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ISLAND TITLE COMPANY
QA 3585 ✓
ACCOMMODATION RECORDING

DECLARATION

OF

COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS
AND RESERVATIONS

FOR

FOREST RIDGE P.U.D.

Grantor: Vintage Investments, Inc.

Grantee: The Public

Abbreviated Legal Description:

Parcel No.:

**DECLARATION AND COVENANTS, CONDITIONS,
RESTRICTIONS AND RESERVATIONS FOR
FOREST RIDGE**

A Planned Unit Development

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**DECLARATION OF COVENANTS, CONDITIONS
RESTRICTIONS AND RESERVATIONS
FOR
FOREST RIDGE**

A Planned Unit Development

Vintage Investments, Inc., being the sole owner of the hereinafter described real property and improvements thereon, does hereby make this Declaration for **Forest Ridge Planned Unit Development** in Anacortes, Washington, pursuant to Chapter 16.40 of the Anacortes City Code.

**ARTICLE I
INTERPRETATION**

1.1 **Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of this planned unit development under the provisions of Washington law.

1.2 **Definitions.**

1.2.1 "Act" shall mean the Condominium Act of Washington, (RCW 64.34), as amended. Although the project is a planned unit development and not a condominium, certain rights of lot owners are the same as or similar to rights which are granted under the Condominium Act of Washington and therefore certain provisions of the statute are referred to in this Declaration.

1.2.2 "Association" or "Association of lot owners" means all of the lot owners acting as a group in accordance with the Bylaws and with the Declaration as it is duly recorded or as they may be lawfully amended, and as provided for in Article 9.



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1.2.3 "Board" shall mean the Board of Directors of the Association as provided for in Section 10.1.

1.2.4 "Building" means a building, situated on two lots, or a building situated on only one lot.

1.2.5 "Bylaws" shall mean Bylaws of the Association as provided for in Section 9.5.

1.2.6 "Common Areas (and facilities)" shall mean those portions of the property as provided for in Article 6 and as limited by Article 7.

1.2.7 "Common expenses" includes: (a) all sums lawfully assessed against the lot owners by the Association of lot owners; (b) expenses of administration, maintenance, repair, or replacement of the common areas and facilities; (c) expenses agreed upon as common expenses by the Association of lot owners; (d) expenses of maintaining and repairing the exterior of all buildings, including windows and doors; (e) expenses for providing outside lighting for the property; (f) expenses for the cost of insuring all of the buildings; (g) and expenses for providing and maintaining security gates to the property (if the Association should elect to have security gates).

1.2.8 "Common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses.

1.2.9 "Declarant" shall mean the undersigned (being the sole owner(s) of the property described in Schedule A hereof).

1.2.10 "Declaration" means this instrument and any amendment hereto.

1.2.11 "Exterior Surfaces" (where the phrase is used in defining the boundaries of apartments or limited common areas) shall include paint or other such decorative surface coverings or finishes.

1.2.12 "Limited common areas and facilities" includes those common areas and facilities designated in the declaration, and as provided in Article 7, as it is duly recorded or as it may be lawfully amended, as reserved for use of certain lots or to the exclusions of those lots.

1.2.13 "Lot" means one of the lots or tracts shown on the map (Subdivision Map of Forest Ridge Planned Unit Development). The boundary to each lot is as shown on said subdivision map.

1.2.14 "Lot number" means the number, letter, or combination thereof, designating the lot in the Declarations duly recorded or as it may be lawfully amended.

1.2.15 "Lot owner" or "owner" means the person or persons owning a lot, as herein defined, in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, together with an undivided interest in a like estate of the common areas and facilities in the percentage specified and established in the declarations as duly recorded or as it may be lawfully amended.

1.2.16 "Majority" or "majority of lot owners" means the lot owners with fifty-one percent or more of the votes in accordance with the percentages assigned in the declaration, as duly recorded or as it may be lawfully amended, to the lot for voting purposes.

1.2.17 "Mortgage" shall mean a recorded mortgage or deed of trust that creates a lien against a lot, and shall also mean a real estate contract for the sale of a lot.

1.2.18 "Mortgage Foreclosure" shall include a deed of trust sale and a deed given in lieu of such foreclosure or sale, and a forfeiture of a real estate contract or a deed given in lieu of such forfeiture.

1.2.19 "Mortgagee" shall mean the beneficial owner or the designee of the beneficial owner, of an encumbrance on a lot created by a mortgagee or deed of trust, and shall also mean the vendor, or the designee of a vendor, of a real estate contract for the sale of a lot.

1.2.20 "Mortgagee of the Developer" shall mean the holder of a mortgage on the real property which this Declaration affects, which mortgage was recorded prior to the recordation of this Declaration. The term "mortgagee of the developer" does not include mortgagees of the individual lots.

1.2.21 "Mortgagee of a Lot" shall mean the holder of a mortgage on a lot, which mortgage was recorded simultaneously with or after the recordation of this Declaration.

1.2.22 "Person" shall include any individual, corporation, partnership, association, trustee, or other legal entity.

1.2.23 "Project" means the planned unit development situated on the property, said project being the subject matter of this Declaration.



1.2.24 "Property" means the land, the building(s), all improvements and structures thereon, all owned in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, and all easements, rights and appurtenances belonging thereto, none of which shall be considered as a security or security interest, and all articles of personalty intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this Declaration.

1.3 **Covenants Running with Land.** It is intended that this Declaration shall be operated as a set of covenants running with the land.

1.4 **Lot Boundaries.** The boundary of each lot is as shown on the subdivision map.

1.5 **Percentage of Mortgagees.** For purposes of determining the percentage of first mortgagees approving a proposed decision or course of action in cases where a mortgagee holds first mortgages on more than one lot, such mortgagee shall be deemed a separate mortgagee for each such first mortgage so held.

1.6 **Declarant is Original Owner.** Declarant is the original owner of all lots and property and will continue to be deemed the owner thereof except as conveyances or documents charging such ownership regarding specifically described lots are filed of record.

1.7 **Captions and Schedules.** Captions given to the various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various schedules referred to herein and attached hereto shall be deemed incorporated herein by reference as though fully set forth where such reference is made.

1.8 **Inflationary Increase in Dollar Limits.** The dollar amounts specified in Articles 10, 13, 14 and 18 may, at the discretion of the Board, be increased proportionately by the increase in the Consumer Price Index for the City of Anacortes, Washington (or the smallest geographical areas containing Anacortes, Washington), For All Urban Consumers, prepared by the United States Department of Labor for the base period, March, 2000, to adjust for any inflation in the value of the dollar.

1.9 **Singular Shall Include Plural.** Reference to the singular shall include the plural and vice versa; and reference to the masculine shall include the feminine and vice versa.



ARTICLE 2

DESCRIPTION OF LAND; EFFECT OF THIS DECLARATION

2.1 **Description of Land.** The lands on which the building(s) and improvements provided for in this Declaration are located as described in Schedule A attached hereto.

2.2 **Effect of this Declaration.** By acceptance of a conveyance, contract for sale, lease, rental agreement, any form of security agreement or instrument, or any privilege of use or enjoyment, respecting the property of any apartment in the property subject to this Declaration, it is agreed that this Declaration, together with the Map referred to herein and incorporated herein by reference, states covenants, conditions, restrictions, and reservations effecting a common plan for the planned unit development mutually beneficial to all of the described lots, and that the covenants, conditions, restrictions, reservations and plan are binding upon the entire property and upon each such lot as a parcel of realty, and upon the lot's owner or possessor, and his heirs, personal representative, successors and assigns, through all successive transfers of all or part of the property or any of security interest(s) therein, without requirement of further specific reference or inclusion in deeds, contracts or security instruments, and regardless of any subsequent forfeitures, foreclosures, or sales of lots under security instruments.

ARTICLE 3

DESCRIPTION OF BUILDINGS AND IMPROVEMENTS

3.1 **Recreational Facilities.** A description of the recreational facilities, if any, included within the planned unit development is set forth in Schedule E attached hereto.

ARTICLE 4

DESCRIPTION OF LOTS

4.1 **Lot Location.** Each lot is identified and shown on the Map filed in conjunction with this Declaration. Each lot is identified by a letter and/or number. The exact location of each lot is shown in the Map filed in conjunction herewith.

ARTICLE 5

ACCESS

5.1 **Access to Common Ways.** Each lot has directional access to common areas,



walks, parking areas and driveways. All streets are part of the common areas and are to be maintained by the Association of lot owners.

5.2 Access to Public Streets. The common areas have direct access to the public street(s) as identified in Schedule A.

5.3 Unobstructed Easement for Fire Equipment. An easement, 20 feet in width, the centerline of which is the center of each private street in the project, is hereby granted to the City of Anacortes, for ingress and egress of Fire Fighting equipment, and nothing shall be constructed or placed in that 20 foot easement which will impede or impair Fire Fighting trucks or equipment.

ARTICLE 6

DESCRIPTION OF COMMON AREAS AND FACILITIES; CERTAIN ITEMS MAY BE MADE OWNER'S RESPONSIBILITY

6.1 Except as otherwise specifically reserved, assigned or limited by the provisions of Article 7 hereof, the common areas and facilities consist of the following:

6.1.1 The land described in Schedule A, with the exception of the land contained in each lot.

6.1.2 Installations of central services such as power, light, gas, pipes, conduits and wires up to the boundary of each lot.

6.1.3 The driving areas which provide access to the limited common areas for parking and any guest parking or other parking areas not assigned to lots.

6.1.4 The yards, gardens, landscaped areas and walkways which surround and provide access to the building(s) or are used for recreational purposes.

6.1.5 Premises for the loading, or for use of persons in charge of, or maintaining, the property, if any.

6.1.6. The RV/boat storage facility.

6.1.6.1. Determination of policies for permitted use, space assignment, allocation and priority of space assignments, maintenance, restrictions, rules and regulations of the RV/boat storage facility shall be the responsibility of the Association. The Association may provide for a fee for storage or other such permitted usage of the RV/boat storage facility.



6.1.7 The recreational facilities, if any, as described in Schedule E attached hereto.

6.1.8 All other of the parts necessary or convenient to its existence, maintenance and safety, or normally in common use.

6.1.9 Certain items which could ordinarily be considered common areas, such as but not limited to screen doors, window screens, awnings, storm windows, planter boxes and the like, may, pursuant to the decision of a majority of owners and subject to specification in the Bylaws or administrative rules, be designated as items to be furnished and maintained by lot owners at their individual expense, in good order, according to standards and requirements set by the Board by rule, regulation or Bylaw.

6.1.10 The detention pond.

6.1.10.1 The detention pond shall be maintained in accordance with the intent of this Declaration regarding common areas and expenses. Maintenance of the detention pond shall be in accordance with the rules and regulations promulgated and/or approved by the City Engineer of the City of Anacortes.

ARTICLE 7

DESCRIPTION OF LIMITED COMMON AREAS; EASEMENTS FOR EXCLUSIVE USE RESERVED FOR CERTAIN LOTS

7.1 **Limited Common Areas.** The limited common areas and facilities are reserved for the exclusive use of the owner or owners of the lot or lots to which they are adjacent or assigned and consist of:

7.1.1 The patio, deck or lanai, if any, individual entrance way and individual stairway, if any, which is adjacent to each building.

7.1.2 The parking space(s) assigned to each lot as more particularly shown on the Map, the boundaries of said parking stall being defined by the striping enclosing said parking space.

7.2 **Parking, Etc., Assignment.** Declarant reserves the right to make the initial assignment of one or more parking space(s) to each lot, such assignment either being made on an attached schedule to this Declaration, by amendment to this Declaration, as shown on the Map, or by designation contained in the lot deed, contract or other conveyance executed by the Declarant.



With respect to each lot, Declarant shall make such assignment prior to or contemporaneously with the closing of the sale of such lot by Declarant. The balance of any parking spaces, if any, not assigned to specific lots shall constitute part of the common area to be used in accordance with the rules and regulations established from time to time by the Board.

ARTICLE 8

PERCENTAGE OF UNDIVIDED INTEREST IN COMMON AREAS

The percentages for each lot in the common areas are stated in Schedule B attached hereto. Each lot includes all the limited common areas appertaining thereto and the percentage of undivided interest in the common areas appertaining thereto.

ARTICLE 9

OWNERS' ASSOCIATION

9.1 **Form of Association.** The Association shall be an incorporated association. The rights and duties of the members and of such corporation shall be governed by the provisions of the Act and of this Declaration.

9.2 Membership.

9.2.1 **Qualifications.** Each owner (including Declarant) shall be a member of the Association and shall be entitled to one membership for each lot so owned; provided, that if a lot has been sold on contract, the contract purchaser shall exercise the rights of the lot owner for purposes of the Association, this Declaration and the Bylaws, except as hereinafter limited, and shall be the voting representative for the lot unless otherwise specified. Ownership of a lot shall be the sole and exclusive qualification for membership in the Association.

9.2.2 **Transfer of Membership.** The Association membership of each owner (including Declarant) shall be appurtenant to the lot giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to said lot and then only to the transferee of title to such lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a lot shall operate automatically to transfer the membership of the Association appurtenant to the lot to the new owner thereof.

9.3 Voting.

9.3.1 **Number of Votes.** The total voting power of all owners shall be one



hundred (100) votes and the total number of votes available to the owner(s) of any one lot shall be equal to one hundred (100) times the percentage of undivided interest in the common areas and facilities appertaining to such lot.

9.3.2 Voting Owner. There shall be one (1) voting representative of each lot. Declarant shall be considered an "owner" as that term is used herein, and shall be the voting representative with respect to any lots owned by Declarant. If a person (including Declarant) owns more than one lot, he shall have the votes for each lot owned. The voting representative shall be designated by the owner of each lot by written notice to the Board, and need not be an owner. The designation shall be revocable at any time by actual notice to the Board from a party having an ownership interest in the lot, or by actual notice to the Board of the death or judicially declared incompetence of any party having an ownership interest in the lot. This power of designation and revocation may be exercised by the guardian of a lot owner, and the administrator or executor of an owner's estate. Where no designation has been made, the voting representative of each lot shall be the group composed of all its owners. All owners may be present at any meeting of the Association members.

9.3.3 Joint Owner Disputes. The vote for a lot must be cast as a single vote and fractional votes shall not be allowed. In the event that joint owners are unable to agree among themselves as to how their vote shall be cast, the majority of said joint owners shall prevail and the vote allocated to such lot shall be cast accordingly. In the event more than one vote is cast for a particular lot, none of said votes shall be counted and said votes shall be deemed void.

9.3.4 Pledged Votes. In the event the record owner has pledged in writing his vote regarding specified matters to a mortgagee under a duly recorded mortgage, or to the vendor under a duly recorded real estate contract, only the vote of such mortgagee or vendor shall be recognized in regard to the specified matters upon which the vote is so pledged, and only during a period of foreclosure involving a mortgage and only during a period of forfeiture involving a real estate contract and only if a copy of the instrument with this pledge has been filed with the Board. Amendments to this subsection shall only be effective upon the written consent of all the voting owners and their respective mortgagees and vendors, if any.

9.4 Meetings, Audits, Notices of Meetings.

9.4.1 Annual Meetings, Audits. There shall be an annual meeting of the owners in the first quarter of each fiscal year at such reasonable place and time as may be designated by written notice of the Board delivered to an owner no less than fourteen (14) nor more than sixty (60) days prior to the date fixed for said meeting. At the annual meeting, there shall be presented an audit of the common expenses, itemizing receipts and disbursements for the preceding fiscal year, and the allocation



thereof to each owner, and the estimated common expenses for the coming fiscal year. Within thirty (30) days after adoption of any proposed budget the Board of Directors shall provide a summary of the budget to all the lot owners and shall set a date for a meeting of the lot 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 owners of lots 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 lot owners ratify a subsequent budget proposed by the Board of Directors.

9.4.2 Special Meetings. Special meetings of the owners may be called at any time for the purpose of considering matters which by the terms of the Act or of this Declaration require the approval of all or some of the owners, or for any other reasonable purpose, or after request signed by a majority of the Board. Such meetings shall be called by written notice of the president, or by written request by owners having at least twenty percent (20%) of the total votes, which notice shall be delivered not less than ten (10) nor more than sixty (60) days prior to the date fixed for said meeting. The notice shall specify the date, time and place of the meeting, and the matters to be considered. No business other than that set forth in the notice shall be transacted at the meeting.

9.5 Bylaws of Association.

9.5.1 Adoption of Bylaws. Bylaws for the administration of the Association and the planned unit development property, and for other purposes not inconsistent with the Act or with the intent of this Declaration, may be adopted at a regular or special meeting by the Association upon the vote of owners holding at least sixty percent (60%) of the total voting power as set forth in Section 9.3.1. Notice of the time, place and purpose of such meeting shall be delivered to each owner not less than ten (10) nor more than sixty (60) days prior to such meeting. Amendments to the Bylaws may be adopted in the same manner as provided for the original adoption of the Bylaws by the owners pursuant to this Section 9.5.1. Declarant may adopt initial Bylaws.

9.5.2 Bylaw Provisions. The Bylaws may contain provisions identical to those provided in this Article 9, and may contain non-inconsistent supplementary provisions regarding the operation of the planned unit development and administration of the property. The Bylaws shall establish such provisions for a quorum, ordering of meeting and details regarding the giving of notice as may be required for the proper administration of the Association and the property.



ARTICLE 10

MANAGEMENT OF THE PLANNED UNIT DEVELOPMENT

10.1 Management by Declarant. Until a date two (2) years from the date of recording this Declaration, or the date on which Declarant shall have closed the sales of lots having seventy-five percent (75%) of the voting power as set forth in Section 9.3.1, or the date on which Declarant elects to permanently relinquish all of its authority under this Section 10.1 by written notice to all owners, whichever date first occurs, the property shall be managed and the Association organized as follows, in the exercise of the sole discretion of the Declarant:

10.1.1 So long as no temporary Board is then entitled to exercise management authority under Section 10.1.2, Declarant, or a managing agent selected by Declarant shall have the power and authority to exercise all the rights, duties and functions of the Board, including but not limited to enacting reasonable administrative rules, contracting for required services, property and insurance, and collecting and expending all assessments and Association funds. The Declarant, or any such managing agent, shall have the exclusive right to contract for all goods and services, payment for which is to be made from any common or maintenance funds.

10.1.2 Declarant may at such times as Declarant deems appropriate select as a temporary Board three (3) to seven (7) persons who own or are purchasers of lots, or are officers of corporations, trusts, partnerships or other entities owning or purchasing such lots. This temporary Board shall have full authority and all rights, responsibilities, privileges and duties to manage the planned unit development under this Declaration and the Bylaws, and shall be subject to all provisions of this Declaration and the Bylaws; provided, that after selecting any such temporary Board, Declarant in the exercise of its sole discretion may at any time terminate such temporary Board, and reassume its management authority under Section 10.1.1 or select a new temporary Board under this Section 10.1.2.

10.1.3 These requirements and covenants are made in order to assure that the property and the planned unit development will be adequately administered in the initial phases of development, and to assure an orderly transition to Association operation.

10.2 Management by Board. At the expiration of Declarant's management authority under Section 10.1, administrative power and authority shall vest in a Board of five (5) directors elected from among the owners. A meeting shall be called to elect the directors unless said meeting and election have been previously held. The Board may delegate all or any portion of its administrative duties to a manager, managing agent, or officer of the Association, or in such manner as may be provided by the Bylaws. All Board positions shall be opened for election at the first annual meeting after the termination of Declarant's authority under Section 10.1. The Board shall



elect a president from among its members, who shall preside over meetings of the Board and the meetings of the Association.

10.3 Authority of the Board.

10.3.1 The Board (or Declarant or Declarant's managing agent as provided in Section 10.1 hereof), for the benefit of the planned unit development and the owners, shall enforce the provisions of this Declaration and of the Bylaws, shall have the duties, powers, authority and responsibility set forth under the Act, this Declaration and the Bylaws; and shall acquire and pay for out of the common expense fund hereinafter provided for all goods and services requisite to the proper functioning of the planned unit development including but not limited to the following:

10.3.1.1 Water, sewer, garbage collection, electrical, telephone, gas and other necessary utility service as required for the common area.

10.3.1.2 Policies of insurance or bonds providing coverage for fire and other hazards, liability for personal injury and property damage, and for the fidelity of Association officers and other employees, as the same or more fully required hereinafter and in the Bylaws.

10.3.1.3 The services of persons or firms as required to properly manage the affairs of the planned unit development to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine are necessary; such personnel employed directly by the Board or as furnished by the manager or management firm or agent.

10.3.1.4 Legal and accounting services necessary or proper to the operation of the Association's affairs, administration of the common areas, or the enforcement of this Declaration.

10.3.1.5 Painting, maintenance, repair and all landscaping and gardening work for the common areas, and such furnishings and equipment for the common areas as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire the same for the common areas.

10.3.1.6 Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, tax or assessments which the Board is required to secure by law, or which in its opinion shall be necessary or proper for the operation of the common areas or for the enforcement of this Declaration.



10.3.1.7 Maintenance, appearance and repair of the exterior of any building including the roof, siding, windows and doors.

10.3.1.8 The Board may also pay any amount necessary to discharge any lien or encumbrance levied against the entire property or any part thereof which is claimed to or may, in the opinion of the Board, constitute a lien against the property or against the common areas, rather than merely against the interest therein of particular owners. Where one or more owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs and expenses (including court costs and attorney's fees) incurred by the Board by reason of such lien or liens shall be specially charged against the owners and their lots responsible to the extent of there responsibility.

10.3.1.9 The Board's powers hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund capital additions and improvements (other than for purposes of restoring, repairing or replacing portions of the common areas and other than for the cost of restoring, repairing and maintaining the exterior of the buildings) having a total cost in excess of Ten Thousand Dollars (\$10,000.00) without first obtaining the affirmative vote of the owners holding a majority of the voting power present or represented at a meeting called for such purpose, or if no such meeting is held, then the written consent of owners having a majority of the voting power; provided that any expenditure or contract for each capital addition or improvement in excess of Twenty-five Thousand Dollars (\$25,000.00) must be approved by owners having not less than seventy-five percent (75%) of the voting power.

10.3.1.10 The Board shall have the exclusive right to contract for all goods and services, payment of which is to be made from the maintenance fund. The Board may delegate such powers subject to the terms hereof.

10.3.1.11 The Board may, for common funds of the Association, acquire and hold in the name of the Association for the benefit of the owners, tangible and intangible personal property and real property and interests therein, and may dispose of the same by sale or otherwise, and the beneficial interest in such property shall be owned by the owners in the same proportion as their respective interest in the common areas, and such property shall thereafter be held, sold, leased, rented, mortgaged or otherwise dealt with for any benefit of the common fund of the Association as the Board may direct. The Board shall not, however, in any case acquire by lease or purchase real or personal property valued in excess of Ten Thousand Dollars (\$10,000.00) except upon a majority vote of the lot owners, or valued in excess of Twenty-



five Thousand Dollars (\$25,000.00) except upon a seventy-five percent (75%) affirmative vote of the lot owners, the manner specified in subsection 10.3.1.9.

10.3.1.12 The Board and its agents or employees may enter any lot or limited common area when necessary in connection with any maintenance, landscaping or construction for which the Board is responsible or in the event of emergency. Such entry shall be made with as little inconvenience to the owner as practicable, and any damage caused thereby shall be repaid by the Board out of the common expense fund if the entry was due to any emergency or for the purpose of maintenance or repairs. If the repairs or maintenance were necessitated by or for the lot entered or its owner, or requested by its owner, the costs thereof shall be specially charged to such lot.

10.3.1.13 Each owner, by the mere act of becoming an owner or contract purchaser of a lot, shall irrevocably appoint the Association as his attorney-in-fact, with full power of subrogation, to take such action as may be reasonably necessary to promptly perform the duties of the Association and Board hereunder, including but not limited to the duties to maintain, repair and improve the property, to deal with owner's lot upon damage or destruction, and to secure insurance proceeds.

10.3.1.14 In the discharge of its duties and the exercise of its powers as set forth in Section 10.3.1.9 and 10.3.1.12, the board may borrow funds on behalf of the Association and, to secure the repayment thereof, encumber, subject to the limitations set forth in this Declaration (including Section 18.4), the common areas and facilities and Association's funds and the undivided interest of each lot owner therein; provided, that the owner of a lot may remove said lot and the percentage of the undivided interest in the common areas appurtenant to such lot from the lien of such encumbrance by payment of the fractional or proportional amount of the lien attributable to such lot. Such individual payments shall be computed by reference to the percentage interests appearing in this Declaration. Subsequent to any such payment, discharge or satisfaction, the lot and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the lien so paid, satisfied or discharged. Such partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any lot and the percentage of undivided interest in the common areas and facilities appurtenant thereto with respect to which the lien has not been so paid, satisfied or discharged.

ARTICLE 11

USE; REGULATION OF USE; ARCHITECTURAL UNIFORMITY

11.1 Residential Use. The building(s) shall be used for single-family residential purposes only, on an ownership, rental or lease basis; and for the common social, recreational and other reasonable uses normally incident to such purposes, and also for such additional uses or purposes as are from time to time determined to be appropriate by the Board. The building(s) may be used for the purposes of operating the Association and for the management of the planned unit development, if required.

11.2 Sales Facilities of Declarant. Notwithstanding any provision in Section 11.1, Declarant, its agents, employees and contractors shall be permitted to maintain during the period of sale of the lots, upon such portion of the property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of lots and including but not limited to, a business office, storage area, signs, model units, sales office, construction office and parking areas for all prospective tenants or purchasers.

11.3 Vehicle Parking. Parking spaces are restricted to use for parking of operative motor vehicles; other items and equipment may be parked or only be kept therein subject to the rules and regulations of the Board. The board may require removal of any inoperative or improperly licensed vehicle, or any unsightly vehicle, and any other equipment or item improperly stored in parking spaces. If the same is not removed within 24 hours of the Board's giving notice to the owner of the vehicle, the Board may cause removal at the risk and expense of the owner thereof. Garages will be kept so that they will accommodate two (2) cars, and owners for overnight parking purposes shall park their cars in the garage. Use of all parking areas may be regulated and is subject to the provisions of Article 7 of this Declaration. No vehicle shall be parked in any common area, limited common area, or outside of a garage except in the areas designated for the outside parking of vehicles and except within the rules of the Association.

11.4 Common Drives and Walks. Common drives, walks, walkways, stairways and other areas commonly used for transit shall be used exclusively for normal transit and no obstructions shall be placed thereon or therein or caused to be placed thereon or therein, and such areas shall be used for no purpose other than their normal and intended purposes, except by express written consent of the Board.

11.5 Interior Building Maintenance.

11.5.1 Each owner shall at his sole expense have the right and duty to keep the interior of his building (home) and its equipment, appliances and appurtenances in good order, condition and repair and shall do all redecorating and painting at any time necessary to maintain the good appearance and condition of his home. Each



owner shall be responsible for the maintenance, repair and/or replacement of any plumbing fixtures, water heaters, fans, heating or other equipment, and electrical fixtures or appliances which may be exclusively connected with his home.

11.5.2 Without limiting the generality of the foregoing, each 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 windows, window frames, doors, door frames, trim and the interior surfaces of the ceilings, floors and the perimeter walls of the home and the surfaces of the bearing walls located within his home and shall not permit or commit waste of his home or the common areas. Each owner shall have the right to substitute new finished surfaces for the finished surfaces then existing on said ceilings, floors and walls. Each owner and his agent has the right to maintain, repair, paint, finish, alter, substitute, add or remove any fixtures attached to said ceilings, floors or walls. This section shall not be construed to permit an interference with or damage to the structural integrity of the building, or interference with the use and enjoyment of the common areas or of the other. Nor shall it be construed to limit the powers or obligations of the Board hereunder. No owner shall install any electrical outlet or any other device in a common wall.

11.5.3 Limited common areas as defined in Article 7 are for the sole and exclusive use of the lot(s) for which they are reserved or assigned; provided, that the use, condition and appearance thereof may be regulated under provisions of the Bylaws, rules, or this Declaration, including the following:

11.5.3.1 Decisions with respect to the standard of appearance and condition of limited common areas, and with respect to the necessity for and manner of caring for, maintaining, repairing, repainting and/or redecorating limited common areas ("maintenance work" herein), shall be made by the Board.

11.5.3.2 Performance of such maintenance work shall be carried out by the Board on behalf of the owner or owners of lot(s) to which the limited common area in questions is assigned or reserved; provided, that by written notice, the board may permit such owner or owners to perform such maintenance work themselves, and such permission shall reasonably be given.

11.5.3.3 Owners may not, however, modify, paint or otherwise decorate, or in any way alter their respective limited common areas without prior written approval of the Board, which approval shall not be unreasonably withheld.

11.5.3.4 The Association shall be responsible for the cost of such



maintenance work for the limited common areas reserved for or assigned to each lot.

11.5.3.5 Owners shall not be responsible for the repair, maintenance and replacement of structural portions of each apartment occasioned by defects, damage, destruction or normal wear and tear (not caused by said owners), and the Board shall pay for the same as a common expense.

11.5.3.6 Owners having enclosed patios shall maintain the interior thereof at their own expense.

11.6 Exterior Appearance. In order to preserve a uniform exterior appearance to the building(s) and the common and limited common areas visible to the public, the Board shall require and provide for the painting and other decorative finish of the building(s), lanais or patio/yard areas, or other common or limited common areas. This power of the Board extends to screens, doors, awnings, rails and other visible portions of each building. The Board may also require use of a uniform color of draperies, under draperies or drapery lining for all buildings. No satellite dishes, television or radio poles, antennas, flag poles, clotheslines, or other external fixtures other than those originally installed by Declarant or approved by the Board and any replacement shall be constructed, erected, or maintained on or within the Residences or the Common Area. No wiring, insulation, air-conditioning, or other machinery or exterior mechanical equipment other than originally installed by Declarant or the Board, and their replacement shall be constructed or maintained on or within the Common Area or any structures on it. No activities shall be carried on nor condition maintained by any owner which despoils the appearance of the project.

11.7 Effect on Insurance. Nothing shall be done or kept in any building or in the common areas which will increase the rate of insurance on the common areas or buildings without prior written consent of the Board. No owner shall permit anything to be done or kept in his home or in the common or limited common areas which will result in the cancellation of insurance on any building or any part of the common or limited common areas, or which would be in violation of any law, ordinance, rule or regulation of a governmental agency or body having jurisdiction over the planned unit development property, lots and homes.

11.8 Signs. No signs of any kind shall be displayed to the public view on or from any home, common area or limited common area except as may be provided in the Bylaws or upon the prior consent of the Board; provided, that such consent shall not be unreasonably withheld; and provided, that this section shall not apply to Declarant or Declarant's agents.

11.9 Pets. No animals, which term includes livestock, domestic animals, poultry, reptiles or living creatures of any kind, shall be raised, bred or kept on any lot, limited common area or common area, whether as pets or otherwise, except subject to the rules and regulations adopted by the Board or Bylaws adopted by the Association. The Board may at any time require the removal of any animal which it finds is dangerous or is disturbing other owners unreasonably, in the Board's



determination, and may exercise this authority for specific animals even though other animals are permitted to remain. No savage or dangerous animal shall be kept at any time. No pets may be permitted to run loose upon the planned unit development property and any owner who causes any animal to be brought or kept upon the planned unit development property shall indemnify the Association and hold it harmless from and against any loss, damage or liability which the Association may sustain as a result of the acts or presence of such animal whether or not the Association has given its permission therefor.

11.10 Offensive Activity. No noxious or offensive activity shall be carried on in any building, limited common area or common area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other owners.

11.11 Common Areas Alterations. Nothing shall be altered or constructed in or removed from the limited common areas except upon the written consent of the Board and pursuant to procedures required herein or by law.

11.12 House Rules. The Board and/or the owners are empowered to adopt, amend and revoke necessary or convenient detailed administrative rules and regulations, ("house rules") from time to time in order to insure compliance with the general guidelines of this Article and the other provisions of this Declaration.

ARTICLE 12

COMMON EXPENSES AND ASSESSMENTS

12.1 Estimated Expenses. Within thirty (30) days prior to the beginning of each fiscal year the Board shall estimate the charges (including common expenses and any special charges for particular lots) to be paid during such year; shall make provisions for creating, funding and maintaining reasonable reserves for contingencies and operations, as well as for repair, replacement and acquisition of common areas and facilities and shall take into account any expected income and any surplus available from the prior year's operating fund. Without limiting the generality of the foregoing but in furtherance thereof, the Board shall create and maintain from regular monthly assessments a reserve fund for the replacement of those common areas which can reasonably be expected to require replacement prior to the end of the useful life of the building(s). The Board shall calculate the contributions to said reserve fund so that there are sufficient funds therein to replace each common area covered by the fund at the end of the estimated useful life of each such common area. The Declarant or initial Board may at any suitable time established the first such estimate. If the sum estimated and budgeted at any time proves inadequate for any reason (including non-payment for any reason of any owner's assessment), the Board may at any time levy a further assessment, which shall be assessed to the owners in like proportions.

12.1.1 Initial Contribution. At the time of the initial sale of each lot by



Declarant, the original purchaser shall pay to the Association an amount equal to three times the then established monthly assessment which shall be non-refundable and non-transferrable. Said payment will include the first monthly assessment plus an additional two months payment.

12.2 Payment by Owners. Each owner shall be obligated to pay his share of common expenses and special charges made pursuant to this Article to the treasurer for the Association in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the board shall designate. Any unpaid assessment or charge shall bear interest at the rate of twelve percent (12%) per annum from the due date until paid. The budget may be reviewed and revised by the membership at the annual meeting, or at a special meeting called for such purpose, but if not so reviewed or if no change is made, shall be deemed approved.

12.2.1. Each owner's obligation to pay common expenses and special charges is based on the number of lots owned by an owner. An owner's obligation is not based on the size, square footage, or location of any lot or unit.

12.3 Purpose. All funds collected hereunder shall be expended for the purposes designated in this Declaration.

12.4 Separate Accounts. The Board shall require that the Association maintain separate accounts for current operation, reserves and a separate reserve account for payment of insurance. Each month the Board shall first deposit to the insurance reserve account that portion of the common expense assessment necessary to pay at least one-twelfth of the total cost of all the insurance policies provided regarding the planned unit development and such insurance reserve account shall be held separate and inviolate until utilized for payment of insurance premiums. Thereafter the remainder of the assessments and charges collected may be utilized for payment of other expenses or deposited or credited to other accounts. All such assessments and charges shall be collected and held in trust for, and administered and expended for the benefit of the owners.

12.5 Based on Percentage. Except for certain special charges which may be levied against particular lots under the provisions of this Declaration, all assessments for common expenses shall be assessed to lots and the owners thereof on the basis of the percentages set forth in Schedule B hereof and any amendments thereto.

12.6 Omission of Assessment. The omission by the Board or the Association before the expiration of any year to fix the estimate for assessments and charges hereunder for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the owner from the obligation to pay the assessment and charges, or any installment thereof, for that or any subsequent year; but the assessment and charge fixed for the preceding year shall continue until a new assessment or charge is fixed.



12.7 **Records.** The Board shall cause to be kept detailed and accurate records, in the form established by the Association's accountant, of the receipts and expenditures of the Association, specifying and itemizing the maintenance and repair expense and any other expenses incurred. Such records and any resolutions authorizing the payment involved shall be available for examination by any owner at convenient hours of weekdays.

12.8. **Declarant Liability.** The assessment provided for in this Declaration shall be imposed on lots owned by Declarant on the same basis as imposed on all other lots, regardless of whether Declarant-owned lots are vacant or have been sold, leased, or rented, provided, however, Declarant and any owner of a lot which does not include a structural improvement for human occupancy is exempted from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of the structural improvements. This exemption includes the following:

- (a) Roof replacement;
- (b) Exterior maintenance;
- (c) Walkway and carport lighting; and
- (d) Insurance.

12.9 **Lien Indebtedness.** In the event any monthly assessment or special charge attributable to a particular lot remains delinquent for more than thirty (30) days, the Board shall upon fifteen (15) days written notice to the owner of such lot accelerate and demand immediate payment of all, or such portion as the Board determines, of the monthly assessments and special charges which the Board reasonably determines will become due during the next succeeding twelve (12) months with respect to such apartment. Each monthly common expense assessment and each special charge shall be a joint and several personal debt and obligation of the fee owner and contract purchaser of the lot for which the same are assessed or charged as of the time the assessment of charge is made and shall be collectible as such. The amount of any assessment or charge, whether regular or special, assessed or charged to any lot and the owner and purchaser of any lot, plus interest at the rate of twelve percent (12%) per annum, and costs, including reasonable attorney's fees, shall be a lien upon such lot, the appurtenant and charge shall have priority over all other liens and encumbrances, recorded or provided in Article 18. Suit shall be maintainable without foreclosure or waiving the lien.

12.10 **Certificate of Assessment.** A certificate executed and acknowledged by the treasurer or the president of the Board, or an authorized agent thereof, if neither change is (or lack thereof) secured by the assessment lien upon any lot, shall be conclusive upon the Board and the owner and purchaser as to the amount of such indebtedness on the date of the certificate, in favor of the person(s) who rely thereon in good faith. Such a certificate shall be furnished to any owner, purchaser or encumbrancer of a lot within a reasonable time after request, in recordable form, at a reasonable fee. Unless otherwise prohibited by law, an encumbrancer shall have a lien on such lot for the amount paid of the same rank as the lien of his encumbrance.



12.11 Assessment Deposit. An owner may be required from time to time by the Board or managing agent to make and maintain a deposit not in excess of three (3) months estimated monthly assessments and charges, which may be collected as are other assessments and charges. Such deposit shall be held in a separate fund, credited to such owner, and resort may be had thereto by the Association at any time when such owner is ten (10) days or more delinquent in paying his monthly or other assessments and charges. All or any portion of such deposit may at any time be refunded to the owner by the Association in the discretion of the Board, such refund being made as a cash refund or credit against assessments subsequently to become due or a combination thereof.

12.12 Foreclosure and Assessment Lien; Attorney's Fees and Costs. The Declarant, manager or Board on behalf of the Association may initiate an action to foreclose the lien of any assessment. In any action to foreclose a lien against any lot for non-payment of delinquent assessments or charges, any judgment rendered against the owner of such lot in favor of Association shall include a reasonable sum for attorney's fees and all costs and expenses reasonably incurred in preparation for or in the prosecution of said action, in addition to taxable costs permitted by law.

12.13 Rental Value. From the time of commencement of any action to foreclose a lien against a lot for non-payment of delinquent assessments of charges, the owner or purchaser of such lot shall pay to the Association the reasonable rental value of the lot, which rental value shall be fixed by the Board. The plaintiff in any such foreclosure action shall be entitled to the appointment of a receiver to collect the rents, who may, if said rental is not paid, obtain possession of the lot, refurbish it for rental up to a reasonable standard for rental units in this type of planned unit development, rent the lot or permit its rental to others, and apply rents first to costs of the receivership and attorney's fees incurred therein, then to costs of refurbishing the lot, then to costs, fees and charges (including attorney's fees) of the foreclosure action, and then to the payment of the delinquent assessments or charges.

12.14 Rental Lots. With respect to the leasing and renting (including the creation of any kind of tenancy) of a lot by its owner, such owner shall be prohibited from leasing or renting less than the entire lot or for a term of less than thirty (30) days; and all leases or rental agreements shall be in writing and subject to this Declaration and the Bylaws, and a default by the tenant in complying with this Declaration and the Bylaws shall constitute a default under the lease or rental agreement. If a lot is rented or leased by its owner, the Board may collect, and the tenant or lessee shall pay over to the Board, so much of the rent for such lot as is required to pay any amounts due the Board hereunder, plus interest and costs, if the same are in default over thirty (30) days. The renter or lessee shall not have the right to question payment over to the Board, and such payment shall discharge the lessee's or renter's duty of payment of rent to the owner, to the extent such rent is paid to the Association, but shall not discharge the liability of the owner and the lot under this Declaration for assessments and charges or operate as an approval of the lease or as being approved with respect to the lot or its owner; nor in derogation of any rights which a mortgagee of such lot may have with respect to such rents.

12.15 Remedies Cumulative. The remedies provided are cumulative, and the



Board may pursue them separately or concurrently, as well as any other remedies which may be available under law or in equity although not expressed herein.

ARTICLE 13

INSURANCE

13.1 Insurance Coverage. The Board shall obtain and maintain at all times as a common expense a policy or policies and bond(s) required to provide:

13.1.1 Fire insurance, with an extended coverage endorsement (including vandalism, malicious mischief, sprinkler leakage, debris removal, cost of demolition, windstorm and water damage), in an amount as near as practicable to the full insurable replacement value (without deduction for depreciation) of the common and limited common areas and the buildings with the Board named as insured as trustee for the benefit of the owners and mortgagees as their interest may appear, or such other fire and casualty insurance as the Board shall determine to give substantially equal or greater protection insuring the owners and their mortgages as their interest may appear. Said policy or policies shall provide for separate protection for each building to the full insurable replacement value thereof (limited as above provided), and a separate loss payable endorsement, in favor of the mortgagee(s) of each lot, if any, and further, a separate loss payable clause in favor of the mortgagee of the planned unit development, if any. All insurance shall be obtained from an insurance carrier rated Triple A (and rated as in Class XI or better financial condition) by Best's Insurance Reports or equivalent rating service, and licensed to do business in the State of Washington.

13.1.2 General comprehensive liability insurance insuring the Board, the Association, the owners, Declarant and managing agent against any liability to the public or to the owners of the lots, and their invitees or tenants, incident to the ownership or use of the common and limited common areas (including, but not limited to owned and non-owned automobile liability, water damage, host liquor liability for property of others and, if applicable, elevator collision or garage-keeper's liability) the liability under such insurance shall be in an amount determined by the Board after consultation with insurance consultants, but not less than One Million Dollars (\$1,000,000.00) covering all claims for personal injury and/or property damage arising out of a single occurrence (such policy limits to be reviewed at least annually by the Board and increased in its discretion). Such insurance shall contain appropriate provisions or endorsements precluding the insurer from denying the claim of an owner because of the negligent act of the Association or another owner.

13.1.3 Workman's compensation insurance to the extent required by



applicable laws.

13.1.4 Fidelity bond(s) naming the members of the Board, the manager and its employees and such other persons as may be designated by the Board as principals, and the Association as obligee, in an amount equal to at least the total estimated cash (including reserves) to be collected as assessments each year. Such fidelity bond(s) shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

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

13.1.6 Such other insurance as the Board deems advisable; provided, that notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or Government National Mortgage Association, so long as any of them is a mortgagee or owner of a lot within the project, except to the extent such coverage is not available or has been waived in by the Federal National Mortgage Association, Federal Home Loan Corporation or Government National Mortgage Association.

13.2 Owner's Additional Insurance. Each owner shall obtain additional insurance respecting his building as contemplated under RCW 64.34.352 at his own expense; no owner shall, however, be entitled to exercise his right 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 of the owners will realize under any insurance policy which the Board may have in force on the planned development at any particular time. Each owner is required to and agrees to notify the Board of all improvements by the owner to his building the value of which is in excess of One Thousand Dollars (\$1,000.00). Each owner is hereby required to file a copy of such individual policy or policies with the Board within thirty (30) days after purchase of such insurance, and the Board shall immediately review its effect with the Board's insurance broker, agent or carrier.

13.3 Insurance Proceeds and Claims. Insurance proceeds for damage or destruction to any part of the property shall be paid to the Board on behalf of the Association, and the Board shall segregate such proceeds from other funds of the Association for use and payment as provided for in Article 14. The Association acting through its 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.



13.4 Additional Provisions. The Board shall exercise its reasonable best efforts to obtain insurance policies containing the following provisions:

13.4.1 Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration or contribution by reason of any other insurance obtained by or for any owner or mortgage.

13.4.2 Contain no provision relieving the insurer from liability for loss because of any act or neglect which is not within the control of the Association or because of any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control.

13.4.3 Contain a waiver of subrogation by the insurer as to any and all claims against the Association, owners and/or their respective agents, employees or tenants, and any of defenses based upon co-insurance or upon invalidity arising from the acts of the insureds.

13.4.4 Provide that despite any provision giving the insurer the right to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written consent of the Association, nor when such option is in conflict with the provisions of any insurance trust agreement to which the Association is a party or of any requirement of law.

ARTICLE 14

DAMAGE OR DESTRUCTION; RECONSTRUCTION

14.1 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 twenty (20) days after the date of damage or destruction, make the following determination with respect thereto, employing such advice as the Board deems advisable:

14.1.1 The nature and extent of the damage or destruction, together with an inventory of the improvements and property direct thereby.

14.1.2 A reasonably reliable estimate of the cost to repair and restore the damage and destruction, which estimate shall, if reasonably practicable, be based upon two or more firm bids obtained from reasonable contractors.

14.1.3 The anticipated insurance proceeds, if any, to be available from insurance covering the loss based on the amount paid or initially offered by the



insurer.

14.1.4 The amount, if any, that the estimated cost of repair and restoration exceeds the anticipated insurance proceeds therefor and the amount of assessment to each lot if such excess were to be paid as a maintenance expense and specially assessed against all the lots in proportion to their percentage of interest in the common areas.

14.1.5 The Board's recommendation as to whether such damage or destruction should be repaired or restored.

14.2 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 other, and each mortgagee who has theretofore requested special notice, with a written notice summarizing the initial Board determination made under Section 14.1. If the Board fails to do so within said thirty (30) days, then any owner or mortgagee may make the determination required under Section 14.1 and give the notice required under this Section 14.2.

14.3 Definitions; Restoration; Emergency Work.

14.3.1 As used in this Article 14, the words "repair," "reconstruct," "rebuild," and "restore" shall mean restoring the improvements to substantially the same condition in which they existed prior to the damage or destruction, with each lot and the common and limited common areas having substantially the same vertical and horizontal boundaries as before. Modifications to conform to then applicable governmental rules and regulations or available means of construction may be made.

14.3.2 As used in this Article 14, the term "emergency work" shall mean 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 owners from liability due to the condition of the site.

14.4 Restoration by Board.

14.4.1 Unless prior to the commencement of repair and restoration work (other than emergency work referred to in subsection 14.3.2) the owners shall have decided not to repair and reconstruct in accordance with the provisions of either subsection 14.5.2 or 14.6.3, the Board shall promptly repair and restore the damage and destruction, use the available insurance proceeds therefor, and pay for the actual cost of repair and restoration in excess of insurance proceeds, such cost in excess of the insurance proceeds to be secured as a common expense which shall be specially assessed against all lots in proportion to their percentages of interest in the common areas.



14.4.2 The Board shall have the authority to employ architects, attorneys and other agents, advertise for bids, let contracts to contractors and others and to take such other action as is reasonably necessary to effectuate the repair and restoration. Contracts for such repair and restoration shall be awarded when the Board, by means of insurance proceeds and sufficient assessments, has provision for the cost thereof. The Board may further authorize the insurance carrier to proceed with repair and restoration upon satisfaction of the Board that such work will be appropriately carried out.

14.4.3 The Board may enter into a written agreement in recordable form with any reputable financial institution, trust or escrow company that such firm or institution shall act as an insurance trustee to adjust and settle any claim for such loss in excess of Fifty Thousand Dollars (\$50,000.00), or for such firm or institution to collect the insurance process and carry out the provisions of this Article.

14.5 Limited Damage; Assessment Under \$3,500.00. If the amount of the estimated assessment determined under subsection 14.1.4 does not exceed Three Thousand Five Hundred Dollars (\$3,500.00) for any one lot, then the provisions of this Section 14.5 shall apply.

14.5.1 The Board may, but shall not be required to, call a special owners' meeting to consider such repair work and restoration work, which notice shall be given simultaneously with the notice required to be given by the Board under Section 14.3 above. If the board shall fail to call such meeting, then any owner or mortgagee, within fifteen (15) days of receipt of the notice given by the board under Section 14.2 above, or the expiration of such thirty (30) day period, whichever is less, may call such special owners' meeting to consider such repair and restoration work. Any meeting called for under this Section 14.5.1 shall be convened not less than ten (10) nor more than twenty (20) days after the date of such notice of meeting.

14.5.2 Except for emergency work, no repair and restoration work shall be commenced until after the expiration of the notice period set forth in Section 14.5.1 and until after the conclusion of said special meeting if such meeting is called within said requisite period.

14.5.3 A unanimous decision of the owners shall be required to avoid the provisions of subsection 14.4.1 and to determine not to repair and restore the damage and destruction; provided, that the failure of the Board, or any owner or any mortgagee to call for a special meeting at the time or in the manner set forth in Section 14.5 shall be deemed a unanimous decision to under take such work.

14.6 Major Damage; Assessment Over \$3,500.00. If the amount of the estimated assessment determined under subsection 14.1.4 exceeds Three Thousand Five Hundred Dollars (\$3,500.00) for any one lot, then the provisions of this Section 14.6 shall apply.



14.6.1 The Board shall promptly, and in all events within thirty (30) days after the date of damage or destruction, provide written notice of a special owners' meeting to consider repair and restoration of such damage or destruction, which notice shall be delivered with the notice required to be provided under Section 14.2 above. If the Board fails to do so within the said thirty (30) day period, then notwithstanding the provisions of this Declaration or the Bylaws with respect to calling special meetings, any owner or mortgagee may within fifteen (15) days of the expiration of said thirty (30) day period, or receipt of the notice required to be provided by the Board under Section 14.2 above, whichever is less, call a special meeting of the owners to consider repair and restoration of such damage or destruction by providing written notice of such meeting to all owners and mortgagees. Any meeting held pursuant to this Section 14.6 shall be called by written notice and shall be convened not less than ten (10) nor more than twenty (20) days from the date of such notice of meeting.

14.6.2 Except for emergency work, no repair and restoration work shall be commenced until the conclusions of the special owners' meeting required under subsection 14.6.1

14.6.3 A concurring vote of more than seventy-five percent (75%) of the total voting power of the owners will be required to avoid the provisions of Section 14.4 and to determine not to repair and restore the damage and destruction; provided, however, that the failure to obtain said seventy-five percent (75%) vote shall be deemed a decision to rebuild and restore the damage and destruction; provided, further, that the failure of the board, or owners or mortgagees to convene the special meeting required under Section 14.6.1 within ninety (90) days after the date of damage or destruction shall be deemed a unanimous decision not to undertake such repair and restoration work.

14.7 **Decision Not to Restore; Disposition.** In the event of a decision under either subsection 14.5.3 or 14.6.3 not to repair and restore damage and destruction, the Board may nevertheless expend such of the insurance proceeds and common funds as the Board deems reasonably necessary for emergency work (which emergency work may include but is not necessarily limited to removal of the damage or destroyed building(s) and clearing, filling and grading the real property), and the remaining funds, if any, and property shall thereafter be held and distributed as follows:

14.7.1 The property shall be owned in common by the owners and shall no longer be subject to this Declaration.

14.7.2 The undivided interest in the property owned in common which appertains to each owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.



14.7.3 Any mortgages or liens affecting any of the lots shall be deemed transferred in accordance with their existing priorities to the percentage of the undivided interest of the owner in the property as provided herein; and,

14.7.4 The property shall be subject to an action for partition at the suit of any owner, in which event the net proceeds of sale, together with the net proceeds of the insurance, if any, shall be considered as one fund; such fund shall be divided into separate shares one for each owner, and each share shall be equal to the percentage of undivided interest owned by each owner in the property; then, after first paying out the respective share of each owner to the extent sufficient for the purpose all first mortgages and then all other liens on the undivided interest in the property owned by such owner, the balance remaining in each share shall then be distributed to each owner respectively.

14.8 **Miscellaneous.** The provisions of this Article 14 shall constitute the procedure by which a determination is made by the owners to repair, restore, reconstruct or rebuild as provided in the Act. By the act of accepting an interest in the property, each owner and party claiming by, through or under such owner hereby consents and agrees to the provisions hereof. In the event that any provisions of this Article 14 shall be determined 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 Article 14 shall be to provide a fair and equitable method of allocating the costs of repair and restoration and making a determination for repair and restoration if all or a portion of this Article 14 shall be liberally construed to accomplish such purpose. By unanimous vote, which vote shall be taken within ninety (90) days of the damage or destruction, the owners may determine to do otherwise than provided in this Article 14.

ARTICLE 15

CONDEMNATION

15.1 **Consequences of Condemnation.** If at any time or times during the continuance of the planned unit development ownership pursuant to this declaration, all or any part of the property shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the provisions of this Article 15 shall apply. The Board shall provide each owner and each mortgagee with a written notice of the commencement of any such condemnation proceeding and of any proposed sale or disposition in lieu thereof or in advance of such proceeding.

15.2 **Proceeds.** All compensation, or damages and other proceeds resulting from the condemnation proceeding, sale or disposition in lieu thereof or in avoidance of such proceedings, the sum of which is hereinafter called the "condemnation award", shall be payable to the Association.



15.3 Complete Taking. In the event that the entire property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the planned unit development ownership of said property shall terminate. The condemnation award shall be apportioned among the owners in proportion to their respective undivided interests in the common areas; provided, that if a standard different from the value of the property as a whole is employed to measure the condemnation award in the negotiation, judicial decree, or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. On the basis of the foregoing principle, the Board shall as soon as practicable determine the share of the condemnation award to which each owner is entitled. After first paying out of the mortgages and then all other liens and encumbrances on the interest in the property of such owner, the balance remaining in each share shall then be distributed to each owner respectively.

15.4 Partial Taking. In the event that less than the entire property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the planned unit development ownership shall not terminate. Each owner shall be entitled to a share of the condemnation award to be determined in the following manner:

15.4.1 As soon as practicable the board shall, reasonably and in good faith, allocate the condemnation award between compensation, damages and other proceeds.

15.4.2 The Board shall apportion the amounts so allocated to taking of or injury to the common areas which in turn shall be apportioned among the owners in proportion to their respective undivided interests in the common areas.

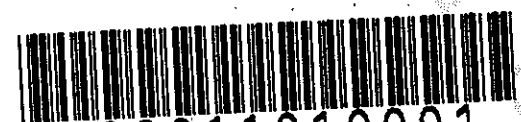
15.4.3 The total amount allocated to severance damages shall be apportioned to those lots which were not taken or condemned.

15.4.4 The respective amounts allocated to the taking of or injury to a particular lot and/or improvements an owner had made within his own lot shall be apportioned to the particular lot involved.

15.4.5 The amount allocated to consequential damages and any other takings or injuries shall be apportioned as the board determines to be equitable in the circumstances.

15.4.6 If an allocation of the condemnation award is already established in negotiation, judicial decree or otherwise, then in allocating the condemnation award the board shall employ such allocation to the extent it is relevant and applicable.

15.4.7 Distribution of apportioned proceeds shall be made to the owners and their respective mortgagees in the manner provided in Section 15.3.



15.5 Reduction of Property Upon Partial Taking. In the event that (a) a partial taking occurs which pursuant to Section 15.4 does not result in a termination of all ownership hereunder, and (b) at least one (1) lot is taken or condemned, and (c) the condemning authority elects not to hold, use or own said lot as a planned unit development lot subject to and in accordance with this Declaration, then the provisions of this Section 15.5 shall take effect immediately upon the condemning authority's taking possession of the lot(s) so taken or condemned:

15.5.1 The lots subject to this Declaration shall be reduced to those lots not taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof.

15.5.2 The general common areas subject to this Declaration shall be reduced to those common areas not so taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof.

15.5.3 The limited common areas, which were not taken or condemned, but which were appurtenant to lot(s) that were taken or condemned, shall be deemed part of the general common areas remaining subject to this Declaration.

15.5.4 The percentage of undivided interest in the common areas appurtenant to each lot not so taken or condemned shall be recalculated on the basis that the value of each of said lots shall remain the same as set forth in Schedule B and that all of the entire property not so taken or condemned shall be the aggregate of said values of said lots.

15.5.5 Except with respect to the share of proceeds apportioned pursuant to Section 15.4, no owner or mortgagee of a lot so taken or condemned shall have, nor shall there be appurtenant to any lot so taken or condemned, any right, title, interest, privilege, duty or obligation in, to or with respect to the Association, any lot, common area or limited common areas which remains subject to this Declaration and which is not so taken or condemned.

15.5.6 Except as otherwise expressly provided in Section 15.5, the rights, title, interest, privileges, duties and obligations of an owner and mortgagee in, to or with respect to the Association and the common areas and limited common areas appurtenant to said lot shall continue in full force and effect as provided in this Declaration.

15.5.7 The provisions of Section 15.5 shall be binding upon and inure to the benefit of all owners and mortgagees of (and other persons having or claiming to have any interest in) all lots which are, as well as all lots which are not so taken or condemned. All such owners, mortgagees and other persons covenant to execute and deliver all documents, agreements or instruments (including, but not limited to appropriate amendments to this Declaration and the Survey map and Plans) as are



reasonably necessary to effectuate the provisions of Section 15.5.

15.6 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article 14 above, provided that the Board may retain and apply such portion of each owner's share of the condemnation award as is necessary to discharge said owner's liability for any special assessment arising from the operation of said Article 14.

ARTICLE 16

COMPLIANCE WITH DECLARATION

16.1 Enforcement. Each owner shall comply strictly with the provisions of this Declaration and with the Bylaws and administrative rules and regulations passed hereunder, as the same may be lawfully amended from time to time, and with all decisions adopted pursuant to this Declaration and the Bylaws and administrative rules and regulations. Failure to comply shall be grounds for an action to recover sums due for damages, or injunctive relief, or both, maintainable by the board acting through its officers on behalf of the owners, or by an aggrieved owner on his own.

16.2 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 to exercise any right or option contained in such 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, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Board of any assessment from an owner, with knowledge of any such breach, shall not be deemed a waiver of such breach, and no waiver by the Board or any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board. This section also extends to the Declarant or Declarant's managing agent, exercising the powers of the Board during the initial period of operation of the Association and the planned unit development.

ARTICLE 17

LIMITATION OF LIABILITY

17.1 Liability for Utility Failure, Etc. Except to the extent covered by insurance obtained by the Board (or the Declarant or Declarant's managing agent exercising the powers of the Board) pursuant to Article 13, neither the Association nor the Board shall be liable for: any failure of any utility or other service obtained or to be obtained and paid for by the Board; for injury or damage to persons or property caused by the elements or resulting from electricity, water, rain, dust or sand which may lead or flow from outside or from any parts of the building(s), from any of the



building(s) pipes, drains, conduits, appliances or equipment, or from any other place; or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance or order of government 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.

17.2 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, 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 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 Article 13.

17.3 Indemnification of Board Members. Each Board member, Association committee member, Association officer, or Declaration or Declarant's managing agent exercising the powers of the Board, shall be indemnified by the owners against all expenses and liabilities, including attorney's 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 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, indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association.

ARTICLE 18

MORTGAGEE PROTECTION

18.1 Priority of Mortgages. Notwithstanding all other provisions hereof and as provided in the Act, the liens created under this Declaration upon any lot for assessments shall be subject to tax liens on the lot in favor of any assessing unit and/or special district and be subject to the rights of the secured party in the case of any indebtedness secured by mortgages which were made in good faith and for value upon the lot. Where such mortgagee of the lot, or other purchaser of a lot, obtains possession of a lot as a result of mortgage foreclosure or deed in lieu thereof, such possessor and his successor and assigns shall not be liable for the share of the common expenses or assessments chargeable to such lot which become due prior to such possession, but shall be liable for the common expenses and assessments accruing after such possession. Such unpaid share of common expenses collectable from all the owners including such possessor, his successors and assigns.



18.2 **Change in Manager.** In the event that professional management is employed by the Association, at least thirty (30) days notice of any contemplated change in the professional manager shall be given to any first mortgagee who has requested to be notified. The Association shall not elect to terminate professional management and assume self-management without the prior consent of seventy-five percent (75%) of all first mortgagees of the lots (based upon one vote for each mortgage owned), who have requested to be advised of such election; provided that such prior consent shall not be required to change from one professional manager to another professional manager. Any and all agreements with a professional manager shall permit cancellation by the Association for cause upon thirty (30) days written notice and shall permit cancellation by the Association without cause upon ninety (90) days written notice without the payment of any termination fee. Any such management agreement shall have a term not in excess of one (1) year, renewable by agreement of the parties for successive periods not to exceed one (1) year in duration.

18.3 **Partitions and Subdivisions.** Neither the Association nor any person shall combine nor subdivide any lot or the appurtenant limited common areas, nor abandon, partition, subdivide, encumber or sell any common area, or accept any proposal to do so, without the prior approval of seventy-five percent (75%) of all first mortgagees of record of the lots (based upon one vote for each lot owned), and without the unanimous approval of the first mortgagee(s) of the lot(s) to be combined or subdivided.

18.4 **Change in Percentages.** The Association shall not make any material amendment to this Declaration or the Bylaws (including changes in the percentages of interest in the common areas) without the prior approval of seventy-five percent (75%) of all first mortgagees of record of the lots (based upon one vote for each first mortgage owned), and without the unanimous approval of the first mortgagees of the lots for which the percentages would be charged.

18.5 **Hazard Insurance.** Except in the case of substantial loss (as provided in the Act and Section 14.6), hazard insurance proceeds shall not be used other than for the repair, replacement or reconstruction of the damaged portion of the planned unit development unless consented to by seventy-five percent (75%) of all first mortgagees of record of the lots (based upon one vote for each first mortgage owned).

18.6 **Copies of Notices.** Written notice that an owner has for more than thirty (30) days failed to meet any obligation under the planned unit development documents shall be given by the Association to any first mortgagee of such lot to receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

18.7 **Effect of Declaration Amendments.** No amendment to this Declaration shall be effective to modify, change, limit or alter the rights expressly conferred upon first mortgagees in this instrument with respect to any unsatisfied mortgage duly recorded unless the amendment shall be consented to in writing by the holder of such mortgage. Any provision to this Declaration conferring rights upon first mortgagees which is inconsistent with any other provisions of this Declaration or the Bylaws shall control over such other inconsistent provision.



18.8 Insurance.

18.8.1 Where a first mortgagee of a lot has filed a written request with the Board, the Board shall:

18.8.1.1 Furnish such mortgagee with a copy of any insurance policy or evidence thereof which is intended to cover the lot on which such mortgage has a lien;

18.8.1.2 Require any insurance carrier to give the Board and any and all insureds (including such mortgagee) at least thirty (30) days written notice before canceling, reducing the coverage or limits, or otherwise substantially modifying any insurance with respect to the property on which the mortgagee has a lien (including cancellation for a premium non-payment).

18.8.1.3 Not make any settlement of any insurance claim for loss or damage to any such lot, appurtenant limited common areas or the common areas exceeding Five Thousand Dollars (\$5,000.00) without the approval of such mortgagee; provided, that the withholding of such approval by the mortgagee shall not be unreasonable or in conflict with the provisions of Article 14.

18.8.1.4 Give such mortgagee written notice of any loss or taking affecting common areas, if such loss or taking exceeds Ten Thousand Dollars (\$10,000.00).

18.8.1.5 Give such mortgagee written notice of any loss, damage or taking affecting any lot or limited common areas in which it has an interest, if such loss, damage or taking exceeds One Thousand Dollars (\$1,000.00).

18.8.2 In addition, the insurance policy required under Section 13.1.1 shall contain a standard mortgagee clause which shall, if reasonably obtainable:

18.8.2.1 Provide that any reference to a mortgage in such policy shall mean and include all holders of mortgages of any lot or lot lease or sublease, in their respective order and preference, whether or not named therein;

18.8.2.2 Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board, owner(s) or any person under any of them;

18.8.2.3 Waive any provisions 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.

18.9 Inspection of Books. First mortgagees shall be entitled to inspect at all reasonable hours of weekdays all of the books and records of the Association, and, upon request, to receive an annual audited financial statement of the Association within ninety (90) days following the end of the fiscal year of the Association.

18.10 Obtaining Declarant's Powers. In the event the mortgagee of the developer becomes bound by this Declaration by granting one or more partial releases or otherwise, and forecloses its mortgages or acquires a deed in lieu of foreclosure, and obtains possessory rights, legal title, or certificates of sale to the unsold lot or residence unit and appurtenant common areas covered by the respective deeds of trust or mortgage liens, then the mortgagee of the developer may succeed to and assume, to the exclusion of the Declarant, the powers of the Declarant as set forth in this Declaration.

18.11 Extension of Declarant's Powers. In the event that the Declarant's obligation to the mortgagee of the developer has not been paid in full at the time the Declarant's management power has expired under Section 10.1, then said powers conferred upon the Declarant by said section and to which the mortgagee of the developer may succeed, shall be extended for an additional two (2) years. The mortgagee of the developer shall be entitled to appoint a receiver during the pendency of any foreclosure action and said receiver shall immediately upon appointment succeed to and assume the rights and powers of the Declarant as set forth in this Declaration, and the receiver shall be entitled to sell unsold lots during the pendency of said foreclosure action, and said sales shall be subject to confirmation by court order.

ARTICLE 19

EASEMENTS

19.1 In General. It is intended that in addition to rights under the Act, each lot has an easement in and through the common and limited common areas for all support elements and utility, wiring, and service elements, and for reasonable access thereto, as required to effectuate and continue proper operation of this project. The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for common facilities reserved by law.

19.2 Association Functions. There is hereby reserved to the Declarant and the Association, or their duly authorized agent and representatives, such easements as are necessary to perform the duties and obligations of the Association as are set forth in this Declaration, the Bylaws and the Association rules and regulations.

19.3 Encroachments. Each lot and all common and limited common areas are



hereby declared to have an easement over all adjoining lots and common and limited common areas for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other similar cause, and any encroachment due to building overhang or projection. There shall be a valid easement for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of the owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner. In the event a building or common or limited common area is partially or totally destroyed, and then repaired or rebuilt, the owners agree that minor encroachments over adjoining lots and common and limited common areas shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they exist. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any lot.

ARTICLE 20

PROCEDURES FOR SUBDIVIDING OR COMBINING

20.1 **Procedure.** Subdivision and/or combining of any lot(s), limited common area(s) and/or common area(s) is authorized only as follows:

20.1.1 Any owner of a lot may propose in writing to the Board any subdividing or combining of any lot(s), limited common areas and/or common areas, together with complete plans and specifications for accomplishing the same and a proposed amendment to this Declaration, the Survey Map and Plans covering such subdividing or combining, and the Board shall then notify all other owners of the requested subdivision or combination.

20.1.2 Upon written approval of such proposal by owners having seventy percent (70%) of the voting power, and upon approval of seventy-five percent (75%) of the first mortgagees of record of the lots (based upon one vote for each first mortgage owned), and the unanimous approval of the first mortgagee(s) of the lot(s) to be combined or subdivided, the owner making the proposal may proceed according to such plans and specifications; provided that the Board may in its discretion (but it is not mandatory that the Board exercise its authority) require that the Board administer the work or that provisions for the protection of other lots or common areas or reasonable deadlines for completion of the work be inserted in the contracts for the work.

20.1.3 The changes in the Survey Map, if any, and the changes in the Plans and this Declaration shall be placed on record as amendments to the Survey Map, Plans and this Declaration in accordance with the provisions of Section 21.1.



ARTICLE 21

DECLARATION OF DEVELOPMENT IN PHASES; DESCRIPTION OF LAND

21.1 **Intention to Develop in Phases.** Declarants propose to develop the planned unit development in phases upon the tracts of land described in Schedule A attached hereto, and by this reference incorporated herein. Schedule A-1 discusses these phases.

This Declaration shall be effective immediately to establish Phase I as a planned unit development.

21.2 **The Expansion into Subsequent Phases.** Declarant expect to expand the planned unit development into one or more subsequent phases but is not required to expand the planned unit development at all or to follow any particular sequence of phases. If Declarant elects to expand the planned unit development into a subsequent phase or phases and a certificate (hereinafter referred to as a "subsequent phase certificate"), declaring that the survey maps and plans previously recorded, or recorded in the subsequent phase or phases, upon the recording of a subsequent phase certificate, the previously existing lots (i.e., Phase I or such subsequent phase or phases as it shall have been expanded into) shall contain a schedule of the percentages of undivided interest in the common areas and facilities appertaining to each lot added to the project by the subsequent phases.

21.3 **Improvements in Subsequent Phases.**

21.3.1 **Number of Lots.** Phase I consists of fourteen (14) lots. The number of lots in Phase II is eight (8) lots. The number of lots in Phase III is be ten (10) lots. These numbers are approximate and will depend upon the approval of the City of Anacortes. Declarant may change the number of phases and/or the number of units per phase as approved by the City of Anacortes.

21.3.2 **Character of Improvements.** The improvements added to the planned unit development by subsequent phases need not be identical to those in Phase I. Declarant may make reasonable alterations in the style, floor plan and size of the buildings added by subsequent phases as market demand may indicate, but Declarant's latitude in making such alterations shall be restricted in that all improvements added by a subsequent phase shall be comparable in style, quality, size and cost, adjusted for inflation, to the improvements in Phase I, to the end that the new improvements will be aesthetically and economically harmonious and compatible with the improvements in Phase I. The subsequent phase shall also be in compliance with the then existing and prevailing building codes of the City of Anacortes and the State of Washington.



21.4 Election Not to Expand to One or More Subsequent Phases. If Declarant does not expand the planned unit development into the final phase, that is Phase III in this case (which would encompass all the land described in Schedule A), Phase I, or such subsequent phase as the project shall have been expanded into, shall constitute a complete, fully operational planned unit development, and the parcel or parcels of land not encompassed by the planned unit development may be used for any lawful purpose. If Declarant determines that he will not expand the planned unit development into a subsequent phase or phases, he may record an amendment to this Declaration, signed only by Declarant, describing the land that will not be included in the planned unit development.

21.5 Unit Percentage Interest. The unit percentage interest of each lot shall be in accordance with the attached Schedule B. When each subsequent phase is added, the unit percentage interest shall be computed by taking as a basis the value of the residential unit in relation to the total value of the property for all phases then recorded.

21.6 Improvements. If the developer has not completed all of the intended off-site facilities prior to the recording of this Declaration, the developer shall be responsible for the construction of such improvements prior to the recording of the amendment to this Declaration incorporating Phase(s) II and III. In addition, the developer shall be responsible for paying all expenses of maintenance of common properties that are developed in conjunction with Phase(s) II, and III until one or more of the units in Phase(s) II and III is sold at which time the Association shall assume the responsibility and the owners of the lots in Phase(s) II and III shall pay their appropriate assessments (including the developer for those units owned by the developer). Any sum not so paid by the developer shall become a lien against the balance of the property owned by the developer and may be foreclosed upon by the Association.

21.7 Veterans' Administration Approval. In the event Phase I has obtained approval from the Veterans' Administration, the amendments to these Declarations incorporating Phases II and III shall not be completed without the prior written approval of the local Veterans' Administration Office.

21.8 Insurance. During the period of construction of Phases II and III the developer agrees to purchase, at developer's expense, a liability insurance policy in an amount determined to be adequate by the local Veterans' Administration Office, or by the homeowners' Association Board of Directors, whichever amount is greater, to cover any liability to which owners of previously sold lots might be exposed. This policy shall be endorsed "as owner's interest might appear."

21.9 Minimum Interest of Units in Phase I. The initial minimum interest of the owner of each lot in Phase I to the common property is set forth on the attached Schedule B. The percentage of ownership of each lot owner after the inclusion of Phase(s) II and III is likewise set forth on the attached Schedule B. The ownership as set forth in Phase I is subject to defeasance upon the construction and inclusion of Phase II or any subsequent phase.



21.10 Subsequent Phases - Amendment. Declarant shall have the right and reserves the right to amend this Declaration without the approval of the owners and/or the Association for the purpose of adding additional phases. In the event Declarant proceeds with the development of the proposed subsequent phase or phases, he shall do so in a numerical order having a logical connection to the numbering system in preceding phases. Whether or not additional phases are added to the project under this Declaration shall be at the sole discretion of the Declarant.

21.11 Easements Reserved for Subsequent Phases. The Declarant reserve for the benefit of the Declarant's non-developed property set forth on the attached Schedule A easements over and across the developed properties for purposes of roadways, parking, ingress and egress and the installation of utilities as necessary for the development of subsequent phases. The easements reserved over the developed properties shall not interfere with the buildings and limited common areas thereon but must be consistent with the intended use and actual use of the property contained in the preceding phases as developed.

ARTICLE 22

AMENDMENT OF DECLARATION, SURVEY MAP, PLANS

22.1 Declaration Amendment. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which shall set forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Board. The Board may at any time designate a new or different person or agency for such purposes 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. The Declarant may, at any time before the Board is organized, charge such designation by amendment to the Declaration signed and acknowledged only by Declarant.

22.2 Map and Plan Amendments. Except as otherwise provided herein, the Map may be amended by revised versions or revised portions thereof referred to and described as to effect in an amendment to the Declaration adopted as provided for herein. Copies of any such proposed amendment to the Map shall be made available for examination by every owner. Such amendment to the Map shall be effective, once properly adopted, upon recordation in the appropriate county or city office in conjunction with the Declaration amendment. No such amendment to the Map shall be effective until approved by the city under then applicable regulations.

22.3 Amendments by Declarant. The Declarant may at any time until all lots have been sold by Declarant record an amendment to the Declaration including, changing the person who is to receive service of process, and such amendment need be acknowledged by only the Declarant and need not otherwise comply with the requirements of this Article 22.



22.4 **Amendments to Conform to Construction.** In addition, Declarant, upon Declarant's sole signature, may at any time until all lots have been sold by Declarant file an amendment to this Declaration and the Survey Map and Plans to conform them to the actual location of any of the constructed improvements and to establish, vacate or relocate utility easements, access road easements or parking areas.

ARTICLE 23

MISCELLANEOUS

23.1 **Service of Process.** The person upon whom process may be served and his address are set forth in Schedule C. After termination of Declarant's management authority under Section 10.1, service of process for the purposes provided in the Act may also be made upon the president of the Association. After Declarant has relinquished his management power as provided for in Section 10.1, service of process shall only be made on the president of the Association whose address is set forth in Schedule C, or such person as the Board may designate. The Board may at any time designate a new or different person or agency for such purposes 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. The Declarant may, at any time before the Board is organized, charge such designation by amendment to the Declaration signed and acknowledged only by Declarant.

23.2 **Notices for All Purposes.**

23.2.1 **Delivery of Notice.** Any notice permitted or required to be delivered under the provisions of this Declaration or the Bylaws may be delivered either personally or by mail. If delivery is made by mail, any such notice shall be deemed to have been delivered twenty-four (24) 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 Board for the purpose of service of such notice, or to the most recent address known to the Board. Notice to the owner of any lot shall be sufficient if mailed to the last such person if no other name or mailing address has been given to the Board by a person so entitled. Mailing addresses may be changed from time to time by notice in writing to the Board. Notice to be given to the Board may be given to Declarant until the Association and Board have been constituted and thereafter shall be given to the president or secretary of the Board.

23.2.2 **Mortgagee Notice.** Upon written request, and for a period of three years (or such longer time as the Board may set) after such request, a vendor, mortgagee or deed of trust beneficiary of any lot shall be entitled to be sent a copy of any notice respecting the lot covered by his security instrument until the request is withdrawn or the security interest discharged. Such written request may be



renewed an unlimited number of times.

23.3 Mortgagee's Acceptance.

23.3.1 **Priority of Mortgage.** This Declaration shall not initially be binding upon any mortgagee of record at the time of recording of said Declaration but rather shall be subject and subordinate to the mortgage of said mortgagee.

23.3.2 **Acceptance Upon First Conveyance.** Declarant shall not consummate the conveyance of title of any lot until said mortgagee shall have accepted the provisions of this Declaration and made appropriate arrangements, in accordance with the Act, for partial release of lots with their appurtenant limited common areas and percentages of interest in common areas from the lien of said mortgage. The issuance and recording of the first such partial release by said mortgagee shall constitute its acceptance of the provisions of this Declaration and the planned unit development status of the lots remaining subject to its mortgage as well as its acknowledgment that such appropriate arrangements for partial release of lots have been made; provided, that except as to lots so released, said mortgage shall remain in full effect as to the entire property.

23.4 **Severability.** The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereon shall not affect the validity or enforceability of any other provision hereof, if the remainder complies with the Act or if the remainder effects the property as covenants.

23.5 **Effective Date.** This Declaration shall take effect upon recording.

23.6 **Reference to Survey Map Plans.** The Map of the lot(s) referred to herein were filed with the Auditor of Skagit County, Washington, simultaneously with the recording of this Declaration under File No. 200010300144, Volume of Records, pages through .

DATED this 31st day of October, 2000.

DECLARANT: VINTAGE INVESTMENTS, INC.

By:

Donald A. W. Schwartz
President

Secretary



SCHEDULE A

Description of Land

The legal description of the land in which the **Forest Ridge Planned Unit Development** is situated is:

Plat of Anacortes, Blocks 252, 253, 254 and 255, TOGETHER WITH the vacated streets and alley as follows: Alleys in Blocks 252, 253, 254 and 255; 21st Street from the East boundary of Blocks 252 and 253 to the West boundary of Blocks 252 and 253; 22nd Street from the East boundary of Blocks 253 and 254 to the West boundary of Blocks 253 and 254; 23rd Street from the East boundary of Blocks 254 and 255 to the West boundary of Blocks 254 and 255, and the East half of "A" Avenue from the North end of Block 252 to the South end of Block 255.

All situated in Skagit County, Washington.

ACCESS

The common areas have direct access to 23rd Street.



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, Skagit County Auditor

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SCHEDULE B

Article 8. Percentages of interest in common areas for each lot.

Each lot will own an equal percentage of the common areas. The percentage is to be determined by dividing the total number of lots, in all completed phases, into 1. For example, if the total number of lots in all completed phases is 32, the percentage of ownership of common areas of each lot will be 3.125%.



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Skagit County Auditor
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SCHEDULE C

23.1 Name and address of person upon whom process may be served. Also name and address of president of Association. Must be resident of county in which planned unit development is located.

Ronald A. Woolworth
2216 Cascade Court
Anacortes, WA 98221.

(Ronald A. Woolworth is both the person on whom process may be served as well as the initial president of the Association).



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, Skagit County Auditor

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STATE OF WASHINGTON

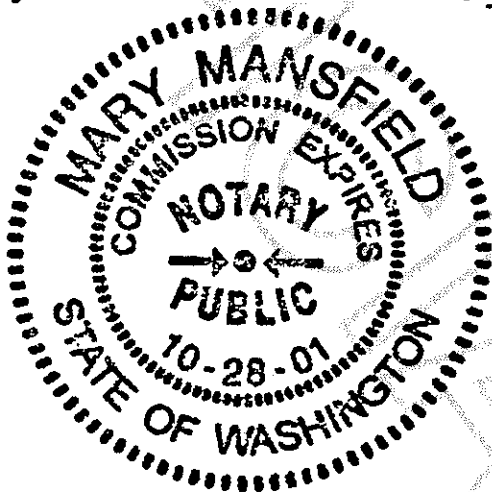
COUNTY OF

Skagit

} ss.

On this 31st day of October, 2000, before me personally appeared Ronald A. Woolworth, to me known to be the President of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he as authorized to execute said instrument.

Given under my hand and official seal this 31st day of October, 2000.



Mary Mansfield

Notary Public in and for the State of Washington.

Name printed MARY MANSFIELD

Residing at Anacortes

My commission expires 10-28-01

Acknowledgement - Corporate



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, Skagit County Auditor

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UNOFFICIAL DOCUMENT