Expense fund if the entry was due to an emergency (unless the emergency was caused by the Owner or a lawful Occupant of the Lot entered, in which case the cost shall constitute a Specially Allocated Assessment against the Lot entered) or for the purpose of Upkeep to Common or Limited Common Elements where the repairs were undertaken by or under the direction or authority of the Board. If the Upkeep was necessitated by conditions within the Lot or performed at the request of its Owner or its lawful Occupants, the costs thereof shall constitute a Specially Allocated Assessment against such Lot.

8.4.3. Lot Owner to Afford Access to Association and Other Owner(s). Each Lot Owner and Occupant shall afford to the Association and, as needed, to other Lot Owner(s), and to their respective agents or employees, access through such Owner's Lot and any appurtenant Limited Common Elements reasonably necessary for the purposes stated in Subsection 8.4.1 hereof, including necessary inspections by the Association.

#### 8.5. Board as Attorney in Fact.

Each Owner, by the act of becoming an Owner of a Lot, shall be deemed to have irrevocably appointed the Board of Directors as his or her attorney-in-fact, with full power of substitution, to take such actions as are reasonably necessary to perform the duties of the Association and Board hereunder, including, but not limited to, the duties to maintain, repair and improve the Property, to deal with the Lot upon damage or destruction, to grant licenses and easements, and to secure and distribute condemnation awards and/or insurance proceeds.

#### 8.6. Board's Authority Exclusive - Owners May Not Direct Association Agents/Employees.

The Board's authority with respect to the Common Elements is exclusive. No Person shall attempt to engage or direct any employee, contractor or agent of the Association or its Manager on any private business of such Person, or to otherwise direct, supervise or in any manner attempt to assert control over such Person during the hours that such Person is working on behalf of the Association.

#### 8.7. Board or Association as Trustee.

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

### ARTICLE IX PERMITTED USES; ARCHITECTURAL CONTROL

#### 9. PERMITTED USES – ARCHITECTURAL CONTROL.

##### 9.1. Permitted Uses.

9.1.1. Residential Use. Dwellings constructed within Lots in this Community shall be used primarily for residential purposes and for common social, recreational or other reasonable uses normally incident to such purposes. Portions of a Dwelling may also be used for a professional office or other low impact commercial use, provided that such use is consistent with all applicable laws, ordinances and regulations of any governmental authority with jurisdiction, and so long as such use does not generate any appreciable levels of client or customer traffic, bulk shipping or receiving, or create noise, odors, vibration or other unreasonable disturbance to other lawful Occupants of the Community.

9.1.2. Commercial Uses Restricted. Other than any commercial uses authorized in Section 9.1.1 hereof, there shall be no commercial uses permitted within Lots or in the Common Elements.

##### 9.1.3. Vehicle Parking and Operation.

(a) General Restrictions. Driveway areas are restricted to use for parking of operable, properly registered automobiles, light trucks and family vans, boats, recreational vehicles, ATVs, jet skis, snowmobiles, trailerable aircraft and other similar vehicles; other items and equipment may be parked or kept therein only if expressly permitted by Rules and only in such areas, if any, as may be designated for such purpose by the Board of Directors. Garages within Lots are restricted to use for parking of automobiles, motorcycles, light trucks, family vans and other similar vehicles, and for storage of such

other items that pose no unreasonable health, safety or fire risks to persons or property. The Board of Directors may promulgate further Rules governing vehicle parking. Vehicle repairs and light maintenance are permitted if conducted quietly and solely within the confines of a garage. Oil or other fluid changes are permitted, but spills of oil or other fluids are prohibited. The Board may require removal of any inoperative or unregistered vehicle, and any other equipment or item improperly stored in parking areas or on Lots. If the same is not removed, the Board may cause removal at the risk and expense of the owner thereof, under such reasonable procedures as may be provided by Rules adopted by the Association. Any designated visitors parking areas shall be left open for use by visitors, guests, invitees and licensees of Lot Owners and their tenants. Any designated handicapped parking areas are restricted to use by vehicles validly displaying State handicapped vehicle placards.

(b) Driving on Roads. Vehicles must be operated in a safe manner within the Planned Community. The Board may regulate the speed, parking and/or other operations of vehicles on road surfaces and/or other portions of the Common Elements.

9.1.4. Parking of Recreational Vehicles. Except as hereinafter provided, junk vehicles (as defined in RCW 46.55.010), Recreational Vehicles (including without limitation campertrailers, mobile homes, motor homes, "fifth-wheels" off-road vehicles, boats, airplanes or etc.), large commercial-style vehicles (including without limitation trucks, tractors, large vans or other types of vehicles or equipment of any length which either require a commercial vehicle operator's license or which exceed 11,000 lbs in gross vehicle weight), or any type of vehicle or equipment not previously enumerated that exceeds 24 feet in length, may not be stored, kept or maintained anywhere within the Community. Nevertheless, such items may be maintained within a Lot, if fully enclosed within a garage or an approved accessory structure. Bona fide Recreational Vehicles of any size not prohibited by resolution of the Board of Directors may be parked in driveway areas for up to a maximum of 21 consecutive nights to accommodate guests and facilitate the loading, unloading or cleaning thereof. The Board may require removal of any vehicle or equipment not authorized by this Section; if it is not so removed, the Board may cause its removal at the risk and expense of the owner thereof, under such reasonable procedures as may be consistent with the provisions of RCW 46.55. Failure of an Owner or other occupant to remove such a vehicle or equipment from a Lot or the Common Elements may result in any or all remedies available to the Association under the Governing Documents. The Board may adopt additional Rules regarding parking and storage of Recreational Vehicles. Violations of the provisions hereof shall constitute a nuisance. The Board may require removal of any vehicle or equipment not authorized by this Section; if it is not so removed, the Board may cause its removal at the risk and expense of the owner thereof, under such reasonable procedures as may be consistent with the provisions of RCW 46.55. Failure of an Owner or other occupant to remove such a vehicle or equipment from a Lot or the Common Elements may result in any or all remedies available to the Association under the Governing Documents. The Board may adopt additional Rules regarding parking and storage of Recreational Vehicles.

9.1.5. Signs and Flags. Except as otherwise provided herein, no sign of any kind shall be displayed to the public view on or from any Lot or Common Elements, without the prior consent of the Board. PROVIDED, that this Subsection shall not be deemed to prohibit the Owner of a Lot from displaying a normal Realtor's sign for a period of time during which an "open house" within the Lot is actively

occurring. A kiosk or panel designed to display Realtors' signs may be erected at the entrance to the Community for longer-term advertising of Lots for sale or rent. No signs advertising home businesses are permitted. The Board may establish further Rules regarding signs, to reflect the sentiments of the Community while giving due regard to traditional democratic rights of free speech, religion and expression of Persons owning or occupying Lots in the Community. The Board's judgment in such matters, adopted in good faith, shall be conclusive, except as to matters governed by applicable state or federal law, and in particular the provisions of RCW 64.90.510, regarding the flying of flags and the display of political signage. In this regard: (1) "flag of the United States" means the flag of the United States as described in 4 U.S.C. Sec. 1 et seq. that is made of fabric, cloth, or paper. "Flag of the United States" does not mean a flag, depiction, or emblem made of lights, paint, roofing, siding, paving materials, flora, or balloons, or of any similar building, landscaping, or decorative components; and (2) the Association may not prohibit display of signs regarding candidates for public or Association office, or ballot issues, on or within a Lot, but the Association may adopt Rules governing the time, place, size, number, and manner of those displays, and no flag or sign may be placed in the General Common Elements without the advance written consent of the Board which consent may be withheld for any or no reason.

9.1.6. Animals. The maintenance, keeping, boarding and/or raising of animals, livestock, poultry, or reptiles of any kind, regardless of number, shall be and is prohibited within any Lot or upon the Common Elements, except that the keeping of small birds, aquarium fish, well-behaved dogs and/or cats and other well-behaved domestic animals that do not normally leave the Lot is permitted, subject to Rules adopted by the Board of Directors. The owner of any animal maintained within the Community shall exercise appropriate control over the animal, and shall clean up after such animal and shall not permit deposits of fecal matter, urinary residue or foodstuffs from or for such animal to remain anywhere within the Common Elements, but shall properly dispose of all such waste material in a safe and sanitary fashion. Any Person who keeps or maintains any animal upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association and each Lot Owner free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such animal within the Community. All animals shall be registered and inoculated as required by law. The Board of Directors may establish reasonable fees not to exceed the additional costs incurred by the Association resulting from the presence of such animals. The Board may at any time require the removal of any animal that it finds is or has become an unreasonable source of annoyance, and may exercise this authority for specific animals even though other animals are permitted to remain.

9.1.7. Noise. No Person shall cause any unreasonably loud noise anywhere in the Community. The Board may by resolution establish "Quiet Hours," i.e., times of day or night during which only minimal noise shall be permitted to emanate from any Lot.

9.1.8. Offensive or Illegal Activity. No noxious, offensive, smelly or illegal activity shall be carried on in any Lot or the Common Elements, nor shall anything be done therein that is or may become an unreasonable source of annoyance (a nuisance) to other Owners or other lawful Occupants of the Community.

9.1.9. Hazardous Substances. A person shall maintain or store on or in the Property only such property and materials which may be legally possessed by such person. No person shall improperly store within or release from a Lot or into the Common Elements any petroleum distillates, liquid or aromatic hydrocarbons, medical wastes or infectious biological agents, acids, caustics, carcinogens, mutagens, heavy metals, or any other inflammable, toxic, explosive, radioactive, or other type of substance which may be hazardous to either the Property or to the public health or safety, or the health or safety of any lawful occupants of the Community, any and all such substances being known herein as Hazardous Substances.

9.1.10. Television and Radio Antennas, Dishes. Satellite TV antennas/dishes 1 meter or less (approximately 36") in diameter are generally permitted within Lots by Over-the-Air Reception Devices ["OTARD"] regulations of the Federal Communications Commission. Larger satellite dishes and other types of reception or transmission antennas may be installed within a Lot only if reasonably screened from view from other Lots and the Common Elements. Ham radio and "citizens band" antennas may be used for transmission purposes only so long as they do not cause interference with electronic equipment of neighboring property owners. No reception or transmission devices may be located within the Common Elements unless expressly permitted by the Board of Directors.

9.1.11. Fencing. Fencing is subject to Design Guidelines and approval by the ARC.

9.1.12. Accessory or Temporary Structures. No structure of a temporary character, nor any trailer, tent, shack, barn, pen, kennel, run, stable, outdoor clothes line, shed or other accessory buildings shall be erected, used or maintained on any Lot absent the written consent of the Board of Directors, which may promulgate Rules governing such matters. Temporary structures, as reasonably necessary, may be erected in connection with construction activities associated with the original construction of Dwellings within the Community, for such periods of time as may be reasonable for such purposes, subject to the provisions of Section 4.4 hereof.

9.1.13. Restrictions on the Leasing or Short-term Occupancy of Lots. Any lease agreement shall be required and deemed to provide that the terms of the lease shall be subject in all respects to the provisions of the Governing Documents or Bylaws, and that any failure by the Lessee to comply with such provisions shall be a default under the lease, entitling the Association to enforce such provisions as a real party in interest. All leases shall be in writing, and the Association is entitled to receive a copy of any lease agreement from the Lot Owner or the tenant, and the Association is entitled to receive contact information for every tenant. A lease, as defined herein, shall include month-to-month rentals, but transient occupancy under any form of rental or license agreement for periods of less than 30 days is not permitted. Subleasing is not permitted. Any tenant shall be deemed to have assumed all the responsibilities of an Owner under Article IX of this Declaration. In the event that a Lot is occupied by a lawful tenant, the tenant shall have rights to use common recreational facilities, parking spaces and the like, while such rights of the Lot Owner of the Lot shall be suspended during the duration of the tenancy, so as not to overburden such facilities. The Board shall have the right to adopt Rules further restricting the leasing of Lots, but only as provided in Subsection 8.3.6 hereof.

9.1.14. Assignment or Subletting. The assignment or subleasing of a Lot shall be subject to the same

limitations as are applicable to the leasing or renting thereof. An Owner or tenant may not exempt himself or herself from any liability under the Governing Documents or Bylaws by assigning or subleasing the occupancy rights to his or her Lot.

9.1.15. Effect on Insurance. Nothing shall be done or maintained in any Lot or in the Common Elements that will increase the rate of insurance on the Common Elements or Lots without the prior written consent of the Board. No Owner or Occupant shall permit anything to be done or maintained in his or her Lot or in the Common Elements that will result in the cancellation of any policy of insurance maintained by the Association.

9.1.16. Mobile Homes. Mobile Homes may be maintained on any Lot within the Community; provided, however, that mobile homes on Lots 1 through 25, 83 through 95 and 101 through 113, must meet the following requirements:

- (a) The minimum width shall be 24 feet;
- (b) There shall not be less than 600 square feet of enclosed area devoted to living purposes;
- (c) There exterior finish must be constructed of new material;
- (d) The below floor-level exterior walls are finished to compliment with the upper exterior walls; and
- (e) Installation is performed according to Whatcom County regulations.

## 9.2. Architectural Control.

9.2.1. General Authority of Board of Directors. To assure the health, safety and enjoyment of persons lawfully using any portion of this Community, and to promote visual harmony within the Community, the Architectural Review Coordinator ("ARC") shall have the power to enforce architectural control over the improvements constructed within the Community on all Lots. The Board of Directors shall have the power to impose reasonable application fees to evaluate any additions or changes to a Dwelling proposed by an Owner; such fees shall constitute a Specially Allocated Assessment against the affected Owner.

9.2.2. Authority to Perform or Delegate Functions of ARC. The Board of Directors shall directly perform the activities of the ARC, or the Board may designate an individual to be the ARC, or it may establish an Architectural Review Committee (also to be known as the "ARC"), to coordinate compliance with the Design Guidelines of the Community, and perform such additional functions as may be delegated to it in the Bylaws or in a Resolution of the Board adopted for such purpose.

9.2.3. Time for Approval - No Construction Prior to Approval. The ARC shall approve or disapprove plans, specifications and details within thirty (30) days of receipt thereof. Upon a failure to respond within such period, then the plans shall be deemed approved. No construction activity may commence prior to such approval.

9.2.4. Status of Design Guidelines. Design Guidelines approved by the Board of Directors shall be enforceable as if set forth in full herein as covenants.

9.2.5. Authority to Grant Variances. The ARC shall have the authority, either by act or omission, to waive enforcement of or grant variances from any written Design Guidelines without a specific finding that enforcement of such guidelines would impose an unfair burden on such Owner, but describing the variance and the reasons therefor in a written instrument which shall be part of the records of the Association. ARC precedent shall be deemed useful, but not conclusively binding. Upon such written approval of any specific variance or exception from the requirements of the Design Guidelines, all development conforming to such variance or exception shall be deemed lawful.

9.2.6. No Liability for Architectural Review. Neither the Association nor any permitted designee shall be liable to any party for any good faith action or failure to act under the provisions of this Declaration of Covenants, with respect to elements of architectural control or as to scenic views, or otherwise.

#### ARTICLE X COMMON EXPENSES AND ASSESSMENTS

##### 10. COMMON EXPENSES AND ASSESSMENTS.

###### 10.1. Annual Budget for the Association.

10.1.1. General Provisions for the Annual Budget. At such other time as may be deemed necessary or desirable by the Board of Directors or the Association's Manager or accountant, but more than 30 days prior to the Meeting described in Section 10.2 hereof, the Board shall prepare an Annual Budget that shall estimate the Common Expenses and those Specially Allocated Expenses that are subject to inclusion in the Budget, to be paid during such year. Specially Allocated Expenses assessable under Section 10.8 shall be budgeted in such fashion that they will be properly apportioned and assessed against only the affected Lots. The Budget shall make provision for creating, funding and maintaining Reserves required by Section 10.3 hereof, and shall take into account any expected income and any surplus determined to be available under the Reconciliation required under RCW 64.90.475 from the prior year's operating fund. If deemed necessary by the Board of Directors, any Annual Budget may be revised prior to the end of its budget year, subject to the provisions of Sections 10.7 and 10.2 hereof

10.1.2. Specific Statutory Requirements for Annual Budget. The Board's proposed Budget must include:

- (a) The projected income to the Association by category;
- (b) The projected Common Expenses and those Specially Allocated Expenses that are subject to being budgeted, described below in Subsection 10.8.1, both by category;
- (c) The amount of the Assessments per Lot and the date the Assessments are due;



(d) The current amount of regular Assessments budgeted for contribution to the reserve account;

(e) A statement of whether the Association has a Reserve Study that meets the requirements of RCW 64.90.550 and, if so, the extent to which the Budget meets or deviates from the recommendations of that Reserve Study; and

(f) The current deficiency or surplus in reserve funding expressed on a per Lot basis

10.2. Meeting of Association to Ratify Budget. Within thirty days after adoption of any proposed Budget for the Community, the Board must provide a copy of the Budget to all the Lot Owners and set a date for a Meeting of the Lot Owners to consider ratification of the Budget not less than fourteen nor more than fifty days after providing the Budget. Unless at that Meeting the Lot Owners of Lots to which a majority of the votes in the Association are allocated reject the Budget, the Budget and the Assessments against the Lots included in the Budget are ratified, whether or not a quorum is present. In the event the proposed Budget is rejected or the required Notice is not given, the periodic Budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent Budget proposed by the Board of Directors.

10.3. Reserves for Major Repairs, Replacements, & Insurance Deductibles.

10.3.1. Establishment of Reserves – Status and Uses of Reserve Funds. The Board of Directors shall establish and maintain reasonable Reserves for major repairs and replacements, in accordance with Section 5.5 hereof. Reserves shall also be established for the deductible under insurance policies obtained pursuant to Article XI hereof, exclusive of earthquake, flood and/or similar coverages. The Annual Budget of the Association shall always contain provisions for such Reserves. The Board may also establish and maintain Reserve Funds for operations, capital improvements and for such other purposes as may appear advisable. All Reserves shall be identified and segregated on the books of the Association. The portions of the Lots' Assessments paid into such Reserves shall be conclusively deemed to be non-refundable contributions to the capital of the Association by the Lot Owners. Such Reserves may be expended only for the purposes for which they were established unless the Lot Owners, at a duly-constituted Meeting of the Association, otherwise decide, or if the procedure described in Subsection 10.3.3 below is followed. The Budget may include Reserves for any Special Limited Common Elements, assessable against only the Lot(s) benefitted thereby.

10.3.2. Reserve Study Required by Governing Law. Unless the cost of performing a Reserve Study or update thereto exceeds ten percent of the Association's Annual Budget, the Association must prepare and update a Reserve Study in accordance with RCW 64.90.550. An initial Reserve Study must be prepared by a Reserve Study Professional, based upon either a Reserve Study Professional's visual site inspection of completed improvements or a review of plans and specifications of or for unbuilt improvements, or both when construction of some but not all of the improvements is complete. An updated Reserve Study must be prepared annually. An updated Reserve Study must be prepared at least every third year by a Reserve Study Professional, based upon a visual site inspection conducted by the

Reserve Study Professional. Lot Owners have specific rights to compel the Association to update the Association's Reserve Study under RCW 64.90.555.

10.3.3. Attributes and Contents of Reserve Study. Any Reserve Study is supplemental to the Association's operating and maintenance budget. A Reserve Study must include: (a) A Reserve Component list, including any Reserve Component, the replacement cost of which exceeds one percent of the Annual Budget of the Association, excluding contributions to the Reserves for that Reserve Component. If one of these Reserve Components is not included in the Reserve Study, the study must explain the basis for its exclusion. The study must also include quantities and estimates for the useful life of each Reserve Component, the remaining useful life of each Reserve Component, and current major replacement costs for each Reserve Component;

(b) The date of the study and a disclosure as to whether the study meets the requirements of the Governing Law;

(c) The following level of Reserve Study performed:

(i) Level I: Full Reserve Study funding analysis and plan; (ii) Level II: Update with visual site inspection; or (iii) Level III: Update with no visual site inspection;

(d) The Association's reserve account balance;

(e) The percentage of the fully funded balance to which the reserve account is funded;

(f) Special Assessments already implemented or planned;

(g) Interest and inflation assumptions;

(h) Current reserve account contribution rates for a full funding plan and a baseline funding plan;

(i) A recommended reserve account contribution rate for a full funding plan to achieve one hundred percent fully funded Reserves by the end of the thirty-year study period, a recommended reserve account contribution rate for a baseline funding plan to maintain the reserve account balance above zero throughout the thirty-year study period without Special Assessments, and a reserve account contribution rate recommended by the Reserve Study Professional;

(j) A projected reserve account balance for thirty years based on each funding plan presented in the Reserve Study;

(k) A disclosure on whether the Reserve Study was prepared with the assistance of a Reserve Study Professional, and whether the Reserve Study Professional was independent;

(l) A statement of the amount of any current deficit or surplus in reserve funding expressed on a dollars

per Lot basis. The amount is calculated by subtracting the Association's reserve account balance as of the date of the study from the fully funded balance, and then multiplying the result by the fraction or percentage of the Common Expenses of the Association allocable to each Lot; except that if the fraction or percentage of the Common Expenses of the Association allocable vary by Lot, the Association must calculate any current deficit or surplus in a manner that reflects the variation; AND THE FOLLOWING DISCLOSURE:

(m) "This Reserve Study should be reviewed carefully. It may not include all Common and Limited Common Element components that will require major maintenance, repair, or replacement in future years, and may not include regular contributions to a Reserve Account for the cost of such maintenance, repair, or replacement. The failure to include a component in a Reserve Study, or to provide contributions to a Reserve Account for a component, may, under some circumstances, require the Association to (1) defer major maintenance, repair, or replacement, (2) increase future reserve contributions, (3) borrow funds to pay for major maintenance, repair, or replacement, or (4) impose Special Assessments for the cost of major maintenance, repair, or replacement."

10.3.4. Reserve Account - Reserve Study - Reserve Disclosure - Liability. Except for an award for attorneys' fees and costs under RCW 64.90.555(2), monetary damages or other liability may not be awarded against or imposed upon the Association or its Officers or Board members, or upon any Person who may have provided advice or assistance to the Association or its Officers or Board members, for failure to: Establish or replenish a Reserve Account, have a current Reserve Study prepared or updated in accordance with the requirements of the Governing Law, or make reserve disclosures in accordance with the Governing Law.

10.3.5. Reserve Accounts - Limitations on Withdrawals from Reserve Account. The Board must establish one or more accounts for the deposit of funds identified for the replacement costs of Reserve Components. Any Reserve Account must be an income-earning account maintained under the direct control of the Board, and the Board is responsible for administering the Reserve Account. The Board may withdraw funds from its Reserve Account to pay for unforeseen or unbudgeted costs that are unrelated to replacement costs of the Reserve Components. Any such withdrawal must be recorded in the Minute Books of the Association. The Board must give Notice of any such withdrawal to each Lot Owner and adopt a repayment schedule not to exceed twenty-four months unless the Board determines that repayment within twenty-four months would impose an unreasonable burden on the Lot Owners. The Board must provide to Lot Owners along with the Annual Budget adopted in accordance with RCW 64.90.525 (a) Notice of any such withdrawal, (b) a statement of the current deficiency in reserve funding expressed on a per Lot basis, and (c) the repayment plan. The Board may withdraw funds from the Reserve Account without satisfying the notification of repayment requirements under this Subsection to pay for replacement costs of Reserve Components not included in the Reserve Study.

10.4. Assessments against Lots.

10.4.1. Liability of Lots. Assessments for General Common Expenses and those Specially Allocated Expenses that are subject to inclusion in a Budget must be made at least annually based on a Budget adopted in the manner described in Sections 10.1 and 10.2 hereof.

10.4.2. Assessments in Proportion to Common Expense Liability. All General Common Expenses must be assessed against all the Lots in accordance with their allocated Common Expense liabilities.

10.4.3. Payable in Installments. Unless otherwise determined by the Board of Directors, the annual Assessment against each Lot for its proportionate share of the Common Expenses of the Association shall be payable in 12 equal, monthly installments, and each installment shall be payable in advance by the first day of the month.

10.5. Allocated Interests for Common Expense Liability; Procedure on Reallocation.

10.5.1. Allocation of Liability for Common Expense Assessments. Each Lot in the Community has been allocated an equal percentage liability for payment of the Common Expenses of the Association that is known as the Lot's Allocated Interest for Common Expense Liability. This liability has been allocated equally among the Lots. Nevertheless, a Lot's liability for Common Expense Assessments under such Allocated Interests is subject to adjustment under the provisions of Subsections 3.3.2 and 10.7 hereof.

10.5.2. Reallocation. If Common Expense liabilities are reallocated through, Common Expense Assessments or any installment thereof not yet due under the prevailing Budget shall be recalculated by the Board in accordance with the reallocated Common Expense liabilities, and each Lot shall thereafter be liable for the revised Assessments due upon such recalculation.

10.6. Special Assessments.

The Board at any time may propose a Special Assessment. The Assessment is effective only if the Board follows the procedures for ratification of a Budget described in Sections 10.1 and 10.2 hereof and the Lot Owners do not reject the proposed Assessment. The Board may provide that the Special Assessment may be due and payable in installments over any period it determines and may provide a discount for early payment. All Lot Owners shall be obligated to pay the adjusted monthly amount or, if the Special Assessment is not payable in installments, the full amount of such Special Assessment, in proportion to their Allocated Interests for Common Expense Liability. See also Section 11.9 governing Special Assessments that may be required in conjunction with major damage repairs.

10.7. Specially Allocated Assessments.

10.7.1. Expenses Subject to Inclusion in Budget. The items included below in this Subsection constitute Specially Allocated Expenses that are subject to inclusion in the Association's Annual Budget:

(a) Any expense associated with the operation, maintenance, repair, or replacement of a Special Limited Common Element shall constitute a Specially Allocated Assessment against the Lot to which such facility is allocated; if applicable, such expenses shall be shared equally among any Lots sharing such facilities.

(b) Charges collectible by the Association for the use of Reserved Common Elements or other facilities, such as storage areas, recreation facilities or the like, or services provided to Lot Owners on a regular

basis.

(c) If one or more Lots or the Common Elements are not separately metered, the utility service shall be paid as a Common Expense, and the Board may either allocate, by reasonable formula, a portion of such expense to each such Lot as a Limited Common Expense, or reimburse any Lot Owner who pays, in whole or in part for utilities serving the Common Elements or other Lots, as appropriate.

10.7.2. Expenses Not Subject to Inclusion in Budget. The items included below in this Subsection constitute Specially Allocated Expenses that are not subject to inclusion in the Association's Annual Budget:

(a) Costs of services provided to or expenses incurred on behalf of one or more Lot Owners on a one-time or irregular basis, reasonable charges for the preparation and recordation of amendments to the Declaration benefitting particular Lot Owners, resale certificates, lender questionnaires, or statements of unpaid Assessments, "move-in" and/or "move-out" charges established by the Board, fines imposed by the Board, the costs and attorney's fees described in RCW 64.90.485(19), or that may be imposed pursuant to the Bylaws, and interest on any delinquent account.

(b) To the extent that any expense of the Association is caused by the negligence of any Lot Owner or that Lot Owner's tenant, guest, invitee, or Occupant, the Association may assess that expense against the Lot Owner's Lot after Notice and an opportunity to be heard as provided in the Bylaws, to the extent of the Association's deductible and any expenses not covered under an insurance policy issued to the Association. See Section 13.2 hereof.

(c) To the extent that any expense of the Association is caused by willful misconduct or gross negligence of any Lot Owner or that Lot Owner's tenant, guest, invitee, or Occupant, the Association may assess that expense against the Lot Owner's Lot after Notice and an opportunity to be heard as provided in the Bylaws, even if the Association maintains insurance with respect to that damage or Common Expense. See Section 13.2 hereof.

10.8. Accounts; Commingling Prohibited - Funds generally maintained in Washington.

10.8.1. General Principles Associated with Association Accounts. The Association must keep all funds of the Association in the name of the Association with a Qualified Financial Institution. The funds must not be commingled with the funds of any other association or with the funds of any Managing Agent of the Association or any other Person, or be kept in any trust account or custodial account in the name of any trustee or custodian.

10.8.2. Obligations of Managing Agents. A Managing Agent who accepts or receives funds belonging to the association must promptly deposit all such funds into an account maintained by the association in compliance with Subsections 10.8.1 or 10.3.3 hereof, as appropriate. Accounts in the name of the Association over which a Managing Agent has any control must be maintained in a financial institution located in the State of Washington.

## 10.9. Surplus Funds.

Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of Reserves must either be paid annually to the Lot Owners in proportion to their Common Expense liabilities or credited to them to reduce their future Common Expense Assessments, at the Board's discretion.

## 10.10. Liability of Lot Owners for Association Obligations.

10.10.1. General Liability Principles. A Lot Owner is not liable, solely by reason of being a Lot Owner, for an injury or damage arising out of the condition or use of the Common Elements. Neither the association nor any Lot Owner except the Declarant is liable for that Declarant's torts in connection with any part of the Community which that Declarant must maintain. An action alleging a wrong done by the Association, including an action arising out of the condition or use of the Common Elements, may be maintained only against the Association and not against any Lot Owner.

10.10.2. Proportionate Liability for Liens. A judgment for money against the Association perfected under RCW 4.64.020 is not a lien on the Common Elements, but is a lien in favor of the judgment lienholder against all of the other real estate of the Association and all of the Lots in the Community at the time the judgment was entered. Other property of a Lot Owner is not subject to the claims of creditors of the Association. If the Association has granted a security interest in the Common Elements to a creditor of the Association pursuant to RCW 64.90.465, the holder of that security interest must exercise its right against the Common Elements before its judgment lien on any Lot may be enforced. Whether perfected before or after the creation of the Community, if a lien, other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the Community, becomes effective against two or more Lots, the Lot Owner of an affected Lot may pay to the lienholder the amount of the lien attributable to the Lot, and the lienholder, upon receipt of payment, must promptly deliver a release of the lien covering that Lot. The amount of the payment must be proportionate to the ratio that the Lot Owner's Common Expense liability bears to the Common Expense liabilities of all Lot Owners that are subject to the lien. After payment, the Association may not assess or have a lien against that Lot Owner's Lot for any portion of the Common Expenses incurred in connection with that lien.

## 10.11. Assessments to Pay Judgment against Association.

Assessments to pay a judgment against the Association may be made only against the Lots in the Community at the time the judgment was entered in proportion to their Allocated Interests for Common Expense liability at the time the judgment was entered.

## 10.12. Owners Personally Liable for Common Expenses.

10.12.1. Owners Jointly & Severally Liable for Assessments. In addition to constituting a lien on the Lot, each Assessment shall be the joint and several obligation of the Owner or Owners of the Lot to which the same are assessed as of the time the Assessment is due. 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.

10.12.2. Suit against Lot Owner Authorized. Suit to recover a personal judgment for any delinquent Assessment is maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

10.12.3. Association's Failure to Adopt Budget Does not Release Owners. The failure or delay of the Board of Directors to adopt the Annual Budget for any year shall not constitute a waiver or release in any manner of a Lot Owner's obligation to pay his or her allocable share of the Common Expenses as herein provided, and in the absence of an Annual Budget or adjusted Annual Budget, each Lot Owner shall continue to pay (with or without Notice) a monthly Assessment at the rate established for the preceding fiscal year until an Assessment is made under a current Annual Budget or adjusted Annual Budget and Notice thereof has been sent to the Lot Owner.

10.12.4. Late Fees Authorized. The Association may from time to time establish reasonable late charges and a rate of interest to be charged, not to exceed the maximum rate calculated under RCW 19.52.020, on all subsequent delinquent Assessments or installments of Assessments. If the Association does not establish such a rate, delinquent Assessments bear interest from the date of delinquency at the maximum rate calculated under RCW 19.52.020 on the date on which the Assessments became delinquent.

10.12.5. No Waiver or Exemption of Liability for Assessments. No Lot Owner may exempt himself or herself from liability with respect to any portion of the Common Expenses for any reason, including without limitation a waiver of the enjoyment of the right to use any of the Common Elements or by leasing, rental or abandonment of his or her Lot or otherwise.

10.13. Liability Following Conveyance of Lot.

10.13.1. Liability of Lot Owner following Sale of Lot. In a voluntary conveyance other than by foreclosure, the grantee of a Lot is jointly and severally liable with the grantor for all unpaid Assessments against the grantor 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.

10.13.2. Liability of Mortgagee or other Purchaser following Foreclosure or Sale. Except as provided in Subsection 10.17.2 hereof, the holder of a mortgage or other purchaser of a Lot who obtains the right of possession of the Lot through foreclosure is not liable for Assessments or installments of Assessments that became due prior to such right of possession. Such unpaid Assessments are deemed to be Common Expenses collectible from all the Lot Owners, including such mortgagee or other purchaser of the Lot. Foreclosure of a mortgage does not relieve the prior Lot Owner of personal liability for Assessments accruing against the Lot prior to the date of such sale as provided in this Subsection.as provided above.

10.14. Statement of Unpaid Assessments.

10.14.1. Board Required to Deliver Statement of Unpaid Assessments. The Board, upon written request, shall furnish to a Lot Owner or a mortgagee a statement signed by an Officer or authorized agent of the Association setting forth the amount of unpaid Assessments against that Lot. The statement shall be furnished within fifteen days after receipt of the request and is binding on the Association, the Board of Directors, and every Lot Owner, unless and to the extent known by the recipient to be false.

10.14.2. Lot Owners Deemed to Consent to Notice to Lender. Every Lot Owner, by virtue of taking title to a Lot in this Community, shall be deemed for all purposes to have consented in advance to the Association furnishing a statement of unpaid Assessments to a mortgagee holding a security interest in the Lot Owner's Lot – no additional consent or authorization from any Lot Owner shall be required in advance of the Association providing such a statement under circumstances that authorize such a delivery.

10.15. Lien for Assessments and Power of Sale.

10.15.1. The Association has a statutory lien on each Lot for any unpaid Assessment against the Lot from the time such Assessment is due.

10.15.2. Each and every Lot Owner of any Lot in the Community, by virtue of his or her acquisition by any means of title to such Lot, shall take such title subject to the Association's lien for Assessments. Pursuant to RCW 64.90.485(13)(b), the Declarant as "Grantor" does hereby grant, bargain, sell and convey to WHATCOM LAND TITLE COMPANY, INC., as "Trustee" in trust WITH POWER OF SALE, the Lots and all other real property in the Community described in Exhibit "A" to this Declaration, which property is not used principally for agricultural purposes, together with all tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any manner appertaining, and the rents, issues and profits thereof, to secure the obligations of the Lot Owners to the Association, as "Beneficiary," for the payment of any Assessments lawfully levied under this Declaration. Each and every Lot Owner shall be deemed for all purposes, as of the time of his or her acquisition of title to any Lot in the Community, to have joined as an additional "Grantor" in the conveyance in trust above described, and to have at that time granted, bargained, sold and conveyed his or her Lot, along with any undivided Allocated Interest in the Common Elements and/or any Limited Common Elements that may be assigned thereto in this Declaration, to such Trustee, to secure all obligations imposed by this Declaration on such Lot Owner to pay Assessments to the Association. The Power of Sale provided and granted herein shall be operative in the case of a default in the obligation to pay Assessments; upon default by such Lot Owner in the payment of any indebtedness secured hereby, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In such event and upon written request of Beneficiary, the Trustee shall sell the Lot as trust property, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Any Person except Trustee may bid at Trustee's sale. The Trustee shall apply the proceeds of the sale as follows: (1) to the expenses of sale, including a reasonable trustee's fee and attorney's



fee; (2) to the obligations secured by this Declaration; (3) the surplus, if any, shall be distributed to the Persons entitled thereto.

#### 10.16. Automatic Perfection of Lien.

Recording of this Declaration constitutes record notice and perfection of the Association's statutory lien. Further notice or recordation of any claim of lien for Assessments is not required, but is not prohibited. The Board may thus record a Notice of Claim of Lien for delinquent Assessments in the real property records of any county in which the Community is located.

#### 10.17. Priority of Lien.

10.17.1. General Lien Priority. The Association's statutory lien shall be prior to all other liens and encumbrances on a Lot except: (a) Liens and encumbrances recorded before the recordation of this Declaration; (b) Except as otherwise provided in Subsection 10.17.2 below, a security interest on the Lot recorded before the date on which the unpaid Assessment became due; and (c) liens for real property taxes and other governmental assessments or charges against the Lot.

10.17.2. Association's Super-priority Lien for Assessments. Except as provided in Subsection 10.18.2 hereof, The Association's statutory lien also has priority over the security interests described in Subsection 10.17.1(b) above, to the extent of an amount equal to the following:

(a) The Common Expense Assessments, excluding any amounts for capital improvements, based on the periodic Budget adopted by the Association pursuant to Sections 10.1 and 10.2 hereof, along with any Specially Allocated Assessments that are properly assessable against the Lot under such periodic Budget, which would have become due in the absence of acceleration during the six months immediately preceding the institution of proceedings to foreclose either the Association's lien or a security interest described in Subsection 10.17.1(b) hereof;

(b) The Association's actual costs and reasonable attorneys' fees incurred in foreclosing its lien but incurred after the giving of the Notice described in Subsection 10.17.2(c) hereof; provided, however, that the costs and reasonable attorneys' fees that will have priority under this Subsection 10.17.2 shall not exceed two thousand dollars or an amount equal to the amounts described in Subsection 10.17.2(a), whichever is less;

(c) The priority amounts described in Subsection 10.17.2 shall be prior only to the security interest of the holder of a security interest on the Lot recorded before the date on which the unpaid Assessment became due and only if the Association has given that holder not less than sixty days' prior written Notice that the Owner of the Lot is in default in payment of an Assessment. The Notice shall contain:

(i) Name of the borrower;

(ii) Recording date of the trust deed or mortgage;

(iii) Recording information;

(iv) Name of the Community, Lot Owner, and Lot designation stated in the Declaration or the Plat or an amendment thereto;

(v) Amount of unpaid Assessment; and

(vi) A statement that failure to, within sixty days of the written Notice, submit to the Association payment of six months of Assessments as described in Subsection 10.17.2(a) hereof will result in the priority of the amounts described in Subsection 10.17.2(b); and

(d) Upon payment of the amounts described in Subsection 10.17.2(a) by the holder of a security interest, the Association's lien described in Subsection 10.17.2 shall be thereafter fully subordinated to the lien of such holder's security interest on the Lot.

(e) The Notice described in Subsection 10.17.2(c) hereof shall be mailed by ordinary mail to the holder of the security interest on the Lot at an address for Notice provided to the Association by the holder, or if the Association mails the Notice to the holder by certified mail, return receipt requested, at that address. If the holder has not provided an address for Notice to the Association, either for the purpose of becoming an Eligible Mortgagee, or for the purposes of receiving the Notice required under Subsection 10.17.2(c) above or otherwise, then consistent with the provisions of RCW 64.90.285(9), the Association must provide Notice to the address appearing in the security interest of record which Notice shall be deemed for all purposes to satisfy the Notice requirements of RCW 64.90.485(3)(a)(iii).

(f) Every Lot Owner, by virtue of taking title to a Lot in this Community, shall be deemed for all purpose to have consented in advance to the Association giving the Notice described in Subsection 10.17.2(c) hereof to a mortgagee holding a security interest in the Lot Owner's Lot under circumstances described herein that would require such a delivery. No additional consent or authorization from any Lot Owner shall be required in advance of the Association providing such a Notice.

10.17.3. Special Definitions Relating to Association's Lien Rights. For the purposes of this Section 10.17:

(a) "Institution of proceedings" means either:

(i) The date of recording of a notice of trustee's sale by a deed of trust beneficiary;

(ii) The date of commencement, pursuant to applicable court rules, of an action for judicial foreclosure either by the Association or by the holder of a recorded security interest; or

(iii) The date of recording of a notice of intention to forfeit in a real estate contract forfeiture proceeding by the vendor under a real estate contract.

(b) "Capital improvements" does not include making, in the ordinary course of management, repairs to Common Elements or replacements of the Common Elements with substantially similar items, subject

to: (i) Availability of materials and products, (ii) prevailing law, or (iii) sound engineering and construction standards then prevailing.

10.17.4. Amendments to Budgets to include Improper Amounts are prohibited. The adoption of a periodic Budget that purports to allocate to a Lot any fines, late charges, interest, attorneys' fees and costs incurred for services unrelated to the foreclosure of the Association's lien, other collection charges, or Specially Allocated Assessments assessed under Subsection 10.7.2 hereof does not cause any such items to be included in the priority amount affecting such Lot.

10.17.5. Mechanic's Liens – Homesteads. This Section 10.18 does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other Assessments made by the Association. The Association's lien is not subject to the provisions of chapter 6.13 RCW relating to Homesteads.

10.18. Enforcement of Association's Lien.

10.18.1. Judicial Foreclosure Proceedings Authorized. The Association's lien may be enforced judicially by the Association or its authorized representative in the manner set forth in Chapter 61.12 RCW, subject to any rights of redemption under chapter 6.23 RCW.

10.18.2. Nonjudicial Foreclosure Proceedings Authorized. The Association's lien also may be enforced nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust. The Association or its authorized representative shall have the power to purchase the Lot at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. The Association may elect to take a deed in lieu of foreclosure in any such proceeding.

10.18.3. Limitations Associated with Nonjudicial Foreclosures. If the Association forecloses its lien nonjudicially pursuant to Chapter 61.24 RCW, the Association shall not be entitled to the lien priority provided for under Subsection 10.17.2 hereof, and is subject to the limitations on deficiency judgments provided in chapter 61.24 RCW.

10.18.4. Additional Remedies for Nonpayment of Assessments. This Section 10.17 does not prohibit actions against Lot Owners to recover sums for which Section 10.16 hereof creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

10.18.5. Restrictions on Commencement of Foreclosure Proceedings. The Association may not commence an action to foreclose a lien on a Lot unless:

(a) The Lot Owner, at the time the action is commenced, owes a sum equal to at least three months of Common Expense Assessments; and

(b) The Board approves commencement of a foreclosure action specifically against that Lot.

10.18.6. Six Year Statute of Limitation on All Enforcement Proceedings. The Association's lien for unpaid Assessments and the personal liability a Lot Owner for payment of those Assessments are extinguished unless proceedings to enforce the lien or collect the debt are instituted within six years after the full amount of the Assessments sought to be recovered becomes due

10.19. Reasonableness Required in Enforcement Actions.

Every aspect of a collection, foreclosure, sale, or other conveyance under Section 10.18 hereof, must be commercially reasonable.

10.20. Rent Subject to Lien for Assessments - Other Remedies for Nonpayment.

10.20.1. Rent Payable to Association Upon Default of Owner. (a) If a Lot is rented or leased by its Owner, and if the Owner becomes delinquent in the payment of Assessments for more than 90 days, the Association may collect the delinquent amount from the tenant, who shall pay over to the Association so much of the rent for such Lot as is required to pay such delinquency, plus interest, attorneys' fees and other costs of collection. In order to avail itself of the remedy contained in this Subsection, the Association shall first send a Notice jointly to the Owner and the Tenant by First Class U.S. Mail, advising both parties [i] of the Owner's delinquency in Assessments, [ii] of the tenant's obligations under this Subsection of the Declaration, and [iii] notifying both parties that if such delinquency is not cured within ten (10) days of mailing, the tenant must commence paying rent to the Association until the delinquency has been cured. The tenant shall not have the right to question payment to the Association, and such payment shall discharge both the tenant's duty to pay rent to the Lot Owner and the Lot Owner's obligation to pay Assessments, pro tanto. The Association shall not resort to this remedy where a receiver has been appointed and is collecting such rents, as provided immediately below in Subsection 10.21.2. (b) Every Lot Owner, by virtue of taking title to a Lot in this Community and subsequently renting the Lot, shall be deemed for all purpose to have consented in advance to the Association giving the Notice described in this Subsection 10.20.1 to a tenant of the Owner under circumstances that authorize such a delivery. No additional consent or authorization from any Lot Owner shall be required in advance of the Association providing such a Notice.

10.20.2. Association Entitled to Appointment of Receiver During Foreclosure. In an action by the Association to collect Assessments or to foreclose a lien on a Lot that is not occupied by the Owner thereof, the court may appoint a receiver to collect all sums alleged to be due and owing to the Lot Owner before commencement or during pendency of the action. The receivership is governed under chapter 7.60 RCW. During pendency of the action, the Court may order the receiver to pay sums held by the receiver to the Association for any Assessments against the Lot. The exercise of rights under this Subsection by the Association does not affect the priority of preexisting liens on the Lot.

10.21. Remedies Cumulative.

The remedies provided herein are cumulative and the Board may pursue them concurrently, along with any other remedies that may be available under the law although not expressed herein. Suit to recover a personal judgment for any delinquent Assessment is maintainable in any court of competent jurisdiction

without foreclosing or waiving the lien securing such sums.

## ARTICLE XI INSURANCE, DESTRUCTION, RESTORATION AND DISTRIBUTION

### 11. INSURANCE, DESTRUCTION, RESTORATION & DISTRIBUTION.

#### 11.1. Authority, General Provisions, Name of Insured.

11.1.1. General Provisions. The Board of Directors shall obtain and maintain for the Association: property insurance, commercial general liability insurance, fidelity insurance and other insurance described in greater detail below in this Section 11, under such terms and for such amounts as shall be deemed necessary or desirable by the Board. Levels of coverage and deductibles from coverage shall be determined annually by the Board with assistance from the agent of the insurance company or companies affording such coverage. Unless not reasonably available, such coverage shall follow the terms, conditions and amounts required by Section 11.2 hereof.

11.1.2. Name of Insured - Certain Insuring Arrangements Prohibited. The name of the insured under each required policy shall be stated as follows: "Sunday Harbor Community Association." The Association must be the First Named Insured under each policy. Having the Association named as an "additional insured" or "additional named insured" in a pooled insurance program or agreement maintained by a Managing Agent or other third party, which provides coverage to unrelated projects, does NOT satisfy this requirement.

11.1.3. General Insuring Scheme - Limited Coverage for Owners and Tenants. The Association is not a guarantor of the health, safety or property of the Lot Owners, tenants or other Occupants of the Community. See Section 14.1 hereof for further details. The Association's policy does not and cannot provide coverage for the Dwelling on the Lot or other real property or personal property owned by or belonging to any Lot Owner, tenant or other Occupant of a Lot, nor will the Association's policy provide coverage for liability for harm arising within a Lot. Further, the property coverage provided under the Association's policy will always include a "deductible," with the result that no loss to common property will be completely covered under the Association's policy.

11.1.4. Owners and Tenants Responsible for Acquiring their Own Insurance. Because of the limitations in coverage afforded under the Association's policy, Lot Owners and tenants must acquire their own insurance coverage in order to be protected.

#### 11.2. Association's Policies and Coverage.

11.2.1. Property Insurance. Any insurable portions of the Common Elements in this Community, along with any real property that must become Common Elements, shall be insured against casualty or physical damage in an amount equal to the maximum insurable replacement value thereof (i.e., 100% of replacement costs based upon the value of replacing all such insurable improvements in the Community exclusive of land, excavations and foundations), utilizing contemporary building materials and technology. Such coverage shall afford protection against loss or damage by fire, vandalism, malicious

mischief, windstorm, and other hazards covered by the standard "broad form" and/or "special" extended coverage endorsements or their equivalent, and such other perils customarily covered by insurance for similar projects. The policy shall also cover other Common property including fixtures, building service equipment and common personal property and supplies owned by the Association or included in the Common Elements. It is intended that insurance coverage obtained by the Board be the most comprehensive insurance that is currently available for projects similar in age and size to this Community.

11.2.2. Liability Coverage. The Association's policy shall provide coverage for liability for death, personal injury and property damage arising from the use, ownership or maintenance of any of the Common Elements, along with medical payments insurance. Such liability insurance should also cover any commercial spaces that are owned by the Association, even if they are leased to others. Coverage should be afforded under a commercial general liability policy for the entire Community, including all areas under the supervision of the Association. Limits of liability shall in no event be less than \$1,000,000 with respect to any single occurrence. 11.2.3. Fidelity Insurance. The Association may also obtain blanket fidelity insurance for any person who either handles (or is responsible for) funds that he or she holds or administers, whether or not that individual receives compensation for services; such a policy should name the Association as the insured and include a provision that calls for at least thirty days' written notice to the Association before the policy can be canceled or substantially modified for any reason. The policy should cover the maximum funds that will be in the custody of the Association or its Manager at any time while the policy is in force. A Manager that handles funds for the Association shall be named either as an employee or as a designated agent under the Association's fidelity policy, or an endorsement thereto, as appropriate.

11.2.4. Directors' and Officers' Insurance. Unless not reasonably available, the Board shall acquire Directors' and Officers' errors and omissions insurance to satisfy the Association's indemnification obligations under the Bylaws of the Association.

11.2.5. Miscellaneous Coverage. The Board may obtain coverage for earthquake and/or flood damage, and other forms of coverage reasonably available in the insurance marketplace that may appear necessary or desirable from time to time.

### 11.3. Deductible.

Except as otherwise provided herein, the deductible under any policy of insurance purchased by the Board of Directors shall not exceed the lesser of \$10,000 or 1% of the face amount of the policy. Except as provided herein, the amount of the deductible shall be paid by the Association as a Common Expense. Funds to cover the amount of the deductible shall be included in the Association's reserve accounts. The deductible should be established at a level that is sufficiently high to eliminate minor "nuisance" claims which could cause cancellation of the Association's insurance policy.

### 11.4. Certificates of Insurance Coverage.

An insurer that has issued an insurance policy to the Association must issue certificates or memoranda

of insurance to the Association and, upon a request made in a Record, to any Lot Owner or holder of a security interest. The insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of chapter 48.18 RCW pertaining to the cancellation or nonrenewal of contracts of insurance. The insurer may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy without complying with this Section 11.4.

#### 11.5. Owners' and Tenants' Policies.

11.5.1. Owners must acquire their own Insurance. Each Lot Owner should obtain, at such Owner's expense, a homeowners insurance policy, to insure against loss or damage to the Dwelling and other improvements on the Lot, and to personal property used in or incidental to the occupancy of the Lot. Such coverage shall afford protection against:

(a) loss or damage by fire, vandalism, malicious mischief, windstorm, and other hazards covered by the standard "broad form" and/or "special" extended coverage endorsements or their equivalent, and such other perils customarily covered by insurance for Dwellings in similar projects.

(b) liability for death, personal injury and property damage arising from the use, ownership or maintenance of any part of the Lot., additional living expense, loss of rent, vandalism or malicious mischief, theft, personal liability, loss assessment coverage, and the like.

11.5.2. Tenants must acquire their own Insurance. Tenants may be held liable to the Association under circumstances described in detail in Section 13.4 hereof, and to other third parties under general principles of law. As a result, any tenant must obtain an HO-4 insurance policy, or equivalent, to protect the tenant from liability for death, personal injury and property damage arising from the use, occupancy or maintenance of any part of the Lot, along with loss to personal property, additional living expense, vandalism or malicious mischief, theft and the like.

11.5.3. Board has no Obligation to Monitor Lot Owners' Insurance. The Association has no insurable interest in the Lots, the Dwellings or personal property owned by Lot Owners, tenants or other Occupants. The Board of Directors is not obligated to monitor the existence or nonexistence of any insurance required under this Section 11.5; such responsibility, and the risks to the Owner or tenant arising from a failure to have proper insurance are to be borne solely by the Lot Owner or tenant. An Owner or tenant who fails to maintain such insurance shall be deemed to have made an election to self-insure for the risks described in Section 11.5 and for any other risks for which coverage is readily available under HO-3 or HO-4 policies. A failure by the Owner or tenant to maintain such insurance or to make a claim under an existing policy, which failure results in an inability of such person to reimburse the Association for any form of economic loss, damage or other harm to the Association caused by such person shall constitute willful misconduct or gross negligence on the person's part. See also Section 14.4 hereof.

#### 11.6. Unavailability, Cancellation or Nonrenewal.

If the insurance described in Section 11.2 hereof is not reasonably available, or is modified, canceled or not renewed, the Board promptly shall cause Notice of that fact to be hand-delivered or sent prepaid by first class United States mail to all Lot Owners, to each Eligible Mortgagee, and to each mortgagee to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

#### 11.7. Adjustment and Payment of Loss Proceeds.

All policies shall provide that adjustment of loss shall be made by the Board of Directors, and that proceeds payable pursuant to the policies shall be paid directly to the Board of Directors as Insurance Trustee, and not to any holder of a security interest. The Board shall hold such proceeds in trust for the Lot Owners and lienholders as their interests may appear.

(a) Proceeds are to be paid first for the repair or replacement of the damaged property, and neither the Association, the Lot Owners, nor lienholders are entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or replaced, or the Community is terminated.

(b) If, pursuant to the provisions of Section 11.8 hereof, not all of the damaged or destroyed portions of the Community are to be repaired or replaced, insurance proceeds shall be payable as provided in that Section.

11.8. Reconstruction Following Casualty Loss. 11.8.1 Duty to Reconstruct. Any portion of the Community for which insurance is required under this Section and for which the Board of Directors has the responsibility of repair that is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (a) the Community is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent (80%) of the Lot Owners, including every Owner of an assigned Limited Common Element that will not be rebuilt, along with that percentage of Eligible Mortgages whose approval must be sought under Article XV hereof, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and Reserves shall be a Common Expense.

11.8.2 Decision Not To Reconstruct. In most instances, the Association will not hesitate to repair or replace damaged portions of the Community following casualty. In the event that the Owners at a Special Meeting of the Association convened to address such issues decide otherwise and adopt a resolution in accordance with the provisions of Section 11.8.1 hereof that some or all of the damaged or destroyed portions of the Community will not be repaired or replaced: (i) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Community; and (ii) the remainder of the proceeds shall be distributed to all the Lot Owners or lien-holders, as their interest may appear, in proportion to the Lots' respective Common Expense liability percentages. Notwithstanding the provisions of this Subsection, RCW 64.90.290 governs the distribution of insurance proceeds if the Community is terminated.



11.8.3 Manner of Reconstruction. If destroyed or damaged property is to be reconstructed or repaired, the reconstruction or repair thereof shall be accomplished as nearly as practicable to the character of the building or improvement existing immediately prior to such casualty. Any reconstruction or repair shall be done in accordance with then prevailing Building Code requirements and may be done with contemporary building materials, and achieved by utilizing updated construction systems and technology.

11.9. Assessments if Insurance is Inadequate.

Immediately after a casualty causing damage to property for which the Board of Directors has the responsibility of maintenance and repair, the Board shall obtain reliable and detailed estimates of the cost to replace the damaged property in as good a condition as it was before the casualty. Such costs may include professional fees and premiums for such performance bonds or other type of security that the Board desires or as may be required. The cost of repair or replacement not paid from insurance proceeds is a Common Expense. If the proceeds of insurance, coupled with any available Reserve Funds, are not sufficient to defray such estimated costs, the Board shall present to the Owners a Budget containing a Special Assessment to be made against all the Lots as provided in Section 10.7 hereof, in sufficient amounts to provide funds to pay the shortfall; such Budget shall be ratified in the manner described in Section 10.2 hereof, but pursuant to RCW 64.90.470(8)(c), the vote necessary to reject the Budget shall be that of 80% of the Lot Owners. If at any time during reconstruction and repair, or upon completion of reconstruction or repair, the funds for payment of the costs thereof are insufficient, the Board shall present a further Budget to the Owners containing a Special Assessment, in sufficient amounts to provide funds for the payment of such costs.

11.10. Notice to Eligible Mortgagees.

The Board of Directors shall give written Notice to all Eligible Mortgagees whenever damage to the Common Elements exceeds \$100,000.

11.11. Miscellaneous.

The provisions of this Article XI shall constitute the procedure by which a determination is made by the Lot Owners to repair, restore, reconstruct or rebuild the Community following casualty thereto. The purpose of this Article XI shall be to provide a fair and equitable method of allocating the costs of repair and restoration and making a determination for repair and restoration if all or a portion of the improvements are damaged or destroyed. The provisions of this Article XI shall be liberally construed to accomplish such purpose.

## ARTICLE XII CONDEMNATION

### 12. CONDEMNATION.

Provisions dealing with the effect of condemnation proceedings affecting this Community appear in

RCW 64.90.030 and are otherwise not set forth herein.

## ARTICLE XIII COMPLIANCE WITH LAW AND COVENANTS

### 13. COMPLIANCE WITH LAW AND COVENANTS.

#### 13.1. Compliance by Owners and Occupants.

Each Owner, tenant or other Occupant of a Lot shall comply strictly with the provisions of the Governing Law and the Governing Documents or Bylaws. All remedies provided to the Association in this Article may be enforced against any tenant or other Occupant of a Lot.

#### 13.2. Liability for Conduct Causing Common Expense.

13.2.1. Liability for Negligence. Any expense of the Association caused by the negligence of any Lot Owner or that Lot Owner's tenant, guest, invitee or Occupant may be assessed against the Lot Owner's Lot after notice and an opportunity to be heard, to the extent of the Association's deductible and any expenses not covered under an insurance policy issued to the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of any Lot or its appurtenances. See Section 10.8 hereof.

13.2.2. Liability for Gross Negligence or Willful Misconduct. To the extent that any expense of the Association is caused by willful misconduct or gross negligence of any Lot Owner or that Lot Owner's tenant, guest, invitee or Occupant may be assessed against the Lot Owner's Lot after notice and an opportunity to be heard, even if the Association maintains insurance with respect to that damage or Common Expense. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of any Lot or its appurtenances. See Section 10.8 hereof.

13.2.3. Hearing to Determine Owner's Liability. An Owner whose conduct appears to justify imposition of a Specially Allocated Assessment pursuant to Subsections 13.2.1 through 13.2.4 above shall be first provided with Notice of the Board's intentions and an opportunity to be heard, in the manner provided in the Bylaws for hearings regarding the imposition of sanctions against an Owner.

#### 13.3. Enforcement by Association.

The Board of Directors shall have primary responsibility for maintaining and enforcing compliance with the covenants, conditions and restrictions contained in the Governing Documents or Bylaws. Without limiting the authority and powers conferred upon the Board by the Governing Law, the Board shall have the rights, powers and duties described in Section 7 of the Initial Bylaws.

#### 13.4. Tenants and other Occupants Subject to Rights and Responsibilities of Owners.

13.4.1. General Principles. Any Tenant or other Occupant of a Lot shall be deemed to be bound by all portions of the Governing Documents or Bylaws that are binding upon the Owner thereof, other than the direct obligation to pay Common Expense Assessments to the Association. All rights, remedies and procedures available to the Association when dealing with Owners under the Governing Documents or Bylaws shall be available to the Association when dealing with any tenant or other Occupant of an Owner.

13.4.2. Remedies against Tenants and Occupants. If a tenant or occupant of a Lot Owner violates the Governing Documents, in addition to exercising any of its powers against the Lot Owner, the Association may:

(a) Exercise directly against the tenant or occupant the powers described in RCW 64.90.480(2)(l);

(b) After giving Notice to the tenant or occupant and the Lot Owner and an opportunity to be heard, levy reasonable fines against the tenant or occupant and the Lot Owner for the violation; and

(c) Enforce any other rights against the tenant or occupant for the violation that the Lot Owner as the landlord could lawfully have exercised under the lease or that the Association could lawfully have exercised directly against the Lot Owner, or both. The rights referred to in this Subsection may be exercised only if the tenant, occupant or Lot Owner fails to cure the violation within ten days after the Association notifies the tenant or occupant and Lot Owner of that violation.

13.4.3. Association's Rights under Leases. The Association shall have the right (but not the obligation) to terminate the lease of a tenant who, following a hearing held under provisions of the Bylaws regarding the imposition of sanctions, has been found to have violated the Governing Documents; the Association shall be deemed a "real party in interest" in any legal proceeding brought to enforce this right. Unless a lease otherwise provides, the provisions of Subsection 13.4.2 above do not: (a) Affect rights that the Lot Owner has to enforce the lease or that the Association has under other law; or (b) Permit the Association to enforce a lease to which it is not a party in the absence of a violation of the Governing Documents.

13.5. Board's Discretion regarding Enforcement.

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

13.5.2. No absolute Duty to Enforce. The Board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented: (a) The Association's legal position does not justify taking any or further enforcement action; (b) The covenant, restriction, or Rule being enforced is, or is likely to be construed as, inconsistent with law; (c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the Association's resources; or (d) It is not in the Association's best interests to pursue an

enforcement action.

13.5.3. Exercise of Discretion Establishes no Precedent. The Board's decision under Subsections 13.5.1 and 13.5.2 above to not pursue enforcement under one set of circumstances does not prevent the Board from taking enforcement action under another set of circumstances, but the Board may not be arbitrary or capricious in taking enforcement action.

13.6. Remedies for Association, Owners and Occupants.

While the Board has enforcement authority as provided above in this Article XIII, Lot Owners and other Occupants who are or may be harmed or aggrieved in some fashion also retain legal rights of enforcement on their own behalf and retain such remedies as are available under the law, and may bring an action to enforce a right granted or obligation imposed under the Governing Law or the Governing Documents. The court may award reasonable attorneys' fees and costs to the prevailing party in any such proceeding.

#### ARTICLE XIV LIMITATION OF LIABILITY

14. LIMITATION OF LIABILITY.

14.1. Association Not a Guarantor - No Liability for Utility Failure, Etc.

The Association is not a guarantor of the health, safety or property of the Lot Owners and other Occupants of the Community. Except to the extent covered by insurance obtained by the Board pursuant to Article XI, neither the Association nor the Board shall be liable for any failure of any utility or other service obtained by the Board, or for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust or sand that may leak or flow from outside or from any parts of any buildings, or from any pipes, drains, conduits, appliances, or equipment, or from any other place, or damage from mold or rot, or for inconvenience or discomfort resulting from any action taken to make repairs to the Property, or to comply with any law, ordinance or order of a governmental authority. No diminution or abatement of liability for Common Expense Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

14.2. No Bailment.

Neither the Board of Directors, the Association or any Owner shall be considered a bailee of any personal property stored or placed on the Common Elements (including property located in vehicles parked on the Common Elements), whether or not exclusive possession of the particular area is given to an Owner for parking or otherwise, nor shall they be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

14.3. Liability of Directors and Officers - Indemnification.

14.3.1. Liability of Directors and Officers. In the performance of their duties, Officers and Board members must exercise the degree of care and loyalty to the Association required of an officer or director of a corporation organized, and are subject to the conflict of interest rules governing directors and officers, under chapter 24.06 RCW. 14.3.2. Indemnification of Officers and Directors. The Association shall indemnify and hold harmless each of the Directors and Officers from and against all contractual liability to others arising out of contracts made by the Board of Directors or Officers on behalf of the Association or the Lot Owners unless such contract was made in bad faith or contrary to the provisions of the Governing Documents or Bylaws. The Directors and Officers shall not be personally liable for contracts made by them on behalf of the Association. The Association shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that (s)he is or was a Director or Officer of the Association, against amounts paid in settlement incurred by him in connection with such action, suit or proceeding if (s)he acted in good faith and in a manner (s)he reasonably believed to be in, or not opposed to, the best interests of the Community or the Association, to the fullest extent authorized by RCW 23B.08.510, 520, 530, and 570, and any amendments thereto. 14.4. Justification for Limitations on Liability.

The Association is required to maintain property and liability insurance more particularly described in Article 11 of this Declaration. Such coverage exists for the benefit of the Association and its Lot Owner members. The limitations of liability contained above in this Article 14 are designed to insulate the Association from liability for types of harm not covered by such insurance, and/or to encourage people to run for and hold positions as Directors and Officers in the Association generally without fear of personal liability arising from such service. These provisions are intended to represent an equitable sharing of risks, losses and liabilities between the Association and its members. Lot Owners and tenants are expected to acquire their own insurance, described with greater particularity in Section 11.5 hereof, to protect themselves from the sorts of harm, damage, loss, inconvenience or discomfort that may be suffered as a result of the application of this Article 14.

## ARTICLE XV MORTGAGEE PROTECTION

### 15. MORTGAGEE PROTECTION.

#### 15.1. Rights of Secured Lenders.

15.1.1. General Authority Consistent with Governing Law. Pursuant to RCW 64.90.295, this Declaration provides that specified percentages of lenders who hold security interests encumbering Lots in the Community, or lenders who have extended credit to the Association, have rights to approve specified actions of the Lot Owners or the Association as a condition to the effectiveness of those actions, but no requirement for such approval may operate to:

(a) Deny or delegate control over the general administrative affairs of the Association by the Lot Owners or the Board;

(b) Prevent the Association or the Board from commencing, intervening in, or settling any litigation or proceeding; or

(c) Prevent the Association's Board or any other insurance trustee from receiving and distributing any insurance proceeds except pursuant to RCW 64.90.470.

15.1.2. Rights Available only to Eligible Mortgagees. With respect to any action requiring the consent of a specified number or percentage of mortgagees, the consent of only Eligible Mortgagees holding a first lien security interest need be obtained and the percentage must be based upon the votes attributable to Lots with respect to which Eligible Mortgagees have an interest.

15.1.3 Implied Approval by Mortgagee. The failure of an Eligible Mortgagee to respond within sixty (60) days to a written request from the Association delivered by certified or registered mail to such Eligible Mortgagee, "return receipt requested," seeking approval of [i] an amendment to the Community Declaration or the Articles of Incorporation or Bylaws of the Association, or [ii] any other proposed action of the Association as to which the approval of Eligible Mortgagees is required, shall constitute an implied approval by such Eligible Mortgagee of such amendment or other action.

15.2. Rights of Secured Lenders – Specific Provisions.

15.2.1. Lenders entitled to Notice of Certain Actions.

The Association shall give prompt written Notice to each Eligible Mortgagee of, and each Lot Owner hereby consents to, and authorizes the giving of Notice of:

(a) Any condemnation loss or any casualty loss that affects a material portion of the Community or any Lot in which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgagee;

(b) Any delinquency in the payment of Common Expense Assessments owed by a Lot Owner whose Lot is subject to a first mortgage held, insured, or guaranteed, by such Eligible Mortgagee; such Notice shall be provided as described in Subsection 10.17.2(c);

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

(d) Any proposed action that would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 15.3 below (in which case, Notice shall be provided by certified or registered mail, "return receipt requested"); and

(e) Any judgment rendered against the Association in excess of \$5,000.00 that is not covered by insurance.

15.2.2. Notice and Consent Required for Certain Actions.

15.2.2.1. Document Changes. Notwithstanding any lower requirement permitted by this Declaration or the Governing Law, no amendment of any material provision of the Governing Documents by the Association described in this Subsection, the effect of which in the opinion of the Board would have a material adverse effect on lenders, may be effective without Notice to all Eligible Mortgagees, as required by Section 15.2(d) above, and the approval by Owners of Lots to which at least 67% (or any greater Lot Owner vote required in Section 17.3 of this Declaration or the Governing Law) of the votes in the Association are allocated, and approval in writing by Eligible Mortgagees who represent at least 67% (or any greater Eligible Mortgagee approval required by this Declaration) of the votes attributable to Lots with respect to which Eligible Mortgagees have an interest; the following (other than those taken pursuant to rights reserved by the Declarant as Development Rights) are examples of actions that Fannie Mae historically viewed as holding the potential for a material adverse effect on lenders in condominium projects:

(a) Voting rights;

(b) Reductions in requirements for Reserves for maintenance, repair and replacement of Common Elements,

(c) Responsibility for maintenance and repairs;

(d) Expansion or contraction of the Community, or the addition, annexation or withdrawal of property to or from the Community;

(e) Hazard or fidelity insurance requirements;

(f) Imposition of any restrictions on the leasing of Lots;

(g) Imposition of any restrictions on a Lot Owner's right to sell his or her Lot;

(h) Restoration or repair of the Community after damage or partial condemnation in a manner other than that specified in the Governing Documents;

(i) Any provision that expressly benefits mortgage holders, insurers, or guarantors, where the amendment would have a material adverse effect on any such party.

15.2.2.2. Specific Actions. Notwithstanding any lower requirement permitted by this Declaration or the Governing Law, the Association may not take any action that, in the opinion of the Board, would have a material adverse effect on lenders, without Notice to all Eligible Mortgagees as required by Section 15.2(d) above, approval by Owners of Lots to which at least 67% (or the indicated percentage, if different) of the votes in the Association are allocated, and approval in writing by Eligible Mortgagees who represent at least 67% (or the percentage indicated below, if different,) of the votes attributable to Lots with respect to which Eligible Mortgagees have an interest; the following (other than those taken pursuant to rights reserved by the Declarant as Development Rights) could be viewed as holding the

potential for a material adverse effect on lenders:

(a) Any action to abandon or terminate the legal status of the Community for reasons other than substantial destruction or condemnation, as to which a sixtyseven percent (67%) Eligible Mortgagee approval is required.

(b) Abandon, partition, subdivide, encumber, sell, transfer or convey the Common Elements or any portion thereof, as to which the approval of Owners to which at least eighty percent (80%) of the votes in the Association are allocated is required, and the procedures specified in Subpart 15.2 hereof must be followed. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Association will not be deemed a transfer within the meaning of this clause;

(c) The assignment of the future income of the Association, including its right to receive Common Expense Assessments.

(d) The restoration or repair of the Property after hazard damage, as to which the approval of Owners to which at least eighty percent (80%) of the votes in the Association are allocated is required, or after a partial condemnation, in a manner other than specified in the Governing Documents.

(e) The merger of the Community with any other common interest community.

## ARTICLE XVI EASEMENTS AND SPECIAL DECLARANT RIGHTS

### 16. EASEMENTS AND SPECIAL DECLARANT RIGHTS.

#### 16.1. Easements for Lots, Lot Owners and Association Functions

16.1.1. Easements for Lots. Each Lot has an unrestricted, perpetual easement in and through each other Lot and the Common and Limited Common Elements for support and for utilities and, subject to the provisions of RCW 64.90.405(2)(f) and 64.90.465, each Lot Owner has an unrestricted perpetual right of ingress to and egress from his or her Lot over the Common Elements.

16.1.2. Lots Subject to Easement Rights. The Lots in the Community are subject to rights of access in favor of the Association and other Lot Owners. See Subsections 5.6.3 and 8.4.3 hereof for further details.

16.1.3. Easements for Association Functions. There is hereby reserved to the Association, or its duly authorized agents, contractors and representatives, such easements as are necessary to perform the duties and obligations of the Association as are set forth in the Governing Documents and Bylaws.

16.1.4. Easements for Master Association Functions. There is hereby reserved to the Master Association described in Section 3.4 of this Declaration, or its duly authorized agents, contractors and



representatives, such easements as are necessary to perform the duties and obligations of the Master Association as are set forth in the Master Subdivision Covenants described in Section 3.4.

#### 16.2. Easement for Emergency Access.

A non-exclusive perpetual easement is hereby granted on, over, under and across the Common Elements to all police, fire, ambulance and other rescue personnel for the lawful performance of their functions during bona fide emergencies.

#### 16.3. Easements Shown on Plat.

16.3.1. General Provisions. Easements shown on the Plat have been declared and established. Any easement shown on the Plat that benefits one or more Lots in the Community, or that benefits any real property not included within the Community, confers various rights and benefits upon the owner(s) of such real property, and may also impose obligations upon the Association.

16.3.2. Specific Provisions. Easements for storm-water conveyance, water, sanitary sewer, telecommunications wiring and equipment and electrical power exist within portions of the Property as depicted on the Plat.

16.5. Special Declarant Rights. There are no Special Declarant Rights in this Community.

### ARTICLE XVII AMENDMENT OF DECLARATION, PLAT & PLANS

#### 17. AMENDMENT OF DECLARATION, PLAT & PLANS.

##### 17.1. Procedure for Amendment of Declaration.

17.1.1. General Provisions for Amendments. Amendments to the Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" that sets forth the entire amendment. For purposes hereof, "amendment" means any change to the Declaration, including adding, removing, or modifying restrictions contained in a Declaration. Except as otherwise specifically provided for in this Declaration or in the Governing Law, any proposed amendment must be approved by the Board of Directors prior to its adoption by the Owners. Except in cases of amendments that may be adopted by the Association under Section 17.7 hereof or under statutory authority in the case of condemnation or a termination of the Community, or by certain Lot Owners under Sections 4.8 or 6.3 hereof, the Declaration may be amended only by vote or agreement of the Owners of Lots to which at least sixty (60%) percent of the votes in the Association are allocated.

17.1.2. Additional Provisions – Advance Notice to Owners. Amendments to the Declaration required to be executed by the Association shall be executed by any authorized Officer of the Association who must certify in the amendment that it was properly adopted. Owners shall be entitled to Notice of a proposed amendment not less than thirty (30) days prior to the Meeting of the Association at which the amendment is to be considered. In the absence of fraud, an action to challenge the validity of an

amendment adopted by the Association may not be brought more than one year after the amendment is recorded.

#### 17.2. Recordation Required.

Every amendment to the Declaration must be recorded with the County Auditor and is effective only upon recording. An amendment shall be indexed in the name of the Community and shall contain a cross-reference by recording number to the Declaration and each previously recorded amendment thereto. An amendment other than an amendment pursuant to RCW 64.90.260(1) must be indexed in the grantee's index in the name of the Community and the Association and in the grantor's index in the name of the parties executing the amendment.

#### 17.3. Special Restrictions.

17.3.1. General Restrictions. Except to the extent expressly permitted or required by other provisions of this Declaration, or of the Governing Law, no amendment may increase the number of Lots, change the boundaries of any Lot, or change the Allocated Interests of a Lot, without the consent of Lot Owners to which at least ninety percent of the votes in the Association are allocated, including the consent of any Lot Owner of a Lot, the boundaries of which or Allocated Interest of which is changed by the amendment, and that percentage of Eligible Mortgagees specified in Article XV hereof. 17.3.2. Restrictions protecting certain Persons. To the extent that Declaration may require the affirmative vote or approval of any particular Lot Owner or class of Lot Owners as a condition of its effectiveness, the amendment is not valid without that vote or approval. See also RCW 64.90.285(1)(b).

#### 17.4. Amendment of Plat.

17.4.1. General Provisions. The Plat may be amended or supplemented by revised versions referred to and described as to effect in an amendment to the Declaration adopted as required above, subject to the provisions of RCW 64.90.245(4). Copies of any such proposed amendment to the Plat shall be made available for examination by every Owner. Such amendment to the Plat shall also be effective, once properly adopted, upon recordation in the appropriate County offices, along with the amendment to the Declaration that accompanies it.

17.4.2. Municipal Requirements. (a) Any amendment to the map must be prepared and recorded in compliance with the requirements, processes, and procedures in chapter 58.17 RCW and of the Subdivision Ordinance of the city, town, or county in which the plat community

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is located; pursuant to RCW 64.90.245(2), only subparts (1), (3), (4), and (14) of RCW 64.90.245 apply to plats and amendments thereto, and (b) any amendment to the Declaration must conform to the Plat as so approved and recorded.

#### 17.5. Consent of Mortgagees May be required – Limitations on Such Rights.

The consent of specified percentages of Eligible Mortgagees may be required, pursuant to Article XV of this Declaration, prior to recordation of certain amendments to the Governing Documents. Such consent is deemed granted if a refusal to consent in a Record is not received by the Association within sixty days after the Association delivers Notice of the proposed amendment to the holder at an address for Notice provided to the Association by the holder, or if the Association mails the Notice to the holder by certified mail, return receipt requested, at that address. If the holder has not provided an address for Notice to the Association, the Association must provide Notice to the address appearing in the security interest of record.

#### 17.6. Amendments by Board of Directors Requiring Notice to Lot Owners.

Upon thirty-day advance Notice to the Lot Owners, the Association may, upon a vote of two-thirds of the members of the Board and, without a vote of the Lot Owners, adopt, execute, and record:

17.6.1. Statutory Rights. An amendment to the Declaration designed to correct or supplement the Governing Documents in cases described in Subsection 17.6.2 above, or as authorized by RCW 64.90.285(11)(c) or (d).

17.6.2. Amendment to Adopt Amendments to Governing Law. An amendment to the Declaration designed to conform the Declaration to provisions of a corrective amendment to the Governing Law adopted by the Washington State Legislature.

### ARTICLE XVIII TERMINATION OF COMMUNITY

#### 18. TERMINATION OF COMMUNITY.

The Lot Owners may elect to terminate the legal status of the property only in accordance with the provisions of RCW 64.90.290 and / or RCW 64.90.226, with the requisite approval of such Mortgagees and other lienholders as may be required by law, or by Article XV hereof.

### ARTICLE XIX NOTICE

#### 19. NOTICE.

19.1. Notice to be provided in Form of a Record. Notice to the Association, Board, or any Owner or Occupant of a Lot under the Governing Law must be provided in the form of a Record.

19.2. Notice in a Tangible Medium. Notice provided in a tangible medium may be transmitted by mail, private carrier, or personal delivery; telegraph or teletype; or telephone, wire, or wireless equipment that transmits a facsimile of the Notice.

19.2.1. Notice to Association. Notice in a tangible medium to the Association may be addressed to the Association's Registered Agent at its Registered Office, to the Association at its principal office shown in its most recent Corporate Annual Report or provided by Notice to the Lot Owners, or to the President or Secretary of the Association at the address shown in the Association's most recent Corporate Annual Report or provided by Notice to the Lot Owners.

19.2.2. Notice to Lot Owner or Occupant. Notice in a tangible medium to a Lot Owner or Occupant must be addressed to the Lot address unless the Lot Owner or Occupant, in a Record delivered to the Association, has requested that Notices be sent to an alternate address or by other method allowed by this Section 19 and the Governing Documents. New Lot Owners must supply their names, addresses, telephone numbers and, if desirable to receive official Notice from the Association by electronic transmission, an e-mail address or other information consistent with Subsection 19.3.1 below.

19.3. Notice by Electronic Transmission.

Notice may be provided in an electronic transmission as follows:

19.3.1. Notice to Lot Owners or Board Members by Consent. Notice to Lot Owners or Board members by electronic transmission is effective only upon Lot Owners and Board members who have consented, in the form of a Record, to receive electronically transmitted Notices under the Governing Law and have designated in the consent the address, location, or system to which such Notices may be electronically transmitted, provided that such Notice otherwise complies with any other requirements of the Governing Law and other applicable law. 19.3.2. Notice Deemed to Include associated Materials. Notice to Lot Owners or Board members under this Subsection includes material that the Governing Law or the Governing Documents require or permit to accompany the Notice.

19.3.3. Consent to Notice by Electronic Transmission may be revoked. A Lot Owner or Board member who has consented to receipt of electronically transmitted Notices may revoke this consent by delivering a revocation to the Association in the form of a Record.

19.3.4. Consent may be automatically revoked. The consent of any Lot Owner or Board member is revoked if: The Association is unable to electronically transmit two consecutive Notices given by the Association in accordance with the consent, and this inability becomes known to the Secretary of the Association or any other Person responsible for giving the Notice. The inadvertent failure by the Association to treat this inability as a revocation does not invalidate any Meeting or other action. 19.3.5. Alternative Methods of Notice by Electronic Transmission. Notice to Lot Owners or Board members who have consented to receipt of electronically transmitted Notices may be provided by posting the Notice on an electronic network and delivering to the Lot Owner or Board member a separate Record of the posting, together with comprehensible instructions regarding how to obtain access to the posting on the electronic network.

19.3.6. When Electronic Notice to Association is Effective. Notice to the Association in an electronic transmission is effective only after the Association has designated in a Record an address, location, or system to which the Notices may be electronically transmitted.

#### 19.4. Alternative Methods of Giving Notice not Prescribed by Statute.

Notice may be given by any other method reasonably calculated to provide notice to the recipient.

#### 19.5. When Notice is Effective.

Notice is effective as follows:

19.5.1. Effectiveness of Notice Provided in Tangible Medium. Notice provided in a tangible medium is effective as of the date of hand delivery, deposit with the carrier, or when sent by fax.

19.5.2. Effectiveness of Notice Provided in Electronic Transmission. Notice provided in an electronic transmission is effective as of the date it:

(a) Is electronically transmitted to an address, location, or system designated by the recipient for that purpose; or

(b) Has been posted on an electronic network and a separate record of the posting has been sent to the recipient containing instructions regarding how to obtain access to the posting on the electronic network.

#### 19.6. Ineffectiveness of Notice does not Invalidate Action by Association.

The ineffectiveness of a good-faith effort to deliver Notice by an authorized means does not invalidate action taken at or without a Meeting.

#### 19.7. When Governing Law Requires Alternative Methods of Notice.

If the Governing Law prescribes different or additional notice requirements for particular circumstances, those requirements govern.

### ARTICLE XX MISCELLANEOUS

#### 20. MISCELLANEOUS.

##### 20.1. Severability.

All provisions of the Governing Documents, and Organizational Documents are severable. If any provision of a governing document, or its application to any Person or circumstances, is held invalid, the remainder of the governing document, Organizational Document or application to other Persons or circumstances is not affected.

##### 20.2. No Right of First Refusal.

There is no right of first refusal in the Association limiting or restricting the right of any Lot Owner to sell, transfer or convey his or her Lot.

20.3. No Discrimination.

The Association shall not discriminate on the basis of race, color, religion, national origin, familial status, handicap or other protected class. The Association shall make reasonable accommodations in its policies and procedures, and permit reasonable modifications of premises where necessary or appropriate to comply with law.

20.4. Obligation of Good Faith.

Every duty governed under this Declaration or the Governing Law imposes an obligation of good faith in its performance or enforcement.

20.5. Effective Date.

This Declaration shall take effect upon recording.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Declarant: SUNDAY HARBOR COMMUNITY ASSOCIATION

By \_\_\_\_\_, Its

STATE OF WASHINGTON ) ) ss. COUNTY OF WHATCOM )

I hereby certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (s)he signed this instrument, on oath stated that (s)he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of the Declarant, SUNDAY HARBOR COMMUNITY ASSOCIATION, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_, 2018. \_\_\_\_\_ NOTARY PUBLIC for the State of Washington, residing in \_\_\_\_\_ My Commission expires \_\_\_\_\_