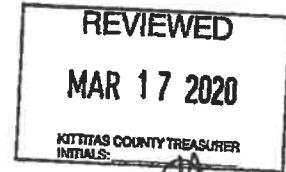




AFTER RECORDING RETURN TO:  
D.R. HORTON  
11241 SLATER AVE, SUITE 200  
KIRKLAND, WA 98033  
ATTN: HOA DEPARTMENT



**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR  
PALOMINO FIELDS WEST**

Grantor: SSSI LLC, dba D R Horton, a Delaware limited liability company

Grantee: Palomino Fields West Homeowners Association

Abbr. Legal Description: Lots 1-7, Palomino Fields Plat – Division II, Book 13 of Plats,  
Pages 23-29

Lots 1-7, Palomino Fields Plat – Division V, Book 13 of Plats, Pages  
88-91

(Full Legal on Schedule A)

Assessor's Parcel No.: 960965, 960966, 960967, 960968, 960969, 960970, 960971,  
961385, 961386, 961387, 961388, 961389, 961390, 961391

THE PLAT FOR THIS COMMUNITY WAS FILED WITH THE AUDITOR OF KITTITAS COUNTY,  
WASHINGTON UNDER AUDITOR'S FILE NO. 201905210014 AND 202002250022.

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**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS  
PALOMINO FIELDS WEST**

**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 Covenant Running with 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.

**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 28.1.

**"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.

**"Articles"** means 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.

**"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 Declarant or a Dealer, (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.

**"County"** means Kittitas County, Washington.

**"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, and its successors and assigns.

**"Declaration"** means this Declaration of Covenants, Conditions, Easements and Restrictions 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) subdivide or 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 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.

**"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, collectively, the plat for the Community recorded under Auditor's File Number 201905210014 and 202002250022. 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 15.10.

**"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.

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

**"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 or within real estate that may be added to 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 the tract(s) identified on the Map, if any.

**"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.

**"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 Palomino Fields West. 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 fourteen (14) Units in the Community. The location and configuration of each Unit are shown on the Map. Declarant has the right to create a total of one hundred twelve (112) Units in 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 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, private roads, curbs, planter strips, sidewalks, Street Landscaping, Entry Monuments, recreational facilities, tot lots, parks, open spaces, trails, mail kiosks, storm water detention vault and treatment facilities, and common utility systems. 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 such 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. As of the recording of this Declaration, there are no Tracts which have been dedicated to the Association.

**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 roadways and sidewalks. 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. Declarant's Authorized Users of the Additional Property shall also have the right to use the Common Elements in common with the Owners.

**Section 7.3 Intentionally Omitted.**

**Section 7.4 Obstruction of Fire Lanes Prohibited.** There shall be no parking on Fire Lanes. The purpose of this restriction is to provide adequate road width for the access of emergency vehicles as defined on the Map. The obstruction of a designated fire lane 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.

**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.

## **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: As of the recording of this Declaration, there are no Limited Common Elements.

**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 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.

**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 and alleys in the Community, as provided in the Plat, in which to install and maintain street signs, directional signs, no parking signs, other types of signs and address columns or monuments.

**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, including an easement of ten feet in width along all parcel lots lines, for the installation, maintenance, repair and replacement of utilities, gas, irrigation and cable television. 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 areas. The Owners of the Units subject to utility easements shall not use or alter their Units in any way that would interfere with the proper operation of the storm drainage system or other utilities located within such easement. The Association may adopt Rules regarding use of the portions of the Units subject to these easements.

**Section 9.9 Private Storm Drainage Easements.** The Plat creates various private storm drainage easements and drainage tracts as part of the overall storm water drainage system in the Community over the exterior 10 feet of each Unit parallel with and adjoining the street frontage which shall be the responsibility of the Owners to maintain. No structure, planting, or other material that may damage the utilities or interfere with the use of the easements may be placed within these easement areas. The Owners of the Units subject to private storm drainage easements shall not use or alter their Units in any way that would interfere with the proper operation of the storm drainage system. 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 private storm drainage system. The Association may adopt Rules regarding use of the portions of the Units subject to these easements.

**Section 9.10 Private Sewer Easements.** The Plat creates a sewer main line easement within the Units as part of the overall septic system in the Community in the locations shown on the Plat. The private sewer company is responsible for the maintenance of the sewer main line. No structure, planting, or other material that may damage the utilities or interfere with the use of the easements may be placed within these easement areas. The Owners of the Units subject to private sewer easements shall not use or alter their Units in any way that would interfere with the proper operation of the septic system. 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 private septic system. The Association may adopt Rules regarding use of the portions of the Units subject to these easements.

**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 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, improvements, landscaping, trees, storm water/drainage facilities, walls, 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 County. 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, including any trees required to be planted within the Community (and on individual Units) 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 Intentionally Deleted.

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 the 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; and (iii) for rights of way, slopes, cuts, fills, environmentally critical areas, native growth protection areas, public facilities or any other purpose or improvement as may be required for the development, construction or sale of the Community or the Additional Property, and (iv) which shall include the 10-foot wide general public utility easement granted by all Owners of each Unit as shown on the Plat.

### **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, no Unit shall be used except for residential purposes (and 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 Board shall have the authority to enact Rules permitting rentals 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 Items. 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 roads, 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 not allowed on any portion of the sidewalks, planter strips or any other portion of the Common Elements, except in designated parking

spaces. No vehicles shall be permitted to park on the Streets within the Property for a period exceeding twenty-four (24) hours (excluding weekends and holidays) without the prior written permission of the Association. 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 or packed earth, and if located on the side or rear yards they must be parked behind a fence, unless otherwise permitted by the Committee unless otherwise permitted by the ACC. Any additional parking added to a Unit after the initial landscaping shall be hard surfaces or packed earth (unless otherwise approved by the ACC in advance) and constructed only in accordance with a site plan approved by the ACC. Unless otherwise expressly permitted herein, only the cars of guests and visitors may be parked on the Streets (it being the intention to keep Street parking available as much as possible for guests and visitors). 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, and then on any Street. 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 the ACC may permit the parking of such over-sized vehicle on the Streets in its reasonable discretion; provided, however, that the Owner or Occupant must park such vehicle on a Street adjacent or as near as possible to their Unit and in no event shall any inoperative vehicle of an Owner or Occupant be allowed to remain on the Street for more than 48 hours (excluding weekends and holidays). No vehicle may be parked on a Street if 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 Utility Lines, Facilities and Satellite Dishes.** No facilities, antennae, equipment, wires or other devices for the communication or transmission of signals, power, electrical current, or any other electronic transmission, including without limitation telephone, television, microwave or radio signals, shall be constructed, placed or maintained anywhere upon any portion of a Unit, other than within buildings or enclosed structures unless the same shall be contained in conduits or cables constructed, placed or maintained underground or concealed in or under buildings or other enclosed structures; provided, however, that satellite dishes not exceeding twenty-four inches (24") in diameter (or other size adopted by the Board in the Rules and Regulations to reasonably accommodate all Owners and Occupants throughout the Community with standards typical within the general area of the Property) may be allowed on buildings with the prior written approval of the Committee, and provided, further, that any approved satellite dish is placed on the building so as to meet the following standards: (a) the satellite dish is placed in the most discreet location practical as determined by the Committee; (b) the satellite dish is screened from view from adjacent Units as feasible; and (c) the satellite dish is not visible from the Street in front of the Owner's Unit



to the extent possible. If the provisions of this Section conflict with the provisions of 47 CFR Section 1.4000 or other applicable Federal, state or local law, ordinance or rule, the terms of such law, ordinance or rule shall prevail, but the conditions and limitations in this Section shall be enforced to the maximum extent permitted by law. Nothing contained in this Section shall be deemed to forbid the erection or use of temporary power or telephone facilities incidental to the construction or repair of buildings on a Unit. Further, nothing in this Section shall preclude the installation of solar energy panels by an Owner, so long as such panels meet the requirements of RCW 64.90.510(3); the ACC may, however, impose conditions upon such installation as permitted under RCW 64.90.510(4) and (5).

**10.2.4 Storage.** No storage under decks or overhangs or anywhere else on any Unit which is visible from any point outside the Unit shall be permitted.

**10.2.5 Regulated Vehicles, Machinery and Equipment.** No in-operative vehicle of any type may remain in any driveway or public road for more than 48 hours (excluding weekends and holidays). No unlicensed motor vehicles, such as motorcycles, dirt bikes, scooters, and ATV's, shall be permitted to operate on any Street. No major automotive repairs shall be permitted on any Unit except for within enclosed garages or behind fences. No machinery or equipment of any kind shall be placed, operated or maintained upon the exterior of or adjacent to any Unit, except such machinery or equipment as is usual and customary in connection with the construction (during residential construction only) or the repair and maintenance of any improvement, appurtenant structure or improvement on a Unit, and except such machinery and equipment customarily used in the maintenance or improvement of landscaping; provided, however, that all such machinery and equipment shall be removed or properly stored upon completion of the applicable construction, repair, maintenance or landscaping project.

**10.2.6 Further Regulation.** The Board may adopt Rules further regulating conduct on roads, 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.** No refuse, garbage, rubbish, cuttings or debris of any kind shall be left or deposited upon any Unit unless placed in a suitable, closed and secure container. All outdoor refuse storage areas on each Unit shall be visually screened so as not to be visible from neighboring Units, Streets, or other Common Elements.

**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, except (a) customary name and address signs, (b) "For Sale" or "For Rent" signs of no more than six (6) square feet in size advertising the Unit for sale or rent, which signs must be removed promptly after sale or lease of the residence, (c) signs required by legal proceedings (and then the sign shall be no larger than eighteen inches (18") by twenty-four inches (24"), unless mandated by statute or court order), and (d) temporary signs for political advertising, garage sales, etc. (and then the sign shall be no larger than four (4) square feet and shall be in place no longer than sixty (60) days). 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 for commercial purposes. No cows, steer or pigs allowed; animals may include chickens (up to 12 with an approved enclosure from the ACC), goats, sheep, and other similar 4-H animals if the Board determines that such additional pet(s) will not adversely impact or be a nuisance within the Community. This does not include fish, birds and other pets that remain caged or housed exclusively indoors. Animals shall be restrained to the Owner's Unit and Yard and shall not be allowed to run at large. 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 Hazardous Activities. No odors or loud noises are permitted to arise or emit from any Unit or Common Elements so as to render any such property or portion thereof, or activity thereon, unsanitary, offensive or detrimental to any other property in the vicinity thereof or to the Owners and Occupants of such property. No other nuisance or unsafe or hazardous activity is permitted to exist or operate upon any Unit so as to be offensive or detrimental to any other Unit or to its Owner or Occupants. No firearms shall be discharged within the Property and no explosives of any kind shall be discharged or stored upon any Unit or permitted within the Property. No open fires are permitted on the Units, except in a contained outdoor fireplace or barbecue pit designated by the Association (if any), while attended by the applicable Owner or Occupant and in full compliance with local laws and ordinances.

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. "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 Buildings shall be of new construction (unless the ACC approves of recycled or "décor" vintage construction materials in advance). No previously used houses or other buildings 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 dedicated on the Plat must comply with and is subject to the approval of the County 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 house 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') 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 County 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 Trees. No Owner shall remove or damage any tree required by the conditions of approval of the Plat to be planted within the Community. If an Owner violates this Section 10.2.16, the Association may, but shall not be obligated to, take such action as may be necessary to the tree and any costs incurred by the Association in connection with such action shall be deemed to be a Special Assessment of the Owner whose damaged or removed the tree.

10.2.17 Unightly Conditions. No Owner shall permit any unsightly condition to exist on his/her Unit. Unightly conditions shall include, without limitation, litter, trash, junk, tarps or other debris; unrepaired and inoperable vehicles, boats, boat trailers or other trailers; inappropriate, broken, damaged or ugly furniture or plants; non-decorative gear, equipment, cans, bottles, ladders, trash barrels and other such items; and air conditioning units or other projections placed on the exterior walls of any Building. The ACC, in its sole discretion, may grant a written waiver of this Section, upon written application by an Owner as provided in this Declaration and may require Owner to remove, screen or take other action to remedy or otherwise adequately mitigate conditions deemed unsightly.

## **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 (including any and all utility systems) 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, septic system, and storm drainage installations) 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. 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. The Owner shall at regular and frequent intervals remove at its own expense any rubbish of any character whatsoever that may accumulate upon such Unit. No improvement upon any Unit shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

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 twelve (12) months of the conveyance of the Unit to the Owner (other than Declarant or a Dealer). 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 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.

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.

11.1.2 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) all Structures, Entry Monuments (if any), and other improvements and landscaping on the Common Elements, provided, however, maintenance and repair of any 6 foot cedar fencing, or portion thereof, bordering a Common Element and a particular Unit shall be the responsibility of such Unit Owner in accordance with Section 11.1 above, and (ii) all utility installations and storm water facilities serving the Community and not the responsibility of an Owner or a governmental entity. 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. Declarant, not the Association, however, is responsible for the actual costs of the maintenance, repair and replacement and insurance of 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. Declarant may pay such costs directly or through the Association. Declarant is also entitled to all income from the Additional Property until Units thereon are created and sold.

**Section 11.3 Intentionally Omitted.**

**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 Structures, (ii) the materials and colors of exterior features and

surfaces of Structures, including 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, or (ii) regulate any landscaping (other than hardscaping) on a Unit unless it alters/interferes with the plan requirements of the Community or the grade and drainage on the Unit. 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 Each Unit must have a private enclosed car shelter for not less than two (2) cars.

11.5.2.2 All roofs must be finished with a minimum thirty (30) year composition material, the color of which shall be approved by the Committee. The exterior finishes on the front of any structures, as well as any paints or stains applied thereto, shall be of similar color to the subject property and approved by the Committee. All Residences and other Improvements shall be constructed of new materials, with the exception of "décor" items, such as weathered brick, approved in advance by the Committee in its sole discretion.

11.5.2.3 The maximum height of any Home shall be per County code.

11.5.2.4 The maximum height of any fence shall be 6 feet.

11.5.2.5 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 Unit. 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 travel on roads, 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 ten 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 ten years from the date this Declaration is recorded. Declarant further reserves mutual nonexclusive easements over, across, and through the Common Elements of the Community for the benefit of 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 Declarant's Right to Subject the Community to a Master Association.** Declarant has the right to make the Community subject to a master association with authority over this Community and the Additional Property. To exercise this right, Declarant may amend this Declaration to delegate powers to the master association and address other matters relevant to the master association. The foregoing rights shall terminate five years from the date this Declaration is recorded.

**Section 12.5 Declarant's Right to Merge the Community.** Declarant has the right to merge the Community with the Palomino Fields Homeowners Association and Lots 1-8, Palomino Fields Plat -- Division 1, Book 12 of Plats, Kittitas County, pages 201-205. To exercise this right, Declarant may execute and record or file one or more merger agreements consolidating the communities and such other documents as are advisable to merge the associations. Such documents shall comply with the requirements of Section 223 of the CIC Act. The foregoing rights shall terminate five years from the date this Declaration is recorded.

**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.** Declarant has the right to add some or all of the Additional Property to the Community. The foregoing rights shall terminate ten 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. Any liens that arise in connection with 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 Declarant.

**Section 12.11 Declarant's Right to Add Improvements to the Community.** Declarant has the right to add improvements to the Community on the Additional Property, including but not limited to Streets (including the extension of the south end of Roan Road to Reecer Creek Road), Units, open spaces, parks and utilities. Any future improvements on the Additional Property will be generally of the same quality as the existing improvements. The foregoing rights shall terminate ten years from the date this Declaration is recorded.

**Section 12.12 Declarant's Right to Create Units, Limited Common Elements and Common Elements.** Declarant has the right to create up to One Hundred Twelve (112) additional Units on the Additional Property. Declarant will be the Owner of any Unit so created. Declarant is not required to create any additional Units. Declarant has the right to create Common Elements and Limited Common Elements on the Additional Property as determined by Declarant in Declarant's discretion, including, but not limited to, Streets, open spaces, parks and utilities. Declarant is not, however, required to create any such Common Elements or Limited Common Elements or to allocate them to any particular Unit. The foregoing rights shall terminate ten years from the date this Declaration is recorded.

**Section 12.13 Declarant's Right to Subdivide or Combine Units or Convert Units to Common Elements.** Declarant has the right to subdivide any Unit that has not been conveyed to an Owner other than a Declarant, or to convert any Unit that has not been conveyed to an Owner other than a Declarant into Common Elements. Declarant will be the Owner of any new Unit so created. The foregoing rights shall terminate ten years from the date this Declaration is recorded.

**Section 12.14 Intentionally Omitted.**

**Section 12.15 Declarant's Right to Reallocate Limited Common Elements Allocated to Unsold Units.** Declarant has the right to reallocate any Limited Common Element allocated to any Unit that has not been conveyed to an Owner other than Declarant. The foregoing rights shall terminate ten years from the date this Declaration is recorded.

**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 Units or Limited Common Elements.** An amendment creating Units will (i) show any new 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 64.90.240), 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 Subdivision of Units or Conversion of Common Elements.** Whenever Declarant exercises the Development Right to subdivide or convert a Unit into additional Units, Common Elements, or both, 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. If Declarant subdivides the Unit into two or more Units, whether or not any part of the Unit is converted into Common Elements, the amendment to the Declaration must reallocate all the Allocated Interests of the Unit among the Units created by the subdivision in any reasonable and equitable manner prescribed by Declarant.

**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, roads, 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 portions of the Additional Property or parcels of real estate at different times and Declarant's development of the Additional Property may be implemented in phases. No assurances are made as to final boundaries of such parcels or as to the order in which the Additional Property 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 Palomino Fields West Owners Association (the "Association"). The

Association shall be organized as a non-profit miscellaneous or mutual corporation, no later than the date the first Unit in the Community is conveyed. 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 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.**

**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, 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. At the time of recording of this Declaration, there are no Specially Allocated Expenses.

**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 date as the Board may establish by Rule, 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 17.8. The Board shall have the right to change the Assessments to a monthly collection but any additional fees associated with this change will be passed to 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 Two Hundred Dollars (\$200.00), as a non-refundable 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 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 the delinquent Assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving 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 the 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 Article 10 of the Articles and shall be entitled to indemnification to the extent set forth in Article 11 of 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 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 Intentionally Omitted.**

**Section 20.9 Board has no Obligation to Monitor Lot Owners' Insurance.** The Association has no insurable interest in the Lots, the Dwellings or personal property owned by Lot Owners, tenants or other Occupants. The Board of Directors is not obligated to monitor the existence or nonexistence of any insurance required under 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 Lot Owner or tenant. An Owner or tenant who fails to maintain such insurance shall be deemed to have made an election to self-insure. 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 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 (i) correct a mathematical mistake, an inconsistency, or a scrivener's error, or (ii) clarify an ambiguity in the Governing Documents with respect to an objectively verifiable fact, including, without limitation, recalculating any Allocated Interest, clarifying or correcting the location, dimensions or characteristics of the constructed improvements, clarifying or correcting the as-built boundaries or areas of the Units, or complying with the requirements of Fannie Mae, Freddie Mac, HUD, VA, lenders, or title insurers, 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, dba D.R. Horton  
11241 Slater Ave, Suite 200  
Kirkland, WA 98033  
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, "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 arbitration demand. 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.

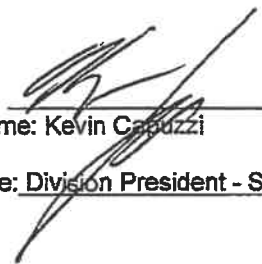
**Section 28.15 Survival.** The provisions of this Article 28 shall survive the transfer by any party of its interest or involvement in the Community or any Unit and the termination of this Declaration.

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

**DECLARANT'S SIGNATURE PAGE FOR  
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS**

Date: 3/16/2020

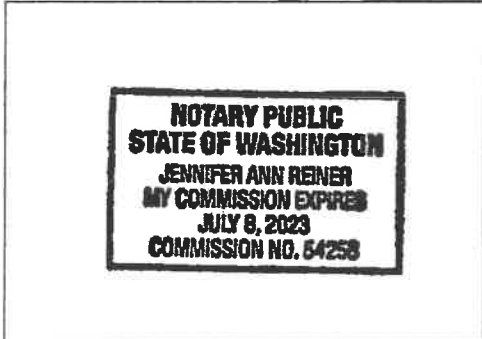
SSHI LLC, dba D R Horton, a Delaware limited liability company

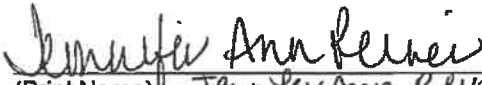
By:   
Name: Kevin Capuzzi  
Title: Division President - Seattle

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING         )

On this 16<sup>th</sup> day of March, 2020, before me personally appeared Kevin Capuzzi, to me known to be or provided satisfactory evidence he is the Division President of SSHI LLC, dba D R Horton, a Delaware limited liability company, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company/corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

DATED: 3/16/2020



  
(Print Name) Jennifer Ann Reiner  
Notary Public for the State of Washington  
Residing at: Monroe, WA  
My commission expires: 7/8/2023

**SCHEDULE A  
Palomino Fields West**

**DESCRIPTION OF REAL ESTATE SUBJECT TO DECLARATION**

Division II

LOTS 1-7, INCLUSIVE, PALOMINO FIELDS PLAT – DIVISION II, ACCORDING TO THE PLAT THEREOF RECORDED UNDER AUDITOR'S FILE NO. 201905210014 IN BOOK 13 OF PLATS, PAGES 23 THROUGH 29, RECORDS OF KITTITAS COUNTY, WASHINGTON;

SITUATE IN THE COUNTY OF KITTITAS, STATE OF WASHINGTON.

Division V

LOTS 1-7, INCLUSIVE, PALOMINO FIELDS PLAT – DIVISION V, ACCORDING TO THE PLAT THEREOF RECORDED UNDER AUDITOR'S FILE NO. 202002250022 IN BOOK 13 OF PLATS, PAGES 88 THROUGH 91, RECORDS OF KITTITAS COUNTY, WASHINGTON;

SITUATE IN THE COUNTY OF KITTITAS, STATE OF WASHINGTON.