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4/20/2000 Page 1 of 61 2:16:50PM

Filed at Request of:

John E. Hanson

HANSON BAKER LUDLOW DRUMHELLER P.S.

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<b>DOCUMENT TITLE</b>	Declaration for Westpoint, a Condominium
<b>REFERENCE NO. OF DOCUMENTS ASSIGNED/RELEASED</b>	n/a
<b>GRANTOR</b>	Allegre-Mitzel Partnership, a Washington general partnership
<b>GRANTEE</b>	County of Skagit
<b>LEGAL DESCRIPTION</b>	Portions of Government Lots 2 and 3, Section 6 Township 34 N., Range 4 E., W.M., in Skagit County, Washington.
<b>ASSESSOR'S PARCEL NO.</b>	

**DECLARATION  
FOR  
WESTPOINT, A CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM is made as of the date below by Allegre-Mitzel Partnership, a Washington general partnership, as sole owner of the property located in Skagit County, Washington hereinafter described, to submit the property as a condominium pursuant to the Washington Condominium Act (Revised Code of Washington Chapter 64.34):

**SECTION 1 - DEFINITIONS**

As used in this Declaration unless the context requires otherwise:

1.1 The "Act" means the Washington Condominium Act (Revised Code of Washington Chapter 64.34), as amended from time to time.

1.2 "Westpoint, a Condominium" means the Condominium development which is the subject of this Declaration.

1.3 "Allocated Interests" means the undivided interest in the Common Elements, the Common Expense Liability, and votes in the Association allocated to each Unit.

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

1.5 "Association", "Westpoint Condominium Association", or "Unit Owners' Association" means the Unit Owners' Association organized pursuant to SECTION 14 below.

1.6 "Board of Directors" or "Board" means the body with primary authority to manage the affairs of the Association.

1.7 "Building(s)" means the Building(s) within the Units comprising a part of the property of the Condominium.

1.8 "Bylaws" shall mean the Bylaws of the Association as initially promulgated by the Declarant, and as amended from time to time by the Association.

1.9 "Common Elements" means all portions of the Condominium other than the Units.

1.10 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.11 "Common Expense Liability" means the liability for Common Expenses allocated to each Unit pursuant to SECTION 15 below.

1.12 "Conveyance" means any transfer of the ownership of a Unit, including a transfer by deed or by real estate contract, but shall not include a transfer solely for security.

1.13 "Declarant" means Allegre-Mitzel Partnership, a Washington general partnership, its successors and assigns.

1.14 "Declarant Control" means the right of the Declarant or persons designated by the Declarant to appoint and remove officers and members of the Board of Directors pursuant to Section 14.4.4.



1.15 "Declaration" means this instrument by which the Property is submitted to provisions of the Act and as it may be, from time to time, lawfully amended.

1.16 "Development Rights" means any right or combination of rights reserved by a Declarant in the Declaration to: (a) add Real Property and/or improvements to the Condominium; (b) create Units, Common Elements, or Limited Common Elements within Real Property included or added to the Condominium; (c) subdivide Units or convert Units to Common Elements; or (d) withdraw Real Property from a Condominium.

1.17 "Dispose" or "disposition" means a voluntary transfer or conveyance to a purchaser of any legal or equitable interest in a Unit, but does not include the transfer or release of a security interest.

1.18 "Eligible Mortgagee" means the holder of a mortgage on a Unit that has filed with the secretary of the Association a written request that it be given copies of notice of any action by the Association that requires the consent of Mortgagees.

1.19 "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a mortgage or a deed in lieu thereof.

1.20 "Identifying number" or "Unit Number" means a symbol or address that identifies only one Unit in the Condominium.

1.21 "Limited Common Element" means a portion of the Common Elements allocated by the Declaration for the exclusive use of one or more, but fewer than all, of the Units.

1.22 "Majority" or "Majority of Unit Owners" means the Unit Owners with fifty-one percent (51%) or more of the votes in accordance with those assigned in this Declaration, as duly recorded or as it may be lawfully amended, to the Units for voting purposes.

1.23 "Mortgagee" means an institutional lender (i.e., a bank, savings and loan association, insurance company, FHA-approved mortgage lender, Massachusetts-type Florida business trust, and Federal National Mortgage Association (FNMA)) which is the holder of a note and mortgage or the beneficiary of a deed of trust covering a Unit or other portion of the Property, and shall also mean the vendor under a real estate contract covering a Unit.

1.24 "Mortgage" means a mortgage, deed of trust, or a real estate contract covering a Unit or other portion of the Condominium.

1.25 "Purchaser" means any person, other than a Declarant or a dealer, who by means of a disposition acquires a legal or equitable interest in a Unit other than (a) a leasehold



interest, including renewal options, of less than twenty years at the time of creation of the Unit, or (b) as security for an obligation.

1.26 "Real Property," "Property" or "Land" means any fee, leasehold or other estate or interest in, over, or under Land, including structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of Land although not described in the contract of sale or instrument of conveyance.

1.27 "Residential Purposes" or "Residential Use" means use for dwelling or recreational purposes, or both.

1.28 "Special Declarant Rights" means rights reserved for the benefit of a Declarant to: (a) complete improvements indicated on Survey Maps and Plans filed with the Declaration under RCW 64.34.232; (b) exercise any Development Right under RCW 64.34.236; (c) maintain sales offices, management offices, signs advertising the Condominium, and models under RCW 64.34.256; (d) use easements through the Common Elements for the purpose of making improvements within the Condominium or within the Real Property which may be added to the Condominium under RCW 64.34.260; (e) make the Condominium subject to a master association under RCW 64.34.276; or (f) appoint or remove any officer of the Association or any member of the Board of Directors during any period of Declarant Control under RCW 64.34.308(4).

1.29 "Survey Map and Plans" means the Survey Map and the set of Plans filed or to be filed simultaneously with this Declaration showing the location, boundaries and other information relating to the Land, the Building(s) and the Units, as required by the Act, as further described in SECTION 36.

1.30 "Temporary Board of Directors" or "Temporary Board" shall mean the persons appointed by the Declarant to manage and administer the Property for the Association until such time as the Unit Owners elect the Board of Directors as provided in this Declaration.

1.31 "Unit" means the parts of the Property intended for Residential Use and occupancy. All the space, Building(s) and improvements located within the boundaries of a Unit shall constitute that Unit. The boundaries of each Unit shall be the sides of a polyhedron in the location shown on the Survey Map and Plans and extending in height for ten feet (10') below the surface of the Land in the Unit upward to thirty-five feet (35') above the elevation of that Land. It is intended that each Unit will contain only one Building and that each Building will be located entirely within its Unit. The number and square footage of each Unit is set forth in Appendix B to this Declaration.



1.32 "Unit Owner" means the Declarant or other person who owns a Unit, but does not include a person who has an interest in a Unit solely as security for an obligation or debt. "Unit Owner" means the vendee, not the vendor, of a Unit under a real estate contract.

## SECTION 2 - DESCRIPTION OF LAND

The Land on which the Units are located is described on Appendix A to this Declaration.

## SECTION 3 - NUMBER OF UNITS CREATED

Westpoint, a Condominium, shall contain thirty-six (36) Units. All the Units are shown on the Survey Map and Plans.

## SECTION 4 - DESCRIPTION OF UNITS AND BUILDINGS

The number and square footage of each Unit is set forth in Appendix B to the Declaration. The description of the existing Building in each Unit is set forth in Appendix C to this Declaration.

## SECTION 5 - BOUNDARIES

The Unit boundaries shall be as described in Section 1.31.

## SECTION 6 - DESCRIPTION OF COMMON ELEMENTS

The Common Elements consist of the roads and open space/play areas as shown on the Survey Map and Plans.

## SECTION 7 - DESCRIPTION OF LIMITED COMMON ELEMENTS

There are no Limited Common Elements in the Condominium.

## SECTION 8- PARKING SPACES

The Building in each Unit contains a garage. The driveway leading to each garage shall be available for additional parking for that Unit's Owner or guests.

## SECTION 9- DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS RESERVED BY DECLARANT

9.1 In addition to the Development Rights listed in Section 1.16 above, the following Development Rights are hereby reserved for use by Declarant:

9.1.1 Declarant may add Units, Common Elements and/or Limited Common Elements to the Condominium as shown on the Survey Map and Plans.



9.1.2 All of the Buildings within the Units which are added pursuant to Section 9.1.1 shall be substantially the same architecture and substantially the same exterior finishes as the Buildings within the other Units on the property of the Condominium.

9.1.3 Declarant may withdraw real property from the Condominium.

9.1.4 Declarant shall have seven (7) years from the date of the recording of this Declaration to add the additional Units, Common Elements and/or Limited Common Elements pursuant to Section 9.1.1.

9.2 The following Special Declarant Rights are hereby reserved for use by Declarant:

9.2.1 Declarant may complete the improvements indicated on the Survey Map and Plans, and as described in this Declaration.

9.2.2 Declarant may maintain a sales office, management office, signs advertising the Units for sale, and models on the Property until all Units are sold.

9.2.3 Declarant may use easements through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising the Special Declarant Rights or making improvements within the Condominium.

9.2.4 Pursuant to Section 14.4, Declarant may appoint or remove any officer of the Association during the period of Declarant Control.

#### SECTION 10 - ALLOCATION OF UNDIVIDED INTERESTS IN THE COMMON ELEMENTS, COMMON EXPENSES, AND VOTES IN THE ASSOCIATION

10.1 The undivided interest in the Common Elements and liability for Common Expenses for each Unit Owner shall be in equal shares.

10.2 In all matters relating to voting in the Association, each Unit shall be entitled to one (1) vote and all votes shall be of equal weight.

#### SECTION 11- OCCUPANCY AND USE COVENANTS, CONDITIONS AND RESTRICTIONS

##### **11.1 Residential Use**

The Building(s) and Units shall be used for single family Residential Purposes only, on an ownership, rental or lease basis, and for social, recreational or other reasonable uses normally incident to such purposes.



## **11.2 Leasing of Units**

Although Declarant intends to sell the Units as Condominium Units, it is recognized that the Units or the Buildings within the Units may be leased or rented by the Declarant or any Unit Owner at any time. No Unit or Building therein may be leased or rented by any party for a period of less than thirty (30) days. Each lease or rental agreement shall be in writing, a copy shall be filed with the Board, and by its terms shall provide that the terms of the lease or rental agreement are subject in all respects to the provisions of this Declaration and the Bylaws of the Association, and all rules and regulations thereunder. Any failure by the lessee to comply with the terms contained in said documents shall be a default in any lease or rental agreement. No Owner may lease less than an entire Unit. The Association shall supervise all leasing, renting or subleasing of Units to ensure compliance with this paragraph and, at the discretion of the Board, may require the Owner to deposit not more than \$500.00 with the Association as a security deposit to cover move-in and/or move-out damage to the Common Elements. The Association shall not consent to any lease, sublease or rental agreement, the effect of which will result in noncompliance with this Section.

## **11.3 Timesharing**

Timesharing of any Unit as defined in Revised Code of Washington, Chapter 34.36, is prohibited.

## **11.4 Sales Facilities of Declarant**

Notwithstanding the provisions in Section 11.1, Declarant, its agents, employees and contractors, may maintain during the period of sale of the Units upon such portion of the Property as Declarant may choose, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the sale, rental or management of such facilities, including, but not limited to, one model Unit, a business or sales office, signs, storage facilities, and parking areas for prospective Purchasers or tenants.

## **11.5 Parking**

Parking outside of garages, both within and without the Unit, is restricted to parking of operative automobiles. Trailers, trucks, campers, recreation vehicles, boats and other vehicles and equipment may be parked or kept therein only subject to the Rules and Regulations of the Association. The Board may require removal of any inoperative or unsightly vehicle, and any other equipment or item improperly stored in parking spaces all in accordance with the Rules and Regulations adopted from time to time by the Board. If that vehicle or equipment is not removed, the Board may cause removal at the risk and expense of the Unit Owner thereof.



200004200063  
Kathy Hill, Skagit County Auditor  
4/20/2000 Page 7 of 61 2:16:50PM



## **11.6 Maintenance of Interiors of Units**

11.6.1 Each Unit Owner shall, at his sole expense, have the right and the duty to keep the interior and exterior of the Building in his Unit and its equipment, appliances, and appurtenances in good order, condition and repair, and shall do all maintenance, redecorating and painting, including but not limited to reroofing, landscaping and painting the exterior of the Building, at any time necessary to maintain the good appearance and condition of the Unit and the Building.

11.6.2 Without limiting the generality of the foregoing, each Unit Owner shall have the right and the duty, at his sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile, and finish the interior surfaces of the ceilings, floors, windows and window frames, door frames, and the trim of the Building within his Unit, and shall not permit or commit waste of his Unit or the Common Elements. Each Unit Owner shall have the right to substitute new finished interior surfaces for the finished interior surfaces then existing in the Building within his Unit. Each Unit Owner shall have the right to maintain, repair, paint, finish, alter, substitute, add or remove any fixtures attached to said ceilings, floors or walls or any other portion of the interior of the Building. This Section shall not be construed to permit interference with or damage to the structural integrity of the Buildings or interference with the use and enjoyment of the Common Elements or of the other Units.

11.6.3 Unit Owners may not modify, paint, or otherwise decorate, or in any way alter the exterior or the color of the Building or any other improvements within his Unit without prior written approval of the Board or pursuant to the rules and regulations adopted thereby.

11.6.4 Each Unit Owner shall be responsible for the replacement of the Building in each Unit if all or any portion thereof is destroyed by fire or other cause.

## **11.7 Maintenance, Repair and Replacement of Common Elements and Enforcement of Maintenance, Repair and Replacement Obligations of Unit Owners.**

The Association shall be responsible for maintenance, repair and replacement of all Common Elements. Subject to Section 11.5 above or as otherwise provided in the Declaration, the Association shall have the right to enforce the obligations of the Unit Owners to maintain and repair the Building, landscaping and other improvements in their respective Units as required by this Declaration. In the event any Unit Owner fails to perform said obligations, the Board shall issue a written demand to the Unit Owner and thereafter following a reasonable period of time the Board may perform the maintenance, repair and replacement at the expense of the Unit Owner. If the Unit Owner fails to pay said expense, the Board may record a lien against the Unit and collect the expense in the same manner as an assessment pursuant to SECTION 15.



200004200063

Kathy Hill, Skagit County Auditor

4/20/2000 Page 8 of 61 2:16:50PM



### **11.8 Uniform Exterior Appearance**

In order to preserve the uniform exterior appearance of the Buildings and the Common Elements visible to the public, the Board may require certain types and colors for the paint and other decorative finish of the Building(, decks, fences, or other Common Elements, and may prohibit, require or regulate any modification or decoration of the Building, decks, fences, trellises, or other Common Elements, including screens, doors, awnings, rails or other portions of each Unit and Building visible from the exterior thereof. The Board may regulate and control the items stored or used on the portion of the Unit outside the Building in order to present a good appearance to the entire Condominium.

### **11.9 Insurance**

The Unit Owners shall not permit anything to be done or kept in the Units or in the Common Elements which will increase the fire insurance premiums thereon or result in the cancellation of such insurance on any Unit or any part of the Common Elements, without the consent of the Board or pursuant to rules and regulations adopted thereby.

### **11.10 Signs**

No sign of any kind shall be displayed to the public view on or from any Unit or from the Common Elements without the consent of the Board or pursuant to rules and regulations adopted thereby; provided, that this section shall not apply to sales activities of Declarant permitted pursuant to Section 1.28 and 11.4 above. This Section shall not apply to the temporary signs, such as "For Sale," "For Rent" or "Garage Sale," which do not exceed 432 square inches in size.

### **11.11 Pets**

Domestic household pets, such as dogs and cats, may be kept by the Unit Owners; provided, that the keeping of pets shall be subject to such reasonable rules and regulations as the Board may from time to time adopt. The Board may require the removal of any animal which the Board in the exercise of reasonable discretion finds disturbing other Unit Owners unreasonably, and may exercise this authority for specific animals even though other animals are permitted to remain.

### **11.12 Offensive Activity**

No noxious or offensive activity shall be carried on in any Unit or on the Common Elements, nor shall anything be done therein which may be or become an annoyance or nuisance to other Unit Owners, or which would be in violation of any laws.

### **11.13 Alteration of Units**

A Unit Owner:



200004200063

Kathy Hill, Skagit County Auditor

4/20/2000 Page 9 of 61 2:16:50PM

11.13.1 May make any improvements or alterations to the Building within the Owner's Unit that do not affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the Condominium;

11.13.2 May not change the appearance of the Common Elements or the exterior appearance of the Building within the Owner's Unit without the prior permission of the Board;

11.13.3 The Board shall approve a Unit Owner's request, which request shall include the Plans and specifications for the proposed removal or alteration, under this subsection within thirty (30) days, unless the proposed alteration does not comply with the Act or this Declaration or impairs the structural integrity or mechanical or electrical systems in the Condominium. The failure of the Board to act upon a request within such period shall be deemed approval thereof.

#### **11.14 Alterations of Common Elements**

The Common Elements shall not be reconstructed, rebuilt, altered, removed or replaced except by the Association acting through the Board, subject to the rights of Mortgagees set forth in SECTION 22.

#### **11.15 Additional Structures Outside Any Building**

No decks, patio, hot tub, children's play equipment, fence or any other structure shall be constructed or installed outside the Building in any Unit without the prior written approval of its location, design, materials, color and appearance by the Board with due regard for the appearance of the proposed improvement and the impact upon surrounding Units and the entire Condominium.

#### **11.16 Bylaws and Rules and Regulations**

The Association may from time to time adopt reasonable additional provisions in the Bylaws or in the rules and regulations of the Association as may be necessary or advisable to ensure compliance with or to supplement the foregoing covenants, conditions and restrictions, and the Unit Owners shall comply in all respects therewith.

### **SECTION 12 - COMPLIANCE WITH DECLARATION**

#### **12.1 Enforcement**

Failure of any Unit Owner to comply strictly with the provisions of this Declaration and with the Bylaws and rules and regulations of the Association, as they may be lawfully amended from time to time, and with all decisions of the Board or the Association adopted pursuant to this Declaration and the Bylaws and administrative rules and regulations shall be grounds for an action against the noncomplying Unit Owner to recover sums due for damages, or for injunctive relief, or both, maintainable by the Board acting through its officers on behalf of the Unit Owners, or by any aggrieved Unit Owner on his own.



## **12.2 No Waiver of Strict Performance**

The failure of the Board in any one or more instances to insist upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or of the Bylaws or rules and regulations, or to exercise any right or option contained in said documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, which shall remain in full force and effect. The receipt by the Board of any Assessment from a Unit Owner, with knowledge of any such breach shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed for by the Board. This section also extends to Declarant or Declarant's managing agent, exercising the powers of the Board during the period of Declarant Control of the Association and the Condominium development.

## **SECTION 13 - SERVICE OF PROCESS**

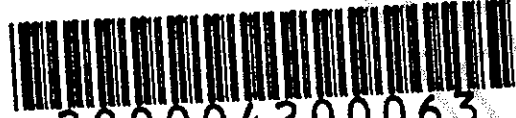
The person initially designated by Declarant to receive service of process in cases provided for in the Act is Jinx Ponath Harrison, whose place of business is 9623 – 32<sup>nd</sup> Street SE, Everett, Washington 98291. After the election of the Board under Section 14.4.3, service of process for the purposes provided in the Act may also be made upon the president of the Association. After the election of the Board, the Board shall designate a new or different person or agency to receive service of process by filing an amendment to this Declaration limited to the sole purpose of making such change, and such amendment need only be signed and acknowledged by the then president of the Association. Declarant may, at any time before the Board is elected, change such designation by amendment to the Declaration signed and acknowledged only by Declarant.

## **SECTION 14 - OWNERS' ASSOCIATION**

The Association shall be a nonprofit corporation. The rights and duties of the members and of such corporation shall be governed by the provisions of the Act and of this Declaration. The Association may use the name "Westpoint Condominium Association," or such other names as may be selected by the Board.

### **14.1 Membership**

Each Unit Owner shall automatically become a member of the Association and shall be subject to its Bylaws and such rules and regulations as may from time to time be adopted by the Association. The membership shall be appurtenant to and nonseverable from the Ownership of each Unit. The membership shall automatically pass to the succeeding Unit Owner with the conveyance of each Unit.

  
200004200063  
Kathy Hill, Skagit County Auditor  
4/20/2000 Page 11 of 61 2:16:50PM


## **14.2 Voting**

**14.2.1 Number of Votes.** For the purposes of determining voting rights under the Act and with respect to the administration of Westpoint, a Condominium, through the Association, the total voting power of all Units shall be equal to the number of Units then in the Condominium. At the time this Declaration is recorded, that number is thirty-six (36). Whenever the approval of a stated percentage of the Unit Owners is required in this Declaration or the Bylaws, unless expressly stated otherwise, the percentage shall be determined by reference to the voting power of the Units as defined above.

**14.2.2 Person Authorized to Vote.** There shall be one (1) voting representative for each Unit. The voting representative shall be designated by the Unit Owner or Owners of each Unit by written notice to the Board and need not be a Unit Owner. The designation may be revoked at any time by the Unit Owner or Owners by written notice to the Board, and the death or judicially declared incompetence of the Unit Owner shall revoke the designation, provided that such designation shall not be effective until the Board has been notified thereof. The powers of designation and revocation may be exercised by the guardian, trustee, personal representative, administrator or executor of a Unit Owner or his estate. Where no designation is made, or where a designation has been made, but is revoked and no new designations have been made, the voting power of each Unit shall be the group composed of all of its Owners; and the Association may recognize the vote of any one or more of such Owners present in person or by proxy at any meetings of the Association as the vote of all such Owners. If there is more than one such Owner and they do not vote unanimously, the Association may divide the vote in accordance with their respective interests if they shall agree thereon or have furnished sufficient written evidence thereof. Otherwise, the vote for that Unit may be disregarded by the Board. For purposes of electing members of the Board, the Unit Owners may use cumulative voting.

**14.2.3 Ownership of More Than One Unit.** If a person shall own more than one Unit, he shall be entitled to exercise the votes for the combined total of all Units owned. Declarant, and any person acquiring under or by virtue of the deed of trust referred to in SECTION 22, shall be entitled to the same voting privileges as other Unit Owners, until all Units owned by Declarant are sold.

**14.2.4 Quorum.** A quorum of Unit Owners at any annual or special meeting of the Association shall be the presence, in person or by proxy, of persons holding twenty-five percent (25%) or more of the total votes, unless otherwise expressly provided herein. If a quorum is present at any such meeting, any action may be taken by an affirmative vote of a majority of the total votes present at the meeting, except as otherwise expressly provided in the Act, this Declaration, or the Bylaws.

  
200004200063  
Kathy Hill, Skagit County Auditor  
4/20/2000 Page 12 of 61 2:16:50PM

### **14.3 Bylaws**

Declarant, on behalf of the Temporary Board, shall adopt the initial Bylaws of the Association to provide for the administration of the property and the organization of the Association, consistent with this Declaration and the Act. The Bylaws shall designate the time and specify the procedures for the holding of annual and special meetings of the Association and may specify other procedures applicable to the organization and administration of the Association. The Bylaws may be amended by Declarant, on behalf of the Temporary Board, at any time prior to the replacement of the Temporary Board by the Board pursuant to Section 14.4.3. Thereafter, the Bylaws may be amended in whole or in part, by a vote of Unit Owners accounting for not less than sixty percent (60%) of the total votes at a meeting of the Association duly held for that purpose. Written notice of the time, place and purpose of such meeting shall be delivered in person or mailed to each Unit Owner at least ten (10) days prior to the date of such meeting.

### **14.4 Management of the Association by the Board**

The Association shall be administered and managed by a Board of three (3) persons who shall serve during the interim period described below, and thereafter as established by the Bylaws.

**14.4.1 Temporary Board of Directors.** Declarant may, at such time as it deems appropriate, appoint a Board of three (3) persons who need not be Unit Owners. The Board (and Declarant, until the Board is appointed) shall exercise the rights, duties and functions of the Board as set forth in this Declaration until the entire Board is elected by the Unit Owners pursuant to Section 14.4.3.

**14.4.2 Election After Sale of Units.** Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units which may be created to Unit Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board must be elected by Unit Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units which may be created to Unit Owners other than Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board must be elected by Unit Owners other than Declarant.

**14.4.3 Election of Complete Board.** Within thirty (30) days after the termination of any period of Declarant Control, the Unit Owners shall elect a Board of at least three (3) directors, at least a majority of whom must be Unit Owners. The Board shall elect the officers of the Association. Such directors and officers shall take office upon this election.

**14.4.4 Removal of Directors.** During the period of Declarant Control, Declarant may remove any director appointed by Declarant at any time and for any reason. The Unit Owners, by a two-thirds (2/3) vote of the voting power in the Association present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any director with or without cause, except for a director appointed by Declarant. Declarant





may not remove any director elected by the Unit Owners. Prior to the termination of the period of Declarant Control, the Unit Owners, other than Declarant, may remove any director elected by the Unit Owners by a two-thirds (2/3) vote.

14.4.5 Term. The term of office of each director shall be two (2) years, with two (2) directors being elected at each annual meeting during even-numbered years, and one (1) director being elected at each annual meeting during odd-numbered years. At the special meeting called for the purpose of electing the directors, pursuant to Section 14.4.3 of this Declaration, the three (3) directors so elected shall, by lot, determine which shall have one (1) or two (2) year terms, to stagger the expiration dates of the terms of the appropriate number of directors. Any director may be elected to serve for an additional term or terms.

14.4.6 Quorum. A majority of the members of the Board shall constitute a quorum. The Board shall act by majority vote of those present at its meetings where a quorum exists. Meetings shall be called, held and conducted in accordance with the Bylaws.

14.4.7 Officers. The Board shall elect a president of the Association from among members of the Board, who shall hold office for one (1) year, or until his successor is elected, and shall preside over both the meetings of the Board and those of the Association. The Board shall also elect a secretary and treasurer, who shall hold office for one (1) year or until their successors are elected. Any officer of the Association may be reelected by the Board for any number of successive terms.

14.4.8 Employment of Manager. The Board may, to the extent it deems advisable, employ a person or firm to manage Westpoint, a Condominium, as well as such other persons as are necessary in its opinion for the proper operation thereof; provided, that the employment of a person or firm to manage Westpoint, shall be under a written contract for a term not in excess of one (1) year and shall permit the Board to revoke the same without cause and without payment of a termination fee, upon no more than thirty (30) days notice.

14.4.9 Standard of Care. Except as provided in this Declaration and the Bylaws, the Board shall act in all instances on behalf of the Association. In the performance of their duties, the officers and members of the Board are required to exercise: (a) If appointed by Declarant, the care required of fiduciaries of the Unit Owners; or (b) if elected by the Unit Owners, ordinary and reasonable care.

14.4.10 Limitations of Board Authority. The Board shall not act on behalf of the Association to amend the Declaration in any manner that requires the vote or approval of the Unit Owners, to terminate the Condominium, to elect members of the Board, or to determine the qualifications, powers, and duties, or terms of office of members of the Board pursuant to Section 14.4.3 of this Declaration. The Board may, however, fill vacancies in its membership for the unexpired portion of any term.



200004200063  
Kathy Hill, Skagit County Auditor  
4/20/2000 Page 14 of 61 2:16:50PM



#### **14.5 Authority of the Association.**

The Association, acting by and through the Board, its officers, manager or other duly authorized agents or representatives, may:

14.5.1 Adopt and amend Bylaws, rules and regulations;

14.5.2 Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect Assessments for Common Expenses from Unit Owners;

14.5.3 Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;

14.5.4 Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two (2) or more Unit Owners on matters affecting the Condominium;

14.5.5 Make contracts and incur liabilities;

14.5.6 Regulate the use, maintenance, repair, replacement, and modification of Common Elements and contract with third parties to accomplish these objectives;

14.5.7 Cause additional improvements to be made as a part of the Common Elements provided that any improvements in excess of \$10,000 must be approved by a majority of the Owners;

14.5.8 Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but Common Elements may be conveyed or subjected to a security interest only pursuant to the Act;

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

14.5.10 Impose and collect any payments, fees, or charges for the use, rental, or operation of the Common Elements and for services provided to Unit Owners;

14.5.11 Impose and collect charges for late payment of Assessments pursuant to Section 15.2.11 of this Declaration, and after notice and an opportunity to be heard by the Board or by such representative designated by the Board and in accordance with such procedures as provided in the Declaration or Bylaws or rules and regulations adopted by the Board, levy reasonable fines in accordance with a previously established schedule thereof adopted by the Board and furnished to the Unit Owners for violations of the Declaration, Bylaws, and rules and regulations of the Association;

14.5.12 Impose and collect reasonable charges for the preparation and recording of amendments to the Declaration, for resale certificates required by RCW 64.34.425, and for statements of unpaid Assessments;



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Kathy Hill, Skagit County Auditor

4/20/2000 Page 15 of 61

2:16:50PM

14.5.13 Provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance;

14.5.14 Assign its right to future income, including the right to receive Common Expense Assessments, but only to the extent the Declaration provides;

14.5.15 Exercise any other powers conferred by the Declaration or Bylaws;

14.5.16 Exercise all other powers that may be exercised in this state by the same type of corporation as the Association; and

14.5.17 Exercise any other powers necessary and proper for the governance and operation of the Association.

## **SECTION 15 - COMMON EXPENSES - ASSESSMENTS**

### **15.1 Prior to Initial Assessment**

Until the Association makes a Common Expense Assessment, Declarant shall pay all Common Expenses.

### **15.2 Assessments and Budget for Common Expenses**

15.2.1 Annual Budget of Common Expenses. Prior to the sale of the first Unit by Declarant, and thereafter within sixty (60) days prior to the beginning of each fiscal year, the Board (or Declarant, prior to the appointment or election of the Board) shall estimate the Common Expenses which it anticipates will be incurred during the forthcoming fiscal year, and determine the monthly Assessments and any Special Assessments to be paid during such year. The Board shall establish the dates for the fiscal year consistent with the needs of the Association. The Board shall also make provision for creating, funding and maintaining reasonable reserves for contingencies, operations, and repair, replacement and acquisition of Common Elements; and shall take into account any expected income and any surplus available from the prior year's operations. The determination and collection of Assessments for any initial partial year of operation of Westpoint, a Condominium, may be made by Declarant or the Board at any reasonable time. The initial Assessments for all Units shall commence on the date of the closing of the sale of the first Unit conveyed by Declarant herein. If at any time during the budget year the sum estimated and budgeted at any time proves inadequate for any reason (including nonpayment for any reason of any Unit Owner's assessment), the Board may at any time levy a further assessment, which shall be assessed to the Unit Owners.

15.2.2 Approval of Budget. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Board shall provide a summary of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing of the summary. Unless at that meeting the Unit Owners of Units to which a majority of the votes in the Association are allocated, or any larger percentage specified in the Declaration, reject the



budget, 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.

15.2.3 Assessments. The Board may also, from time to time, impose such Special Assessments as may be determined by the Board, subject to the restrictions in this Declaration and the Bylaws.

15.2.4 Initial Payment for Working Capital. Declarant shall collect from each Purchaser an amount equal to at least two (2) months' Assessments at the time of the first conveyance of each Unit to establish a sufficient initial working capital fund. This initial payment into the fund shall be in addition to the Assessment for the first month which each Purchaser of a Unit from Declarant will pay at the time of closing of the sale. Each Unit's share of the working capital fund must be collected and transferred to the Association at the time of closing of the sale of each Unit and maintained in a separate account segregated from all other funds of the Association for the use and benefit of the Association. The purpose of the fund is to ensure that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board. Amounts paid into the fund are not to be considered as advance payments of regular Assessments. Declarant shall deposit a sum equal to at least two (2) months' Assessments in the working capital fund for each existing but unsold Unit within sixty (60) days after conveyance of the first Unit. Thereafter, at the time of the conveyance of each Unit, Declarant shall be reimbursed for the working capital deposit for that Unit from the funds collected from the Purchaser.

15.2.5 Liability for Assessment Payments. All Common Expenses shall be assessed against all Units in equal shares, except Assessments to pay a judgment against the Association resulting from a foreclosure of a lien against the Association shall be made only against the Units in the Condominium at the time the judgment was entered in proportion to their allocated Common Expense Liabilities at the time the judgment was entered. To the extent that any Common Expense is caused by the misconduct of any Unit Owner(s), the Association may assess that expense against that Unit(s). Any Common Expense or portion thereof benefiting fewer than all of the Units shall be assessed exclusively against the Unit(s) benefited.

15.2.6 Payment by Unit Owners. Each Unit Owner shall be obligated to pay its share of Common Expenses and special charges made pursuant to this Section to the treasurer of the Association in equal monthly installments on or before the first day of each month, or in such other reasonable manner as the Board shall designate. No Owner may exempt himself from liability for payment of Assessments for any reason, including waiver of use or enjoyment of any of the Common Elements or abandonment of the Unit Owner's Unit.



**15.2.7 Commencement of Assessments.** Assessments for each Unit Owner shall begin on the date said Owner closes the transaction in which he acquires right, title or interest in the Unit. Declarant shall commence payment of Assessments for existing but unsold Units containing a Building no later than sixty (60) days after the conveyance of the first Unit containing a Building. In the alternative, Declarant may, at its option, elect to continue to pay all operating expenses for Westpoint, a Condominium, after conveyance of the first Unit in each Building and commence the Assessments at a later time. Whenever Assessments are thereafter commenced and required from any Unit Owners, Assessments shall be required from all Unit Owners, including Declarant for existing Units then owned by Declarant, subject to Section 15.2.8. Assessments for the initial month shall be prorated if closing occurs on other than the first of the month.

**15.2.8 Liability of Declarant for Assessments.** Notwithstanding the provisions of Sections 15.2.6 and 15.2.7, Declarant shall not be liable for payment of assessments for Units owned by Declarant which do not contain any Building, but Declarant shall pay all actual expenses of ownership and development for each such Unit during Declarant's ownership. Declarant shall pay assessments for each Unit owned by Declarant which contains a Building and the liability for assessments shall commence sixty (60) days after issuance of a certificate of occupancy from Skagit County.

**15.2.9 Payment by Mortgagees.** Subject to Section 16.2, the holder of a Mortgage or other Purchaser of a Unit who obtains the right of possession of the Unit through foreclosure shall not be liable for Assessments that became due prior to such right of possession. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Unit Owners, including such Mortgagee or other Purchaser of such Unit. Foreclosure of a Mortgage does not relieve the prior Unit Owner of personal liability for Assessments accruing against the Unit prior to the date of such sale as provided in this section.

**15.2.10 Security Deposit.** From time to time, the Board may, at its sole discretion, require a Unit Owner to make and maintain a security deposit not in excess of three (3) months estimated monthly Assessments, which may be collected as are other Assessments. Such deposit shall be held in a separate fund, credited to such Unit Owner, and resort may be had thereto at any time when such Owner is fifteen (15) days or more delinquent in paying his monthly or other Assessments.

**15.2.11 Interest, Late Charges, Expenses and Attorneys' Fees.** As part of its collection of delinquent Assessments, the Association shall be entitled to recover interest for the period of delinquency, late charges, expenses of collection, and attorneys' fees incurred by the Association whether or not a suit is commenced or prosecuted to judgment. In addition, the Association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

**15.2.11.1** The Association may, from time to time, establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent Assessments or



installments thereof. 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.

15.2.11.2 The Association may impose a late charge in an amount not exceeding twenty-five percent (25%) of any unpaid Assessment or charge which had remained delinquent for more than fifteen (15) days.

15.2.12 Remedies Cumulative. The remedies provided herein are cumulative, and the Board may pursue them concurrently, as well as any other remedies which may be available under law although not expressed in this Declaration.

### 15.3 Surplus Funds.

Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of reserves shall, in the discretion of the Board, either be paid to the Unit Owners in proportion to their Common Expense Liabilities or credited to them to reduce their future Common Expense Assessments.

## SECTION 16 - LIENS FOR ASSESSMENTS

### 16.1 Lien in Favor of Association

The Association has a lien on a Unit for any unpaid Assessments levied against a Unit from the time the Assessment is due. Fees, late charges, fines, and interest charged by the Association are enforceable as Assessments and are subject to the Association's lien on said Unit. If an Assessment is payable in installments, the Association has a lien for the full amount of the Assessment from the time the first installment is due.

### 16.2 Priority of Association Lien

16.2.1 General Priority. The lien of the Association under this section shall be prior to all other liens and encumbrances on a Unit, except: (a) Liens and encumbrances recorded before the recording of the Declaration; (b) a Mortgage on the Unit recorded before the date on which the Assessment sought to be enforced became delinquent; or (c) liens for Real Property taxes and other governmental Assessments or charges against the Unit.

#### 16.2.2 Priority Over Mortgages Encumbering Individual Units.

16.2.2.1 If the Association elects to foreclose its lien under Section 16.5 of this Declaration, the lien shall also be prior to the Mortgages described in Section 16.2.1(b) of this Declaration to the extent of Assessments for Common Expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the Association pursuant to this Declaration which would have become due, in the absence of acceleration, during the six (6) months immediately preceding institution of an action to enforce the lien.





16.2.2.2 The priority of the Association's lien against Units encumbered by a Mortgage held by an Eligible Mortgagee or by a first Mortgagee which has given the Association a written request for a notice of delinquent Assessments shall be reduced by up to three (3) months if and to the extent its foreclosure includes delinquencies which relate to a period after such holder becomes an Eligible Mortgagee or has given such notice and before the Association gives the holder a written notice of the delinquency.

16.2.2.3 This subsection 16.2.2 does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other Assessments made by the Association.

### **16.3 Recording Not Required**

Recording of this Declaration constitutes record notice and perfection of the lien for Assessments. While no further recording of any claim of lien for Assessment under this section shall be required to perfect the Association's lien, the Association may record a notice of claim of lien for Assessments under this section in the Real Property records of Skagit County. Such recording shall not constitute the written notice of delinquency to a Mortgagee referred to in Section 16.2.2 of this Declaration.

### **16.4 Limitation on Enforcement**

A lien for unpaid Assessments is extinguished unless legal proceedings to enforce the lien are instituted within three (3) years after the amount of the Assessments sought to be recovered becomes due.

### **16.5 Enforcement of Lien**

16.5.1 The lien arising under this section may be enforced judicially by the Association or its authorized representative in the manner set forth in Chapter 61.12 RCW or nonjudicially in the manner set forth in Chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust. For the purpose of preserving the Association's nonjudicial foreclosure option, this Declaration shall be considered to create a grant of each Unit in trust to Chicago Title Insurance Company or its successors and assigns ("Trustee"), to secure the obligations of each Unit Owner ("Grantor") to the Association ("Beneficiary") for the payment of Assessments. Grantor shall retain the right to possession of Grantor's 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 Grantor's obligation to pay assessments. The Units are not used principally for agricultural or farming purposes.

16.5.2 The Association or its authorized representative shall have the power to purchase the Unit at the foreclosure sale, whether judicial or non-judicial, and to acquire, hold, lease, mortgage, or convey the Unit to a third party. 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 (8) months. Nothing in this section shall prohibit the Association from accepting a deed in lieu of foreclosure from the Owner of the Unit subject to the lien.

#### **16.6 Appointment of Receiver**

From the time of commencement of an action by the Association to foreclose a lien for nonpayment of delinquent Assessments against a Unit that is not occupied by the Unit Owner thereof, the Association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the Unit as and when due. If the rental is not paid, the receiver may obtain possession of the Unit, refurbish it to a reasonable standard for rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the Unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent Assessments. A receiver shall not be appointed less than ninety (90) days after the delinquency. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Unit.

#### **16.7 Personal Liability of Unit Owners**

In addition to constituting a lien on the Unit, each Assessment shall be the joint and several obligation of the Unit Owner or Unit Owners of the Unit to which the same are assessed as of the time the Assessment is due. Suit to recover a personal judgment for any delinquent Assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

#### **16.8 Certificate of Assessment**

The Association, upon written request, shall furnish to a Unit Owner or a Mortgagee of a Unit a statement signed by an officer or authorized agent of the Association setting forth the amount of unpaid Assessments against that Unit. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board, and every Unit Owner, unless and to the extent known by the recipient to be false.

### **SECTION 17 - ASSOCIATION ACCOUNTS AND RECORDS**

#### **17.1 Bank Accounts**

The Association shall maintain four (4) separate bank accounts, one each for general account, reserve fund, insurance reserve account, and working capital account.

**17.1.1 General Account.** All Assessment payments shall be deposited in the general account and thereafter distributed to other accounts or paid out for current expenses.

**17.1.2 Reserve Account.** Any reserve funds of the Association shall be kept in a segregated account. Any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two (2) persons who are officers or directors of the Association.



17.1.3 Insurance Reserve Account. Each month the Board shall first deposit to the insurance reserve account that portion of the Common Expense Assessments necessary to pay at least one-twelfth (1/12) of the total cost of all of the insurance coverage then in effect pursuant to SECTION 19. Such insurance reserve account shall be held separately and inviolate until utilized for payment of such premiums.

17.1.4 Working Capital Account. This account shall contain the funds paid to the Association pursuant to Section 15.2.4, and said funds shall be used for the purposes set forth therein.

17.1.5 No Commingling. The funds of the Association shall not be commingled with the funds of any other association, nor with the funds of any officer, director or manager of the Association or any other person responsible for the custody of such funds.

## 17.2 Financial Records

The Board shall keep complete and accurate books and records of the receipts and expenditures affecting the Common Elements, specifying and itemizing the maintenance and repair expenses of the Common Elements and any other expenses incurred, together with any additional information which may from time to time be designated by the Board. Such books and records and the vouchers authorizing payments shall be available for examination by the Unit Owners, their Mortgagees, agents or attorneys, at any reasonable time or times. All books and records shall be kept in accordance with good accounting procedures.

17.2.1 Records for Resale Certificates. The Association shall keep financial records sufficiently detailed to enable the Association to comply with requests for resale certificates pursuant to RCW 64.34.425.

### 17.2.2 Financial Statements and Audits.

17.2.2.1 At least one (1) copy of the annual financial statements shall be furnished to each Unit Owner and any Mortgagee requesting the same within sixty (60) days following the end of the fiscal year covered thereby or as soon thereafter as the statement shall be completed.

17.2.2.2 An annual audit shall be made of the records and accounts of the Association, unless it is waived annually by Unit Owners other than the Declarant of Units to which sixty percent (60%) of the votes are allocated, excluding the votes allocated to Units owned by the Declarant.

## SECTION 18 - DECLARANT CONTROL OF THE ASSOCIATION AND TRANSFER TO UNIT OWNERS

### 18.1 Declarant Control

Subject to Section 14.4, Declarant may control the Association, and, acting alone, appoint and remove the officers and members of the Board until the earlier of (a) sixty (60)



days after conveyance of seventy-five percent (75%) of the Units which may be created to Unit Owners other than a Declarant; (b) two (2) years after the last conveyance or transfer of record of a Unit except as security for a debt; (c) two (2) years after any Development Right to add new Units was last exercised; or (d) the date on which Declarant records an amendment to the Declaration pursuant to which Declarant voluntarily surrenders the right to further appoint and remove officers and members of the Board. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of that period pursuant to (a), (b) and (c) of this section, but in that event Declarant may require, for the duration of the period of Declarant Control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

## **18.2 Transfer of Control of Association**

Within sixty (60) days after termination of the period of Declarant Control pursuant to SECTION 18 of this Declaration, the Declarant shall deliver to the Association all property of the Unit Owners and of the Association held or controlled by Declarant, including, but not limited to:

18.2.1 The original or a photocopy of the recorded Declaration and each recorded amendment to the Declaration;

18.2.2 The Certificate of Incorporation and a copy or duplicate original of the Articles of Incorporation of the Association as filed with the Secretary of State;

18.2.3 The Bylaws of the Association;

18.2.4 The minute books, including all minutes, and other books and records of the Association;

18.2.5 Any rules and regulations that have been adopted;

18.2.6 Resignations of officers and members of the Board who are required to resign because Declarant is required to relinquish control of the Association;

18.2.7 The financial records, including canceled checks, bank statements, and financial statements of the Association, and source documents from the time of incorporation of the Association through the date of transfer of control to the Unit Owners;

18.2.8 Association funds or the control of the funds of the Association;

18.2.9 All tangible personal property of the Association, if any, represented by Declarant to be the property of the Association, or ostensibly the property of the Association, and an inventory of the property;

18.2.10 Except for alterations to a Unit done by a Unit Owner other than Declarant, a copy of Declarant's Plans and specifications utilized in the construction or remodeling of the Condominium, with a certificate of Declarant or a licensed architect or



engineer that the Plans and specifications represent, to the best of their knowledge and belief, the actual Plans and specifications utilized by Declarant in the construction or remodeling of the Condominium;

18.2.11 Insurance policies or copies thereof for the Condominium and Association;

18.2.12 Copies of any certificate(s) of occupancy that may have been issued for the Condominium;

18.2.13 Any other permits issued by governmental bodies applicable to the Condominium in force or issued within one (1) year before the date of transfer of control to the Unit Owners;

18.2.14 All written warranties that are still in effect for the Common Elements, or any other areas or facilities which the Association has the responsibility to maintain and repair, from the contractor, subcontractors, suppliers, and manufacturers and all owners' manuals or instructions furnished to Declarant with respect to installed equipment or Building systems;

18.2.15 A roster of Unit Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on Declarant's records and the date of closing of the first sale of each Unit sold by Declarant;

18.2.16 Any leases of the Common Elements and other leases to which the Association is a party;

18.2.17 Any employment contracts or service contracts in which the Association is one of the contracting parties or service contracts in which the Association or the Unit Owners have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service; and

18.2.18 All other contracts to which the Association is then a party.

### **18.3 Audit of Records Transferred**

Upon the transfer of control to the Unit Owners, the records of the Association shall be audited as of the date of transfer by an independent Certified Public Accountant in accordance with generally accepted auditing standards unless the Unit Owners, other than Declarant, by two-thirds (2/3) vote elect to waive the audit. The cost of the audit shall be a Common Expense unless otherwise provided in the Declaration. The accountant performing the audit shall examine supporting documents and records, including the cash disbursements and related paid invoices, to determine if expenditures were for Association purposes and the billings, cash receipts, and related records to determine if Declarant was charged for and paid the proper amount of Assessments.



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Kathy Hill, Skagit County Auditor

4/20/2000 Page 24 of 61 2:16:50PM

## **SECTION 19 - INSURANCE**

### **19.1 Insurance Coverage Provided by the Association**

Commencing not later than the time of the first conveyance of a Unit to a person other than Declarant, the Association shall maintain, to the extent reasonably available:

19.1.1 **Property Insurance.** Fire insurance, with extended coverage endorsements, in an amount as near as practicable to the full insurable replacement value (without deduction for depreciation, but less any other deductions which the Board may find reasonable after consultation with insurance consultants), covering the Common Elements, insuring against all risks of direct physical loss commonly insured against. The full insurable replacement value, exclusive of the value of Land, excavations, foundations, and other items normally excluded from property policies of property insurance, shall be reviewed and adjusted as necessary at each renewal date.

19.1.2 **Liability Insurance.** General comprehensive liability insurance, including medical payments insurance, insuring the Unit Owners, the Association, the Board, Declarant, and such others as may be designated by the Board against liability to the public or to the Unit Owners, and their invitees, guests, or tenants, incident to the Ownership or use of the Common Elements with coverage limits determined by the Board, but not less than \$1,000,000 for personal injuries and deaths arising out of a single occurrence, and \$50,000 (per accident) for property damage. Each such policy shall contain a Severability of Interest Endorsement or its equivalent which would preclude the insurer from denying a claim of the negligent acts or omissions of the Association or another Unit Owner. Each such policy shall contain protection against water damage liability, liability for nonowned and hired automobiles, liability for the property of others and any other coverage which may, from time to time, be required by regulations of the Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), Federal Housing Authority (FHA), Veterans Administration (VA), Government National Mortgage Association (GNMA), or other governmental or quasi-governmental agencies involved in the secondary mortgage market, so long as it may be a Mortgagee or Unit Owner within the project, except to the extent such coverage is not available or has been waived by such agency.

19.1.3 Worker's compensation insurance to the extent required by applicable laws.

19.1.4 Insurance against loss of personal property of the Association by fire, theft and other losses, with such deductible provisions as the Board deems advisable.

19.1.5 Insurance coverage, in such amounts as the Board may in its discretion determine, to indemnify the directors, officers and agents of the Association pursuant to Section 23.3.

19.1.6 Such other insurance as the Board deems advisable.



## **19.2 Insurance Ratings**

All insurance shall be obtained from an insurance carrier or carriers rated Class B or better general policyholder's rating by "Best's Key Rating Guide" or equivalent rating service, and licensed to do business in the State of Washington, or from Lloyd's of London. The Board shall have the insurance coverage reviewed by the insurance consultants of the Association not less often than once every year with respect to the adequacy of the policy limits and coverage.

## **19.3 Notices to Unit Owners Regarding Availability of Insurance Contracts**

If the insurance described in this Section is not reasonably available, the Association promptly shall send notice of that fact to be hand-delivered or sent prepaid by first class United States mail to all Unit Owners, to each Eligible Mortgagee, and to each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

## **19.4 Special Policy Requirements**

Insurance policies carried pursuant to Section 19.1.1 shall provide that:

19.4.1 Each Unit Owner is an insured person under the policy with respect to liability arising out of the Unit Owner's interest in the Common Elements or membership in the Association;

19.4.2 The insurer waives its right to subrogation under the policy against any Unit Owner, and any member of the Unit Owner's household;

19.4.3 No act or omission by any Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

19.4.4 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;

19.4.5 The insurer shall not be relieved from liability for loss occurring while the hazard to the insured property is increased, whether or not within the knowledge or control of the Board, or because of any breach of warranty or condition or any other act or neglect by the Board, the Unit Owners or any other persons acting under authority of any of them;

19.4.6 The policy may not be cancelled (whether or not requested by the Board) except by the insurer giving at least thirty (30) days prior written notice thereof to the Board and every other person in interest who shall have requested such notice of the insurer;

19.4.7 The policy contains a cross-liability endorsement wherein the rights of an insured party under the policy or policies shall not be prejudiced as respects actions against



another insured party thereunder, or other equivalent coverage in cases of liability of the Association or Unit Owners to other Unit Owners; and

19.4.8 The policy contains a standard mortgagee clause which shall:

19.4.8.1 Provide that any reference to a Mortgagee in such policy shall mean and include all holders of Mortgages of a Unit or a Unit lease or sublease, in their respective order and preference, whether or not named therein;

19.4.8.2 Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board, and Unit Owners or any persons acting under authority of any of them; and

19.4.8.3 Waive any provision invalidating such mortgage clause by reason of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the Mortgagee pay any premium thereon, and any contribution clause.

## **19.5 Unit Owner's Required Insurance**

19.5.1 Each Unit Owner shall at his own expense obtain fire insurance and extended coverage for the Building and all other improvements within his Unit.

19.5.2 Each Unit Owner may at his own expense, obtain additional insurance covering his property or his liability. However, no Unit Owner shall be entitled to maintain insurance coverage in any manner which would decrease the amount which the Board, or any trustee for the Board, on behalf of all the Unit Owners, would otherwise realize under any insurance policy which the Board may have in force at any particular time.

## **19.6 Insurance Proceeds**

Insurance proceeds for damage or destruction to any part of the Common Elements shall be paid to an insurance trustee designated by the Board, on behalf of the Association, which shall segregate such proceeds from other funds of the Association for use and payment as provided for in SECTION 20. The Association, acting through the Board, shall have the authority to settle and compromise any claim under insurance obtained by the Association and the insurer may accept a release and discharge of liability made by the Board on behalf of the named insureds under the policy; provided, however, that no provision of this Declaration shall entitle any Unit Owner or any other party to priority over the Mortgagee of that Unit with respect to the distribution of any insurance proceeds. Subject to the provisions of Section 20.1, the proceeds must be disbursed first for the repair or restoration of the damaged property, and Unit Owners and lienholders 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 Condominium is terminated.



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Kathy Hill, Skagit County Auditor  
4/20/2000 Page 27 of 61 2:16:50PM

21

## **SECTION 20 - DAMAGE OR DESTRUCTION - REPAIR AND RECONSTRUCTION**

### **20.1 Initial Board Determinations**

In the event of damage or destruction to any part of the Property, the Board shall promptly, and in all events within thirty (30) days after the date of damage or destruction, make the following determinations with respect thereto employing such advice as the Board deems advisable:

20.1.1 The nature and extent of the damage or destruction, together with an inventory of the improvements and property directly affected thereby.

20.1.2 An estimate of the cost to repair and reconstruct the damage and destruction, which estimate shall, if practicable, be based upon two (2) or more firm bids obtained from responsible contractors.

20.1.3 The anticipated insurance proceeds, if any, which will be available from insurance covering the loss, based on the amount paid or initially offered by the insurer.

20.1.4 The amount, if any, that the estimated cost of repair and reconstruction will exceed the anticipated insurance proceeds, and the amount of any Special Assessment which will be necessary in such event.

20.1.5 The Board's recommendations as to whether such damage or destruction should be repaired or reconstructed.

### **20.2 Notice of Damage or Destruction**

The Board shall promptly, and in all events within thirty (30) days after the date of damage or destruction, provide each Unit Owner and each Mortgagee with a written notice summarizing the initial Board determinations made under Section 20.1. If the Board fails to do so within said thirty (30) days, then any Unit Owner or Mortgagee may make the determinations required under Section 20.1 and give the notice required under this Section.

### **20.3 Definitions**

As used in this Section, the words "repair," "reconstruct," "rebuild" or "restore" mean restoring the Common Elements to substantially the same condition in which they existed prior to the damage or destruction. Modifications to conform to then applicable governmental rules and regulations or available means or construction may be made. As used in this SECTION 20, the term "emergency work" means that work which the Board deems reasonably necessary to avoid further damage, destruction or substantial diminution in value to the improvements and to reasonably protect the Unit Owners from liability from the condition of the site.



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Kathy Hill, Skagit County Auditor

4/20/2000 Page 28 of 61 2:16:50PM

## **20.4 Reconstruction**

20.4.1 Unless prior to the commencement of repair and reconstruction work (other than emergency work) the Unit Owners shall have decided not to repair and reconstruct in accordance with the provisions of either Section 20.5.3 or 20.6.3, the Board shall promptly repair and reconstruct the damage and destruction, use the available insurance proceeds therefor, and pay for the actual cost of repair and reconstruction in excess of insurance proceeds secured as a Common Expense which shall be specially assessed against all Units in proportion to their allocated undivided interests in the Common Elements.

20.4.2 The Board shall have the authority to employ architects and attorneys, advertise for bids, let contracts to contractors and others, and to take such other action as is reasonably necessary to accomplish the repair and reconstruction. The Board may, in its discretion, authorize the insurance carrier involved to proceed with the repair and reconstruction.

## **20.5 Limited Damage - Assessment Under \$3,500**

If the amount of the estimated Assessment determined under Section 20.1.4 does not exceed Three Thousand Five Hundred Dollars (\$3,500) for any one (1) Unit, the following provisions shall apply:

20.5.1 Either the Board or a requisite number of Unit Owners, within fifteen (15) days after the notice required under Section 20.2 has been given, may, but shall not be required to, call a special meeting of the Association to consider such repair and reconstruction.

20.5.2 Except for emergency work, no repair or reconstruction shall commence until after said fifteen (15) day period and until after the conclusion of said special meeting if such meeting is called within said fifteen (15) days.

20.5.3 A unanimous decision of the Unit Owners shall be required to avoid the provisions of subsection 20.4.1 and to determine not to repair and rebuild the damage and destruction; provided, that the failure of the Board or the Unit Owners within said fifteen (15) day period to call for said special meeting shall be conclusively deemed a unanimous decision to undertake such work.

## **20.6 Major Damage - Assessment Over \$3,500**

If the amount of the estimated Assessment determined under Section 20.1.4 exceeds Three Thousand Five Hundred Dollars (\$3,500) for any one (1) Unit, the following provisions shall apply:

20.6.1 The Board shall promptly, and in all events within thirty (30) days after the date of damage or destruction, call a special meeting of the Association to consider repair and reconstruction of such damage or destruction. If the Board fails to do so within said



thirty (30) day period, then any Unit Owner or Mortgagee may convene and conduct the meeting required under this Section.

20.6.2 Except for emergency work, no repair or reconstruction shall commence until the conclusion of the special meeting of the Association required under subsection 20.6.1.

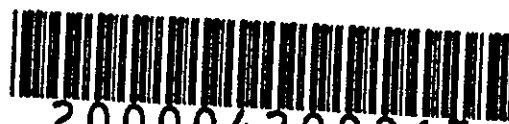
20.6.3 A concurring vote of eighty percent (80%) or more of the total voting power will be required to avoid the provision of Section 20.4.1 and to determine not to repair or reconstruct the damage or destruction; provided, that failure of the Board, the Unit Owners, or Mortgagees to convene the special meeting required under Section 20.6.1 within thirty (30) days after the date of damage or destruction shall be deemed a unanimous decision not to undertake such repair and reconstruction.

## 20.7 Decision Not to Restore – Disposition

In the event of a decision under either subsection 20.5.3 or 20.6.3 not to repair or reconstruct damage or destruction, the Board may nevertheless expend such of the insurance proceeds and Common Expense 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 or destroyed Property, and clearing, filling and grading the Land), and any remaining funds and the Property shall thereafter be held and distributed as follows: (a) 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 Condominium; and (b) the remainder of the proceeds shall be distributed to all the Unit Owners or lienholders, as their interest may appear, in proportion to their allocated undivided interests of all the Units in the Common Elements. Notwithstanding the provisions of this section, Section 20.1 of this Declaration governs the distribution of insurance proceeds if the Condominium is terminated.

## 20.8 Miscellaneous

The provisions of this Section shall constitute the procedure by which a determination is made by the Unit Owners to repair or reconstruct as provided in the Act. By accepting an interest in the Property, each Unit Owner and party claiming by, through, or under such Unit Owner hereby consents and agrees to the provisions hereof. In the event that any provision of this Section shall be determined to be invalid or unenforceable by any court of competent jurisdiction, such determination shall not affect the validity of any other provision of this Declaration. The purpose of this Section shall be to provide a fair and equitable method of allocating the costs of repair and reconstruction and making a determination for repair and reconstruction, if all or a portion of the improvements are damaged or destroyed, and the provisions hereof shall be liberally construed to accomplish such purpose.



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Kathy Hill, Skagit County Auditor  
4/20/2000 Page 30 of 61 2:16:50PM

## **SECTION 21 - CONDEMNATION**

### **21.1 Total Condemnation or Taking 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 which may not practically or lawfully be used for any purpose permitted by the Declaration, the award must compensate the Unit Owner for the Owner's Unit and its appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, that Unit's allocated interests are automatically reallocated to the remaining Units before the taking, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken as described in this Section shall thereafter be a Common Element.

### **21.2 Partial Condemnation or Taking of a Unit**

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 appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides: (a) that Unit's allocated undivided interest shall be reduced in proportion to the reduction in the size of the Unit, or on any other basis specified in the Declaration; and (b) the portion of the allocated interests divested from the partially acquired Unit shall be 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.

### **21.3 Partial Condemnation or Taking of Common Elements**

If part of the Common Elements is acquired by condemnation, the portion of the award attributable to the Common Elements taken shall be paid to the Board, which shall use the award to repair and reconstruct the damage done to the remaining Common Elements, and the remaining sum shall be treated as surplus funds under Section 15.3 of this Declaration.

## **SECTION 22 - MORTGAGEE PROTECTION**

### **22.1 Construction Mortgage**

A Construction Lender has financed the construction of the Buildings within the Units and improvements on the Property and holds a Deed of Trust on each separate Unit which will be reconveyed upon sale by Declarant. Construction Lender does not waive or consent to any modification of its rights thereunder, and retains all security interests against the Units and the Common Elements, except insofar as the same may be specifically relinquished by reconveyance of the Deeds of Trust signed by Construction Lender from time to time, for each Unit and its percentage of interest in the Common Elements, as each Unit is sold and conveyed, pursuant to agreement for such reconveyance made apart from the Declaration.



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## **22.2 Retention and Extension of Declarant's Control**

In the event that Declarant's obligation to any Mortgagee or deed of trust holder financing construction of the Condominium has not been paid in full at the time Declarant's control has expired, then said powers conferred upon Declarant in this Declaration shall be extended for an additional two (2) years if Construction Lender so requests in writing; provided, however, that said control extended under this Section shall not be extended, or if previously extended, shall terminate, when Units are sold pursuant to SECTION 18 of this Declaration, and provided further that Construction Lender will not unreasonably refuse to permit Declarant to relinquish Declarant's control, nor insist on retention should such retention at any time conflict with provisions of law, or if the relinquishment thereof be required by any proposed institutional first mortgagee of a Unit or by a mortgage insurer, or corporation or agency administering any program creating any form of market for mortgages.

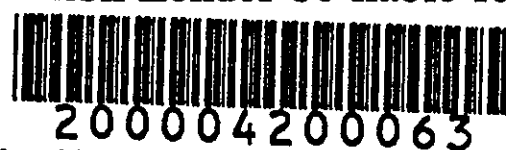
## **22.3 Rights of Construction Lender After Foreclosure**

Although no such rights are warranted to Mortgagees by any party, the following rights shall be accorded to Construction Lender to the extent permitted by law.

**22.3.1 Obtaining Declarant's Powers.** If the Construction Lender of the Condominium forecloses its mortgage or acquires a deed in lieu of foreclosure, and obtains possessory rights, legal title, or certificates of sale to the unsold Units and appurtenant Common Elements to which the mortgage liens extend, then Construction Lender may succeed to and assume, to the exclusion of the Declarant, the rights, powers and privileges of Declarant as set forth in this Declaration, and may further assign and transfer such rights or the right to have or obtain such rights to any other person.

**22.3.2 Appointment of Receiver.** Construction Lender shall be entitled to appointment of a receiver during the pendency of any foreclosure of its mortgage, if it accelerates its indebtedness. Said receiver shall immediately, upon appointment, succeed to and assume the rights and power of Declarant as set forth in this Declaration, and the receiver shall be entitled to sell unsold Units during the pendency of said foreclosure, and said sales shall be subject to confirmation by court order. All proceeds of such sales shall be accounted for and, after reasonable receiver's fees and costs of sale approved by the court, shall be applied in reduction of the indebtedness to Construction Lender.

**22.3.3 Liability of Construction Lender.** In the event Construction Lender obtains possessory rights, or any rights which may subject it to liability for Common Expense Assessments for any Unit, in any way as a result of the foreclosure of the mortgage financing construction of the Condominium, or by taking of a transfer in lieu of foreclosure, then said Construction Lender shall be liable for only that portion of any Assessments against any Unit to which Construction Lender is so entitled for which Declarant is liable under law and this Declaration. In no event will Construction Lender be liable for any past due Assessments



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Kathy Hill, Skagit County Auditor

4/20/2000 Page 32 of 61 2:16:50PM



which accrued or became due prior to the time Construction Lender obtained possession by foreclosure or by deed in lieu of foreclosure, except as provided in this Declaration or the Act.

22.3.4 Signature by Construction Lender. If this Declaration is signed by Construction Lender, such signature indicates that arrangements have been made to partially reconvey Units for sale, and that upon the first such release, Construction Lender accepts the Condominium status of the project, but until such first reconveyance the rights of Construction Lender against the entire property and each Unit are superior to the rights of any Purchaser of the project or of any portion or Unit thereof.

22.3.5 Liability for Past Due Assessments. The liens created under this Declaration upon any Unit for Assessments in favor of the Association shall be subject to the rights of the Mortgagee in the case of any indebtedness secured by Mortgages made in good faith and for value of the Unit or of all or a part of the Property which extend to the Unit, subject to the provisions of Section 16.2.2 of this Declaration. Where a Mortgagee or other Purchaser obtains possession of a Unit as a result of judicial or non-judicial foreclosure, such possessor and his successors and assigns shall not be liable for the share of the Common Expenses or Assessments due prior to such possession. To the extent there are unpaid Assessments for Common Expenses after foreclosure of any Mortgage as described in this Section, the unpaid Assessments shall be an additional Common Expense collectible from all of the Unit Owners, including the foreclosing Mortgagee, its successor or assignee.

22.3.6 Option to Pay Past Due Assessments. Unless otherwise prohibited by law, any Mortgagee may pay any unpaid Common Expenses payable with respect to the Unit on which he has a Mortgage, and upon such payment the Mortgagee shall have a lien on the Unit for the amounts paid of the same rank as the lien of his encumbrance.

22.3.7 Abandonment or Change of Condominium Status - Use of Hazard Insurance. Except for consequences provided by the Act for certain situations involving damage or destruction, or in cases of condemnation effected by judicial action, neither the Association nor the Board, nor the Unit Owners shall, without prior written approval of sixty-seven percent (67%) of all first priority institutional lenders: seek by act or omission to abandon or terminate the condominium status of the property; partition or subdivide any Unit; seek to abandon, partition, subdivide, encumber, or sell the Common Elements (but easements or grants to public utilities or governmental agencies, or for utility or public purposes, are permitted if they are required or if they are consistent with the use of the property for purposes of this Condominium); use hazard insurance proceeds from losses to any part of the Property for other than repair, restoration, rebuilding, reconstruction, or replacement of the Property; or seek to change the single family residential or related uses as defined and limited in this Declaration to which any Unit of the Common Elements is restricted.

22.3.8 Additional Rights and Privileges of Mortgagees. Each Mortgagee shall be entitled to the following rights and privileges upon written request to the Association:



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Kathy Hill, Skagit County Auditor

4/20/2000 Page 33 of 61 2:16:50PM

22.3.8.1 In the event a Unit Owner has pledged his vote to a Mortgagee, to cast the vote pursuant to the authority given under the terms of the pledge involved; provided, however, that a Unit Owner may only pledge his vote to a Mortgagee during the period of a pending foreclosure.

22.3.8.2 To receive written notice contemporaneously with notice sent to the Unit Owner at the address designated by the Mortgagee of:

22.3.8.2.1 All annual or special meetings of the Association;

22.3.8.2.2 Any default by the Unit Owner in the performance of any obligations under this Declaration, the Bylaws or the Act which is not cured within thirty (30) days;

22.3.8.2.3 Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which the Mortgagee holds the Mortgage;

22.3.8.2.4 Any condemnation or eminent domain proceeding affecting the Property;

22.3.8.2.5 Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

22.3.8.2.6 All other matters for which the Unit Owner is entitled to written notice under the terms of this Declaration, the Bylaws, the Act, or other applicable laws, ordinances or administrative rules and regulations.

(The notices required under subparagraphs 22.3.8.2.1 and 22.3.8.2.4 shall be given to the Mortgagee on or before the time or times that comparable notices are to be given to the Unit Owners.)

22.3.8.3 To examine the books and records of the Association and to be given a copy of the annual financial statement and report of the Association, as provided in Section 17.2.2. If no audited statement is required by Section 17.2.2, the Mortgagee may have an audited statement prepared at its own expense.

22.3.8.4 To be given the endorsements of insurance policies and the notices, and to exercise all other rights and privileges with respect to insurance matters which are specified in SECTION 19 for the benefit of Mortgagees.

22.3.8.5 To be permitted to designate a representative to attend all meetings of the Association.

## **22.4 Termination of Professional Management**

The prior written approval of fifty-one percent (51%) of all institutional holders of a first Mortgage on Units in Westpoint, a Condominium, including all Mortgagees which have

previously required professional management, shall be required before any decision by the Association to terminate professional management and to assume self-management.

### **22.5 Amendments of Declaration and Bylaws**

Notwithstanding any other provision contained in this Declaration, no amendment of this Section or of any other provision of this Declaration or of the Bylaws shall affect the rights of the holder of any Mortgage recorded prior to the recordation of such amendment, unless the holder shall have consented to such amendment in writing.

## **SECTION 23 - LIMITATION OF LIABILITY**

### **23.1 Liability for Utility Failure, Etc.**

Except to the extent covered by insurance obtained by the Board pursuant to SECTION 19, neither the Association, the Board, the Declarant, nor the managing agent exercising the powers of the Board shall be liable for: (a) any failure of any utility or other service to be obtained and paid for by the Board; (b) for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust, or sand which may lead or flow from outside or inside the Unit, or from any pipes, drains, conduits, appliances, or equipment, or from any other place; or (c) from inconvenience or discomfort resulting from any action taken to comply with any law, ordinance, or orders of a governmental authority. No diminution or abatement of Common Expense Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

### **23.2 No Personal Liability**

So long as a Board member, Association committee member, Association officer, Declarant, or Declarant's managing agent exercising the powers of the Board, has acted in good faith within the applicable standard of care set forth in Section 14.4.9, without willful or intentional misconduct, upon the basis of such information as may be possessed by such person, then no such person shall be personally liable to any Unit Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of such person; provided, that this Section shall not apply where the consequences of such act, omission, error or negligence are covered by insurance obtained by the Board pursuant to SECTION 19.

### **23.3 Indemnification of Board Members**

Each Board member, Association committee member, Association officer, Declarant or Declarant's managing agent exercising the powers of the Board, shall be indemnified by the Unit Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of being or having held such position, or any settlement



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Kathy Hill, Skagit County Auditor

4/20/2000 Page 35 of 61 2:16:50PM

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thereof, whether or not he holds such position at the time such expenses or liabilities are incurred, except in such cases wherein such person is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association.

## **SECTION 24 – EASEMENTS**

### **24.1 In General**

It is intended that in addition to rights under the Act and other easements rights created in this Declaration, each Unit has an easement in and through each other Unit (as shown on the Survey Map and Plans) and the Common Elements for all water, sewer, electric, gas, telephone, cable, storm drain and other utilities and for reasonable access thereto, as required to effectuate and continue proper operation of this Condominium Plan. Each Unit, as it is constructed, is granted an easement to which each other Unit, and all Common Elements are subject to an easement, for the location and maintenance of all of the original equipment, facilities and utilities for such Units. The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement through Common Elements reserved by the Act. Unit 31 is subject to a PUD water pipeline easement as shown on the Survey Map and Plans.

### **24.2 Authority**

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

### **24.3 Association Functions**

There are hereby reserved to the Association (and to Declarant prior to the transfer of Declarant Control pursuant to Section 18.2) a reasonable right of entry to any Unit to perform the proper maintenance of the Property, and such easements as are necessary to perform the duties and obligations of the Association as set forth in this Declaration, the Bylaws, and the Act.

### **24.4 Encroachments**

Each Unit and all Common Elements are hereby declared to have easements over all adjoining Units and Common Elements for the purpose of accommodating and maintaining any encroachment due to engineering errors, errors in original construction, settlement or shifting of the Building within each Unit, or any other similar cause, and any encroachment due to Building overhang or projection; provided, that in no event shall a valid easement for encroachment be created in favor of a Unit Owner if said encroachment occurred due to the



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willful act or acts with full knowledge of said Unit Owner. In the event a Unit or any Common Element is partially or totally destroyed, and subsequently repaired or reconstructed, minor encroachments over adjoining Units and Common Elements shall be permitted, and there shall be valid easements for the maintenance of said encroachments so long as they shall exist. Said encroachments, if any, and resulting easements, shall not be construed as encumbrances affecting the marketability of title to any Unit.

## **SECTION 25 - AMENDMENT OF DECLARATION, SURVEY MAP AND PLANS**

### **25.1 Approval of Unit Owners**

Except in cases of amendments which may be made by Declarant, under RCW 64.34.232(6) or RCW 64.34.236, the Association under RCW 64.34.060, 64.34.220(5), 64.34.228(3), 64.34.244(1), 64.34.248, or 64.34.268(8), or certain Unit Owners under RCW 64.34.228(2), 64.34.244(1), 64.34.248(2), or Section 25.4 below, the Declaration, including the Survey Maps and Plans, may be amended only by vote or agreement of Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

### **25.2 Execution of Amendment**

Amendments to the Declaration required by the Act to be recorded by the Association 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 and without any other signature.

### **25.3 Recording**

Every amendment to the Declaration must be recorded in each County in which any portion of the Condominium is located, and is effective only upon recording.

### **25.4 Exceptions**

Except to the extent expressly permitted or required by the Act and as set forth in this Declaration, no amendment may create or increase Special Declarant Rights, increase the number of Units, change the boundaries of any Unit, the allocated interests of a Unit, or the uses to which any Unit is restricted, in the absence of the vote or agreement of the Owner of each Unit particularly affected and the Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated excluding the votes allocated to Declarant or such larger percentage as this Declaration provides.

### **25.5 Special Declarant's Rights**

No amendment may restrict, eliminate, or otherwise modify any Special Declarant Right provided in the Declaration without the consent of Declarant and any Mortgagee of record with a security interest in the Special Declarant Right or in any Real Property subject thereto, excluding Mortgagees of Units owned by persons other than Declarant.

## **25.6 Limitation of Action**

No action to challenge the validity of an amendment adopted by the Association pursuant to this Section may be brought more than one (1) year after the amendment is recorded.

## **25.7 Approval by Mortgagees**

Notwithstanding any of the foregoing, fifty-one percent (51%) of all Mortgagees who have requested notification of amendments must give prior written approval to any material amendment to the Declaration, including any of the following:

- 25.7.1 Voting rights;
- 25.7.2 Assessments, Assessment liens and subordination of such liens;
- 25.7.3 Reserves for maintenance, repair and replacement of Common Elements;
- 25.7.4 Insurance or fidelity bonds;
- 25.7.5 Responsibility for maintenance and repair;
- 25.7.6 Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the Condominium;
- 25.7.7 The boundaries of any Unit;
- 25.7.8 Reallocation of interest in the Common Elements, or rights to their use;
- 25.7.9 Convertibility of Units into Common Elements or of Common Elements into Units;
- 25.7.10 Leasing of Units other than as set forth in this Declaration;
- 25.7.11 Imposition of any restrictions on the right of a Unit Owner to sell or transfer his Unit;
- 25.7.12 Decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgagee;
- 25.7.13 Restoration or repair (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration, the Act, or the Bylaws;
- 25.7.14 Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or
- 25.7.15 Any provisions which are for the express benefit of Mortgage holders, Eligible Mortgagees or eligible insurers or guarantors of first Mortgages on Units.



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Kathy Hill, Skagit County Auditor

4/20/2000 Page 38 of 61 2:16:50PM



## **25.8 Amendment to Record Change in Service of Process**

The Board (or Temporary Board) may record any changes in the name or address of the person authorized to receive service of process under SECTION 13 without any approval of the Unit Owners; provided, that any such amendment shall recite the approval of the Board (or Temporary Board) and shall be signed by any officer of the Association designated for that purpose or in the absence of any other designation by the president of the Association.

## **25.9 Amendments by Declarant**

In addition to the foregoing, Declarant may amend this Declaration and the Survey Map and Plans without the consent or approval of the Board or the Unit Owners, as follows:

25.9.1 To add additional Units or real property to the Condominium pursuant to the exercise of Declarant's development rights and Special Declarant's Rights created in this Declaration;

25.9.2 To correct or revise the boundaries or descriptions of the Buildings, Units, and/or Common Elements to reflect their locations as built;

25.9.3 To make such reasonable changes as may from time to time be required by a Mortgagee; provided, that any such changes shall not affect the allocation of undivided interest in the Common Elements or materially and adversely affect the rights of the Unit Owners or other Mortgagees;

25.9.4 To execute and record amendments; or

25.9.5 To commemorate the exercise of Development Rights and Special Declarant Rights pursuant to this Declaration.

25.9.6 If any Unit is financed through the Veteran's Administration, neither the Declaration nor the Survey Map and Plans shall be amended without the prior written consent of the Veterans' Administration until the Board has been elected pursuant to Section 14.4.3

## **SECTION 26 - TERMINATION OF CONDOMINIUM**

### **26.1 Approval by Unit Owners**

Except in the case of a taking of all the Units by condemnation, the Condominium may be terminated only by agreement of Unit Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated.

### **26.2 Termination Agreement**

An agreement to terminate must be evidenced by the execution of a termination agreement or ratifications thereof, in the same manner as a deed, by the requisite number of Unit Owners. The termination agreement must specify a date after which the agreement will

be void unless it is recorded before that date and shall contain a description of the manner in which the creditors of the Association will be paid or provided for. A termination agreement and all ratifications thereof must be recorded in Skagit County and is effective only upon recording. A termination agreement may be amended by complying with all of the requirements of this Section and the Act.

### **26.3 Sale of Common Elements and Units**

A termination agreement may provide that all the Common Elements and Units of the Condominium shall be sold following termination. If, pursuant to the agreement, any Real Property in the Condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

### **26.4 Ownership after Termination**

The Association, on behalf of the Unit Owners, may contract for the sale of Real Property in the Condominium, but the contract is not binding on the Unit Owners until approved pursuant to Sections 26.1 and 26.2. If any Real Property in the Condominium is to be sold following termination, title to that Real Property, upon termination, vests in the Association as trustee for the holders of all interests in the Units. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association shall continue in existence with all powers it had before termination. Proceeds of the sale must be distributed to Unit Owners and lien holders as their interests may appear, in proportion to the respective interests of Unit Owners as provided in Section 26.7 below. Unless otherwise specified in the termination agreement, as long as the Association holds title to the Real Property, each Unit Owner and the Unit Owner's successors in interest have an exclusive right to occupancy of the portion of the Real Property that formerly constituted the Owner's Unit. During the period of that occupancy, each Unit Owner and the Owner's successors in interest shall remain liable for all Assessments and other obligations imposed on Unit Owners by the Act or this Declaration.

### **26.5 Tenancy in Common**

If the Real Property constituting the Condominium is not to be sold following termination, title to all the Real Property in the Condominium vests in the Unit Owners upon termination as tenants-in-common in proportion to their respective interests as provided in Section 26.7, and liens on the Units shall attach accordingly. While the tenancy in common exists, each Unit Owner and the Unit Owner's successors in interest have an exclusive right to occupancy of the portion of the Real Property that formerly constituted the Owner's Unit.

### **26.6 Payment to Creditors**

Following termination of the Condominium, the proceeds of any sale of Real Property, together with the assets of the Association, are held by the Association as trustee for Unit Owners and holders of liens on the Units and creditors of the Association as their interests may

appear. No such proceeds or assets may be disbursed to the Unit Owners until all of the creditors of the Association have been paid or provided for. Following termination, creditors of the Association holding liens on the Units, which were recorded or perfected under RCW 4.64.020 before termination, may enforce those liens in the same manner as any such lien holder.

## **26.7 Division of Ownership after Termination**

The respective interests of Unit Owners after termination are as follows:

26.7.1 Except as provided in Section 26.7.2, the respective interests of Unit Owners are the fair market values of their Units and Common Element interests immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Unit Owners and shall become final unless disapproved, within thirty (30) days after distribution, by Unit Owners of Units to which twenty-five percent (25%) of the votes in the Association are allocated. In the event of disapproval of the appraisal by said Unit Owners, the Property shall be reappraised until there is no such disapproval. The proportion of any Unit Owner's interest to that of all Unit Owners is determined by dividing the fair market value of that Owner's Unit and Common Element interest by the total fair market values of all the Units and Common Elements.

26.7.2 If any Unit is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all Unit Owners shall be their respective Common Element interests immediately before the termination.

## **26.8 Suspension of Right of Partition**

The right of partition under Chapter 7.52 RCW shall be suspended and said suspension shall continue unless and until no binding obligation to sell exists three (3) months after the recording of the termination agreement, the binding sale agreement is terminated, or one (1) year after the termination agreement is recorded, whichever first occurs.

## **SECTION 27 - COVENANTS RUNNING WITH THE LAND**

The covenants, conditions, restrictions, uses, limitations and obligations contained in this Declaration shall be deemed to run with the Land, shall be a burden and benefit upon the Units and all other portions of the property, shall be binding upon all persons acquiring or owning any interest therein, their grantees, successors, heirs, executors, administrators and assigns, and shall supplement the Act and be and remain effective independently of the Act, if it should for any reason or in any respect be or become inapplicable. This Declaration shall no longer apply if the property is removed from under the Act and discontinued as a Condominium.



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Kathy Hill, Skagit County Auditor

4/20/2000 Page 41 of 61 2:16:50PM

## SECTION 28 - WAIVER

The failure of the Association, the Board of Directors, its officers or agents, or Declarant, to require in any one or more instances a strict performance of or compliance with any of the terms, covenants, conditions or restrictions contained in this Declaration, the Bylaws, or the Act, or to serve any notice or to institute any action or proceeding, shall not be construed as a waiver or release thereof, but they shall continue and remain in full force and effect. The receipt by any of said parties of any sum paid by a Unit Owner, with or without the knowledge of the breach of or failure to comply with any such provision, shall not be deemed a waiver thereof. No waiver, express or implied, of any such provision shall be effective unless made in writing pursuant to procedures specified herein, or in the Bylaws or in the Act, or if no such procedures are specified, then in writing and signed by the president of the Association pursuant to the authority contained in a resolution of the Board.

## SECTION 29- ENTRY FOR REPAIRS

The Association shall have the right to have access to each Unit from time to time during reasonable hours as may be necessary for maintenance, repair, or replacement of any of the Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units.

## SECTION 30 - NOTICES

Any notice permitted or required to be delivered under the provisions of this Declaration, the Bylaws or the Act may be delivered either personally or by mail. If delivery is by mail, any such notice shall be deemed to have been delivered forty-eight (48) hours after a copy has been deposited in the United States mail, postage prepaid for first class mail, addressed to the person entitled to such notice at the most recent address given in writing by such person to the Association. Notice to a Unit Owner or Owners shall be sufficient if delivered or addressed to the Unit if no other mailing address has been given the Association. Notices to be given to the Association may be given to the person named in SECTION 13 hereof until the Board of Directors has been elected pursuant to Section 14.4.3, and thereafter shall be given to the president or secretary of the Association.

## SECTION 31 - CABLE TELEVISION SYSTEM

The Real Property described in Appendix A, all of the Units located thereof, and the Owners thereof are subject to and bound by that certain letter of agreement executed by Declarant and \_\_\_\_\_ providing for the installation, maintenance and operation of a cable television and FM signal distribution system for the entire Condominium project. A copy of the agreement is available upon request to Declarant or to the Board. The agreement permits the Board to revoke the same without cause and without payment of a termination fee, upon no more than thirty (30) days notice.

## **SECTION 32 - PHASED DEVELOPMENT**

### **32.1 Development in Phases.**

32.1.1 Declarant intends to develop and establish this Condominium in four (4) phases: Westpoint, a Condominium, which is created by recording this Declaration, and Phases 2, 3 and 4 which will be added in the future. Westpoint, a Condominium contains ten (10) Units. All phases will be created and added upon the Land described on Appendix A. Phase 2 will contain five (5) Units, Phase 3 will contain eleven (11) Unit, and Phase 4 will contain ten (10) Units. Section 32.6 states the Development Rights and Special Declarant Rights reserved for Declarant in Phases 2, 3 and 4. Future phases may be created and added in any order selected solely by Declarant. The Survey Map and Plans, filed simultaneously herewith, depict a survey of the location, the vertical and horizontal boundaries, the number, and the dimensions of each Unit. The provisions regarding the Condominium shall be effective immediately to establish Westpoint, a Condominium (including the Land and all Units and improvements constructed thereon) as a Condominium under the Act. No provisions regarding each future phase shall be effective to establish that phase (including the Units, Buildings and improvements constructed on the Land) as part of the Condominium under the Act until Declarant records an amendment to the Declaration for a future phase (and an amendment to the Survey Map and Plans, if necessary) pursuant to Section 32.1.3.

32.1.2 The Declarant expects to add all the phases, but it is not required to add Phases 2, 3 and 4. If Phases 2, 3 and/or 4 are not in fact added within seven (7) years from the date of the recording of this Declaration, Westpoint, a Condominium (or Westpoint, a Condominium and any combination with Phases 2, 3 and/or 4) shall constitute a complete condominium, and the land described for the uncompleted phase or phases shall remain within the Condominium.

32.1.3 Declarant shall execute and record an amendment to this Declaration stating that Westpoint, a Condominium and any future phase, and subsequently any additional future phases(s) (including the Units, Buildings and other improvements thereon), are established as a Condominium under the Act. From and after the recording of said amendment, all of the Units, Buildings and other improvements located in Phase 2 (and later in Phase 3 and Phase 4), shall constitute a single condominium pursuant to the Act and the provisions of this Declaration. In conjunction with said amendment to the Declaration, an updated or revised Survey Map and Plans shall be recorded describing the Condominium and each future phase as it is added.

32.1.4 All Common Elements for each phase will be utilized by Unit Owners of the next succeeding phase as it is established, and the additional Unit Owners will, after the effective date of the subsequent phase, also share in the expenses of the Common Elements in the succeeding phase. Owners in each prior phase shall utilize the Common Elements for the subsequent phase and also share in the expenses therefor.



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Kathy Hill, Skagit County Auditor  
4/20/2000 Page 43 of 61

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## **32.2 Phase Allocation of Undivided Interests in Common Elements, Liability for Common Expenses and Votes in the Association**

32.2.1 After each future phase is incorporated into the Condominium, the undivided interest in the Common Elements and the liability for Common Expenses for each Unit shall be according to the percentage of undivided ownership for each Unit stated in the Amendment to this Declaration recorded by Declarant, provided that the allocation of undivided interests shall be in equal shares.

32.2.2 In all matters relating to the Association, each Unit shall be entitled to one (1) vote and all votes shall be of equal weight.

## **32.3 Easement for Phased Developments**

In addition to the general easements reserved by the Act and by reference in other sections of this Declaration, there is reserved a nonexclusive easement in favor of the Declarant and Declarant's successors and assigns, over and across the Condominium and, for ingress and egress, and over and across easements, roadways and utility lines specified or established in and for the Condominium for the benefit of all future phases. This reserved easement shall entitle Declarant and Declarant's successors and assigns, for development of all future phases, to tie into water, sewer, storm sewer, electrical, gas, telephone or other utility lines of all variety, and to connect with roadways or utilities systems developed and located in the completed phases of the Condominium; provided, however, that Declarant shall bear the cost of tie-ins to said utilities, and shall not tie into such utilities in a manner that impairs or significantly reduces the quality of utility service to the Units in the Condominium.

## **32.4 Phased Amendment**

Declarant, upon Declarant's sole signature, may execute and file the amendments to the Declaration (and to the initial Survey Map and Plans, if necessary) as provided under subsection 32.1.3, said amendments to contain and depict such information and data as is necessary to establish the Units in Phase 2, Phase 3 and Phase 4. Said amendments shall contain and depict such information and data as is necessary to establish the Units in Phase 2, Phase 3 and Phase 4, as part of the Condominium pursuant to the Act. Such amendments shall not require the consent of any Unit Owner other than Declarant.

## **32.5 Liens Arising in Connection with Future Phases**

At the time the amendments are made incorporating each future phase into the Condominium, no lien arising in connection with Declarant's ownership of and construction of the improvements in phases not yet added to the Condominium shall adversely affect the rights of the existing Unit Owners or the priority of the first Mortgages on existing Units. All taxes, assessments, mechanics liens and other charges affecting the Land in future phases not yet added to the Condominium, shall be paid or otherwise satisfactorily provided for by Declarant.



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Kathy Hill, Skagit County Auditor

4/20/2000 Page 44 of 61 2:16:50PM

Westpoint, a Condominium



## **32.6 Development Rights and Special Declarant Rights Reserved by Declarant**

**32.6.1** The following development rights are hereby reserved for use by Declarant in each of the future phases;

**32.6.1.1** Declarant may create and add five (5) Units in Phase 2, and eleven (11) Units in Phase 3, and ten (10) Units in Phase 4.

**32.6.1.2** All of the Buildings within the Units shall be substantially the same architecture and substantially the same exterior finishes as the existing Buildings within the Units on the Property of the Condominium.

**32.6.1.3** Declarant shall have seven (7) years from the date of recording of this Declaration to add the additional Units pursuant to Section 32.6.1.1.

**32.6.2** The following Special Declarant Rights are hereby reserved for use by Declarant in Phases 2, 3 and 4:

**32.6.2.1** Declarant may complete the improvements indicated on the Survey Map and Plans for the respective phases, and as described in this Declaration;

**32.6.2.2** Declarant may maintain a sales office, management office, signs advertising the Units for sale, and models on the property until all Units are sold;

**32.6.2.3** Declarant may use easements through the Common Elements as may be reasonably necessary for the purposes of discharging Declarant's obligations or exercising the Development Rights and Special Declarant Rights or making improvements within the Condominium and in Phases 2, 3 and 4; and

**32.6.2.4** Declarant shall execute and record an amendment to this Declaration and an amendment to the Survey Map and Plans to reflect the addition of the Units referred to in Section 32.6.1.1. No signature other than Declarant's shall be required on any such amendment. Upon the recordation of each such amendment, the Units described therein shall be added to the Condominium and shall thereafter share in the ownership of the Common Elements, the liability for common expenses, and shall have the right to vote in matters of the Association as set forth in SECTION 10.

## **32.7 Binding Effect**

The provisions of this SECTION 32 shall constitute irrevocable covenants running with all phases and shall be irrevocably binding upon Declarant, and its successors and assigns, with respect to all phases.

## **SECTION 33 - SEVERABILITY**

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.



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Kathy Hill, Skagit County Auditor

4/20/2000 Page 45 of 61 2:16:50PM

#### SECTION 34 - INTERPRETATION

The provisions of this Declaration shall be liberally construed to effectuate its purposes to create a uniform plan for the development and operation of the property as a Condominium project under the Act.

#### SECTION 35 - EFFECTIVE DATE

This Declaration shall take effect upon recording with the Skagit County Recorder.

#### SECTION 36 - SURVEY MAP AND PLANS

The Survey Map and Plans referred to herein were filed with the Recorder of Skagit County, Washington, simultaneously with the recording of this Declaration under Skagit County Recorder's No. 200004200062, in Volume \_\_\_\_\_ of Condominiums, pages \_\_\_\_\_ through \_\_\_\_\_.

#### SECTION 37 - INFLATIONARY INCREASES IN DOLLAR LIMITS

The dollar limits specified in this Declaration may, in the discretion of the Board, be increased proportionately to adjust for any inflation in the value of the dollar by the Consumer Price Index for all Urban Consumers (1982 - 1984 = 100 (semi-annual)) specified for "All Items," relating to Seattle-Tacoma-Bremerton, Washington and issued by the Bureau of Labor Statistics of the United States Department of Labor, or any successor index. If the index for Seattle-Tacoma-Bremerton is discontinued, the National Index shall be used in this calculation. In the event the index shall hereafter be converted to a different standard reference base or otherwise revised, the increase shall be made with the use of such conversion factor, formula or table for converting the index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or, failing such publication, by any other nationally recognized publisher of similar statistical information. In the event the index shall cease to be published, then there shall be substituted for the index such other index as the Board deems reasonable.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

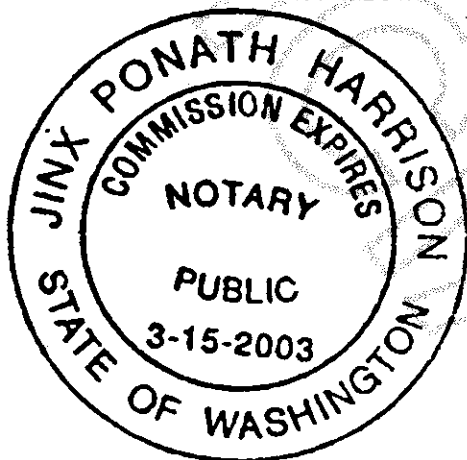
ALLEGRE-MITZEL PARTNERSHIP,  
a Washington general partnership

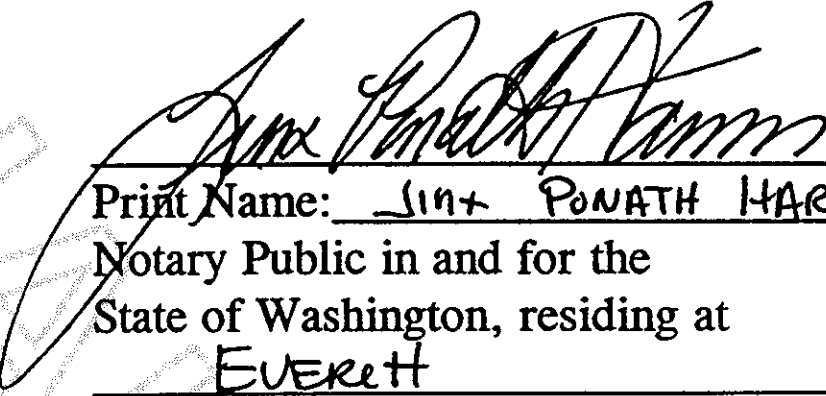
By   
Daniel R. Mitzel, General Partner



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SNOHOMISH )

THIS IS TO CERTIFY that on this 17 day of APRIL, 2000, before me, a Notary public in and for the State of Washington, duly commissioned and sworn, came Daniel Mitzel, personally known or having presented satisfactory evidence to be a general partner in Allegre-Mitzel Partnership, a Washington general partnership, the general partnership that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said general partnership for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.



  
Print Name: Jinx Ponath Harrison  
Notary Public in and for the  
State of Washington, residing at  
Everett  
Expiration Date: 3-15-2003



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Kathy Hill, Skagit County Auditor  
4/20/2000 Page 47 of 61 2:16:50PM

**APPENDIX A TO  
DECLARATION FOR  
WESTPOINT, A Condominium**

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The legal description of the property is as follows:

SEE ATTACHED



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Kathy Hill, Skagit County Auditor  
4/20/2000 Page 48 of 61 2:16:50PM

April 19, 2000

LEGAL DESCRIPTION FOR:

Parcel "A":

Tracts 3 and 4 as shown on survey map recorded February 25, 1983, Book 4 of Surveys, page 85, under Auditor's File No. 8302250027, records of Skagit County, Washington, being a portion of the West Half of the West Half of Government Lot 2, Section 6, Township 34 North, Range 4 East, W.M.

Parcel "B":

That portion of Government Lot 3, Section 6, Township 34 North, Range 4 East, W.M., described as follows:

Beginning at a point on the East line of said Government Lot 3, 186 feet South of the Northeast corner thereof; **thence** North  $88^{\circ} 42'$  West, parallel to the North line of said Lot 3, 100 feet; **thence** South parallel to the East line of said Lot 3 to the North right-of-way line of the Great Northern Railway Company Railroad; **thence** North  $63^{\circ} 36'$  East along said railway company's North right-of-way line to the East line of said Lot 3; **thence** North along the East line of said Lot 3, 573.22 feet, more or less, to the **POINT OF BEGINNING**.

EXCEPT that portion of Government Lot 3, Section 6, Township 34 North, Range 4 East, W.M., described as follows:

Beginning at a point on the East line of said Government Lot 3, said point lying South  $0^{\circ} 01' 24''$  East, 186.00 feet from the Northeast corner thereof; **thence** South  $0^{\circ} 01' 24''$  East, along said East line, 5.00 feet; **thence** North  $88^{\circ} 41' 40''$  West, parallel with the North line of said Government Lot 3, a distance of 100.00 feet; **thence** North  $0^{\circ} 01' 24''$  West, parallel with said East line of Government Lot 3, a distance of 5.00 feet; **thence** South  $88^{\circ} 41' 40''$  East, 100.00 feet to the **TRUE POINT OF BEGINNING**.

Situate in the County of Skagit, State of Washington.

Parcel "C":

A non-exclusive easement for ingress, egress, and utilities established by that certain quit claim deed recorded March 16, 2000 as Auditor's File No. 200003160086 over, across and under a portion of Tract 2 of survey recorded in Book 4 of Surveys, page 85, records of Skagit County, Washington; being a portion of Government Lot 2 of Section 6, Township 34 North, Range 4 East, W.M.



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Kathy Hill, Skagit County Auditor

4/20/2000 Page 49 of 61 2:16:50PM

March 28, 2000

Legal Description For: Westpoint Condominium, Phase I

Those portions of Tract 3 and Tract 4 as shown on Survey recorded in Book 4 of Surveys at page 85, records of Skagit County, Washington, under Auditor's File No. 8302250027, being in a portion of Government Lot 2, Section 6, Township 34 North, Range 4 East, W.M., described as follows:

Beginning at the Northeast corner of said Tract 3; thence South  $0^{\circ} 01' 00''$  West, along the East lines of said Tract 3 and said Tract 4, a distance of 285.10 feet to the Southeast corner of said Tract 4; thence South  $63^{\circ} 34' 59''$  West, along the South line of said Tract 4, a distance of 206.26 feet; thence North  $0^{\circ} 01' 24''$  West, 183.03 feet; thence South  $89^{\circ} 07' 22''$  East, 26.98 feet to the beginning of a curve to the right, having a radius of 29.50 feet; thence Southerly along the arc of said curve to the right, through a central angle of  $89^{\circ} 05' 58''$ , an arc distance of 45.88 feet; thence South  $0^{\circ} 01' 24''$  East, 45.85 feet; thence South  $89^{\circ} 07' 22''$  East, 36.00 feet; thence North  $0^{\circ} 01' 24''$  West, 52.11 feet to the beginning of a curve to the right, having a radius of 19.50 feet; thence Northerly along the arc of said curve to the right, through a central angle of  $35^{\circ} 14' 51''$ , an arc distance of 12.00 feet, to the beginning of a curve to the left, having a radius of 40.50 feet; thence Northerly along the arc of said curve to the left, through a central angle of  $70^{\circ} 29' 43''$ , an arc distance of 49.83 feet to the beginning of a curve to the right, having a radius of 19.50 feet; thence Northerly along the arc of said curve to the right, through a central angle of  $35^{\circ} 14' 52''$ , a distance of 12.00 feet; thence North  $0^{\circ} 01' 24''$  West, 105.06 feet; thence North  $42^{\circ} 36' 44''$  West, 7.39 feet; thence South  $89^{\circ} 58' 36''$  West, 5.07 feet; thence North  $0^{\circ} 01' 24''$  West, 38.21 feet to a point on the North line of said Tract 3, which lies South  $89^{\circ} 58' 36''$  West, 103.01 feet from the **POINT OF BEGINNING**; thence North  $89^{\circ} 58' 36''$  East, along said North line, 103.01 feet to the **POINT OF BEGINNING**.

Situate in the County of Skagit, state of Washington.



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Kathy Hill, Skagit County Auditor  
4/20/2000 Page 50 of 61 2:16:50PM



March 28, 2000

Legal Description For: Westpoint Condominium, Phase II

Those portions of Tract 3 and Tract 4 as shown on Survey recorded in Book 4 of Surveys at page 85, records of Skagit County, Washington, under Auditor's File No. 8302250027, being in a portion of Government Lot 2, Section 6, Township 34 North, Range 4 East, W.M., described as follows:

Commencing at the Northeast corner of said Tract 3; **thence** South  $89^{\circ} 58' 36''$  West, along the North line of said Tract 3, a distance of 174.96 feet to an angle point in said Tract 3; **thence** South  $0^{\circ} 01' 24''$  West, along the West line of said Tract 3, a distance of 24.00 feet to an angle point in said Tract 3 and **TRUE POINT OF BEGINNING**; **thence** South  $89^{\circ} 58' 36''$  West, along the North line of said Tract 3, a distance of 50.00 feet to a point on the West margin of Pauli Drive as shown on said Survey; **thence** South  $0^{\circ} 01' 24''$  East, along said West margin, 42.60 feet; **thence** North  $89^{\circ} 07' 22''$  West, 94.51 feet; **thence** South  $0^{\circ} 01' 24''$  East, 2.34 feet to the beginning of a curve to the left having a radius of 219.50 feet; **thence** Southerly along the arc of said curve to the left, through a central angle of  $12^{\circ} 29' 58''$ , an arc distance of 47.88 feet to the beginning of a curve to the right, having a radius of 244.50 feet; **thence** Southerly, along the arc of said curve to the right, through a central angle of  $5^{\circ} 49' 44''$ , an arc distance of 24.87 feet to the beginning of a curve to the left, having a radius of 24.50 feet; **thence** Southerly, along the arc of said curve to the left, through a central angle of  $18^{\circ} 10' 24''$ , an arc distance of 7.77 feet; **thence** North  $65^{\circ} 07' 58''$  East, 5.00 feet to the beginning of a non-tangent curve to the left, having a radius point which bears North  $65^{\circ} 07' 58''$  East, 19.50 feet; **thence** Easterly along the arc of said curve to the left, through a central angle of  $64^{\circ} 15' 20''$ , an arc distance of 21.87 feet; **thence** South  $89^{\circ} 07' 22''$  East, 127.46 feet to the beginning of a curve to the left, having a radius of 24.50 feet; **thence** Northerly, along the arc of said curve to the left, through a central angle of  $90^{\circ} 54' 02''$ , an arc distance of 38.87 feet; **thence** North  $0^{\circ} 01' 24''$  West, 12.50 feet; **thence** North  $89^{\circ} 58' 36''$  East, 5.00 feet; **thence** North  $0^{\circ} 01' 24''$  West, 97.17 feet to a point which lies North  $89^{\circ} 58' 36''$  East, 46.02 feet from the **TRUE POINT OF BEGINNING**; **thence** North  $89^{\circ} 58' 36''$  West, 46.02 feet to the **TRUE POINT OF BEGINNING**.

Situate in the county of Skagit, state of Washington.



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Kathy Hill, Skagit County Auditor

4/20/2000 Page 51 of 61 2:16:50PM

March 28, 2000

Legal Description For: Westpoint Condominium, Phase III

Those portions of Government Lot 3 and Tract 4, lying within Government Lot 2, all of Section 6, Township 34 North, Range 4 East, W.M., as shown on Survey recorded in Book 4 of Surveys, at page 85, records of Skagit County, Washington, under Auditor's File No. 8302250027, described as follows:

Commencing at the Southeast corner of said Tract 4; **thence** South  $63^{\circ} 34' 59''$  West, along the South line of said Tract, 206.26 feet to the **TRUE POINT OF BEGINNING**; **thence** continuing South  $63^{\circ} 34' 59''$  West, along said South line, a distance of 157.41 feet to the Southwest corner of said tract; **thence** continuing South  $63^{\circ} 34' 59''$  West, 111.61 feet; **thence** North  $0^{\circ} 01' 24''$  West, 228.90 feet; **thence** South  $88^{\circ} 41' 40''$  East, 81.50 feet; **thence** South  $0^{\circ} 01' 24''$  East, 39.69 feet; **thence** South  $89^{\circ} 58' 36''$  East, 5.00 feet; **thence** South  $0^{\circ} 01' 24''$  East, 6.35 feet to the beginning of a curve to the left, having a radius of 35.50 feet; **thence** Easterly along the arc of said curve to the left, through a central angle of  $250^{\circ} 31' 39''$ , an arc distance of 155.22 feet to the beginning of a curve to the right, having a radius of 24.50 feet; **thence** Northerly along the arc of said curve to the right, through a central angle of  $70^{\circ} 31' 39''$ , an arc distance of 30.16 feet; **thence** North  $0^{\circ} 01' 24''$  West, 47.21 feet to the beginning of a curve to the right, having a radius of 19.50 feet; **thence** Northeasterly along the arc of said curve to the right, through a central angle of  $90^{\circ} 54' 02''$ , an arc distance of 30.94 feet; **thence** South  $89^{\circ} 07' 22''$  East, 103.71 feet to a point which lies North  $0^{\circ} 01' 24''$  West, 183.03 feet from the **TRUE POINT OF BEGINNING**; **thence** South  $0^{\circ} 01' 24''$  East, 183.03 feet to the **TRUE POINT OF BEGINNING**.

Situate in the county of Skagit, state of Washington.



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Kathy Hill, Skagit County Auditor

4/20/2000 Page 52 of 61 2:16:50PM

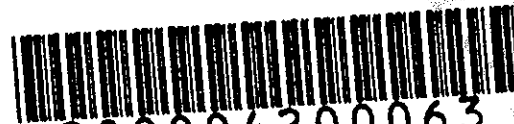
March 28, 2000

Legal Description For: Westpoint Condominium, Phase IV

That portion of Government Lot 3 of Section 6, Township 34 North, Range 4 East, W.M., described as follows:

Commencing at the Southwest corner of Tract 4 as shown on Survey, recorded in book 4 of Surveys at page 85, records of Skagit County, Washington, under Auditor's File No. 8302250027; **thence** South  $63^{\circ} 34' 59''$  West, along the Westerly extension of the South line of said tract 4, a distance of 111.61 feet; **thence** North  $0^{\circ} 01' 24''$  West, 228.90 feet to the **TRUE POINT OF BEGINNING**; **thence** South  $88^{\circ} 41' 40''$  East, 81.50 feet; **thence** North  $0^{\circ} 01' 24''$  West, 101.45 feet to the beginning of a curve to the left, having a radius of 208.50 feet; **thence** Northerly along the arc of said curve to the left, through a central angle of  $12^{\circ} 29' 58''$ , an arc distance of 45.48 feet to the beginning of a curve to the right, having a radius of 255.50 feet; **thence** Northerly, along the arc of said curve to the right, through a central angle of  $12^{\circ} 29' 58''$ , an arc distance of 55.74 feet; **thence** North  $0^{\circ} 01' 24''$  West, 160.85 feet to the beginning of a curve to the right, having a radius of 75.50 feet; **thence** Northerly, along the arc of said curve to the right, through a central angle of  $44^{\circ} 21' 36''$ , an arc distance of 58.45 feet to the beginning of a curve to the left, having a radius of 29.50 feet; **thence** Northerly along the arc of said curve to the left, through a central angle of  $34^{\circ} 30' 20''$ , an arc distance of 17.77 feet to a point on the East line of said Government Lot 3, which lies South  $0^{\circ} 01' 24''$  East, 194.58 feet from the Northeast corner of said Government Lot; **thence** North  $0^{\circ} 01' 24''$  West, along said East line, 3.58 feet; **thence** North  $88^{\circ} 41' 40''$  West, 100.00 feet to a point which lies North  $0^{\circ} 01' 24''$  West, 435.10 feet from the **TRUE POINT OF BEGINNING**; **thence** South  $0^{\circ} 01' 24''$  East, 435.10 feet to the **TRUE POINT OF BEGINNING**.

Situate in the county of Skagit, state of Washington.



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Kathy Hill, Skagit County Auditor

4/20/2000 Page 53 of 61 2:16:50PM

**APPENDIX B TO  
DECLARATION FOR  
WESTPOINT, A CONDOMINIUM**

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<b>Unit</b>	<b>Approximate Square Footage</b>
1	3388
2	3557
3	3455
4	3525
5	3524
6	2867
7	3106
8	3255
9	3260
10	3260
11	3804
12	4783
13	6762
14	4639
15	3307
16	3292
17	4132
18	3999
19	3514
20	3340
21	3340
22	3964
23	5013
24	4480
25	4247



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Kathy Hill, Skagit County Auditor

4/20/2000 Page 54 of 61 2:16:50PM

**APPENDIX B TO  
DECLARATION FOR  
WESTPOINT, A CONDOMINIUM  
(continued)**

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<b>Unit</b>	<b>Approximate Square Footage</b>
26	3685
27	3342
28	3683
29	3716
30	3717
31	4522
32	4163
33	4568
34	3802
35	3802
36	4210



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Kathy Hill, Skagit County Auditor

4/20/2000 Page 55 of 61 2:16:50PM

**APPENDIX C TO  
DECLARATION FOR  
WESTPOINT, A CONDOMINIUM**

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A description of the Units by Phases is as follows:

Note: At the time of the recording of the Declaration there are no Buildings constructed in any Unit. Upon completion of the construction of the Buildings, this Appendix C shall be amended to state the following information for each such Unit.

Unit by Phases	Floor Plan (See Note 1)	No. of Bedrooms	No. of Baths
<u>Phase 1</u>			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
<u>Phase 2</u>			
32			
33			
34			
35			
36			



200004200063  
Kathy Hill, Skagit County Auditor  
4/20/2000 Page 56 of 61 2:16:50PM



**APPENDIX C TO  
DECLARATION FOR  
WESTPOINT, A CONDOMINIUM  
(continued)**

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**Phase 3**

11  
12  
13  
14  
15

16  
17  
18  
19  
20

21

**Phase 4**

1  
2  
3  
4  
5

6  
7  
8  
9  
10



200004200063  
Kathy Hill, Skagit County Auditor  
4/20/2000 Page 67 of 61 2:16:50PM

## TABLE OF CONTENTS

SECTION 1 - DEFINITIONS .....	1
SECTION 2 - DESCRIPTION OF LAND .....	5
SECTION 3 - NUMBER OF UNITS CREATED .....	5
SECTION 4 - DESCRIPTION OF UNITS and buildingS .....	5
SECTION 5 - BOUNDARIES .....	5
SECTION 6 - DESCRIPTION OF COMMON ELEMENTS .....	5
SECTION 7 - DESCRIPTION OF LIMITED COMMON ELEMENTS .....	5
SECTION 8 - PARKING SPACES.....	5
SECTION 9 - DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS RESERVED BY DECLARANT .....	5
SECTION 10 - ALLOCATION OF UNDIVIDED INTERESTS IN THE COMMON ELEMENTS, COMMON EXPENSES, AND VOTES IN THE ASSOCIATION.....	6
SECTION 11 - OCCUPANCY AND USE COVENANTS, CONDITIONS AND RESTRICTIONS .....	6
11.1 Residential Use .....	6
11.2 Leasing of Units .....	7
11.3 Timesharing .....	7
11.4 Sales Facilities of Declarant .....	7
11.5 Parking .....	7
11.6 Maintenance of Interiors of Units .....	8
11.7 Maintenance, Repair and Replacement of Common Elements and Enforcement of Maintenance, Repair and Replacement Obligations of Unit Owners. ....	8
11.8 Uniform Exterior Appearance.....	9
11.9 Insurance .....	9
11.10 Signs .....	9
11.11 Pets.....	9
11.12 Offensive Activity .....	9
11.13 Alteration of Units .....	9
11.14 Alterations of Common Elements .....	10
11.15 Additional Structures Outside Any Building.....	10
11.16 Bylaws and Rules and Regulations .....	10
SECTION 12 - COMPLIANCE WITH DECLARATION .....	10
12.1 Enforcement .....	10
12.2 No Waiver of Strict Performance .....	11
SECTION 13 - SERVICE OF PROCESS .....	11
SECTION 14 - OWNERS' ASSOCIATION.....	11
14.1 Membership .....	11
14.2 Voting .....	12
14.3 Bylaws.....	13
14.4 Management of the Association by the Board.....	13



14.5	Authority of the Association.....	15
SECTION 15 - COMMON EXPENSES - ASSESSMENTS.....		16
15.1	Prior to Initial Assessment.....	16
15.2	Assessments and Budget for Common Expenses .....	16
15.3	Surplus Funds.....	19
SECTION 16 - LIENS FOR ASSESSMENTS .....		19
16.1	Lien in Favor of Association.....	19
16.2	Priority of Association Lien .....	19
16.3	Recording Not Required .....	20
16.4	Limitation on Enforcement .....	20
16.5	Enforcement of Lien.....	20
16.6	Appointment of Receiver.....	21
16.7	Personal Liability of Unit Owners.....	21
16.8	Certificate of Assessment .....	21
SECTION 17 - ASSOCIATION ACCOUNTS AND RECORDS .....		21
17.1	Bank Accounts .....	21
17.2	Financial Records .....	22
SECTION 18 - DECLARANT CONTROL OF THE ASSOCIATION AND TRANSFER TO UNIT OWNERS .....		22
18.1	Declarant Control .....	22
18.2	Transfer of Control of Association.....	23
18.3	Audit of Records Transferred .....	24
SECTION 19 - INSURANCE .....		25
19.1	Insurance Coverage Provided by the Association.....	25
19.2	Insurance Ratings.....	26
19.3	Notices to Unit Owners Regarding Availability of Insurance Contracts.....	26
19.4	Special Policy Requirements .....	26
19.5	Unit Owner's Required Insurance.....	27
19.6	Insurance Proceeds.....	27
SECTION 20 - DAMAGE OR DESTRUCTION - REPAIR AND RECONSTRUCTION .....		28
20.1	Initial Board Determinations.....	28
20.2	Notice of Damage or Destruction .....	28
20.3	Definitions .....	28
20.4	Reconstruction .....	29
20.5	Limited Damage - Assessment Under \$3,500.....	29
20.6	Major Damage - Assessment Over \$3,500 .....	29
20.7	Decision Not to Restore - Disposition.....	30
20.8	Miscellaneous .....	30
SECTION 21 - CONDEMNATION .....		31
21.1	Total Condemnation or Taking of a Unit .....	31
21.2	Partial Condemnation or Taking of a Unit.....	31
21.3	Partial Condemnation or Taking of Common Elements.....	31
SECTION 22 - MORTGAGEE PROTECTION .....		31
22.1	Construction Mortgage .....	31



200004200063

22.2	Retention and Extension of Declarant's Control .....	32
22.3	Rights of Construction Lender After Foreclosure .....	32
22.4	Termination of Professional Management .....	34
22.5	Amendments of Declaration and Bylaws.....	35
SECTION 23 - LIMITATION OF LIABILITY .....		35
23.1	Liability for Utility Failure, Etc. ....	35
23.2	No Personal Liability .....	35
23.3	Indemnification of Board Members .....	35
SECTION 24 – EASEMENTS.....		36
24.1	In General.....	36
24.2	Authority .....	36
24.3	Association Functions .....	36
24.4	Encroachments.....	36
SECTION 25 - AMENDMENT OF DECLARATION, SURVEY MAP AND PLANS .....		37
25.1	Approval of Unit Owners.....	37
25.2	Execution of Amendment.....	37
25.3	Recording .....	37
25.4	Exceptions .....	37
25.5	Special Declarant's Rights .....	37
25.6	Limitation of Action .....	38
25.7	Approval by Mortgagees.....	38
25.8	Amendment to Record Change in Service of Process.....	39
25.9	Amendments by Declarant.....	39
SECTION 26 - TERMINATION OF CONDOMINIUM.....		39
26.1	Approval by Unit Owners .....	39
26.2	Termination Agreement .....	39
26.3	Sale of Common Elements and Units.....	40
26.4	Ownership after Termination.....	40
26.5	Tenancy in Common.....	40
26.6	Payment to Creditors .....	40
26.7	Division of Ownership after Termination.....	41
26.8	Suspension of Right of Partition .....	41
SECTION 27 - COVENANTS RUNNING WITH THE LAND .....		41
SECTION 28 - WAIVER.....		42
SECTION 29 - ENTRY FOR REPAIRS .....		42
SECTION 30 - NOTICES .....		42
SECTION 31 - CABLE TELEVISION SYSTEM.....		42
SECTION 32 - PHASED DEVELOPMENT .....		43
32.1	Development in Phases.....	43
32.2	Phase Allocation of Undivided Interests in Common Elements, Liability for Common Expenses and Votes in the Association.....	44
32.3	Easement for Phased Developments .....	44
32.4	Phased Amendment .....	44
32.5	Liens Arising in Connection with Future Phases .....	44



200004200063

32.6	Development Rights and Special Declarant Rights Reserved by Declarant.....	45
32.7	Binding Effect.....	45
SECTION 33 - SEVERABILITY.....		45
SECTION 34 - INTERPRETATION .....		46
SECTION 35 - EFFECTIVE DATE .....		46
SECTION 36 - SURVEY MAP AND PLANS.....		46
SECTION 37 - INFLATIONARY INCREASES IN DOLLAR LIMITS.....		46



200004200063

Kathy Hill, Skagit County Auditor

4/20/2000 Page 61 of 61 2:16:50PM