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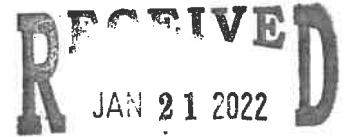
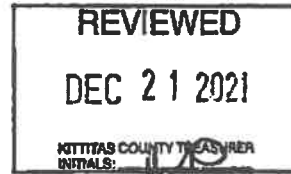
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Declaration DR HORTON  
Kittitas County Auditor



AFTER RECORDING RETURN TO:

SSHI LLC  
11241 SLATER AVE, SUITE 200  
KIRKLAND, WA 980  
ATTN: HOA DEPARTMENT



Kittitas County CDS

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR  
BLACK HORSE AT WHISKEY CREEK**

**Grantor:** SSHI LLC, a Delaware limited liability company dba D.R. Horton  
**Grantee:** Black Horse at Whiskey Creek Home Owners Association, a Washington nonprofit corporation  
**Abbr. Legal Description:** W 1/2 of NE 1/4, S27, T18N, R18E, Kittitas County, Washington  
(Full Legal on Schedule A)  
**Assessor's Parcel Nos.:** 431033

THE PLAT FOR THIS COMMUNITY WAS FILED WITH THE AUDITOR OF KITTITAS COUNTY, WASHINGTON UNDER AUDITOR'S FILE NO. 202112210020.

THIS COMMON INTEREST COMMUNITY IS SUBJECT TO THE WASHINGTON UNIFORM COMMON INTEREST OWNERSHIP ACT (CHAPTER 64.90 RCW).

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**SCHEDULES:**

- A Description of Real Estate Subject to Declaration
- B Description of Additional Property
- C Description of Withdrawable Property
- D Schedule of Maintenance Responsibilities

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR  
BLACK HORSE AT WHISKEY CREEK**

**ARTICLE 1 CONSTRUCTION AND VALIDITY OF DECLARATION**

Section 1.1 Purpose. Declarant has recorded this Declaration to create a single-family residential community of the real estate described in Schedule A, to enhance the value of the Community, to establish a system for governance of the Community, and to protect the interests of Persons having any right, title or interest to real estate in the Community, pursuant to the CIC Act. This Declaration shall be effective as of the date that it is recorded.

Section 1.2 Construction. The creation and operation of the Community are governed by this Declaration, the Map and the CIC Act. In the event a provision of the Declaration is inconsistent with a provision of the CIC Act, the provisions of the CIC Act will prevail. In the event of a conflict between a provision of this Declaration and the Bylaws, the Declaration will prevail except to the extent the Declaration is inconsistent with the CIC Act. An insignificant failure of the Declaration or the Map, or any amendment thereto, to comply with the CIC Act will not, however, invalidate the creation of the Community, nor will it make unmarketable or otherwise affect the title to a Unit and its Common Ownership Interest.

Section 1.3 Covenants Running with the Land. This Declaration shall operate as servitude and shall bind Declarant, the Association, all Owners and any other Persons having any right, title or interest in the real estate-subject to this Declaration, or any portion thereof, together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

Section 1.4 Severability. The provisions of this Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision if the remaining provision or provisions comply with the CIC Act.

Section 1.5 Percentage of Owners or Mortgagees. For purposes of determining the percentage of Owners, Mortgagees or voting power necessary to approve a proposed decision or course of action where an Owner owns, or a Mortgagee holds Mortgages on, more than one Unit, an Owner shall be deemed a separate Owner for each Unit so owned and a Mortgagee shall be deemed a separate Mortgagee for each first Mortgage so held.

Section 1.6 Inflationary Increase in Dollar Limits. Any dollar amounts specified in this Declaration in connection with any proposed action or decision of the Board or Association shall be proportionately increased on July 1 of each year by the percentage change in the consumer price index specified in Section 065(2) of the CIC Act, as if Section 065(2) applied to such amounts.

**ARTICLE 2 DEFINITIONS**

Section 2.1 Words Defined. For the purposes of this Declaration and any amendments hereto, the following definitions shall apply. The singular form of words includes the plural and the plural includes the singular. Masculine, feminine and neutral pronouns are used interchangeably.

**“Additional Property”** means the real property described in Schedule B to this Declaration, as it may be amended from time to time.

**“Allocated Interests”** means the Common Ownership Interest, if any, as to any Common Elements owned in common by the Unit Owners, the Common Expense Liability and the Voting Interest allocated to each of the Units in the Community. The formulas used to determine the Allocated Interests are set forth in Article 6.

**“Arbitration Demand”** is defined in Section 28.

**“Architectural Control Committee”** or **“ACC”** means any committee established or designated by the Board for the purpose of carrying out some or all of the Board functions set forth in Article 11.5.

**“Articles”** means the Articles of Incorporation for the Association.

**“Assessments”** means all sums chargeable by the Association against a Unit, including, without limitation: (a) general and special assessments for Common Expenses; (b) charges and fines imposed by the Association; (c) interest and late charges on any delinquent account; and (d) costs of collection, including reasonable attorneys’ fees, incurred by the Association in connection with the collection of a delinquent Owner’s account.

**“Association”** is defined in Section 13.1.

**“Authorized Users”** means the agents, servants, Tenants, family members, invitees, and licensees of an Owner who are accorded rights, directly or indirectly, by that Owner to use or access all or a portion of that Owner’s Unit and its appurtenant interest in the Common Elements.

**“Board”** means the board of directors of the Association, as described in Article 15 and in the Articles and the Bylaws.

**“Books and Records of the Association”** means the books and records that the Association is required to maintain pursuant to Section 495 of the CIC Act.

**“Bylaws”** means the bylaws of the Association as they may from time to time be amended.

**“CIC Act”** means the Washington Uniform Common Interest Ownership Act, Chapter 277, Laws of 2018, codified as chapter 64.90 RCW, as it may be from time to time amended.

**“City”** means the City of Ellensburg, Washington.

**“Common Elements”** means (i) any real estate, other than a Unit, within the Community that is owned or leased by either (A) by the Association or, (B) in common by the Unit Owners, and (ii) any other interests in real estate for the benefit of any Unit Owners that are subject to this Declaration. The term includes the Limited Common Elements.

**“Common Expenses”** means expenditures made by or financial liabilities of the Association, including expenses related to the maintenance, repair and replacement of the Common Elements, allocations to reserves, and expenses related to any utility services provided by or billed

through the Association to the Unit Owners. Some Common Expenses are allocated to the Units according to the Common Expense Liability of the Unit. Other Common Expenses are Specially Allocated Expenses.

**“Common Expense Liability”** means the liability for Common Expenses (other than Specially Allocated Expenses) allocated to each Unit, as described in Article 6. The Common Expense Liability may change if additional Units are added to the Community.

**“Common Ownership Interest”** means the undivided ownership interest in any Common Elements that are owned in common by the Unit Owners, allocated to each Unit, as described in Article 6. The Common Ownership Interest may change if additional Units are added to the Community.

**“Community”** or **“Property”** means the Units and Common Elements created by this Declaration and the Map, as they may be amended.

**“Community-Wide Standard”** means the standard of conduct, maintenance, or other activity generally prevailing in the Community, or the minimum standards established by the Board pursuant to any Rules adopted by the Board, whichever is the higher standard. Declarant shall establish initially such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within the Community change.

**“Control Termination Date”** means the date that is the earlier of (i) 60 days after Conveyance of 75% of the Units that may be created in the Community, including Units later created, to Owners other than the Declarant, (ii) two years after the last Conveyance or transfer of record of a Unit except as security for a debt, (iii) two years after any Development Right to create Units was last exercised, or (iv) the date on which Declarant records a Record terminating all rights to appoint or remove any director or officer of the Association or any master association or to veto or approve a proposed action of any Board or Association.

**“Conveyance”** means any transfer of the ownership of a Unit, including a transfer by deed or by real estate contract and, with respect to a Unit created from a leasehold estate, a transfer by lease or assignment thereof. Conveyance does not mean a transfer solely as security for a debt or other obligation.

**“Dealer”** means a person who, together with such persons’ affiliates, owns or has a right to acquire six or more units in the Community.

**“Declarant”** means SSHI LLC, a Delaware limited liability company dba D.R. Horton, and its successors and assigns.

**“Declaration”** means this Declaration of Covenants, Conditions, Easements and Restrictions for Black Horse at Whiskey Creek as it may from time to time be amended.

**“Development Right”** means any right or combination of rights reserved in this Declaration, or an amendment thereto, for the benefit of Declarant, or its successors or assigns to: (a) add real estate or improvements to the Community; (b) create Units, Common Elements or Limited Common Elements within any real estate initially included or subsequently added to the Community; (c)

combine Units or convert Units into Common Elements; (d) withdraw real estate from the Community; or (e) reallocate Limited Common Elements with respect to Units that have not been conveyed by Declarant.

**“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.

**“Eligible Mortgagee”** means an **“eligible mortgagee”** as defined in the CIC Act.

**“Entry Monuments”** means any entry monuments, signs, landscaping, lighting and other improvements, including water and electricity, installed by Declarant or Association to mark an entry to the Community.

**“Fannie Mae”** means the Federal National Mortgage Association, a federally chartered corporation.

**“Fence Requirements”** shall mean the requirements for fences as provided herein, as well as any requirements included within the Rules adopted by the Board.

**“Fire Lanes”** means any areas, if any, within any public right-of-way, easement or on private property that is designated for the use, travel and parking of fire trucks and other firefighting or emergency equipment.

**“Foreclosure”** means a forfeiture or judicial or non-judicial foreclosure of a Mortgage or a deed in lieu thereof.

**“Freddie Mac”** means the Federal Home Loan Mortgage Corporation, a federally chartered corporation.

**“Governing Documents”** means this Declaration, the Map, and the Articles, Bylaws, and Rules of the Association, as they may be amended from time to time.

**“Home”** means a single-family residence, and its associated improvements, located on and within a Unit.

**“HUD”** means the United States Department of Housing and Urban Development.

**“KCC”** means the Kittitas County Code as such may be amended from time to time.

**“Limited Common Element”** means a portion of the Common Elements allocated in this Declaration, or by operation of law, for the exclusive use of one or more but fewer than all of the Units.

**“Managing Agent”** means the Person, if any, designated by the Board under Section 15.3.

**"Map" or "Plat"** means the plat for the Community recorded under Auditor's File Number 202112210021. The Map includes any recorded amendments, corrections, and addenda thereto.

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

**"Mortgagee"** means any holder, insurer or guarantor of a Mortgage on a Unit.

**"Notice and Opportunity to Be Heard"** means the procedure described in Section 18.5.

**"Owner" or "Unit Owner"** means Declarant or other Person who owns a Unit, but does not include any Person who (i) has an interest in a Unit solely as security for an obligation, monetary or regulatory, (ii) is the beneficiary of rights under easements and/or covenants granted by an Owner, or (iii) is an Authorized User.

**"Person"** means a natural person, corporation, partnership, limited partnership, trust, governmental agency or other legal entity.

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

**"RCW"** means Revised Code of Washington.

**"Record"**, when used as a noun, means information inscribed on a Tangible Medium or contained in an Electronic Transmission.

**"Rules"** means the rules or regulations adopted by the Association, as they may be amended from time to time.

**"Special Declarant Rights"** means all rights identified in ARTICLE 12 together with any right or combination of rights reserved in this Declaration for the benefit of Declarant to: (a) complete improvements indicated on the Map, described in the Declaration or the public offering statements; (b) exercise any Development Rights; (c) maintain sales offices, management offices, signs advertising the Community and models; (d) use easements through the Common Elements for the purpose of making improvements within the Community; (e) make the Community subject to a master association; (f) merge or consolidate the Community with any other community of the same type; (g) appoint or remove any director or officer of the Association or any master association, or veto or approve a proposed action of any Board or Association; (h) control any construction, design review, or aesthetic standards committee or process; (i) attend meetings of the Units Owners and, except during an executive session, the Board; or (j) have access to the records of the Association to the same extent as a Unit Owner.

**"Specially Allocated Expenses"** means those Common Expenses described in Section 16.6 of this Declaration.

**"Street"** shall mean any public or private road, drive lane or driveway lane (if located in a public right of way or Common Elements), alley, or similar place or other thoroughfare either as shown on the Map or Plat of the Property, however designated, or as so used as a part of the Common Elements; but not any access-way designated on the Map or otherwise as a Limited Common Element

for the private use between specific Owners.

**“Street Landscaping”** means the street trees, grass, landscaping and vegetation (as applicable) located within or along the streets in the Community.

**“Street Lighting”** means the lighting for streets within or adjacent to the Community.

**“Structure”** means any improvement on any Unit, including without limitation, any Home, building, garage, carport, porch, shed, greenhouse, deck, pool, pool cover, curbing, fence, wall, rockery, antenna, dish or other receiving device.

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

**“Tenant”** means an occupant of Unit other than the Unit Owner, or its personal guests, family members, care givers or roommates. The term includes renters, lessees, tenants and subtenants.

**“Tract”** means any of Tracts A – M and N - Q identified on the Map.

**“Transition Date”** means the date that is (i) 30 days after the Control Termination Date, or (ii) in the absence of a Special Declarant Right to appoint or remove directors and officers or veto or approve Board or Association actions, 60 days after the Conveyance of 75% of the Units that may be created to Unit Owners other than a Declarant.

**“Transition Meeting”** means the Association meeting called after the Transition Date to elect a new Board pursuant to Section 415(4) of the CIC Act.

**“Unit”** means a physical portion of the Community designated for separate ownership, the boundaries of which are shown on the Map, as amended. Each lot shown on the Map, as such Map may be amended, is a Unit.

**“VA”** means the United States Veterans Administration.

**“Voting Interest”** means the proportionate number of votes in the Association allocated to each Unit, as described in Section 6.4. The Voting Interest may change if additional Units are added to the Community.

**“Withdrawable Property”** means the real property described in Schedule C to this Declaration, as it may be amended from time to time.

**“Yard”** means the outdoor area within the Unit and includes any fences installed by Declarant or an Owner therein.

**Section 2.2 Statutory Definitions.** Some of the terms defined above are also defined in the CIC Act. The definitions in the Declaration are not intended to limit or contradict the definitions in the CIC Act. If there is any inconsistency or conflict, the definition in the CIC Act will prevail.



**ARTICLE 3 NAME OF COMMUNITY**

The name of the Community is Black Horse at Whiskey Creek. The Community is a plat community, as that term is defined in the CIC Act.

**ARTICLE 4 DESCRIPTION OF REAL ESTATE AND BUILDINGS**

Section 4.1 Description of Real Estate. The real estate subject to this Declaration is described in Schedule A, as such Schedule may be amended consistent with this Declaration and the CIC Act.

**ARTICLE 5 DESCRIPTION OF UNITS**

Section 5.1 Number and Identification of Units. There are 80 Units in Phase 1 of the Community. The location and configuration of each Unit are shown on the Map, as such may be amended from time to time. Declarant has the right to create a total of 354 Units in the Community or an additional 274 Units to be developed upon the Additional Property in subsequent phases, if added to the Community.

**ARTICLE 6 ALLOCATED INTERESTS**

Section 6.1 Allocated Interests.

6.1.1 This Declaration allocates certain interests in the Community to each Unit. Those interests are: a Common Ownership Interest, a Common Expense Liability and a Voting Interest. The formula used for allocating these interests are set forth in Section 6.2. The allocation of these interests to each Unit can only be changed as provided in this Declaration. The Allocated Interests and the title to a Unit may not be separated or separately conveyed, whether voluntarily or involuntarily, except in conformity with this Declaration. The Allocated Interests shall be deemed to be conveyed with the Unit to which they are allocated even though the description in the instrument of Conveyance may refer only to the title to the Unit. When and if the Declarant creates additional Units, it will recalculate the Allocated Interests of the Units using the same formulas, and will amend this Declaration accordingly.

6.1.2 Declarant shall have the right to recalculate the Allocated Interests and amend the Declaration and the Map if the Allocated Interests are incorrect for any reason, including changes in the data used to calculate the Allocated Interests, changes in Unit boundaries, the combination or subdivision of Units, or clerical errors in the Map or Declaration.

Section 6.2 Common Ownership Interest. The Common Ownership Interest of each Unit is equal to the fraction, the numerator of which is the Unit, and the denominator of which is the total number of Units in the Community. The formula for allocating the Common Ownership Interests is: equally among the Units.

Section 6.3 Common Expense Liability. The Common Expense Liability of each Unit is equal to the fraction, the numerator of which is the Unit, and the denominator of which is the total number of Units in the Community. Except for Specially Allocated Expenses, the Common Expenses are allocated to the Units according to the Common Expense Liability, the formula for

which is: equally among the Units. Specially Allocated Expenses are allocated according to Section 16.6.

Section 6.4 Voting Interest. The Voting Interest of each Unit is equal to the fraction, the numerator of which is the Unit, and the denominator of which is the total number of Units in the Community. The formula for allocating votes to the Units is: equally among the Units.

#### **ARTICLE 7 COMMON ELEMENTS**

Section 7.1 Description. The Common Elements include, without limitation, the following portions of the Community, to the extent applicable: open space/recreation and storm drainage, Common Element Tracts A – K and M - Q the curbs, planter strips outside of the public rights of way, sidewalks, street landscaping, entry monuments, recreational facilities, trails, parks, open spaces, mail kiosks, storm water drainage and evaporation and treatment facilities, private Community irrigation system and common utility systems. In conjunction with the recording of the Map, Tract L is to be conveyed and dedicated to the Ellensburg Water Company, shall be the obligation of the Ellensburg Water Company to maintain and shall not be part of the Common Elements of the Association. Declarant may add or subtract from the Common Elements during the Development Period by amendment to this Declaration. If the Common Elements shown on the Map are different from those described herein, the Common Elements described on the Map shall be deemed to be the Common Elements unless this Declaration has been amended or modified and states that such amendment or modification changes the Common Elements shown on the Map.

Section 7.2 Use of Common Elements. Except as otherwise stated in this Declaration, no Owner may alter any Common Element or construct or remove anything in or from any Common Element except with the prior written consent of the Board. The right to use the Common Elements, including the Limited Common Elements, shall be governed by the provisions of the CIC Act and the Governing Documents. The Owners have no right, however, to use or occupy the Additional Property except the Streets and sidewalks. The Declarant and its Authorized Users shall have the exclusive right to use and occupy the Additional Property and improvements thereon until Units are created on the property. If any portion of the Property is withdrawn from the Community, then the Owners in other portions of the Community will have no right to use any portion of the property withdrawn.

Section 7.3 Critical Areas and Wetland Tracts. All or a portion of Tracts M and Q are open space tracts, portions of which contain a creek and/or critical area wetlands and adjacent buffer areas (“Critical Areas”). These Critical Areas may be subject to protection easements as set forth on the Plat, the KCC and herein. The development and use of the Critical Areas may be restricted by the terms of the Plat, the KCC and Rules of the Association. The Declarant may install fencing or protective landscaping in and around Tracts M and Q and adjoining Common Elements or Units. The fencing and landscaping is part of the Common Elements and no Owner may modify or remove such improvements. In addition, no Owner may erect any solid fence, wall or other barrier greater than three feet high that serves to separate an adjoining Unit from Tracts M and Q

Section 7.4 Obstruction of Streets Prohibited. Parking shall not be permitted along any Streets within the Community, where “No Parking” or similar signage is posted. The obstruction of a Street by a parked vehicle or any other object is prohibited and constitutes a traffic hazard as defined

in state law and an immediate hazard to life and property and such vehicle shall be subject to towing at the Owner's expense.

**Section 7.5 Conveyance or Encumbrance of Common Elements.** Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) by a Unit Owner of its interest in the Common Elements shall be void unless the Unit to which that interest is allocated is also transferred. The Association may not convey or subject to a security interest any portion of the Common Elements unless Owners of Units to which at least 80% of the Voting Interests in the Association are allocated, including 80% of the votes allocated to Units not owned by Declarant, agree to that action. All Owners of Units to which any Limited Common Element is allocated must, however, agree in order to convey that Limited Common Element or subject it to a security interest. Any agreement to convey Common Elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications of an agreement, in the same manner as a deed, by the requisite number of Unit Owners. The agreement must specify a date after which it will be void unless recorded before that date. The agreement and all ratifications of the agreement must be recorded in every county in which a portion of the Community is located and will only be effective upon recordation.

**Section 7.6 Restrictions of Common Elements.** Tracts A – K and N - P are open space and storm drainage tracts which shall contain certain storm water drainage systems and are subject to easements the terms of which are set forth on the Map. Tracts M and Q are Critical Areas tracts also subject to easements the terms of which are set forth on the Map. Declarant may install fencing in or around certain storm water Tracts and any other Critical Areas and the adjoining properties. The fences are part of the Common Elements and no Owner may modify or remove any such fencing. Any Owner that wishes to install a solid cedar fence, wall or other barrier that serves to separate an adjoining Unit from such Tract must comply with the County restrictions or requirements relating to fencing at or around the Tract. Use of Tracts A – K and Tract M - Q are subject to the restrictions contained in the Map and the Rules of the Association including but not limited to uses such as open play areas, picnic areas, viewing platforms, trails, drainage facilities, benches and landscape improvements.

## **ARTICLE 8 LIMITED COMMON ELEMENTS**

**Section 8.1 Description and Allocation of Limited Common Elements.** The following portions of the Common Elements are Limited Common Elements: none.

**Section 8.2 Change in Status of Common Elements.** Except for the Development Rights of Declarant, no Common Element may be reallocated as a Limited Common Element, and no Common Element or Limited Common Element may be incorporated into an existing Unit without the approval of Owners of Units holding 67% of the Voting Interest in the Association, including the Owner of the Unit to which the Limited Common Element will be allocated or incorporated. Such reallocation or incorporation shall be reflected in an amendment to the Declaration and the Map.

**Section 8.3 Reallocation Between Units.** An allocation of a Limited Common Element may not be altered without the consent of the Owners of the Units from which and to which the Limited Common Element is allocated. Except in regard to the Development Rights of Declarant, a Limited Common Element may be reallocated between Units only with the approval of the Board and by an amendment to the Declaration executed by the Owners of the Units to which the Limited

Common Element was and will be allocated. The Board shall approve the request of the Owner or Owners under this Section 8.3 within 30 days unless the reallocation does not comply with the CIC Act or the Declaration. The failure of the Board to act upon a request within such period shall be deemed approval thereof. The amendment shall be recorded in the names of the parties and of the Community.

**Section 8.4 Right to Use Limited Common Elements.** Each Owner of a Unit to which a Limited Common Element is allocated, if any, shall have the exclusive right to use the Limited Common Element in common with the other Owners, if any, to which that Limited Common Element is allocated. The right to use the Limited Common Element extends to the Owner's Authorized Users, but is governed by the provisions of the CIC Act and the Governing Documents.

## **ARTICLE 9 EASEMENTS**

**Section 9.1 Unit Owners.** Subject to the Governing Documents and to the Association's rights to regulate the use, maintenance, repair, replacement and modification of the Common Elements, and convey or encumber the Common Elements, each Unit Owner has (i) an easement in and through the Common Elements for access to its Units and (ii) a right to use the Common Elements that are not Limited Common Elements for the purposes for which the Common Elements were intended. The foregoing easement shall terminate upon the termination of this Community pursuant to Article 25 of this Declaration.

**Section 9.2 Driveway Maintenance Easements.** Certain Units may have driveways that abut or are close to the boundary line of the adjacent Unit. Each Unit that has any portion of a driveway within one foot of the boundary line of an adjacent Unit has an easement over and across that portion of the adjacent Unit as necessary for the maintaining, repairing or replacing the driveway on the benefited Unit. The benefited Owner must repair any damage to the adjoining Unit and must restore the adjoining Unit to a condition similar to that immediately before use of the adjoining Unit.

**Section 9.3 Easement for Encroachments.** To the extent not provided by the definition of "Unit" in the Declaration and in the CIC Act, each Unit and all Common Elements have an easement over all adjoining Units and Common Elements for the purpose of accommodating any present or future encroachment overhang or intrusion of (i) eaves, bay windows, gutters, downspouts, utility meters, vents and other similar portions of the Owner's Home, or (ii) any encroachment caused by the construction, reconstruction or repair of the improvements, or the natural settlement, shifting, or movement of the improvements or land. Such easements shall exist so long as the encroachments exist or the Unit Owner has the right to cause them to be replaced, provided, however, no valid easement shall exist if the encroachment was caused willfully by the Owner. Such encroachments shall not be construed to affect the marketability of title to any Unit, nor shall they alter the rights and obligations of the Owners.

**Section 9.4 Association Functions Easement.** The Association has such easements throughout the Community as are necessary to perform the duties and obligations of the Association as are set forth in the Governing Documents. The Declarant hereby grants to the Association an easement over the Units and all portions thereof and therein for the purpose of otherwise carrying out all obligations, duties, responsibilities and rights of the Association contained in this Declaration.

**Section 9.5 Entry Monument Easement.** To the extent located on any Unit or the Common Elements, the Association has an easement on, under, over and across such Unit or Common Element for the purpose of installing, modifying, maintaining, repairing and replacing, entry monuments or signs and associated landscaping and utilities, together with a non-exclusive right of ingress and egress thereto.

**Section 9.6 Signage Easement.** The Association has an easement on, under, over and across the exterior 10 feet parallel with and abutting all Streets in the Community, as provided in the Map, in which to install and maintain parking restriction signs, other types of signs and address columns or monuments. Street signage and no parking signage are to be dedicated to the City.

**Section 9.7 Easement for Entry by Security Patrol.** If the Board contracts for security patrol service, said service, and its employees, shall have the right to enter onto any of the Units and the Common Element in order to carry out their duties under such security patrol agreement; provided, however, the patrol service can enter a Unit only if it is either (i) doing so with reasonable cause; or (ii) acting with the consent of the Owner or tenant of such Unit.

**Section 9.8 Public Utility Easements.** The Plat creates various easements within the Community for the installation, maintenance, repair and replacement of utilities, including but not limited to (i) a 10 feet wide general public utility easement parallel with and adjoining the Street frontage of all Units and Common Element Tracts within the Community; and (ii) easements for City and County inspections, maintenance, repair, replacement and the like for storm water and drainage facilities located upon Tracts A - L. No structure, planting, or other material that may damage the utilities or interfere with the use of the easement may be placed within these easement area; and specifically no Owner shall construct any permanent Structures or other physical features including but not limited to covered parking, decks, sheds, walls, fences, landscaping features, trees overhangs, or the like which would interfere with City's easement rights provided herein or in the Map. The Owners of the Units subject to such easements shall not use or alter their Units in any way that would interfere with the proper operation of any utility easement area located within their Unit or upon the Common Elements. The Association may adopt Rules regarding use of the portions of the Units subject to these easements.

**Section 9.9 Private Irrigation Easements.** The Community is served by a private irrigation system that is part of the Common Elements of the Association. The Map creates various private irrigation easements for the irrigation lines, related facilities and irrigation pump station for the Community irrigation system. The irrigation easements are located within the Common Element Tracts and within each Unit, specifically in the rear Yard of each Unit a width of five feet from the rear Yard Unit boundary, as depicted on the Map. It shall be the responsibility of the Association to maintain such facilities except any landscaping installed within the rear Yard of any Unit. No structures (including but not limited to decks, patios, outbuildings or overhangs) fill, obstructions, planting, or other material that may damage the utilities or interfere with the use of the irrigation lines or facilities may be placed within these easement areas or outside of any building setback per the KCC. This includes a prohibition on any grading or the installation of any fence within or bordering these easement areas shown on the Map unless first approved by the Board. The Owners of the Units shall not use or alter their Units in any way that would interfere with the proper operation of the irrigation system. No Owner shall use or alter its Units in any way that would interfere with the proper operation of any irrigation lines, facilities or the irrigation pump station located throughout the Community. Vegetation within the easements shall be routinely maintained and replaced as

needed. The Association shall have an easement for the maintenance, repair and replacement of any portion of the irrigation system and may adopt further Rules regarding use of the portions of the Units with regard to the irrigation easement areas.

**Section 9.10 Private Fence, Retaining Wall and Rockery Easements.** Declarant may construct certain fences between certain Units and Common Elements, including fencing around any critical area and storm drainage Tracts (collectively referred herein as “fences”). The intention of Declarant is that each fence, when constructed, shall be located wholly within one Unit or another and not on the property line between Units or Common Elements. Due to obstructions or topography, however, a fence may not be wholly within a Unit or Common Element or immediately adjacent to the property line. Therefore, Declarant reserves an easement on each side of each boundary line, for the Association and each Unit Owner for the installation, maintenance, repair and replacement of any fence installed by Declarant for as long as the wall or fence exists. The owner of such fence shall have the right to maintain, repair and replace any portion of such fence and shall have reasonable access over the adjoining Unit or Common Element for such purposes. The owner of such fence shall have reasonable access over the adjoining Unit or Common Element for the purposes of maintaining any fence located on or benefitting their Unit subject to the maintenance restriction contained in Section 11.1.1.16. Before performing any such maintenance, repair or improvements, the Owner shall give all other Owners of the adjacent Units reasonable advance notice (except in an emergency), and shall only enter the adjoining Unit or Units at reasonable times and shall promptly repair any damage caused thereby and restore the property to the condition it was in prior to the entry and shall otherwise indemnify the Association and Owner of the adjacent Unit from any damage caused by such entry. Neither the location of any fence installed by Declarant, nor any conduct of the Owner in maintaining the land between a neighboring fence and the property line shall be construed as modifying the property line. The owner of a fence shall be responsible for keeping such in good condition and repair. The Association is responsible for maintaining and repairing the fence surrounding the Common Elements.

**Section 9.11 Declarant.** Declarant has an easement through the Common Elements as is reasonably necessary for the purpose of developing and discharging Declarant’s obligations or exercising Special Declarant Rights, and as is necessary to conduct inspections and tests from time to time of all or any parts of the Units or Common Elements, and to determine whether maintenance, repairs or replacements of any such improvements are indicated. Declarant shall restore the affected portion of the property to substantially the condition immediately prior thereto, and shall indemnify the Association and Owners of any affected Units from any damage resulting therefrom.

**9.11.1 Declarant Easement Regarding Plat Bonds.** The Association hereby acknowledges, and all Owners by their acceptance of a deed to any Unit acknowledge, that Declarant or its predecessor posted or will be required to post one or more maintenance, performance or monitoring bonds with the City, County or other public governmental authority with jurisdiction over the Plat (collectively the “Plat Bonds”) in connection with Declarant’s build out and the maintenance or monitoring of certain Common Elements, infrastructure improvements, landscaping, storm water/drainage facilities, and/or other items and shared facilities within and serving the Community (all such areas and items, collectively, the “Plat Improvements”). Copies of the Plat Bonds are on file with the City (water and sewer) and County (all other Plat Improvements). The Association and all Owners further acknowledge that they are or will be benefitted by use of the Plat Improvements installed under and covered by the Plat Bonds and that Declarant will remain

obligated to complete certain maintenance, monitoring, and repair work under the Plat Bonds until the applicable jurisdiction releases the Plat Bonds back to Declarant. Declarant shall be responsible for initially installing and completing all Plat Improvements as required by the governmental authority. Thereafter, the Association shall keep and maintain, or ensure that any responsible Owners keep and maintain, all Plat Improvements in good condition and repair. Until such time that the County or other governmental authority releases the last of the Plat Bonds back to Declarant, Declarant hereby reserves for itself an easement over the Units, Common Elements and remainder of the Property for the purpose of accessing, inspecting, maintaining, monitoring, repairing and restoring any Plat Improvement covered by a Plat Bond to the extent required by the applicable jurisdiction holding the Plat Bond or as necessary to ensure that such Plat Bonds will be released back to Declarant. The foregoing easement is expressly intended to survive and to continue until all Plat Bonds are released in full. Declarant and its successors shall use commercially reasonable efforts to exercise the foregoing easement rights in a manner that minimizes interference with Owners and the Community, to the extent reasonably practicable. If the Association or any Owner causes or permits damage to an item installed under or covered by a Plat Bond or otherwise fails to maintain such an item when they had an obligation to maintain the same under this Declaration, the Plat or other binding instrument, and Declarant may exercise its easement rights in this paragraph to maintain, repair or replace any aspect of a Plat Improvement installed under or covered by a Plat Bond, then Declarant shall have the right to perform such maintenance, repair or replacement work and to thereafter seek reimbursement for all reasonable costs incurred from the Association or the responsible Owner. The responsible party shall reimburse Declarant for all such reasonable costs incurred within 30 days after demand, otherwise such costs shall bear interest at the statutory rate and Declarant shall have the right pursue collection of such amounts through any legal means available at law or in equity. For so long as any Plat Bonds remain in place, this paragraph may not be amended without the written consent of Declarant. The Association (or any designated Manager), the ACC and Declarant shall have a limited right of entry in and upon the exterior of all improvements located on any Unit for inspection purposes, and taking whatever corrective action may be deemed necessary or proper, consistent with the provisions of this Declaration. However, nothing herein shall be construed to impose an obligation upon the Association, the ACC, or Declarant to maintain or repair any portion of any Unit or any improvement thereon which is the obligation of the Owner to maintain as provided herein. Nothing in this Article shall in any manner limit the right of any Owner to the exclusive occupancy and control over the improvements located upon their Unit, provided each Owner shall permit access to such Owner's Unit and improvements by any Person authorized by the Association, the ACC, or Declarant (including any designated Manager) as is reasonably necessary, in case of any emergency originating on or threatening such Unit or improvements, whether or not such Owner is present.

9.11.2 Easement Regarding Critical Area. All Owners by their acceptance of a deed to any Unit acknowledge the importance of the Critical Areas which are located within Tracts M and Q and acknowledge there are restrictions concerning the use of the Critical Areas regarding such things as buffers, fencing, signage, habitat, and vegetation. No Owner or the Association shall cause or permit any damage to, removal of, or other alteration of any trees, shrubs, or other vegetation within Tracts M and Q without the prior written approval of the applicable governmental authority and the Board. As a result of its critical area status, a portion of Tracts M and Q may be subject to various periodic maintenance,

monitoring and reporting requirements. The Association shall be responsible for the basic and routine maintenance of the Critical Areas in accordance with or as required by the applicable governmental authority and any approved Critical Area maintenance plan. Declarant and the County hereby reserve easements over Tracts M and Q and the remainder of the Community as necessary or appropriate to perform all monitoring, reporting and additional maintenance, repair and replacement requirements.

**Section 9.12 Utility and Municipal Easements Granted by Declarant.** Declarant reserves the right to grant and record easements to any utility provider or municipality (i) for the installation, construction, maintenance, repair and reconstruction of all utilities serving any portion of the Community, or Additional Property, including, without limitation, such utility services as water, sanitary sewer, storm sewer, electricity, cable television, internet access and telecommunications; (ii) for access through the Common Elements to the utility installations; (iii) for rights of way, slopes, cuts, fills, public facilities or any other purpose or improvement as may be required for the development, construction or sale of the Community, and (iv) including the 10-foot wide general public utility easement granted by all Owners to the exterior 10 feet of each Unit abutting the Streets as shown on the Plat or the Additional Property.

**Section 9.13 Easement for Maintenance.** Each Owner shall have a right to enter upon the Common Elements and the Yard of an adjacent Unit, as necessary to perform maintenance, repair or replacement of the Owner's Unit and improvements and, if reasonably necessary, to read utility meters. The Owner shall give the Owner of an adjacent Unit reasonable advance notice (except in an emergency), shall only enter the adjoining Unit at reasonable times, and shall promptly repair any damage caused thereby and restore the property to the condition it was in prior to the entry and shall otherwise indemnify the Association and Owner of the adjacent Unit from any damage caused by such entry.

**Section 9.14 Easements for Withdrawable Property.** The Declarant reserves the right to grant easements over, across, and through the Common Elements of the Community for the benefit of the Declarant and its successors and assigns as present and future owners of the Withdrawable Property, (i) for ingress to and egress over the roadways and parking lots and sidewalks of the Community, (ii) to have access to and to tie into and use any water, sanitary sewer, storm sewer, electricity, gas, telephone, cable, television, or other utility facilities now or hereafter established in the Community, and (iii) for the right to use the mail kiosk, and the trash facilities located on such properties. The easements reserved hereby shall not be exercised in a manner that will overload or materially impair the use and enjoyment of the roadways, pathways, and utilities by Unit Owners or the present and future owners of the Development Rights.

**Section 9.15 [Intentionally Omitted]**

**Section 9.16 Other Easements and Restrictions to Which the Community is Subject to.**

**9.16.1 Covenants, conditions, restrictions, reservations and easements contained in the Map.**

**9.16.2 The Community is located within or near land used for agriculture on which a variety of commercial activities may occur that are not compatible with residential development for periods of varying duration (RCW 36.70A.060(1)).**



Commercial natural resource activities performed in accordance with county, state and federal laws are not subject to legal action as public nuisances (RCW 7.48.305).

9.16.3 Unit height and setback restrictions per the KCC.

Section 9.17 Government Right of Enforcement & Indemnification. In the event the Association, in the judgment of the County or City, fails to maintain any storm water, water quality or Critical Area Tracts and any drainage or detention facilities and installations thereon for which it is responsible, or if the Association or any Owner willfully or accidentally damages, or reduces the capacity of any drainage facilities or renders any part thereof unusable, the Association agrees to correct and/or repair the damage at the Association's expense. If the Association fails to take the necessary action, following not less than 30 days' notice sent by registered mail to the Association, the County or City may initiate enforcement proceedings against the Association. In the event the County or City determines that the lack of maintenance has resulted in a situation of imminent danger to life, limb or property, the County or City may correct the damage and/or complete the repair as necessary to restore the capacity of the drainage facilities and shall charge the Association for all costs associated with such work including engineering, administration, reasonable legal fees, construction, equipment and personnel. Costs or fees incurred by the County or City, including reasonable legal fees and expert fees should legal action be required to collect such costs and fees, shall be borne by the Association. The County and City shall not be liable to the Declarant, Owners or the Association for any damage to Streets, Common Element Tracts or easement areas caused during routine maintenance activities conducted as the result of construction or maintenance materials or techniques, including but not limited to damage to pavement or landscaped areas caused by maintenance vehicles.

**ARTICLE 10 USE RESTRICTIONS AND CONDUCT RESTRICTIONS**

Section 10.1 Use Restrictions. The following use restrictions shall apply to all Units.

10.1.1 Allowed Use. Except as otherwise expressly set forth herein Units shall be used exclusively for residential purposes (including for social, recreational, or other reasonable activities normally incidental to such use); provided, however, upon the written request by an Owner, the Board may allow an Owner to conduct an "in-home business", provided all business activities are carried on within the Home and that there are not an unreasonable number of employees, clients, customers, tradesmen, student, suppliers, or others that come to the Home in connection with such business, but in no event in any number that would unduly burden the Community, its parking or create a material amount of additional traffic through the Community, as such standards are determined by the Board in its sole and absolute discretion. The determination of whether or not a use is incidental to residential uses shall be made by the Board and shall be binding on all Owners. The Units may also be used for the purpose of operating and managing the Community. The Board may, by Rule, specify the limits of residential use in general and also in particular cases. Notwithstanding the foregoing, Declarant may use any of the Units owned by Declarant as allowed by the CIC Act or this Declaration. Notwithstanding the foregoing, to the extent required under the CIC Act, operation of an "adult family home" on a Unit shall not be prohibited.

**10.1.2 Prohibited Uses.** The Property is being developed as a residential development. Timesharing of Units is not permitted, as defined in chapter 64.36 RCW. The Units may not be used for hotel or transient purposes, which shall be defined as: (i) rental for a period of less than one year, (ii) rental under which occupants are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services, or (iii) the overnight accommodation of business invitees on a temporary or transient basis (such as a hotel, motel or corporate suites operation). All leases, rental and other occupancy agreements for Units shall expressly provide that they are subject in all respects to the Governing Documents and that any failure by the tenant to comply with the terms of such documents shall be a default under the lease. If any lease under this Section does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be part of the lease and binding upon the Owner and all tenants shall be deemed bound by the restrictions stated herein. All leases shall be in writing. The Association may request the names and contact information for all tenants including family members who will occupy a Unit. If any lessee or occupant of a Home violates or permits the violation by his/her guests and invitees of any provisions of the Governing Documents, the Board may give notice to the lessee or occupant of the Home and the Owner thereof to cease such violations. If the violation is thereafter repeated, the Board shall have the authority, following Notice and Opportunity to be Heard, to impose a fine upon the Unit Owner in accordance with a schedule adopted by the Board and each day that a violation persists thereafter shall be deemed a separate violation for which the fine may be separately assessed. The Association shall have a lien against the Owner's Unit for any fines not timely paid and any costs incurred by it in connection with such violation, including reasonable attorneys' fees, which may be collected and foreclosed by the Association in the same manner as Assessments as provided herein.

The Board shall have the authority to enact Rules permitting rentals, including but not limited to, Airbnb, vrbo.com or other vacation rental websites in a manner that will not violate the requirements of Fannie Mae, Freddie Mac, FHA or VA and to prohibit such use if advisable to obtain project approval from such agencies.

**10.1.3 Single-Family Residence.** Only one (1) single-family residential Home may be constructed or permitted to remain on a Unit.

**10.1.4 Other Structures and Vehicles.** Except as expressly provided herein, no structure of a temporary character, trailer, recreational vehicle, boat, boat trailer, panel truck, bus, camper or camping trailer, tent, shed, shack, basement of any incomplete building, barn or other outbuilding shall be either used or located on any Unit, or on any Street, at any time or used as a Home either temporarily or permanently, unless permitted for temporary use during construction/reconstruction of a Home on a Unit and such temporary structure and use are permitted in advance by the ACC. No prefabricated buildings or structures of any nature, specifically including mobile homes, shall be moved, placed, constructed or otherwise located on any Unit for any period of time unless approved by the ACC in advance. Temporary buildings or structures allowed during construction shall be removed immediately after construction or upon request of the ACC, whichever occurs first. Notwithstanding the foregoing, Declarant may place construction and sales trailers on any Unit which Declarant owns or on Common Elements. Notwithstanding the foregoing, a trailer, boat, RV, camper, shed, recreational vehicle or other outbuilding may be located on

a Unit if such item is screened or located such that it is not visible from the Street and such item, structure, screening and location are approved in advance by the ACC, which approval shall be in the sole discretion of the ACC. No prior approval by the ACC shall be required if any such trailer, boat, or recreational vehicle is located or parked entirely within the garage of the Home or within any other structure constructed previously with the approval of the ACC.

**Section 10.2 Conduct Restrictions.** The following conduct restrictions shall apply to all Owners and Authorized Users, except that they shall not apply to, or prohibit any conduct of, Declarant as authorized by the CIC Act or the Governing Documents.

**10.2.1 Roads, Sidewalks, Walkways, Etc.** The Streets, sidewalks and walkways used for access shall be used exclusively for normal ingress and egress. No obstructions shall be placed therein unless permitted by the Board or the Rules.

**10.2.2 Parking.** Parking is allowed on the Streets; provided that in areas designated by No Parking Street signage, Street parking is prohibited. Parking is also not allowed on any portion of the sidewalks, planter strips or any other portion of the Common Elements. No vehicle may be parked on any Unit, except in garages and on designated and approved driveways or parking areas, which areas shall be hard-surfaced, unless otherwise permitted by the ACC. Any additional parking added to a Unit after the initial landscaping shall be hard surfaces (unless otherwise approved by the ACC in advance) and constructed only in accordance with a site plan approved by the ACC. All other vehicles of Owners and Occupants shall be parked in garages or on driveways or other approved parking areas located entirely within their Unit, as set forth herein. Owners and Occupants shall, to the extent reasonably practicable, first park their vehicles within available garage spaces within their Unit and then on any available driveway or other approved external parking areas within their Unit. Notwithstanding the foregoing, if any personal or work-related vehicle of an Owner or Occupant is oversized in nature and does not fit within the garage or on the driveway or other parking surface upon their Unit, then such vehicle must be parked offsite. No vehicle may be parked such that it interferes with or impedes the flow of traffic and use of the Street by others or if it interferes with a Unit Owner's ability to pull out of or into their approved driveways or parking areas. Notwithstanding anything in this Section to the contrary, no parking shall be allowed on any area or Street where the Plat expressly restricts such parking or where "No Parking," "Emergency Vehicle Access," "Fire Access" or similar signs or markings are otherwise expressly posted in the Community. No commercial vehicles, motor homes, trailers, campers, boats and other recreational vehicles may be parked on any Common Element except on a temporary basis for loading or unloading. The Association may direct that any vehicle or other thing improperly parked or kept on any portion of the Common Elements be removed at the risk and cost of the Owner thereof.

**10.2.3 [Intentionally Omitted]**

**10.2.4 Parking in Unit/Garage Use Restrictions.** No vehicle may be parked in any Unit except in driveways and garages. No vehicle parked in any driveway may extend into the streets or sidewalks of the Community or otherwise impede vehicular or pedestrian traffic or access to any Unit. Owners should use their garages as the primary vehicle storage and parking use, if available.

**10.2.5 Regulated Vehicles.** No Owner may store any trailers, boats, motor homes, recreational vehicles, or trucks over two tons or any disabled or inoperable motor vehicle on its Unit unless any such vehicle is completely enclosed and hidden from view within a garage or within such other enclosure as may be allowed by the Board or the Rules. Motor homes, trailers, campers, boats and other recreational vehicles may not be kept in driveways or parking spaces except on a temporary basis for loading or unloading, subject to such rules and regulations concerning parking as may be adopted by the Board. No inoperative vehicle of any type may remain in any driveway or public road for more than 48 hours (excluding weekends and holidays). Violations of this Section 10.2.5 shall subject such vehicles to impound, at the expense and risk of the owner thereof. The Association may adopt rules and regulations to implement these restrictions and provide guidance to Owners.

**10.2.6 Further Regulation.** The Board may adopt Rules further regulating conduct on Streets, sidewalks, driveways, parking spaces and other Common Elements, including the parking and storage of recreational vehicles, campers, boats and the like, and safe operation of vehicles. The Board may direct that any inoperative vehicle or anything improperly parked or kept in a parking space, or elsewhere in the Community be removed, and if it is not removed the Board may cause it to be removed at the risk and cost of the Owner thereof.

**10.2.7 Trash and Garbage.** Each Owner shall store trash and garbage inside the garage of the Home or on the side of the Home if concealed from street view by an approved fence, and set it out for collection in such locations and receptacles as are authorized by the Board only on designated trash collection days, or as otherwise allowed by the Rules. Each Owner is responsible for removing from the Community all trash and garbage generated by that Owner that is not required to be picked up by a service. The Board may adopt such Rules pertaining to such matters as in the judgment of the Board are necessary for the safe, sanitary and efficient operation of the Community.

**10.2.8 Signs.** No sign of any kind may be displayed to the public view on or from any Unit or Common Elements without the prior consent of the Board or pursuant to the Rules; provided that certain political signs and the like are permitted as provided in the CIC Act subject to Rules of the Board. The Board may erect on the Common Elements a master directory of Units including Units that are for sale or lease, and may regulate the size, appearance and location of signs advertising Units for sale or lease.

**10.2.9 Pets.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Unit except dogs, cats, birds, fish or other typical household pets; provided they are not kept, bred or maintained for commercial purposes; provided further that no more than two (2) dogs or two (2) cats shall be allowed per Unit, excluding fish, birds and other pets that remain caged or housed exclusively indoors; and provided further that the Board may permit in their sole discretion a third or fourth dog/cat (for a total of 4 such household pets) if the additional dog(s)/cat(s) are small in size and the Board determines that such additional pet(s) will not adversely impact or be a nuisance within the Community. Dogs shall be restrained to the Owner's Unit and Yard and shall not be allowed to run at large. All animals must be kept as domestic indoor pets. Leashed animals are permitted within rights-of-way and authorized Common Elements when accompanied by their Owners. Owners shall be responsible for cleaning up any and all of their animals' waste on the

Property, including on the respective Owner's Unit. If an Owner fails to clean up their animals' waste, the Association may, but shall not be obligated to, take such action as may be necessary to clean up the animals' waste and shall have the right of entry for such purposes. Any costs incurred by the Association in connection with such action shall be deemed to be a Special Assessment of the Owner whose animal(s) created the waste. No animal shall be allowed to make an unreasonable amount of noise or become a nuisance as determined by the Board, at its sole discretion. Notwithstanding anything above, no animal that is considered dangerous, threatening or otherwise harmful to others or that displays any such qualities after being within the Community shall be permitted or allowed to remain within the Community after Notice and Opportunity to Be Heard, after which the Board shall have the right to require removal of any animal from the Unit which it finds in its sole discretion to violate this subsection.

10.2.10 Nuisances and Intrusive Activity. No noxious or offensive activity shall be permitted in or upon any Unit or Common Elements, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Community. No Owner may conduct, permit or allow any activity or the keeping of anything in the Community that may unreasonably interfere with the other residents' use or enjoyment of their Units or the Common Elements; threaten the comfort, safety or security of any Owner; or be or become a nuisance to other Owners. No use or activity that generates noise, vibration, odors or traffic that would generally be considered unacceptable to households in a single-family neighborhood is allowed. The Board may adopt such Rules pertaining to such matters as in the judgment of the Board are necessary.

10.2.11 Hazardous Substances. No Owner may permit any Hazardous Substance to be generated, processed, stored, transported, handled, or disposed of on, under, in, or through the Owner's Unit or any portion of the Common Elements. Each Owner must indemnify, defend, and hold harmless the other Owners and the Association from all fines, suits, procedures, claims, and actions of any kind arising out of or in any way connected with any spills or discharges of Hazardous Substances or wastes arising from the operation or use of the Unit or the property by the Owner, Tenants, or invitees of the Unit. As used herein, the term "Hazardous Substance" means any hazardous, toxic, or dangerous substance, waste, or material which is or becomes regulated under any federal, state, or local statute, ordinance, rule, regulation, or other law now or hereafter in effect pertaining to environmental protection, contamination, or cleanup, including without limitation any substance, waste, or material which now or hereafter is designated as a "Hazardous Substance" under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601, *et seq.*); or under any local or state rule or regulation.

10.2.12 Conveyance by Owners; Notice Required. The right of an Owner to transfer the Unit is not subject to any right of approval, disapproval, first refusal, or similar restriction by the Association or the Board, or anyone acting on their behalf. An Owner intending to convey a Unit must, however, deliver a written notice to the Board at least two weeks before closing specifying (a) the Unit being sold; (b) the name and address of the purchaser, the closing agent, and the title insurance company insuring the purchaser's interest; and (c) the estimated closing date. The Board has the right to notify the purchaser, the title insurance company, and the closing agent of the amount of unpaid Assessments and charges outstanding against the Unit, whether or not such information is requested. Promptly

upon the Conveyance of a Unit, the new Unit Owner must notify the Association of (i) the date of the Conveyance; (ii) the Unit Owner's name and address; and (iii) the name and notice address of every first Mortgagee of the Unit. The Association must notify each insurance company that has issued an insurance policy under Article 20 of the name and address of the new Owner and request that the new Owner be made an additional insured under such policy, unless the insurance policy under Article 20 is written in a manner that would automatically provide coverage to all Unit Owners by virtue of their ownership of a Unit.

**10.2.13 Construction.** No dirt, debris, or other materials shall be allowed to come off of any Units onto any Streets, Common Elements, other Units, or other parts of the Property as a result of any construction or other activities. All Structures shall be of new construction (unless the ACC approves of recycled or "décor" vintage construction materials in advance). No previously used Structures shall be moved onto a Unit. The Unit shall be kept clean and clear of debris during construction. No Home may be constructed on any Unit by other than a contractor licensed as a general contractor under the statutes of the State of Washington without the prior approval of the ACC.

**10.2.14 Fences.** Fences must comply with all applicable laws and regulations and the Plat, and specifically any fence located within an easement must comply with and is subject to the approval of the City and the utility purveyor as provided in the Plat. Fences may be erected on property lines, except that no fence shall be erected between the front of the Home and the Street. Nothing herein shall prevent the erection or maintenance of a necessary or appropriate retaining wall and safety fencing on top of said wall installed by Declarant or otherwise later approved in advance by the ACC. No fence, wall, hedge or mass planting shall at any time extend higher than six feet (6 feet) above the ground, except for necessary and appropriate retaining walls or rockeries (and associated safety fencing on top of the same) which conform to the City codes and are installed by Declarant or otherwise later approved by the ACC in advance. With the exception of necessary or appropriate safety fencing on top of walls, fences shall conform to any applicable Rules concerning fencing, unless otherwise approved by the ACC. No wire fences (other than safety fencing describe above) shall be used unless approved by the ACC. If the Plat or particular easement does not expressly restrict such fencing, rear and side yard fences are permitted to be located within easements created or dedicated on the face of the Plat with the prior written approval of the ACC, provided that such fencing must not interfere with or obstruct the purpose of the easement or any facilities therein. If such a fence or portion of a fence is ever placed within any easements in accordance with the foregoing sentence, the Owner of said fence shall be required to temporarily remove the same at its cost if the party benefitted by such easement requires removal to carry out activities permitted by the easement (e.g., maintenance of utilities) or required to permanently remove the fence at its cost if such benefitted party determines the fence unreasonably interferes with or obstructs its easement rights.

**10.2.15 Lighting.** All area lighting shall be designed and positioned to ensure that the light source is not visible from any other Homes or, if visible, is angled downward so as to adequately mitigate the effect of any light spill over onto adjacent Units (whether or not any visible light is adequately mitigated shall be determined by the ACC in its sole discretion for the protection of the Owners within and for the overall harmony of the

ACC). Decorative holiday lighting may be installed no more than thirty (30) days before and shall be removed no later than thirty (30) days after the date of the holiday.

10.2.16 Yard Art. No yard pieces or yard art (including but not limited to sculptures, statues, and other freestanding or attached works, whether for decoration or otherwise) that are more than twelve inches (12 inches) tall or twelve inches (12 inches) wide shall be permitted outside of the Home and within view from the Street without prior written approval of the ACC. Flags of the United States or the State of Washington are not considered yard art hereunder and are permitted, provided, however, the Association may place reasonable restrictions on the time, place and manner of display as permitted by federal and state law.

## **ARTICLE 11 MAINTENANCE, CONSTRUCTION AND ALTERATIONS**

Section 11.1 Owner's Maintenance and Repair Responsibilities. Except for maintenance and repairs to be performed by the Association under this Article 11, each Owner must, at the Owner's sole expense, maintain, repair and replace (i) its Home and Yard, (ii) all Structures, other improvements and landscaping on its Unit, (iii) to the extent not included in the foregoing, any driveways, fences or walls on its Unit, (iv) that portion of the utility installations (including without limitation power, water, gas, telephone and data lines, sanitary sewers, and storm drainage easement areas but not the storm drainage facilities located therein which shall be the obligation of the Association) that are located over the exterior 10 feet of street frontage of their Unit or outside of the Unit but that serve only that Unit, and (v) landscaping within the irrigation easement areas and drainage swales located in the rear Yards of the Unit. Each Owner must keep all such items in good repair and in neat, clean and sanitary condition, in compliance with applicable Laws, the Governing Documents and the Community-Wide Standard.

11.1.1 Grounds; Maintenance of Grounds. The entire front landscaping for each Unit with a Home thereon shall be installed prior to occupancy in accordance with the plan submitted to the ACC. The entire landscaping, including the remaining portions of the side and rear yard, shall be installed within six (6) months. To the extent applicable each Owner shall be responsible for removing the PVC pipe containing the cable connection wires located on their Unit and either burying the cable wires or installing a landscape box and landscaping to screen the cable connection wires and box. Each Owner shall be responsible for the maintenance and repair of all parking areas, driveways, walkways, and landscaping on his/her Unit. Nothing contained herein shall preclude an Owner from recovering (from any person liable therefor) damages to which such Owner might be entitled for any act or omission to act requiring an expenditure by the Owner for the maintenance and repair of the parking area, driveway, walkway, and/or landscaping on Owner's Unit. Such maintenance and repair of the Owner's Unit shall include, without limitation:

11.1.1.1 Parking and Other Areas. Maintenance of all parking areas, driveways and walkways in a clean and safe condition, including paving and repairing or resurfacing such areas when necessary with the type of material originally installed thereon or a substitute therefore as shall, in all respects, be equal in quality, appearance and durability; the removal of debris and waste material and the washing and sweeping of paved areas as required.

11.1.1.2 Lighting. Cleaning, maintaining and re-lamping of any external lighting fixtures, except those as may be the property of any public utility or government body.

11.1.1.3 Landscaping. Landscaping shall emphasize plantings and other features which complement and enhance the existing character of the Community. Maintenance of all landscaping, including the trimming, watering and fertilization of all grass, ground cover, shrubs or trees, removal of dead or waste materials, and replacement of any dead or diseased grass, ground cover, shrubs or trees.

11.1.1.4 Drainage. Maintenance of all private storm water drainage systems, yard drains, and catch basins in their originally designed condition, and per any governmental requirements and any conditions as provided here or on the Plat. Further, no Owner shall take any action that would interfere with surface water drainage across his/her Unit either through natural drainage or by drainage easements. The topographic conditions of any Unit shall not be altered in any way that would adversely affect or obstruct the approved and constructed storm drain system and surface flows without the written consent of the ACC and without first obtaining approval from the applicable City department for any such alteration.

11.1.1.5 Hillsides and Other. Maintenance of all hillsides, slopes and swales in their as designed and completed condition, and which shall not be changed or interfered with without the prior written consent of the Board.

11.1.1.6 Retaining or Structural Walls. Declarant may construct retaining or other structural walls on or for the benefit of the certain Units (collectively "Retaining Walls"). Such Retaining Walls contain drainage pipes and facilities within them to collect and direct storm water run-off. Where such Retaining Walls exist, the removal or deterioration of such Retaining Walls will affect the Units and other real property benefitted by and/or along the same slope supported by such Retaining Walls. No Owner whose Unit is benefitted or burdened by any such Retaining Wall shall alter, damage, destroy or remove such Retaining Wall or any part of it without the prior written consent of the City, and the all other Owners of Units and real property affected by such Retaining Wall. The Owners affected by each Retaining Wall shall be jointly and equally responsible for all maintenance and repair of such Retaining Wall as necessary to keep the same structurally sound and in good repair; provided, however, that if the act of any Owner or their Occupants, guests, invitees or other representatives damages or causes excess deterioration to any Retaining Wall, the applicable Owner shall be responsible for all costs to repair such damage and deterioration. If any Owner disputes which Retaining Wall(s) affect their Unit or what work is necessary or appropriate under this Section, the Owner may submit its dispute to the Association and the Association shall engage a neutral professionally licensed geotechnical engineer to make such determination, which shall constitute a final decision of the Board. The Association shall pass along the cost of such geotechnical engineer to the Owner who was incorrect in the dispute, as a Special Assessment. Each Owner shall permit reasonable access to and use of his or her Unit as necessary or appropriate for all maintenance and repair work on any Retaining Wall called for under this Section. Any work performed on any Retaining Wall must be permitted in accordance with all City rules, must be performed by a licensed and insured contractor, must first be reviewed and approved by a professionally licensed geotechnical engineer, and all work must comply with the recommendations of such engineer.



**11.1.2 Remedies for Failure to Perform Owner Maintenance Obligations.** If any Owner fails to perform the maintenance and repair obligations required herein, then the Board after fifteen (15) days' prior written notice to such delinquent Owner, shall have the right, but not the obligation, to perform such maintenance and repair and to charge the delinquent Owner and his/her Unit for the cost of such work together with interest thereon from the date of the Association's advancement of funds for such work to the date of reimbursement of the Association by Owner. If the delinquent Owner fails to reimburse the Association for such costs within ten (10) days after demand therefore, the Association may, at any time after such advance, record a claim of lien signed by an authorized agent of the Association for the amount of such charge together with interest thereon and enforce the Association lien in accordance with the provisions of this Declaration. The Association lien and the rights to foreclose thereunder shall be in addition to all other rights and remedies which the Board may have hereunder or in equity or at law, including any suit to recover a money judgment for unpaid Assessments.

**Section 11.2 Association's Maintenance and Repair Responsibilities.** The Association is responsible for the maintenance, repair, and replacement of the Common Elements, including, without limitation, (i) the Street Landscaping, including any landscaped areas in the public right-of-way and the landscape buffer along the northern and southern boundaries of the Community and any temporary irrigation facilities located therein, (ii) the Street Lighting, (iii) mail kiosk, (iv) Tracts A – K and Tract M, (v) all Structures, Entry Monuments, if any, and other improvements and landscaping on the Common Elements, (vi) all storm drainage and evaporation facilities serving the Community and not maintained by a utility provider, including storm drainage swales within the rear Yard of Units, the stormwater lift station, (vii) all utility installations not the responsibility of a governmental entity, (viii) and all irrigation lines, facilities and the irrigation pump station serving the Community, including those located within private irrigation easements within Unit boundaries, (ix) the Critical Areas in accordance with any approved maintenance plan, and (x) fencing and signage around any Critical Areas and Common Element Tracts. The Board of the Association shall have the obligation as provided herein and in the Map to contract with reputable landscaping, utility companies or the like to ensure proper, adequate and routine maintenance, operation and monitoring of the irrigation pump station, located within Tract H, and the stormwater lift station, located within Tract O. For services related to the irrigation or stormwater pump stations, the Board shall contract with only companies that are licensed, bonded and insured.

The Association must keep such items in good repair and in a neat, clean and sanitary condition, in compliance with applicable Laws, the Governing Documents and the Community-Wide Standard. The Association shall further be responsible for ongoing monitoring and maintenance of noxious weeds upon the Common Elements for which it is responsible. The Declarant, not the Association, however, is responsible for the actual costs of the maintenance, repair and replacement and insurance for the buildings and improvements on the Additional Property while they are subject to Development Rights to add Units, Common Elements or Limited Common Elements. The Association shall become responsible for the maintenance, repair and replacement of those items upon the exercise or expiration of such Development Rights. The Declarant may pay such costs directly or through the Association. The Declarant is also entitled to all income from the Additional Property until Units thereon are created and sold.

**Section 11.3 Summary of Maintenance Responsibilities.** The maintenance responsibilities of the Owners and Association are summarized in Schedule D attached hereto. In the

event of any conflict between the text of this Article 11 and the schedule, the terms of this Article shall control.

**Section 11.4 Transfer of Responsibility.** The Board may adopt Rules transferring responsibility to maintain certain Limited Common Elements to the Owners if it determines that the Owners will regularly, properly and consistently maintain the Limited Common Elements, and that there is little risk of damage to the Community or cost to the Association from such transfer of maintenance responsibility. The Association may modify or revoke any such Rules if it determines that modification or revocation is in the best interest of the Community.

**Section 11.5 Construction and Alterations: Architectural Control.** Although the Owners have the responsibility for maintenance, repair and replacement of their Units, Homes and Yards as set forth in this Article 11, the Board shall have the right to regulate any new Structures and any alterations to existing Structures to ensure that they (i) comply with the Governing Documents and (ii) are harmonious with the other Homes and improvements in the Community. Accordingly, except as set forth in Governing Documents, no Owner may construct or install a new Structure or alter any portion of an existing Structure, without the prior written approval of the Board.

**11.5.1 Scope of Regulation and Authority.** For the avoidance of doubt, the authority of the Board under this Section 11.5 includes regulation of: (i) the location, size, design and appearance of any Structure, (ii) the materials and colors of exterior features and surfaces of Structures, including but not limited to, siding, roofing, windows and doors, (iii) the placement and appearance of ancillary items such as antennae, security devices, and hardscaping, and (iv) other factors relating to compliance with the Governing Documents or harmony with the other Homes and improvements in the Community. The Board shall not have authority to (i) regulate the maintenance, repair or reconstruction of a Structure that does not change its location, size or appearance, (ii) prohibit the installation of basketball hoops to be used in a driveway or (iii) regulate any landscaping (other than hardscaping) on a Unit unless it alters/interferes with the approved landscape plan, restrictions contained in the Map or Rules of the Association. The Board shall have the authority to adopt Rules to implement and clarify the scope, standards and processes under this Section 11.5 and to appoint, pursuant to the Bylaws, an architectural control committee to exercise some or all of its authority hereunder or to advise it as to matters hereunder.

**11.5.2 Particular Standards.** The following standards shall apply to all Structures and alterations of Structures in the Community.

**11.5.2.1** The maximum height of any Home shall be 35 feet with side-yard setbacks of five feet (5'), rear yard setbacks of 5 feet (5), and fifteen feet (15') from any Street right-of-way.

**11.5.2.2** The maximum height of any fence shall be six (6) feet. No fence may be closer than two (2) feet to a Street, Common Element Tract, drive or sidewalk and an Owner must install a landscape buffer between the fence and any Street, Common Element Tract, driveway or sidewalk; provided that setbacks may differ for adjacent Critical Areas.

11.5.2.3 No radio, television or satellite antenna, dish or receiving device other than a "protected antenna" (as defined in 47 C.F.R. §1.4000, as it may be amended) may be installed on the front of a Home or front Yard area. Any receiving device shall not be larger than 24 inches in diameter.

11.5.3 Approval Process. Subject to any Rules adopted by the Board, an Owner desiring to construct or install any new Structures or alter any existing Structures on its Unit must apply to the Board for approval. The Board may require the submission of plans and specifications and other data relating to the proposal. The Board may require that plans and specifications be prepared by a competent professional and may establish requirements for the format and content of materials submitted to it. The Board may require evidence that the Owner has obtained all permits necessary for the proposed work. Construction, alteration or repair shall not be started until written approval thereof is given by the Board. The Board shall act promptly to process applications and render a decision. The failure of the Board to approve a proposal within 60 days after receiving a complete application, shall be deemed to constitute the Board's approval of the proposal.

11.5.4 Declarant Exempt. Declarant (including any successor in interest to Declarant's status as Declarant) shall not be subject to the restrictions of this Section 11.5. Declarant reserves the right to exempt any Dealer to whom Declarant conveys Units from the restrictions of this Section 11.5.

Section 11.6 Construction Work – Common Elements. Except as otherwise allowed by the Governing Documents, or the Board, no owner may alter any portion of the Common Elements.

Section 11.7 Landscaping. The Board may require, at the Owner's expense, the trimming, topping or, removal of any tree, hedge or shrub on an Owner's Unit that it determines is interfering with line-of-sight or travel on Streets, sidewalks or trails in the Community, or presents a safety hazard related to the Common Elements.

Section 11.8 Declarant Inspections. Until the expiration of all warranties given by Declarant and the time period for filing any claims against Declarant, Declarant shall have the right, but not the obligation, to conduct inspections and tests from time to time of all or any parts of the Common Elements, including the Limited Common Elements, in order to ascertain the physical condition of the improvements in the Community and to determine whether maintenance, repairs or replacements of any such improvements are indicated. Declarant shall pay all costs of such inspections and tests and restore the affected portion of the property to its condition immediately prior thereto, and shall indemnify the Association and Owners of any affected Units from any damage resulting therefrom. Declarant shall have such rights of entry on, over, under, across and through the property as may be reasonably necessary to exercise the rights described in this Section 11.8.

## ARTICLE 12 SPECIAL DECLARANT RIGHTS

Section 12.1 Declarant's Right to Complete Improvements. Declarant and its agents, employees and contractors have the right to complete any improvements and otherwise perform work that is authorized by the Declaration, indicated on the Map, authorized by building permits, provided for under any purchase and sale agreement, necessary to satisfy any express or implied warranty, or otherwise authorized or required

by law. Declarant also has the right to make any modifications, improvements or changes to the Common Elements as Declarant determines are appropriate to increase the appeal of the Community to potential buyers, to correct problems in the design or construction of the Community, or for the benefit of one or more Units. In conjunction with the foregoing rights, until construction of the Community is completed, Declarant shall have the right to use any unassigned parking spaces and any portion of any garage or parking lot for staging, storage, parking and other construction-related purposes. The foregoing rights shall terminate seven years from the date this Declaration is recorded.

**Section 12.2 Declarant's Right to Maintain Sales Facilities.** Declarant, its agents and its employees have the right to install and maintain in any Units owned by Declarant and in any of the Common Elements any facilities that Declarant deems necessary or convenient to the construction, marketing, sale or rental of Units. These facilities may include but are not limited to business offices, management offices, sales offices, construction offices, storage areas, signs, model units and parking areas for Declarant and its employees, agents and contractors, and prospective Tenants or purchasers and their agents. Declarant may install and maintain as many of such facilities as it deems necessary or convenient in such locations as it deems necessary or convenient. Declarant may relocate such facilities as it determines is appropriate in its sole discretion. The right to install and maintain such facilities will expire when Declarant ceases to be a Unit Owner and has no further Development Rights in the Community (including no more right to add property to, or create additional Units in, the Community). Declarant will have a reasonable time, but in no event less than 60 days after such expiration, to remove any such facilities from the Community.

**Section 12.3 Declarant's Right to Use Easements.** Declarant and its agents, employees and contractors have an easement over, across, under and through the Common Elements of the Community as reasonably necessary for the purpose of completing construction, exhibiting and preparing Units for sale, making repairs required pursuant to any contract of sale, discharging Declarant's obligations, or exercising Special Declarant Rights within the Community or within any real estate that may be added to the Community. The foregoing rights shall terminate seven years from the date this Declaration is recorded. The Declarant further reserves mutual nonexclusive easements over, across, and through the Common Elements of the Community for the benefit of the Declarant and its successors and assigns as present and future owners of buildings on the Additional Property, and for the benefit of the Association and all Owners of Units in the Community as follows: (i) for ingress to and egress over the roadways and pathways of the Community and the Additional Property, (ii) to have access to and to tie into and utilize any water, sanitary sewer, storm sewer, electricity, gas, telephone, cable, television, or other utility lines now or hereafter established in the Community and on the Additional Property, and (iii) for the right to use the mail kiosk and trash facilities located on such properties. The easements reserved hereby shall not be exercised in a manner that will overload or materially impair the use and enjoyment of the roadways, pathways, and utilities by Unit Owners or the present and future owners of the buildings on the Additional Property.

Section 12.4 [Intentionally Omitted]

Section 12.5 [Intentionally Omitted]

**Section 12.6 Declarant's Right to Appoint, Remove and Veto.** Until the Control Termination Date, Declarant shall have the right to appoint and remove all officers and members of the Board. Notwithstanding the foregoing, not later than 60 days after Conveyance of 25% of the Units that may be created to Owners other than Declarant, at least one member and not less than 25% of the members of the Board must be elected by Owners other than Declarant; and not later than 60 days after Conveyance of 50% of the Units that may be created to Owners other than Declarant, not less than one-third of the members of the Board must be elected by Owners other than Declarant. Declarant may at any time voluntarily terminate its right to appoint and remove officers and members of the Board by recording an amendment to the Declaration surrendering such right. If Declarant does so, it may, for the duration of the period ending on the Control Termination Date, retain the right to veto or approve proposed actions of the Association or Board before they become effective. To exercise this right, Declarant must execute and record an instrument that specifies the proposed actions that may be vetoed or approved by Declarant. The foregoing rights shall terminate on the Control Termination Date.

**Section 12.7 Declarant's Right to Control Architectural Committees.** Until Declarant no longer owns any Unit in the Community and no longer has a Development Right to create any Units in the Community or real estate added to the Community, Declarant has the right to appoint and remove all officers and members of any construction, design review or aesthetic standards committee of the Association. In addition, during the period set forth in this Section 12.7, Declarant shall have the right to control any construction, design review or aesthetic standards review or approval process. Declarant may voluntarily terminate its right to appoint and remove officers and members of any such committee or control any process by recording an amendment to the Declaration surrendering the right to appoint and remove officers and members of such committee. If Declarant does so, it may, for the duration of the period set forth in this Section 12.7, exercise the right to approve certain actions of any such committee before they become effective. The foregoing rights will terminate on the later of the date Declarant no longer owns any Unit in the Community, or the date Declarant no longer has a Development Right to create any Units in the Community or in real estate added to the Community.

**Section 12.8 Declarant's Right to Attend Association Meetings.** Declarant has the right, whether or not it owns any Units in the Community, to attend all meetings of the Association, except during any executive session when Owners are excluded. The Association shall send Declarant notices of all meetings and copies of all minutes of all meetings at the same time that such items are sent to Unit Owners. Notices and minutes shall be delivered to Declarant in a Tangible Medium at the address specified in Section 26.1 or in such other manner as Declarant shall specify in a Record from time to time. The foregoing rights shall terminate seven years from the date this Declaration is recorded.

**Section 12.9 Declarant's Right to Association Records.** Declarant has the right, whether or not it owns any Units in the Community, to have access to the Books and Records of the Association to the same extent as a Unit Owner, including, without limitation, pursuant to Section 13.7 and Section 13.8 of this Declaration. The foregoing rights shall terminate seven years from the date this Declaration is recorded.

**Section 12.10 Declarant's Right to Add Real Estate to the Community.** The Declarant has the right to add some or all of the Additional Property to the Community. The foregoing rights shall terminate seven years from the date this Declaration is recorded. Any future improvements on the Additional Property will be generally of the same quality as the existing improvements. All future improvements on the Additional Property will be substantially complete before the Additional Property is added to the Community. Any liens that arise in connection with the Declarant's ownership of and construction of improvements on the Additional Property shall not adversely affect the rights of other Unit Owners or the priority of Mortgages on the Units. All taxes and costs relating to improvements on the Additional Property before it has been added to the Community shall be paid by or allocated to the Declarant.

**Section 12.11 Declarant's Right to Add Improvements to the Community.** Declarant has the right to add the following improvements to the Community: Additional Property to the Community which is up to a maximum of 274 additional Units, along with additional Common Elements or Limited Common Elements that may consisted of open space improvements, storm drainage improvements, critical areas, and other improvements to the Common Elements. The foregoing rights shall terminate seven years from the date this Declaration is recorded.

**Section 12.12 Declarant's Right to Create Units, Limited Common Elements and Common Elements.** The Declarant has the right to create up to 274 additional Units on the Additional Property which is legally described in the attached Schedule B. The Declarant will be the Owner of any Unit so created. The Declarant is not required to create any additional Units. The Declarant has the right to create additional Common Elements and Limited Common Elements upon the Additional Property. The Declarant is not, however, required to create any such Common Elements or Limited Common Elements. The foregoing rights shall terminate seven years from the date this Declaration is recorded. When and if the Declarant adds Additional Units, it will recalculate the Allocated Interests of the Units using the same formulas as provided in Section 6.1, and will amend this Declaration accordingly.

**Section 12.13 Declarant's Right to Combine Units or Convert Units to Common Elements.** The Declarant has the right to combine Units or convert any Unit that has not been conveyed to an Owner other than a Declarant into Common Elements. The Declarant will be the Owner of any new Unit so created. The foregoing rights shall terminate seven years from the date this Declaration is recorded. When and if the Declarant combines or converts Units, it will recalculate the Allocated Interests of the Units using the same formulas as provided in Section 6.1, and will amend this Declaration accordingly.

**Section 12.14 Declarant's Right to Withdraw Property.** The Declarant reserves the right to withdraw all or any portion of the Withdrawable Property from the Community. Such withdrawal may be done in part or whole through one or more withdrawals, and no Owner other than Declarant shall have any right or interest in the Withdrawable Property so as to require any notice or consent under any provision of Chapter 58.17 RCW and the CIC Act in conjunction with or as a condition for such withdrawal. To the extent any notice or consent may be required, all Owners and the Association hereby delegate those rights to the Declarant and appoint the Declarant as their attorney in fact for purposes of exercising

those rights on their behalf. If Declarant exercises its right to withdraw the Withdrawable Property, it is acknowledged that such property shall receive no benefit of any use rights to any Common Elements within the Association, nor utilize any Community utilities, storm water facilities, insurance, or any other privileges, shared improvements, services or benefits of the Association. The foregoing rights to withdraw the Withdrawable Property shall terminate seven years from the date this Declaration is recorded.

**Section 12.15 [Intentionally Omitted]**

**Section 12.16 Exercise of Development Rights.**

**12.16.1 General.** To exercise any Development Right reserved under this Article 12, Declarant shall prepare, execute and record an amendment to the Declaration. In conjunction therewith, Declarant shall record an amendment or supplement to the Map if the previous Map lacks the required detail, certification or other matters required under the CIC Act.

**12.16.2 Creation of New or Withdrawing Units or Limited Common Elements.** An amendment creating or withdrawing Units will (i) show any new or withdrawn Unit(s) created, (ii) reallocate the Allocated Interests among all the Units in the Community, (iii) describe any Limited Common Elements thereby created and designate the Units to which they are allocated (to the extent required by RCW 64.34.228), and (iv) reallocate the Allocated Interests of all Units in the Community using the formulae set forth in Article 6 of the Declaration. The amendment will reallocate the Allocated Interests of all Units in the Community using the formulae set forth in Article 6 of the Declaration.

**12.16.3 Conversion of Common Elements.** Whenever Declarant exercises the Development Right to convert a Unit into Common Elements if Declarant converts the Unit entirely to Common Elements, the amendment to the Declaration must reallocate all the Allocated Interests of that Unit among the other Units as if that Unit had been taken by condemnation under Section 22.

**Section 12.17 Use of Property Subject to Development Rights.** The Owners shall have the right to use the driveways, sidewalks, garage, parking spaces, and open spaces of the Community, subject to Declarant's Special Declarant Rights.

**Section 12.18 Responsibility for Expenses.** Declarant shall be responsible for all expenses incurred in connection with real estate subject to Development Rights. Notwithstanding the foregoing, all expenses associated with the operation, maintenance, repair and replacement of any Common Element that the Owners have a right to use (including, without limitation, amenities, parking spaces, drives, Streets, sidewalks, trails and open spaces) must be paid by the Association as a Common Expense. Declarant's responsibility shall cease upon the exercise or expiration of such Development Rights, whichever is earlier. Declarant may pay such costs directly or through the Association. Declarant is also entitled to all income from such portions of the property and any improvements thereon until the exercise or expiration of such Development Rights.

Section 12.19 Different Parcels; Different Times. Any Development Right may be exercised with respect to different parcels of real estate at different times. No assurances are made as to final boundaries of such parcels or as to the order in which those parcels may be subject to the exercise of each Development Right. Even though a Development Right is exercised in any portion of the real estate subject to that right, that right need not be exercised in all or in any other portion of the remainder of that real estate.

Section 12.20 Liens. Any liens that arise in connection with Declarant's ownership of or construction of additional improvements shall attach only to Declarant's interest in any improvements owned by Declarant or against Declarant's Special Declarant Rights and shall not adversely affect the rights of other Unit Owners or the priority of Mortgages on the Units. All taxes and costs relating to improvements before the Units therein have been created shall be paid by or allocated to Declarant.

Section 12.21 Transfer of Special Declarant Rights. The rights described in this Article 12 shall not be transferred except by instrument evidencing the transfer executed by Declarant or Declarant's successor and the transferee and recorded in the county in which the Community is located. The rights and liabilities of the parties involved in such a transfer and of all Persons who succeed to any Special Declarant Right are set out in the CIC Act.

Section 12.22 Termination of Special Declarant and Development Rights. Each Special Declarant Right and Development Right shall terminate as set forth above. Declarant may, however, voluntarily terminate any or all aspects of its Special Declarant Rights or Development Rights at any time by recording an amendment to the Declaration specifying which rights are thereby terminated.

Section 12.23 Liability for Damage. Declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the Community, of any portion of the Community damaged by the exercise of rights reserved by Declarant pursuant to or created by this Declaration or the CIC Act.

### ARTICLE 13 OWNERS ASSOCIATION

Section 13.1 Form of Association. The Owners of Units shall constitute an owner's association to be known as the Black Horse at Whiskey Creek Home Owners Association (the "Association"). The Association is a nonprofit miscellaneous or mutual corporation formed in 2007. Except where expressly reserved to the Owners under the CIC Act or the Governing Documents, the affairs of the Association shall be managed by a Board. The rights and duties of the Board and the Association shall be governed by the provisions of the CIC Act, the Washington Miscellaneous and Mutual Corporations Act, chapter 24.06 RCW, the Declaration and the Bylaws.

Section 13.2 Bylaws. The initial directors appointed in the Articles will adopt initial Bylaws to supplement the Declaration and to provide for the administration of the Association and the property and for other purposes not inconsistent with the CIC Act or the Governing Documents. The Bylaws may be amended pursuant to the procedures set forth in Article 24.

Section 13.3 Qualifications for Membership. Each Owner of a Unit (including Declarant as to Units it owns) shall be a member of the Association and shall be entitled to one membership.



for each Unit owned. Only Owners may be members of the Association. Ownership of a Unit shall be the sole qualification for membership in the Association. Corporations, partnerships, associations, and other legal entities, trustees under an express trust, and other fiduciaries, as well as natural persons, may be members of the Association.

**Section 13.4 Transfer of Membership.** The membership of an Owner in the Association is appurtenant to the Unit giving rise to the membership. The membership may not be transferred in any way except upon the transfer of title to the Unit and then only to the transferee of title to the Unit, provided that if a Unit has been sold on contract, the contract purchaser shall, except as otherwise set forth in the Governing Documents, exercise all rights of the Owner under the Governing Documents, and shall be the voting representative unless otherwise specified. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Unit will automatically transfer the membership in the Association to the new Owner.

**Section 13.5 Voting.**

**13.5.1 Number and Classes of Votes.** The allocation of Voting Interests in the Association is set forth in Section 6.4. Other matters concerning voting are set forth in the Bylaws.

**13.5.2 Arbitration.** If the votes are tied on any matter voted upon by the members of the Association, the matter shall be submitted to arbitration and mediation as provided in Article 28 of this Declaration.

**Section 13.6 Powers of Association.**

**13.6.1 General Powers.** Except to the extent limited by the Governing Documents, the Association shall have (i) all powers authorized under the CIC Act and the Washington Nonprofit Miscellaneous and Mutual Corporations Act; (ii) all powers necessary for the operation of the Community or governance of the Association; (iii) any other powers authorized by this Declaration; and (iv) all powers that may be exercised by any corporation of the same type as the Association.

**13.6.2 Capital Improvements.** The Association may cause additional improvements to be constructed within the Common Elements and may acquire, hold, encumber, convey, and dispose of, in the Association's name, any additional tangible or intangible personal property. If the estimated cost of any such improvements or personal property to the Community exceeds \$25,000, the approval of the Owners holding at least 51% of the votes in the Association shall be required; and if such estimated cost exceeds \$50,000, the approval of the Owners holding 67% of the votes in the Association shall be required. This Section 13.6.2 does not apply to maintenance, repair or replacement of existing Common Element and Limited Common Element improvements.

**13.6.3 Rules.** The Board shall have the power to adopt Rules for any purpose authorized under the CIC Act, including the power to adopt Rules to establish and enforce construction and design criteria and aesthetic standards pertaining to the improvements and alterations to the Community. In adopting, amending or rescinding Rules, the Board (i) shall give consideration to the matters brought to its attention after notice to the

Unit Owners; and (ii) shall give consideration to the interests of individual Owners and Authorized Users as well as the interests of the Association. All Rules must be reasonable. All Rules must treat similarly situated Units, Owners and Authorized Users similarly. No Rules shall be inconsistent with or violate the provisions of the Governing Documents. Before, adopting, amending or repealing any Rule, the Association must give all Owners notice of: (i) its intention to adopt, amend, or repeal a Rule and provide the text of the Rule or the proposed change; and (ii) a date on which the Board will act on the proposed Rule or amendment after considering comments from Owners. Following adoption, amendment, or repeal of a Rule, the Association must give notice to the Owners of its action and provide a copy of any new or revised Rule.

**Section 13.7 Accounts, Records, Financial Statements, Audits and Funds.** The Association must keep all of its funds in accounts in the name of the Association with a Qualified Financial Institution. The Association shall keep financial records in accordance with accrual-based accounting principles. 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 account of the appropriate units in accordance with the provisions of this Declaration. To assure that the unit 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 unit owner. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association in accordance with accrual-based accounting principles. The annual financial statement shall be audited at least annually by a certified public accountant who is not a member of the Board or an Owner unless the annual Assessments for the year were less than \$50,000.00 and Owners holding a majority of the votes, excluding votes held by Declarant, waive the audit for that year. The financial statement shall be completed in time for the Association's annual meeting and in any event within 120 days following the end of the fiscal year. Any Mortgagee of a first Mortgage, and Declarant pursuant to Article 12, will be entitled to receive the audited financial statement upon written request. The Board, or Persons having 35% of the voting power of the Association, may require that an audit of the Association and management books be presented at any special meeting. An Owner or Mortgagee, or Declarant pursuant to Article 12, at such Person's expense, may at any reasonable time conduct an audit of the books of the Board and Association. Upon written request of Freddie Mac, Fannie Mae, HUD or VA, if it is a Mortgagee or prospective Mortgagee, the Association shall provide within a reasonable time an audited financial statement of the Association for the preceding fiscal year.

**Section 13.8 Inspection of Documents, Books and Records.** The Association shall make available for inspection upon request, during normal business hours or under other reasonable circumstances to Owners, Mortgagees, prospective purchasers and their prospective Mortgagees, and Declarant pursuant to Article 12, and the agents or attorneys of any of them, current copies of the Books and Records of the Association. The Association may require the requesting party to pay a reasonable charge to cover the cost of making the copies.

#### **ARTICLE 14 TRANSITION TO OWNER CONTROL**

**Section 14.1 Election of New Board.** No later than the Transition Date, the Board shall call a Transition Meeting to elect a new Board. The Persons elected to the Board at the Transition

Meeting shall take office upon such election. Nothing shall prevent previously elected or appointed directors from being elected at such election.

**Section 14.2 Transfer of Association Property.** No later than 30 days after the Transition Meeting, Declarant shall deliver to the Board elected at the Transition Meeting, or the management agent of the Association, all property of the Owners and of the Association held or controlled by Declarant pursuant to the CIC Act.

**Section 14.3 Audit of Association Records.** No later than 60 days after the Transition Meeting, the Board shall engage an independent certified public accountant to audit the records of the Association in accordance with generally accepted auditing standards, unless the Owners, other than Declarant, by majority vote, elect to waive the audit. The cost of the audit shall be a Common Expense.

**Section 14.4 Termination of Contracts and Leases Made by Declarant.** Within two years after the Transition Meeting, the Association may terminate, without penalty, upon not less than 90 days' notice to the other party, any of the following if it was entered into before the Transition Meeting: (a) any management, maintenance, operations or employment contract, or lease of recreational or parking areas or facilities or (b) any other contract or lease between the Association and Declarant or an affiliate of Declarant, as defined in Section 010(1) of the CIC Act. The Association may terminate, without penalty, at any time after the board elected at the Transition Meeting takes office, upon not less than 90 days' notice to the other party any contract or lease that is not bona fide or was unconscionable to the Unit Owners at the time entered into. This Section 14.4 does not apply to any lease, the termination of which would terminate the Community or reduce its size, unless the real estate subject to that lease was included in the Community for the purpose of avoiding the right of the Association to terminate a lease under this Section 14.4.

## **ARTICLE 15 THE BOARD OF DIRECTORS**

**Section 15.1 Qualifications of Directors and Officers.** The qualifications, number, method of election, removal and terms of service of the directors and officers shall be as specified in the Bylaws.

**Section 15.2 Powers of the Board.** Except where expressly reserved to the Owners under the CIC Act or the Governing Documents, the affairs of the Association shall be managed by the Board. The Board may exercise all powers of the Association, except as otherwise provided in the CIC Act, or the Governing Documents. The Board shall arrange for, and shall have the exclusive right to contract for, goods and services necessary for the proper functioning of the Community. Those goods and services may include, but are not limited to, the following:

**15.2.1 Utilities.** All necessary utility services for the Common Elements and the Units.

**15.2.2 Additions to Common Elements.** The addition of improvements or personal property to the Common Elements.

**15.2.3 Professional Services.** Legal and accounting services necessary or proper for the operation of the Community or enforcement of Governing Documents;

services of a hearing officer for quasi-judicial disputes; or services of an architect or other professional to assist with applications for changes to the Community.

15.2.4 Maintenance. The maintenance, repair and replacement of the Common Elements including any Limited Common Elements (such as the parking areas, landscaping, and common utility facilities).

15.2.5 Other Necessary Expenditures. Any other materials, supplies, furniture, labor, services, insurance, taxes or assessments which the Board is required to secure or pay for pursuant to the terms of this Declaration or the Bylaws, or under law, or which, in its opinion, is necessary or proper for the operation of the Community, or for the enforcement of this Declaration or the Bylaws.

15.2.6 Liens. The Board may also pay any amount necessary to discharge any lien or encumbrance levied against the entire property or any part thereof which may or is claimed to, in the opinion of the Board, constitute a lien against the property or against the Common Elements, rather than merely against the interest therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs and expense incurred by the Board by reason of such lien or liens shall be assessed against the Owners and the Units responsible to the extent of their responsibility and shall be immediately due and payable to the Association.

Section 15.3 Managing Agent. Declarant or Board may contract with an experienced professional Managing Agent to assist the Board in the management and operation of the Community and may delegate such of its powers and duties to the Managing Agent as it deems to be appropriate, except as limited herein. Any contract with a Managing Agent shall have a term no longer than one year (but may be renewable by agreement of the parties for successive one-year periods) and shall be terminable by the Board without payment of a termination fee, either (a) for cause, on 30 days' written notice; or (b) without cause, on not more than 90 days' written notice.

Section 15.4 Authority to Borrow. If the Board determines that the funds of the Association are or will be insufficient to pay the expenses of the Association, the Association may borrow funds to pay such expenses. To secure the repayment thereof, the Association may encumber (subject to the limitations set forth in this Declaration) any portion of the Common Elements. Proceeds of the conveyance or financing are an asset of the Association. In addition, to secure the repayment thereof, the Association may assign (subject to the limitations set forth in this Declaration) its right to receive future income of the Association, including any receivable, right to payment, and special and general Assessments from the Unit Owners. Prior to making such an assignment, the Board shall provide a notice of intent to borrow to all the 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, and must set a date for a meeting of the Owners to consider ratification of the borrowing not fewer than 14 or more than 60 days after mailing of the notice. Unless at that meeting, whether or not a quorum is present, the Owners to which a majority of the votes in the Association are allocated reject the proposal to borrow funds, the Association may proceed to borrow the funds in substantial accordance with the terms contained in the notice. In connection with the encumbrance of future income of the Association, the Association may execute

such loan documents and undertake such obligations as the lender may require to realize on the encumbrance including powers of attorney, control over deposit accounts, the right to file or foreclose Assessment liens, and the right to contact account debtors (including the Unit Owners) and require that payment be made directly to the lender.

Section 15.5 Standard of Conduct. In the performance of their duties, the officers and directors are required to exercise the degree of care and loyalty to the Association required of an officer or a director of a corporation organized, and are subject to the conflict of interest rules governing directors and officers, under chapter 24.06 RCW.

Section 15.6 Limitations on Board Authority. The Board shall act reasonably, in light of the facts determined by the Board, in making all determinations, exercising its discretion, granting or withholding consent, or taking any action on behalf of the Association. The Board shall not, without the vote or agreement of the Unit Owners, (i) amend the Declaration except as set forth in Article 24, (ii) amend the organizational documents of the Association, (iii) terminate the Community, (iv) elect members of the Board, or (v) determine the qualifications, powers, duties, or terms of office of members of the Board. The Board may, in accordance with the Bylaws, fill vacancies in its membership for the unexpired portion of any term.

Section 15.7 Limitation of Liability; Indemnification. The liability of each director, officer and committee member, including Declarant when acting in any such capacity, shall be limited as set forth in the Association's Articles. Each director, officer and committee member, including Declarant when acting in any such capacity, shall be entitled to indemnity, reimbursement of expenses and advances of expenses as set forth in the Association's Articles.

Section 15.8 Lawsuits or Arbitration Proceedings<sup>1</sup>

15.8.1 General. The Association may institute, defend, or intervene in litigation or in arbitration, mediation, or administrative proceedings or any other legal proceeding ("Proceedings") in its own name on behalf of itself or on behalf of two or more Unit Owners, in a representative capacity, on matters affecting the Community, but any action on behalf of Unit Owners shall not convert any individual claims or legal rights that the Unit Owners may have into claims or rights of the Association.

15.8.2 Notice. The Board must carefully evaluate the potential costs and risks to the Unit Owners before committing the Unit Owners to a course of action in any Proceedings. The Board shall evaluate those matters and promptly provide notice in a Record to the Units Owners about any legal proceedings in which the Association is a party other than Proceedings involving the enforcement of Rules or to recover unpaid Assessments due to the Association. The notice shall describe: (i) the principal amount sought to be recovered; (ii) the estimated attorneys' fees which will be chargeable to the Association; (iii) the basis on which the attorneys' fees will be paid (for example, hourly, flat fee or contingent); (iv) the estimated cost of all witnesses or investigators including bookkeepers, accountants, consultants, investigators, contractors, and experts; (v) the nature of the Association's claims and defenses and the amount at issue; and (vi) the negative consequences the Unit Owners could suffer by reason of the proposed Proceedings, including the likelihood of special Assessments and the impact of the litigation on Unit sales or refinancing while the Proceedings are pending.

## **ARTICLE 16 BUDGET AND ASSESSMENTS**

**Section 16.1 Fiscal Year.** The Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year.

**Section 16.2 Preparation of Budget.** Not less than 30 days before the end of the fiscal year in which Assessments are collected, the Board shall prepare a budget for the Association for the coming year. The budget must include: (i) the projected income to the Association by category, (ii) the projected Common Expenses and those Specially Allocated Expenses that are subject to being budgeted, both by category, (iii) the amount of Assessments per Unit and the date the Assessments are due, (iv) the amount of regular Assessments budgeted for contribution to the reserve account, (v) a statement of whether the Association has a reserve study that meets the requirements of the CIC Act and, if so, the extent to which the budget meets or deviates from the recommendations of that reserve study, and (vi) the current deficiency or surplus in reserve funding expressed on a per unit basis. The Budget shall also take into account any surplus or deficit carried over from the preceding year, and make provision for reasonable reserves for contingencies. The Board need not reserve for items that can reasonably be funded from cash flow or borrowing, and need not adopt a "fully funded" plan or contribution and may adopt such plan and contribution rate as it deems appropriate in its reasonable discretion. The Board may at any suitable time require the commencement of contributions to such reserve accounts. The Board need not adopt a new budget prior to the Transition Date, and any budget adopted during such period may be based on the actual expenses for the Association and need not provide for accumulation of reserves.

**Section 16.3 Ratification of Budget.** Within 30 days after adoption of any proposed budget for the Community, the Board shall provide a copy of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not fewer than 14 or more than 50 days after mailing of the summary. Unless at that meeting the Owners to which a majority of the votes in the Association are allocated reject the budget, the budget and the Assessments against the Units included in the Budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, or the required notice is not given, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board. If the Board proposes a supplemental budget during any fiscal year, such budget shall not take effect unless ratified by the Unit Owners in accordance with this Section 16.3.

**Section 16.4 Revisions to Budget.** The Board may revise the budget and any Assessments based thereon, from time to time for any reason, including non-payment of any Owner's Assessments. Any revision to the budget is, however, subject to the notice requirements and the right of Owners to ratify the revised budget set forth in Section 16.3.

**Section 16.5 Assessments for Common Expenses.** The sums required by the Association for Common Expenses as reflected in the annual budget and any supplemental budget shall be divided into installments to be paid periodically, with such frequency as determined by the Board, over the period to be covered by the budget or supplemental budget. The Assessment for Common Expenses for each Unit shall be the sum of (a) the Common Expense Liability of that Unit multiplied by the total periodic installment for Common Expenses (except Specially Allocated Expenses) for all Units; and (b) any Specially Allocated Expenses of that Unit. Assessments shall commence against all Units that have been created by this Declaration no later than the date of the first Conveyance of a Unit to an Owner other than Declarant. Monthly Assessments shall commence

against each later created Unit no later than the date of the first Conveyance of such Unit to an Owner other than Declarant. Notwithstanding the foregoing, Declarant may delay the commencement of Assessments for some or all Common Expenses or Specially Allocated Expenses beyond such date, in which event Declarant must pay all of the Common Expenses or Specially Allocated Expenses that have been delayed during the period of delay. Declarant may exercise the right to delay Assessments for any Units whether initially created or subsequently created pursuant to a Development Right to create Units. If Declarant has paid insurance premiums prior to the commencement of Assessments, it shall be entitled to a refund from the Association of any unearned premium for the period after commencement of Assessments. If the Association does not have adequate working capital at the commencement of Assessments to reimburse Declarant for the unearned premiums, it may deliver a promissory note to Declarant and pay the balance due over time.

**Section 16.6 Specially Allocated Expenses.** The Common Expenses described in this Section 16.6 shall be assessed against the Units as described herein, and not on the basis of the Unit's Common Expense Liability. Only the following costs can be specially allocated: (i) costs of insurance in proportion to risk, (ii) capacity charges and assessments, (iii) costs of one or more specified utilities in proportion to respective usage or upon the same basis as such utility charges are made by the utility provider, and (iv) costs of operation, maintenance, repair, or replacement of any specified Limited Common Element to the extent incurred by the Association for the benefit of any one or more Unit Owners.

16.6.1 [Intentionally Omitted]

16.6.2 **Unequal Benefit.** The Board may assess any Common Expense, or portion thereof, associated with excess usage of any private utilities provided by the Association solely against the Units receiving the benefit thereof.

16.6.3 **Insurance.** The expense of procuring and maintaining insurance will be assessed against the Units according to their Common Expense Liability unless the Board determines, based on advice from the Association's insurance broker, agent or company, that differences in the value or replacement cost of improvements within individual Units or in the activities conducted within Units make it appropriate to assess the cost of insurance in accordance with risk.

16.6.4 **Capacity Charges and Assessments.** Any Common Expenses for sewer capacity charges, business improvement district assessments, local improvement district assessments and other similar charges or assessments be assessed against the Units on the same basis, or in accordance with the same formula, as the assessments or charges are imposed by the governmental authority.

**Section 16.7 Misconduct.** To the extent that any Common Expense is caused by the negligence of any Owner or Authorized User of any Unit, the Association may assess that expense against the Owner's Unit.

**Section 16.8 Special Assessments.** For those Common Expenses which cannot reasonably be calculated and paid on a periodic basis, the Board may levy special Assessments for such expenses against the Units, subject to ratification by the Owners pursuant to Section 16.3.

**Section 16.9 Reserve Studies.** The Association shall obtain reserve studies and updated reserve studies as and when required by the CIC Act. An initial reserve study must be prepared by a reserve study professional and 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 and need not be completed each year by a reserve study professional; provided, however, that an updated reserve study must be prepared at least every third year by a reserve study professional and based upon a visual site inspection conducted by the reserve study professional. Until the expiration of all warranties given by or imposed upon Declarant, and the time period for filing any claims against Declarant, the Board shall contemporaneously send a copy of each reserve study to Declarant at the address specified in Section 26.1, or such other address as Declarant may specify in a Record to the Association from time to time.

**Section 16.10 Creation of Reserve Account.** Once Assessments for replacement reserves are collected, the Board shall establish one or more accounts for the deposit of reserve contributions. 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 operation of the reserve account and any Assessments for contribution to the reserve account shall be further governed by this Article 16 and the Bylaws.

**Section 16.11 Withdrawals from Reserve Accounts.** The Board may withdraw funds from the Association's reserve accounts 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 Unit 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 Unit Owners. The Board must provide to Unit Owners along with the annual budget adopted in accordance with Section 16.2 of this Declaration (a) notice of any such withdrawal, (b) a statement of the current deficiency in reserve funding expressed on a per Unit basis, and (c) the repayment plan. The Board may withdraw funds from the reserve account without satisfying the notification of repayment requirements under this section to pay for replacement costs of reserve components not included in the reserve study.

**Section 16.12 Payment of Assessments.** On a periodic date as the Board may establish, each Owner shall pay or cause to be paid to the treasurer or designated agent of the Association all Assessments against the Unit due for that period, as determined by the Board. Any Assessment that is not paid when due will be subject to late charges, interest charges and collection adopted by the Board pursuant to Section 17.9. The Board shall have the right to change the Assessments collection period to a monthly collection, but any additional fees associated with this change shall be the responsibility of each Owner.

**Section 16.13 Proceeds Belong to Association.** All Assessments and other receipts received by the Association on behalf of the Community shall belong to the Association.

**Section 16.14 Failure to Assess.** Any failure by the Board or the Association to make the budgets and Assessments hereunder before the expiration of any year for the ensuing year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay Assessments during that or any subsequent year, and the



Assessments amounts established for the preceding year shall continue until new Assessments are established.

**Section 16.15 Certificate of Unpaid Assessments.** Upon the request of any Owner or Mortgagee of the Owner's Unit, the Board must furnish a statement signed by an officer or authorized agent of the Association stating the amount of unpaid Assessments against that Unit. The Association must furnish the statement within 15 days after receiving the request. The statement shall be binding on the Association, the Board and every Unit Owner, unless and to the extent known by the recipient to be false. The Board may establish a reasonable fee to be charged to reimburse it for the cost of preparing the statement.

**Section 16.16 Recalculation of Assessments.** If Common Expense Liabilities are reallocated, Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated liabilities. The Board shall have the discretion to determine when to impose the recalculated Assessments, but in no event, shall the Board delay imposition beyond the fiscal year during which the Common Expense Liabilities were reallocated.

**Section 16.17 Initial Contribution to Working Capital.** The first purchaser (as defined in the CIC Act) of any Unit shall, at the time of closing, pay to the Association (or Declarant as set forth below), in addition to other amounts due, an estimated amount of Five Hundred Dollars (\$500.00), as a nonrefundable initial contribution to the Association's working capital. Declarant shall not use any such contributions to defray expenses that are the obligation of Declarant.

## **ARTICLE 17 LIEN AND COLLECTION OF ASSESSMENTS**

**Section 17.1 Assessments Are a Lien: Priority.**

17.1.1 The Association has a lien on a Unit for any unpaid Assessment levied against a Unit from the time the Assessment is due.

17.1.2 A lien under this Article 17 shall be prior to all other liens and encumbrances on a Unit except: (i) liens and encumbrances recorded before the recording of this Declaration; (ii) a Mortgage on the Unit recorded before the date on which the unpaid Assessment became due; and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit.

17.1.3 Except as provided in this Section 17.1.3, the lien shall also be prior to the Mortgages described in Section 17.1.2(ii) to the extent of an amount equal to:

17.1.3.1 Assessments (whether specially allocated or not) for Common Expenses, excluding any amounts for capital improvements, based on the periodic budgets adopted by the Association pursuant to Article 16, 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 Mortgage described in Section 17.1.2(ii); plus

17.1.3.2 The Association's actual costs and reasonable attorneys' fees incurred in foreclosing its lien but incurred after the giving of the notice described in Section 17.1.3.3; provided, however, that the costs and reasonable attorneys' fees that will

have priority under this Section 17.1.3.2 shall not exceed \$2,000 or an amount equal to the amounts described in Section 17.1.3.1, whichever is less.

17.1.3.3 The notice must satisfy the requirements of Section 515 of the CIC Act.

17.1.4 Recording of this Declaration constitutes recorded notice and perfection of the lien for Assessments; however, the Association may record a notice of claim of lien for Assessments in the real estate records of the county in which the Community is located. Such recording shall not constitute the notice referred to in Section 17.1.3.3.

**Section 17.2 Judicial Foreclosure.** A lien arising under this Article 17 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. 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.

**Section 17.3. Non-Judicial Foreclosure.** A lien arising under this Article 17 may be foreclosed non-judicially in the manner set forth in chapter 61.24 RCW for non-judicial foreclosure of deeds of trust. For the purpose of preserving the Association's non-judicial foreclosure option, this Declaration shall be considered to create a grant of each Unit in trust to Chicago Title Insurance Company or other title company or their successors or assigns ("Trustee"), to secure the obligations of each Unit Owner to the Association for the payment of Assessments. Each Unit Owner shall retain the right to possession of its Unit so long as Grantor is not in default of an obligation to pay Assessments. The Trustee shall have a power of sale with respect to each Unit, which becomes operative in the case of a default in a Unit Owner's obligation to pay Assessments. The Units are not used principally for agricultural or farming purposes. If the Association forecloses its lien non-judicially pursuant to this Section 17.3, it shall not be entitled to the lien priority over Mortgages provided in Section 17.1.3 and shall be subject to the limits on deficiency judgments under chapter 61.24 RCW.

**Section 17.4 Receiver During Foreclosure.** In an action to collect Assessments or to foreclose on a lien on a Unit, the Association shall be entitled to the appointment of a receiver to collect all sums due and owing to the Unit Owner before commencement of the action or during the pendency of the action. The receivership shall be governed by chapter 7.60 RCW. During the 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 Unit. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Unit.

**Section 17.5 Effect of Foreclosure.** The Association or its authorized representative shall have the power to purchase the Unit at the Foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Nothing in this Article 17 shall prohibit the Association from taking a deed in lieu of Foreclosure. Except as provided in Section 17.1.3, the holder of a Mortgage or other purchaser of a Unit who obtains the right of possession of a Unit through Foreclosure shall not be liable for any Assessments or installments thereof that became due prior to such right of possession. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Owners, including such Mortgagee or other purchaser of the Unit. Foreclosure of a Mortgage does not relieve the prior Owner of personal liability for Assessments accruing against the Unit prior to the date of such sale.

**Section 17.6 Assessments Are Personal Obligations.** In addition to constituting a lien on the Unit, all sums assessed by the Association chargeable to any Unit, including all charges in this Article 17, shall be the personal obligation of the Owner of the Unit when the Assessments are made. Suit to recover personal judgment for any delinquent Assessments shall be maintainable without foreclosing or waiving the liens securing them.

**Section 17.7 Extinguishment of Lien and Personal Liability.** A lien for unpaid Assessments and the personal liability for payment of Assessments are extinguished unless proceedings to enforce the lien or collect the debt are instituted within six years after the full amount of the Assessments sought to be recovered becomes due.

**Section 17.8 Joint and Several Liability.** In addition to constituting a lien on the Unit, each Assessment shall be the joint and several obligation of the Owner or Owners of the Unit to which the same is assessed as of the time the Assessment is due. In a voluntary Conveyance, other than by foreclosure, the grantee of a Unit shall be 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 therefore. Suit to recover a personal judgment for any delinquent Assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waving the lien securing such sums.

**Section 17.9 Late Charges and Interest on Delinquent Assessments.** 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 thereof. If the Association has not established such a rate, delinquent Assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the Assessments became delinquent.

**Section 17.10 Recovery of Attorneys' Fees and Costs.** 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 a suit being commenced or prosecuted to judgment. In addition, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

**Section 17.11 Limitations on Foreclosure Proceedings.** The Association may not commence an action to Foreclose a lien on a Unit under this Article 17 unless: (i) the Unit Owner, at the time the action is commenced, owes a sum equivalent to at least three months of Assessments, and (ii) the Board approves commencement of a Foreclosure action specifically against that Unit. Every aspect of a collection, Foreclosure, sale or other conveyance under this Article 17, including the method, advertising, time, date, place and terms must be commercially reasonable.

**Section 17.12 Security Deposit.** An Owner who has been chronically delinquent in paying its Assessments may, from time to time, be required by the Board, after Notice and Opportunity to be Heard, to make and maintain a security deposit not in excess of three months' estimated Assessments, which shall be collected and shall be subject to penalties for non-payment as are other Assessments. The deposit shall be held in a separate fund, credited to such Owner, and may be resorted to at any time when such Owner is 10 days or more delinquent in paying Assessments.

Section 17.13 Remedies Cumulative. The remedies provided herein are cumulative, and the Board may pursue them, and any other remedies which may be available under law although not expressed herein, either concurrently or in any order.

## **ARTICLE 18 ENFORCEMENT OF GOVERNING DOCUMENTS**

Section 18.1 Rights of Action. Each Owner and its Authorized Users and the Association shall comply with the Governing Documents and the proper decisions of the Board. Declarant shall enjoy all the rights and assume all the obligations of an Owner as to each unsold Unit in the Community owned by Declarant. The Association acting on behalf of the Owners or any Owner acting on its own behalf may bring an action to recover sums due or damages, or for injunctive relief, or any or all of them, against any party who fails to comply with the Governing Documents and the proper decisions of the Board.

Section 18.2 Additional Rights. In addition to any rights authorized by the CIC Act, the Board may, after Notice and Opportunity to Be Heard, take any of the following actions against any party who fails to comply with the Governing Documents and the proper decisions of the Board:

18.2.1 Require an Owner, at its own expense, to stop work on, and remove, any improvement from such Owner's Unit or other areas of the Community in violation of the Governing Documents and to restore the property to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

18.2.2 Levy Assessments to cover costs incurred by the Association to cure a violation of the Governing Documents;

18.2.3 Apply a security deposit posted by an Owner to any unpaid charges or Assessments;

18.2.4 Suspend any right or privilege of a Unit Owner who fails to pay an Assessment, but the Association may not (i) deny a Unit Owner or other occupant access to the Owner's Unit, (ii) suspend a Unit Owner's right to vote, or (iii) withhold services provided to a Unit or a Unit Owner by the Association if withholding such service would endanger the health, safety, or property of any Person; and

18.2.5 Exercise self-help or take action to abate any violation of the Governing Documents.

Notice and Opportunity to Be Heard shall not be required in an emergency situation or in regard to the removal of vehicles or items that are in violation of parking Rules.

Section 18.3 Remedies Cumulative; Attorneys' Fees. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association or Owner prevails, it shall be entitled to recover all costs, including, without limitation, its attorneys' fees and court costs, reasonably incurred in such action.

**Section 18.4 Enforcement Discretion; No Waiver.** The decision to pursue enforcement action in any particular case shall be left to the judgment of the Board, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

18.4.1 The Association's position does not justify taking action or further action;

18.4.2 The covenant, restriction or Rule being enforced is, or is likely to be, construed as inconsistent with applicable law;

18.4.3 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

18.4.4 It is not in the Association's best interests to pursue enforcement action.

Such a decision shall not be construed to be a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or Rule. The receipt by the Board of payment of an Assessment from an Owner, with knowledge of a breach by the Owner, shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless expressed in a Record and signed for by the Board. This Section 18.4 also extends and applies to Declarant.

**Section 18.5 Notice and Opportunity to Be Heard.** Whenever this Declaration requires that an action of the Board be taken after Notice and Opportunity to Be Heard, the following procedure shall be observed: The Board shall give written notice of the proposed action to all Owners, Tenants or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing, which shall be not less than five days from the date notice is delivered by the Board. At the hearing, the affected Person shall have the right, personally or by a representative, to give testimony orally, in a Record or both (as specified in the notice), subject to reasonable Rules of procedure established by the Board to ensure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the Board. The affected Person shall be notified of the decision in the same manner in which notice of the meeting was given.

## **ARTICLE 19 TORT AND CONTRACT LIABILITY**

**Section 19.1 Declarant Liability.** An Owner is not liable, solely by reason of being an Owner, for an injury or damage arising out of the condition or use of the Common Elements. Neither the Association nor any Owner except Declarant is liable for Declarant's torts in connection with any part of the Community which Declarant has the responsibility to maintain. An action alleging a wrong done by the Association must be brought against the Association and not against any Owner. An Owner is not precluded from bringing an action contemplated by this Section 19.1 because it is a Unit Owner or a director or officer of the Association.

Section 19.2 Limitation of Liability for Utility Failure. Except to the extent covered by insurance obtained by the Association, neither the Association, the Board, the Managing Agent nor Declarant shall be liable to any Unit Owner for:

19.2.1 the failure of any utility or other service to be obtained and paid for by the Board;

19.2.2 injury or damage to Person or property caused by the elements, or resulting from electricity, water, rain, dust, mold or mildew which may leak, travel or flow from outside of any building; from any Unit, Common Element or part of the building; from any pipes, drains, conduits, appliances, or equipment; or from any other place; or

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

Section 19.3 Limitation of Personal Liability; Indemnification. Each director and officer of the Association shall be insulated from liability for its conduct as a director or officer of the Association to the extent set forth in the Articles and shall be entitled to indemnification to the extent set forth in the Articles.

## ARTICLE 20 INSURANCE

Section 20.1 Required Insurance. Commencing not later than the time of the first Conveyance of a Unit to a Person other than Declarant, the Association shall maintain in its own name, to the extent reasonably available and subject to reasonable deductibles, insurance meeting the requirements of this Article 20. The Association may, however, delay procurement of fidelity insurance until the election of the Board at the Transition Meeting. All insurance must be obtained from insurance carriers who are generally acceptable for similar projects, are authorized to do business in the State of Washington and meet the acceptability criteria of Fannie Mae, Freddie Mac, HUD and VA. The Board shall review at least annually the adequacy of the Association's insurance coverage. The Board shall promptly notify the Unit Owners if the required property or liability insurance is not reasonably available.

Section 20.2 Property Insurance Requirements. The Association shall maintain property insurance written on a "special form" of coverage. The property insurance shall cover (i) all Common Elements (including Limited Common Elements) and all real estate that must become Common Elements, (ii) to the extent not described in the foregoing clause, all installed machinery and equipment and personal property owned by the Association and located outside of a Unit (including but not limited to furniture, media equipment, and appliances used for refrigerating, ventilating, cooking, dishwashing or laundering), and (iii) all other personal property of the Association. The property insurance shall insure against all risks of direct physical loss and may, but need not, include damage caused by earthquakes or terrorism. The amount of insurance shall not be less than 100% of the current replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. To ensure adequate property insurance coverage, the

Board shall periodically obtain insurance replacement cost appraisals of any buildings and personal property for which insurance is required under this Section 20.2.

**Section 20.3 Liability Insurance Requirements.** The Association shall maintain commercial general liability insurance, including medical payments insurance, which provides coverage for bodily injury and property damage resulting from the operation, maintenance or use of the Common Elements in an amount of at least \$1,000,000 for any single occurrence and \$2,000,000 aggregate and which contains a specific endorsement to preclude the insurer's denial of a Unit Owner's claim because of the negligent act of the Association or other Unit Owners.

**Section 20.4 Fidelity Insurance Requirements.** The Association shall maintain, or require its Managing Agent to maintain, fidelity insurance naming the Association and its officers, directors, trustees and employees, any Managing Agent, and all other Persons who handle or are responsible for handling funds held or administered by the Association, whether or not the Person receives compensation for services, as insured. The bond shall contain waivers of any defense based upon the exclusion of Persons who serve without compensation from any definitions of "employee" or similar expression. The policy must provide minimum limits at least equal to the larger of (i) the highest amount of funds, including reserve funds, that the Association is expected to hold at any time while the policy is in force, or (ii) three months of the expected aggregate Assessments for the policy term, plus reserve funds. There shall be no requirement to obtain a fidelity bond prior to the Transition Meeting.

**Section 20.5 Additional Insurance Requirements.** The insurance policies obtained pursuant to Section 20.2 and Section 20.3 shall:

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

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

20.5.3 Provide that no act or omission by any Unit Owner, unless acting within the scope of the Owner's authority on behalf of the Association, or any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no direct control, will void the policy or be a condition to recovery under the policy; and

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

**Section 20.6 Adjustment of Losses; Insurance Trustee; Power of Attorney.** Any loss covered by the insurance described in Section 20.2 must be adjusted with the Association, but the proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a Mortgage. The insurance trustee or the Association must hold any insurance proceeds in trust for the Association, Unit Owners and lien holders as their interests may appear. Subject to the provisions of Sections 20.9 and 21.4, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Community is terminated. Each Owner appoints the Association, or any insurance trustee or successor trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to accomplish such purposes. Each Owner and the Owner's Mortgagee, if any, are beneficiaries of the policy in accordance with percentages established by the Common Ownership Interest of Owner's Unit. Certificates of insurance shall be issued to each Owner and Mortgagee upon request. Provided, however, that prior to the creation of Additional Units, Common Elements or Limited Common Elements pursuant Declarant's Development Rights, Declarant shall be solely entitled to any insurance proceeds for any improvements created by Declarant pursuant to its Development Rights unless and until such improvements have been created as Units, Limited Common Elements or Common Elements.

**Section 20.7 Additional Insurance.** The Association may maintain such other insurance as the Board deems advisable; provided that notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood, loss of maintenance fees and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for similar projects established by Fannie Mae, Freddie Mac, HUD or VA, or other governmental agencies involved in the secondary mortgage market, so long as any such agency is a Mortgagee or an Owner of a Unit within the Community or an insurer of a Mortgage encumbering a Unit, except to the extent such coverage is not reasonably available or has been waived in a Record by such agency.

**Section 20.8 Owners' Individual Insurance.** Each Unit Owner shall maintain special cause-of-loss coverage in an amount equal to 100% of the replacement cost of its Unit and the Home thereon. Each Unit Owner and Tenant shall maintain a liability policy insuring against liability for property damage or bodily injury caused by the Unit Owner or Tenant or those for whom each is legally responsible, and cover any obligation to pay or reimburse the Association for any deductible under the Association's property insurance or for any portion of loss caused by the insured and not covered by the Association's property insurance. The liability policy shall have a limit of liability of at least the full replacement cost of the Home and any other structures located within the Unit. Owners must obtain the required insurance from insurance carriers authorized to do business in the State of Washington. All policies must provide that coverage may not be canceled without 30 day's written notice to the Association. The Board may adopt Rules that establish greater or more specific requirements for such policies, including minimum amounts and types of coverage.

**Section 20.9 Board has no Obligation to Monitor Unit Owners' Insurance.** The Association has no insurable interest in the Units, the Homes or personal property owned by Unit Owners, tenants or other Occupants. The Board of Directors is not obligated to monitor the existence



or nonexistence of any insurance required under Section 20.8; 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 Unit Owner or tenant as to any personal proerpty insurance if the Unit is subject to a lease. An Owner or tenant who fails to maintain such insurance shall be deemed to have made an election to self-insure. 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.

Section 20.10 Use of Insurance Proceeds. Any portion of the Community, for which insurance is required under Section 20.2 which is damaged or destroyed must be repaired or replaced promptly by the Association pursuant to Article 21.

Section 20.11 Certificate. An insurer that has issued an insurance policy under this Article 20 shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Unit Owner or Mortgagee. 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 non-renewal of contracts of insurance.

Section 20.12 Notification of Sale of Unit. Promptly upon Conveyance of a Unit, the new Unit Owner shall notify the Association of the date of the Conveyance and the Unit Owner's name and address. The Association shall notify each insurance company that has issued an insurance policy to the Association for the benefit of the Owners of the name and address of the new Owner and request that the new Owner be made a named insured under such policy.

## **ARTICLE 21 DAMAGE AND REPAIR OF DAMAGE TO PROPERTY**

Section 21.1 Definitions: Damage, Substantial Damage, Repair, Emergency Work. As used in this Article 21:

21.1.1 "Damage" shall mean all kinds of damage, whether of slight degree or total destruction, caused by casualty or other occurrence, but shall not include construction defects, deterioration or wear and tear.

21.1.2 "Substantial Damage" shall mean that in the judgment of a majority of the Board the estimated Assessment determined under Section 21.2.4 for any one Unit exceeds 3% of the full, fair market value of the Unit before the Damage occurred, as determined by the then current assessed value for the purpose of real estate taxation.

21.1.3 "Repair" shall mean restoring the damaged improvements to substantially the condition they were in before they were damaged, with the Unit and the Common Elements having substantially the same boundaries as before. "Repair" does include restoration of improvements or betterments installed after Conveyance by Declarant if those improvements or betterments are not insured because the Owner failed to notify the Board of their installation. Modifications to conform to applicable governmental Rules or available means of construction may be made.

21.1.4 “Emergency Work” shall mean work that the Board deems reasonably necessary to avoid further Damage or substantial diminution in value to the improvements and to protect the Owners from liability from the condition of the site.

**Section 21.2 Initial Board Determination.** In the event of Damage to any portion of the Community that the Association is required to insure by this Declaration, the Board shall promptly take the following actions. In doing so, the Board shall obtain such advice from professionals (such as engineers, architects, contractors, insurance consultants, lenders and attorneys) as the Board deems advisable and shall consider the information then known to the Board.

21.2.1 Determine the nature and extent of the Damage to the insured property and loss to the Association, together with an inventory of the improvements and property directly affected thereby.

21.2.2 Obtain as reliable an estimate as possible of the cost and time to Repair the Damage, which estimate shall, if reasonably practicable, be based upon two or more firm bids obtained from responsible contractors.

21.2.3 Determine the insurance proceeds and reserves, if any, that will likely be available to pay for the Damage.

21.2.4 Determine (i) the amount, if any, by which the estimated cost of Repair is likely to exceed the expected insurance proceeds, the reserves available to Repair the Damage, other available funds of the Association, and the deductibles owed by Owners; and (ii) the likely amount of the Assessments that would have to be made against each Unit if the excess cost were to be paid as a Common Expense.

**Section 21.3 Notice of Damage.** The Board shall provide each Owner with a written notice summarizing the initial Board determinations made under Section 21.2, explaining any further information needed by the Board to make a final decision on the cost and schedule for Repairs. If the Board determines that the Damage is Substantial Damage then the notice shall also explain any further information needed by the Board to allow the Owners to make an informed decision about Repairs to the Community, and shall call a special meeting to consider whether to Repair the Damage. If the Damage affects a material portion of the Community, the Board shall also send the notice to each Mortgagee. If the Board fails to call a meeting within 30 days of the Damage, any Owner or Mortgagee may call such a meeting. The Board may, but is not required to, call such a meeting in other circumstances.

**Section 21.4 Execution of Repairs.**

21.4.1 The Association shall promptly Repair any damaged portion of the Community that the Association is responsible to insure and to maintain or repair unless:

21.4.1.1 The Community is terminated by vote at a special meeting called in accordance with Section 21.3 and taken in accordance with the termination provisions of the Declaration and CIC Act;

21.4.1.2 Repair would be illegal under any state or local health or safety statute or ordinance; or

21.4.1.3 Owners holding at least 80% of the votes in the Association, including every Owner of a Unit or Limited Common Element which will not be rebuilt, and Declarant if Declarant has the right to create Units in the Community, vote not to Repair the Damage.

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

21.4.3 The Board may enter into a written agreement with a reputable financial institution or trust or escrow company that the institution or company shall act as an insurance trustee to adjust and settle any claim for casualty loss in excess of \$50,000, or for the institution or company to collect the insurance proceeds and carry out the provisions of this Article 21.

The Board may expend so much of the insurance proceeds and Association funds as the Board deems reasonably necessary for Emergency Work (which Emergency Work may include but is not necessarily limited to removal of the damaged improvements and clearing, filling, and grading the land), and the remaining funds, if any, and the property shall thereafter be held and distributed as provided in Section 21.5. The cost of Repair or replacement in excess of insurance proceeds, reserves, and deductibles paid by Owners, is a Common Expense.

Section 21.5 Effect of Decision Not to Repair. If all of the damaged or destroyed portions of the insured property are not repaired or replaced:

21.5.1 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;

21.5.2 The insurance proceeds attributable to Units and Limited Common Elements that are not repaired or replaced shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated or to lien holders, as their interests may appear; and

21.5.3 The remainder of the proceeds shall be distributed to all the Unit Owners or lien holders, as their interests may appear, in proportion to their Common Ownership Interests.

If the Unit Owners vote not to rebuild any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote as if the Unit had been condemned under Article 22, and the Association promptly shall prepare, execute, and record an amendment to this Declaration reflecting the reallocations. Notwithstanding the provisions of this Section 21.5, Article 25 governs the distribution of insurance proceeds if the Community is terminated.

## **ARTICLE 22 CONDEMNATION**

**Section 22.1 Power of Attorney.** The Association shall represent the Unit Owners in any legal proceedings related to the condemnation of all or part of the Common Elements, and shall have the sole authority to control, negotiate and settle such matters on behalf of the Unit Owners. Each Owner appoints the Association as attorney-in-fact for the purpose of representing the Owners in any proceedings, negotiations, settlements or agreements regarding a condemnation of any part of the Common Elements. Any proceeds from a condemnation shall be paid to the Association for the benefit of affected Units and their Mortgagees, as set forth herein. Should the Association not act, based on their right to act pursuant to this Section 22.1, the affected Owners may individually or jointly act on their own behalf.

**Section 22.2 Consequences of Condemnation; Notices.** If any Unit or portion thereof or the Common Elements or Limited Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Association shall promptly give notice of the proceeding or proposed acquisition to each Owner and Mortgagee and to Declarant unless each and every Development Right and Special Declarant Right has expired.

**Section 22.3 Condemnation of a Unit.** If a Unit is acquired by condemnation, or if part of a Unit is acquired by condemnation leaving the Unit Owner with a remnant of a Unit that may not practically or lawfully be used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and its Allocated Interests, whether or not any Common Elements are acquired. The award shall be distributed to the Owner or lien holder of the Unit, as their interests may appear. Upon acquisition, unless the decree otherwise provides, that Unit's Allocated Interests are automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, and the Association shall promptly prepare, execute, and record an amendment to this Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this Section 22.3 is thereafter a Common Element.

**Section 22.4 Condemnation of Part of a Unit.** Except as provided in Section 22.3, if part of a Unit is acquired by condemnation, the award must compensate the Unit Owner for the reduction in value of the Unit and its Common Ownership Interest, whether or not any Common Elements are acquired. The award shall be distributed to the Owner or lien holders of the Unit, as their interests may appear. Upon acquisition, unless the decree otherwise provides: (a) that Unit's Common Ownership Interest and Common Expense Liability are reduced in proportion to the reduction in the size of the Unit; and (b) the portion of the Allocated Interests divested from the partially acquired Unit is automatically reallocated to that Unit and the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests.

**Section 22.5 Condemnation of Common Element or Limited Common Element.** If part of the Common Elements is acquired by condemnation, any portion of the award attributable to the acquisition of a Limited Common Element must be equally divided among the Owners of the Unit to which that Limited Common Element was allocated at the time of the acquisition, or to lien holders, as their interests may appear, and the portion of the award attributable to the other Common Elements shall be distributed to the Association. If the Board determines that a particular Owner's

interest in the Common Elements will be diminished with respect to other Owners by the acquisition of a Common Element, the Declaration may be amended to adjust that Owner's Common Expense Liability allocation, or to remove the allocation of a Limited Common Element to that Owner's Unit, as the case may be.

Section 22.6 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article 21.

Section 22.7 Taking of Special Declarant Rights. The Association will have no power to represent Declarant in any condemnation or eminent domain proceedings relating to any Development Rights or Special Declarant Rights. Declarant, and not the Association, will be entitled to receive all awards attributable to any Development Rights or Special Declarant Rights.

#### **ARTICLE 23 PROCEDURES FOR SUBDIVIDING OR COMBINING UNITS**

Section 23.1 Subdivision or Combination of Units. A Unit may not be subdivided into a greater number of Units, and two or more Units may not be combined into a lesser number of Units. This Section 23.1 does not apply to the exercise of Development Rights.

#### **ARTICLE 24 AMENDMENT OF DECLARATION, MAP, ARTICLES OR BYLAWS**

Section 24.1 Procedures. Except in cases of amendments that may be executed by Declarant, the Association or certain Owners under other provisions of this Declaration or under the CIC Act, the Declaration, and the Map, the Articles and the Bylaws may be amended only by vote or agreement of the Owners as specified in this Article 24. Provisions in this Declaration pertaining to Special Declarant Rights that have not expired may not be amended without the consent of Declarant.

24.1.1 Any Owner or Owners may propose amendments to the Board. If approved by a majority of the Board, the amendment shall be submitted to the members of the Association for their consideration. If an amendment is proposed by Owners with 20% or more of the votes in the Association, the Board shall submit the amendment to the members of the Association for their consideration at the next regular or special meeting for which timely notice can be given. The notice for any meeting at which an amendment will be considered shall include the text of the amendment.

24.1.2 Amendments may be adopted at a meeting of the members of the Association or by such alternative methods as allowed by the Bylaws, after such notice as is required by the Bylaws and this Declaration has been given to all Persons (including Mortgagees) entitled to receive notices.

24.1.3 Upon its adoption and the receipt of any necessary consent under this Article 24, an amendment to the Declaration or the Map will become effective when it is recorded or filed in the real estate records in the county in which the Community is located. The 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. No action to challenge the validity of an amendment to the Declaration or Map adopted by the Association pursuant to this Article 24 may be brought more than one year after the amendment is recorded. An amendment to the Articles shall be effective upon filing

the amendment with the Secretary of State. An amendment to the Bylaws shall be effective upon adoption.

24.1.4 Amendments under this Section 24.1 shall be prepared, executed, recorded and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 24.2 Consent Required. Except in cases of amendments that may be executed by a Declarant, the Association, or certain Owners under the CIC Act pursuant to different standards, including as specified in RCW 64.90.285, the percentages of consent of Owners and Mortgagees required for adoption of amendments to the Declaration are as follows:

24.2.1 General. Except as set forth elsewhere in this Section 24.2, an amendment to the Declaration or the Map shall require the vote or agreement of Unit Owners holding at least 67% of the Voting Interest in the Association.

24.2.2 Creation of Special Declarant Rights; Increase in Units; Boundary Changes; Changes in Allocated Interests. Except to the extent permitted or required under the CIC Act or this Declaration, an amendment to the Declaration that creates or increases Special Declarant Rights, increases the number of Units, changes the boundaries of any Unit, or changes the Allocated Interests of a Unit shall require the vote or agreement of the Owners holding at least 90% of the Voting Interest in the Association, including the consent of any Owner of a Unit, the boundaries or Allocated Interests of which will be changed by the amendment.

24.2.3 Modification of Allowed and Prohibited Uses. Except to the extent permitted or required under the CIC Act or this Declaration, an amendment to the Declaration that allows any use of the Units other than residential use or that prohibits the residential use of the Units shall require the vote or agreement of the Owners holding at least 90% of the Voting Interest in the Association. Any such amendment must provide reasonable protection for a use permitted at the time the amendment is adopted.

24.2.4 Director and Officer Indemnification. No amendment to any provision in the Declaration, Articles or Bylaws may restrict, eliminate or modify (i) any right of a director or officer of an Association to indemnification, or any (ii) limitation of liability of such persons, as to conduct that occurred prior to the amendment. Any current or former director or officer affected by such amendment, who is not a Unit Owner is a third party beneficiary of this provision entitled to enforce it.

24.2.5 Special Declarant Rights. No amendment may restrict, eliminate, or otherwise modify any Special Declarant Right that has not expired without the consent of Declarant and any Mortgagee of record with a security interest in the Special Declarant Right or in any real estate subject thereto. No amendment may restrict, eliminate, or otherwise modify any right of directors or officers to indemnification for conduct that occurred prior to the amendment, without the consent of that director or officer.

Section 24.3 Amendments by Declarant. In addition to any other rights to amend the Governing Documents in the CIC Act or this Declaration, Declarant may at any time, upon 30 days

advance notice to the Association, adopt, execute and record an amendment or supplement to the Governing Documents to correct a mathematical mistake, an inconsistency, or a scrivener's error, all within five years after the recordation or adoption of the Governing Document containing or creating the mistake, inconsistency, error or ambiguity. Declarant may execute and record any such amendment itself and need not otherwise comply with the requirements of this Article 24.

#### **ARTICLE 25 TERMINATION OF COMMUNITY**

**Section 25.1 Action Required.** Except in the case of the taking of all Units by condemnation or a judicial termination of the Community pursuant to the CIC Act, the Community may be terminated only by (i) agreement of Owners of Units to which at least 80% of the Voting Interest in the Association is allocated, and (ii) the consent of all the holders, including Declarant, of any unexpired Development Rights or Special Declarant Rights.

**Section 25.2 Limitation on Termination.** The Community may not be terminated while Declarant has any Development Right or Special Declarant Right without the consent of Declarant and any Mortgagee of record with a security interest in the Development Right or Special Declarant Right or in any real estate subject thereto, excluding Mortgagees of Units owned by Persons other than Declarant.

**Section 25.3 CIC Act Governs.** The applicable provisions of the CIC Act relating to termination of common interest communities, contained in Section 290 of the CIC Act, as it may be amended, shall govern the termination of the Community, including, but not limited to, the disposition of real estate in the Community and the distribution of proceeds from the sale of real estate.

#### **ARTICLE 26 NOTICES**

**Section 26.1 Form and Delivery of Notice.** Notices to the Association, Board, any Owner or any occupant of a Unit must be provided in such manner as provided in the CIC Act. Notices to Declarant must be provided in a Tangible Medium and must be transmitted by mail, private carrier or personal delivery to the following address, or such other address as Declarant may specify in written notice to the Board or the Owners:

SSHI, LLC  
11241 Slater Ave, Suite 200  
Kirkland, WA 980  
Attn: HOA Department

#### **ARTICLE 27 ASSIGNMENT BY DECLARANT**

Declarant reserves the right to assign, transfer, sell, lease, or rent all or a portion of the property then owned by it and reserves the right to assign all or any of its rights, duties and obligations created under this Declaration.

## **ARTICLE 28 DISPUTE RESOLUTION**

**Section 28.1 Mediation and Binding Arbitration of Claims.** Any and all claims, disputes or controversies (whether under federal, state or local law) between or between or among any of the Association, the Board or one or more Unit Owners or Authorized Users arising from or related to (i) the Governing Documents, (ii) the Community, or (iii) the management or operation of the Community or the Association, including, without limitation, any such claim of breach of contract, negligence, breach of any duty under the Washington Uniform Common Interest Ownership Act or breach of any alleged duty of good faith and fair dealing (collectively, "Claim" or "Claims"), shall be resolved exclusively by binding, non-appealable, arbitration as set forth herein. Notwithstanding the foregoing, the following matters shall not be Claims subject to mandatory mediation or arbitration under this Article 28: (i) any action or remedy initiated by or against any Mortgagee, (ii) judicial Foreclosure actions, (iii) non-judicial trustee's sales, (iv) the appointment of a receiver during Foreclosure, or (v) actions to collect or enforce any order, decision or award rendered by arbitration.

**Section 28.2 Initiation of Arbitration: Mediation.** If any party to a Claim determines that the Claim cannot be resolved without intervention, then that party shall give notice in a Tangible Medium to all other parties to the Claim demanding that the Claim be submitted to mediation and arbitration pursuant to this Article 28. The parties shall attempt to resolve any Claims in good faith through mediation at the outset of any arbitration proceeding. Any administrative fees of the mediation service and fees of the mediator shall be borne equally by the parties to the mediation. Each party shall pay its own attorneys' fees and costs in connection with the mediation.

**Section 28.3 Arbitrator's Authority.** This Article 28 shall be deemed to be a self-executing arbitration agreement. Without limiting the authority of the arbitrator under the applicable arbitration rules, the arbitrator shall have the authority to decide (i) the substance of the Claim and any defenses and counterclaims relating thereto, (ii) procedural or evidentiary issues, (iii) issues relating to discovery, (iv) issues relating to applicable law, and (v) issues as to the interpretation or the enforceability of this arbitration agreement, including, without limitation, its revocability, unconscionability or voidability for any cause, the scope of arbitrable issues. The arbitrator shall have the authority to award both damages and injunctive relief and to enforce the arbitration award. The arbitrator shall not have the authority to award punitive or exemplary damages.

**Section 28.4 Arbitration Fees.** All administrative fees of the arbitration service and fees of the arbitrator shall be borne equally by the parties to the arbitration, subject to the discretion of the arbitrator to reallocate such fees in the interests of justice.

**Section 28.5 Arbitration Service: Arbitrator.** The arbitration shall be conducted by the American Arbitration Association pursuant to its *Construction Industry Arbitration Rules* in effect as of the date of the Claim notice. The arbitrator shall possess sufficient knowledge in single family plat communities as determined by the arbitration service.

**Section 28.6 Arbitration Procedures and Hearing.** All arbitration hearings and meetings shall occur in the county in which the Community is located. The arbitrator shall apply the substantive law of the State of Washington. The arbitrator may allow factual discovery of information from the parties and witnesses to the extent reasonably relevant to claims and damages at issue but shall protect the parties from irrelevant, burdensome or unreasonable discovery. Prior to the arbitration hearing, the parties must agree upon a written statement of the claim theories to be



arbitrated. The arbitrator shall schedule the arbitration hearing for the earliest possible time that is consistent with fairness to the parties and the complexity of the issues. A party may request a stenographic record of the arbitration hearing. At the conclusion of the hearing in making the award, the arbitrator shall state in writing the theories raised by the parties and on which the award is based.

**Section 28.7 Attorneys' Fees and Costs.** The arbitrator shall have the authority to award actual reasonable attorneys' fees and costs to the prevailing party. An attorneys' fee award shall be calculated based upon the actual reasonable hours spent multiplied by a reasonable hourly rate given the experience and knowledge of the biller, without adjustment for risk, delay or difficulty. An attorneys' fee award must be reasonable under the Washington Rules of Professional Conduct. For purposes of this section, a party is a prevailing party if it recovers the majority of the relief it has claimed, or if it prevents another party from recovering the majority of the relief it has claimed, including the enforcement of this Article 28. It may be appropriate in some cases to determine the prevailing party on a claim by claim basis. In some cases there may be no prevailing party..

**Section 28.8 Finality.** The decision and award of the arbitrator shall be final and binding and may not be appealed to an arbitration panel or a court. The arbitrator's decision and award and may be entered as a judgment in any state or federal court of competent jurisdiction, and a party may institute judicial proceedings to enforce the arbitration award.

**Section 28.9 Applicability of Arbitration Acts.** The parties expressly agree that the use, operation, management, development, maintenance, repair and replacement of the Community involve and concern interstate commerce and are governed by the provisions of the Federal Arbitration Act (9 U.S.C. § 1, et seq.) and the Washington Uniform Arbitration Act (Chapter 7.04A RCW) now in effect and as the same may from time to time be amended, to the exclusion of any inconsistent state or local law, ordinance or judicial rule. To the extent that any state or local law, ordinance or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the rules of the arbitration service shall govern the conduct of the arbitration.

**Section 28.10 Applicability of Statutes of Limitations.** No Claim can be asserted in arbitration after the date such claim could be asserted in a judicial proceeding under applicable statutes of limitation and repose.

**Section 28.11 Enforceability.** This Article 28 shall inure to the benefit of, and be enforceable by, the Association, the Board, the Unit Owners and Authorized Users and their respective members, managers, officers, directors, employees, agents, attorneys and insurers. The initiation by any party who reserves the right to arbitrate of a judicial proceeding concerning this arbitration agreement or any matter arbitrable hereunder, or the filing of a lis pendens, shall not be deemed a waiver of the right to arbitrate or to enforce this arbitration agreement, and, notwithstanding any provision of law to the contrary, shall not be asserted or accepted as a reason to delay or refuse to participate in arbitration, or to refuse to enforce this arbitration agreement.

**Section 28.12 Severability.** If any provision of this Article 28 shall be determined by the arbitrator or by any court to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

Section 28.13 Waiver of Right to Judicial Proceedings. Each person subject to this Declaration waives any right it may have to institute a judicial proceeding to decide a Claim, to demand arbitration under chapter 64.50 of the Revised Code of Washington, or to demand a trial de novo after arbitration under chapter 64.50 of the Revised Code of Washington.

Section 28.14 Waiver of Right to Jury Trial. Each person subject to this Declaration waives any right it may have to a jury trial under federal or state law as to any dispute between them arising from or involving a Claim. In addition, if the arbitration provisions of this Article 28 are deemed entirely or partially invalid, void or unenforceable by the arbitrator or a judge, such that the parties are not required to resolve their disputes through binding arbitration for any reason, any and all Claims shall be tried before a judge in a court of competent jurisdiction in the State of Washington in the county where the Community is located, and not before a jury, and all parties waive any right to a trial by jury.

Section 28.15 Survival. The provisions of this Article 28 shall survive the transfer by any party of its interest or involvement in the Community or any Unit and the termination of this Declaration.

***[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK;  
SIGNATURE AND NOTARY ON FOLLOWING PAGE]***



**SCHEDULE A**  
**BLACK HORSE AT WHISKEY CREEK**

**(Description of Real Estate Subject to Declaration)**

The West Half of the Northeast Quarter of Section 27, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington;

EXCEPT right of way for Reecer Creek County Road and Bender County Road;

AND EXCEPT a parcel of land laying in the Northeast Quarter of Section 27, Township 18 North, Range 18 East, W.M., Commencing at the Northwest corner of said quarter section; thence 30.0 feet along the North line of said quarter to the East right of way line of Reecer Creek Road and the true point of beginning; thence 10.0 feet along the North line of said quarter; thence Southerly and parallel with the East right of line of Reecer Creek Road 2,139.26 feet; thence Northwesterly 17.10 feet to a point on the East right of line for Reecer Creek Road right of way; thence Northerly 2,125.25 feet to the true point of beginning;

AND EXCEPT a parcel of land laying in the Northeast Quarter of Section 27, Township 18 North, Range 18 East, W.M. Commencing at the Southwest corner of said Quarter, thence North 00°09'12" East 29.92 feet along the West line of said quarter, thence South 89°50'48" East, 18.05 feet to the intersection of the right of ways for Reecer Creek Road and Bender Road and the true point of beginning; thence South 89°35'18" East, 47.69 feet along the North right of way line of Bender Road to the beginning of a curve to the right, a cord bearing North 44°53'31" West, a cord length of 67.80 feet, a curve length of 75.199 feet to the end of the curve, thence South 00°11'44" East 47.69 feet along the East right of way for Reecer Creek Road and the true point of beginning;

AND EXCEPT that portion conveyed to Kittitas County, State of Washington, by Deed recorded March 1, 2005, under Auditor's File No. 200503010021.

AND EXCEPT all rights as conveyed by that certain mineral deed, recorded October 11, 2006 under Auditor's File No. 200610110009.

**SCHEDULE B**  
**BLACK HORSE AT WHISKEY CREEK**

**(Description of Additional Property)**

[Confirm legal with title company]

Declarant reserves, as Development Right, the right to add additional real estate to the Community, consistent with RCW 64.90.315 and the provisions of this Declaration. Such Additional Property to be developed into Unit in additional phases includes the following:

Tracts Z-1 thru Z-12, Black Horse at Whiskey Creek, recorded in Volume 12 of Plats, Pages 187, Records of Kittitas County, Washington.

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**SCHEDULE C**  
**BLACK HORSE AT WHISKEY CREEK**

**(Description of Withdrawable Property)**

Declarant reserves, as Development Right, the right to withdraw real estate from the Community, consistent with RCW 64.90.250 and the provisions of this Declaration.

**SCHEDULE D**  
**BLACK HORSE AT WHISKEY CREEK**  
 Maintenance Responsibility Chart

<b>UNIT IMPROVEMENT:</b>	<b>OWNED BY:</b>	<b>MAINTAINED BY:</b>	<b>PAID FOR BY:</b>
Home and Structures on Unit	Unit Owner	Unit Owner	Unit Owner
Yards, improvements and landscaping within each respective Unit, including landscaping in irrigation easement areas	Unit Owner	Unit Owner	Unit Owner
Portions of Utility Installations serving only one Home	Unit Owner	Unit Owner	Unit Owner
Private Storm Drainage Easements located within a Unit, such as landscaping within the drainage swales, but not the storm drainage facilities which shall be the responsibility of the Association	Benefitted Unit Owner	Benefitted Unit Owner exclusive of drainage facilities to be maintained by Association	Benefitted Unit Owner exclusive of drainage facilities, with the cost of such maintenance to be paid by the Association
<b>LIMITED COMMON ELEMENT</b>	<b>OWNED BY:</b>	<b>MAINTAINED BY:</b>	<b>PAID FOR BY:</b>
None			
<b>COMMON ELEMENTS</b>	<b>OWNED BY:</b>	<b>MAINTAINED BY:</b>	<b>PAID FOR BY:</b>
Tracts A thru K and N and P - Open space, stormwater evaporation facilities	Association	Association	Association: Assessed to all Units
Tracts M and Q - Critical Areas/Floodplain, and related fencing and signage	Association	Association	Association: Assessed to all Units
Tract O - Stormwater Lift Station	Association	Association	Association: Assessed to all Units
Tract H - Open space and Irrigation Pump Station	Association	Association	Association: Assessed to all Units
Private Irrigation Lines and Facilities located in the rear Yards of Units	Association	Association	Association
Mail Kiosk	Association	Association	Association: Assessed to all Units
<b>PUBLIC PROPERTY</b>	<b>OWNED BY:</b>	<b>MAINTAINED BY:</b>	<b>PAID FOR BY:</b>
Utility Installations Serving Multiple Homes	Public or Utility Provider	Public or Utility Provider	Public or Utility Provider

