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**CONDOMINIUM DECLARATION  
CONTAINING COVENANTS, CONDITIONS  
RESTRICTIONS AND RESERVATIONS  
FOR  
PADILLA HEIGHTS SUITES, A CONDOMINIUM**

TITLE OF DOCUMENT:

GRANTORS:

GRANTEE:

ABBREV. LEGAL DESCRIPTION:

ADDITIONAL LEGAL ON  
TAX PARCEL NOS.:

CONDOMINIUM DECLARATION FOR PADILLA  
HEIGHTS SUITES, A CONDOMINIUM  
KNORR HOMES, LLC, Z & D II, L.L.C.  
THE GENERAL PUBLIC  
PTN SW 1/4 OF SE 1/4 OF SEC. 3, TWP 34 N,  
RANGE 2 E, W.M. SKAGIT  
P. 39  
340203-4-018-0007 P19701 & P19781

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## ARTICLE I

### SUBMISSION OF PROPERTY: PURPOSE

#### 1.1. Submission of Property.

Knorr Homes, LLC and Z & D II, L.L.C., hereinafter collectively referred to as the "Declarant," being the owner in fee simple of the land described in the attached Exhibit "A", hereby submits said land, together with all improvements, easements, rights and appurtenances thereunto belonging, collectively referred to hereinafter as "the Property", to the provisions of the Washington Condominium Act ("the Condominium Act", i.e., Chapter 64.34 of the Revised Code of Washington), and creates from such Property a Condominium to be known as "Padilla Heights Suites, a Condominium."

#### 1.2. Reference to Survey Map.

Contemporaneously with the recordation of this Declaration, the Declarant has recorded with the Auditor of Skagit County, Washington a certain survey map and Condominium plans, showing the location and dimensions of the land described in Exhibit "A" and the location and dimensions of the improvements thereupon constructed or contemplated to be constructed, together with other information required by the Condominium Act; this survey map and Condominium plans are hereinafter together referred to as the "Survey Map" or the "Survey Map and Plans"; the Survey Map is recorded at Auditor's File No.

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#### 1.3. Purpose.

This Declaration, together with the Survey Map and Plans referred to herein, states covenants, conditions, restrictions and reservations intended by the Declarant to effect a common plan for the Condominium development of the Property mutually beneficial to all of the described Units. The covenants, conditions, restrictions, reservations and plan, including without limitation the statutory lien for Assessments described at Section 10.16 hereof, which may be foreclosed by the Association nonjudicially under the Power of Sale granted herein, are binding upon the entire Property and upon each such Unit as a parcel of realty, and upon its Owners and their heirs, personal representatives, tenants, licensees, successors and assigns, through all successive transfers of any part of the Property, irrespective of whether specifically referred to in deeds, contracts or security instruments, and regardless of any subsequent forfeitures, foreclosures, or sales of Units under security instruments, or of any forfeitures, foreclosures, or sales instituted for nonpayment of government tax, levy or assessment of any kind.

## ARTICLE II

### DEFINITIONS

2.1. "Allocated interest" means the undivided interest in the Common Elements, the Common Expense liability, and votes in the Association allocated to each Unit by the provisions of Sections 5.3, 7.4.2 and 10.6 of this Declaration, pursuant to RCW 64.34.224 .

2.2. "Assessment" means all sums chargeable by the Association against a Unit including, without limitation: (a) Regular, Special and Limited Assessments for Common Expenses, charges, and fines





imposed by the Association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the Association in connection with the collection of a delinquent Owner's account.

2.3. "Association" or "Unit Owners' Association" means the unit owners association organized under RCW 64.34.300.

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

2.5. "Common Elements" means all portions of a Condominium other than the Units. The term "General Common Elements" is sometimes used herein to describe Common Elements which are not or have not yet been allocated as Limited Common Elements.

2.6. "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves. Such expenditures are described with particularity in Schedule 8.3.2 in Exhibit D to this Declaration.

2.7. "Common Expense liability" means the liability for Common Expenses allocated to each Unit pursuant to RCW 64.34.224, and Section 10.6 of this Declaration.

2.8. "Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the Owners of those portions. Real property is not a Condominium unless the undivided interests in the Common Elements are vested in the Unit Owners, and unless a Declaration and a Survey Map and Plans have been recorded pursuant to the Condominium Act.

2.9. "Condominium Instruments" means the Declaration, the Survey Map and Plans, the Bylaws of the Association, any Rules and Regulations adopted by the Board of Directors, and any amendments to any such documents.

2.10. "Conversion condominium" generally means a condominium which, prior to its creation, was lawfully occupied wholly or partially by one or more residential tenants or subtenants. This term is specifically defined at RCW 64.34.020(10). This Condominium does not constitute a conversion condominium.

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

2.12. "Declarant" means any party who (a) executes the Condominium Declaration, or (b) reserves or succeeds to any Special Declarant Right under the Declaration or who owns a fee interest in the project and who is materially involved in the development of the project in the manner described in RCW 64.34.020(13).

2.13. "Declarant control" means the right of the Declarant or persons designated by the Declarant to appoint and remove officers and members of the Board of Directors or to veto or approve a proposed action of the Board or Association pursuant to Sections 8.1 and 16.5 of this Declaration and RCW 64.34.308(4) or (5).



2.14. "Declaration" means this document, which creates the Condominium by setting forth the information required by RCW 64.34.216, and any amendments to this document.

2.15. "Development Rights" means any right or combination of rights reserved by the Declarant in the Declaration: (a) to add real property or improvements to the Condominium; (b) to create Units, Common Elements, or Limited Common Elements within real property included in or added to the Condominium; (c) to subdivide Units or convert Units into Common Elements; (d) to withdraw real property from the Condominium; or (e) to reallocate Limited Common Elements with respect to Units that have not been conveyed by the Declarant. Development rights are personal to the Declarant and may be exercised, or not exercised, at the sole discretion of the Declarant. In this Condominium, Development rights are described in Section 3.3 hereof.

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

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

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

2.19. "Identifying number" means a symbol or address that represents the designation of each Unit or, in some cases, a Common Element component, in the Condominium. A list of identifying numbers for all the Units in the Condominium in existence as of the effective date of this original Declaration, along with other information required by the Condominium Act, is attached as Exhibit B to this Declaration, where such identifying numbers are listed in a column below the words "Unit No."

2.20. "Leasehold Condominium" means a Condominium in which all or a portion of the real property is subject to a lease, the expiration or termination of which will terminate the Condominium or reduce its size. This Condominium is not a leasehold Condominium.

2.21. "Limited Common Element" means a portion of the Common Elements allocated by Article VI of the Declaration or by operation of RCW 64.34.204(2) or (4) for the exclusive use of one or more but fewer than all of the Units.

2.22. "Limited Common Assessment" means a portion of the Common Expenses of the Association which may be specially assessed against one or more but fewer than all of the Units pursuant to Section 10.8 of this Declaration.

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

2.24. "Occupant" means a person lawfully occupying any Unit; the term includes without limitation Unit Owners, and family members, employees and tenants of Unit Owners.

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



2.26. "Purchaser" means any person, other than the Declarant or a dealer, who by means of a disposition acquires a legal or equitable interest in a Unit other than (a) a leasehold interest, including renewal options, of less than twenty years at the time of creation of the Unit, or (b) as security for an obligation.

2.27. "Special Declarant Rights" means rights reserved for the benefit of the Declarant: (a) to complete improvements indicated on survey maps and plans filed with the Declaration under RCW 64.34.232; (b) to exercise any Development Right under RCW 64.34.236; (c) to maintain sales offices, management offices, signs advertising the Condominium, and models of the project under RCW 64.34.256; (d) to use easements through the Common Elements for the purpose of making improvements within the Condominium or within real property which may be added to the Condominium under RCW 64.34.260; (e) to make the Condominium part of a larger Condominium or a development under RCW 64.34.280; (f) to make the Condominium subject to a master Association under RCW 64.34.276; or (g) to appoint or remove any Officer or Director of the Association or of any master Association, or to veto or approve a proposed action of the Board or the Association during any period of Declarant control under RCW 64.34.308(4). In this Condominium, Special Declarant Rights are described in Section 16.5 hereof.

2.28. "Special Limited Common Elements" means those Limited Common Elements which shall be repaired, replaced and subjected to periodic maintenance by the Association **at the expense of the Owner(s) of the Unit(s) to which such Limited Common Element(s) are allocated**, under Sections 6.2.3 and 10.8 of this Declaration. In this Condominium, Special Limited Common Elements consist of the signage, canvas awnings, and exterior windows and doors of each Unit. The term shall also include any areas or facilities which are constructed and permitted to exist among the Common Elements by or at the request of a Unit Owner after the recordation of this Declaration, which require such work by the Association rather than by the Unit Owner, and as to which it would be inequitable that other Owners share in the costs incurred by the Association in so doing. The Board may require that a Special Limited Common Element be insured by the Owner of the Unit to which it is appurtenant, under Section 11.5.4 hereof.

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

2.30. "Unit" means a physical portion of the Condominium designated for separate ownership, the boundaries of which are described pursuant to RCW 64.34.216(1)(d) at Section 4.2 hereof.

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

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



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## ARTICLE III

### DESCRIPTION OF LAND, BUILDINGS, DEVELOPMENT RIGHTS

#### 3.1. Land and Street Address.

The land on which the building and other improvements of this Condominium are located is situated at 9642 Padilla Heights Road, Anacortes, Skagit County, Washington 98221, and is more particularly described in Exhibit "A" which is attached hereto and incorporated herein.

#### 3.2. Buildings.

The Condominium contains one building depicted on the Survey Map and Plans.

#### 3.3. Development Rights.

##### 3.3.1. Description.

Pursuant to RCW 64.34.216(1)(j), the Declarant has reserved Development rights which are personal to the Declarant and may be exercised, or not exercised, at the sole discretion of the Declarant. These include the rights to: to create additional Units, Common Element components; to create additional Common Elements or Limited Common Elements within the real property included in the Condominium, as described more particularly in Sections 4.1, 5.1, and/or 6.1 of this Declaration; to allocate portions of the Common Elements as Limited Common Elements; to create and/or subdivide Development Units, to convert Development Units into storage Units, and/or to convert portions of Development Units into Common Elements and to subdivide or combine Units in the Condominium.

Without limiting the foregoing, the Declarant reserves the right to expand the scope of development within the Condominium through phased development, as described below. Only Phase 1 is required to be completed.

(a) Phase 1, in general, shall consist of the fourteen(14) commercial Units in one building and four (4) Development Units, as described in Exhibit B to this Declaration, along with various amenities described hereinafter.

(b) Phase 2, in general, would consist of up to an additional fourteen (14) commercial Units created by a subdivision of a Development Unit created in Phase 1, in a second building, with additional parking facilities.

(c) Phase 3, in general, would consist of up to an additional fourteen (14) commercial Units created by a subdivision of a Development Unit created in Phase 1, in a third building, with additional parking facilities.

(d) Phase 4, in general, would consist of up to an additional fourteen (14) commercial Units created by a subdivision of a Development Unit created in Phase 1, in a fourth building, with additional parking facilities.



(e) Phase 5, in general, would consist of up to an additional five (5) commercial Units created by a subdivision of a Development Unit created in Phase 1, in a fifth building, with additional parking facilities.

3.3.2. Procedure for Exercise.

(a) To exercise any Development Right reserved under Section 3.3.1 of this Declaration, the Declarant shall prepare, execute, and record an amendment to the Declaration and either a new Survey Map and Plans necessary to conform to the requirements of subsections (1), (2), and (3) of RCW 64.34.232, or new certifications of the Survey Map and Plans previously recorded if the documents otherwise conform to the requirements of those subsections, in accordance with Section 17.6 of this Declaration. The Declarant shall be the Unit Owner of any Units thereby created. The amendment to the Declaration shall assign an identifying number to each new Unit created, and, except in the case of subdivision or conversion of Units described in subsection (c) of this section, shall reallocate the allocated interests among all Units in existence following the amendment, using the same formulas or factors for allocation specified in Sections 5.3, 7.4.2 and 10.6 hereof. The amendment shall describe any Common Elements and any Limited Common Elements thereby created and, in the case of Limited Common Elements, designate the Unit to which each is allocated to the extent required by RCW 64.34.228. No additional Phase of development shall be deemed to be completed or to constitute a lawful portion of this Condominium until the Amendments described above shall have been recorded.

(b) If the Declarant exercises a Development Right to subdivide a Unit previously created, whether or not any part of the Unit is converted into Common Elements, the amendment to the Declaration shall reallocate all the allocated interests of the Unit among the Units created by the subdivision in any reasonable and equitable manner prescribed by the Declarant at the time of such subdivision.

3.3.3. Time Limits on Development Rights.

The Declarant may exercise the Development Rights described in Section 3.3.1 of this Declaration within seven (7) years from the date of the conveyance by the Declarant of the first Unit in the Condominium to a person other than the Declarant. Declarant may commence construction of any improvements relating to such Development Rights at any time prior thereto, under the Easement Rights and Special Declarant Rights reserved in Sections 16.3 and 16.5 of this Declaration.

3.3.4. Sequence of Exercise of Rights.

The Declarant declares, pursuant to RCW 64.34.216(1)(k), that subject to the time limitations stated in Section 3.3.3 hereof, and except as otherwise expressly provided elsewhere in this Declaration, the Development Rights described in Section 3.3.1 of this Declaration may be exercised at any time, at different times and in any order, without further assurances or limitation of any sort.

3.3.5. Declarant's Liability for Expenses.

In addition to the liability that the Declarant as a Unit Owner has under this Declaration, the Declarant alone is liable for all expenses in connection with real property subject to Development Rights. No other Unit Owner and no other portion of the Condominium is subject to a claim for payment of those expenses. Any income or proceeds from real property subject to Development Rights shall inure to the Declarant.



## ARTICLE IV

### UNITS

#### 4.1. Number and Location.

##### 4.1.1. Initial Units.

The Condominium contains fourteen (14) commercial Units and four (4) Development Units which are depicted on the Survey Map and Plans. The location of existing Units within the Condominium and the dimensions of those Units are shown on the Survey Map and Plans. Exhibit B hereto contains a list of all Units, their identifying numbers, size, the Allocated Interests appurtenant to each Unit, and other information required by the Condominium Act.

##### 4.1.2. Units Created by Phased Development.

The Declarant reserves the right to create a total of sixty-one (61) commercial Units pursuant to Development Rights reserved in Section 3.3.1 of this Declaration. Reference should be made to that Section for additional information. If required for purposes of financing the construction of future phases, Declarant may create interim "Development Units" designed to support and contain the construction of the building(s) containing new Units. Development Units may be "airspace" units, which have boundaries consisting simply of planes in space. Any Development Unit will be assigned Allocated Interests proportional to the number of commercial Units which may be created within it. Declarant specifically reserves the right to subdivide any such Development Unit into Units and Common Elements supporting or serving same.

#### 4.2. Unit Boundaries.

The boundaries of each Unit are as follows:

##### 4.2.1. Upper and Lower (horizontal) Boundaries.

The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the vertical (perimetric) boundaries.

(a) Upper Boundary: The horizontal or oblique planes of the bottom surfaces of the wood joists or other structural materials used in the structural portions of the ceiling except where there is a skylight, in which case the upper boundary exists at the underside of the skylight. The skylight fixture itself constitutes a Limited Common Element pursuant to Section 6.1.2 hereof.

(b) Lower Boundary: The horizontal plane of the top surface of the undecorated concrete floor slab or subflooring material, as the case may be.

(c) The floor of any second or mezzanine level of Unit constitutes a part of the Unit rather than a horizontal boundary thereof.



#### 4.2.2. Vertical (perimetric) Boundaries.

The vertical boundaries of the Unit shall be the vertical planes which include the back surface of the sheetrock of all walls bounding the Unit, extended to intersections with each other and with the upper and lower boundaries.

#### 4.2.3. Boundaries of Development Units.

The vertical boundaries of Development Units shall consist of planes extending vertically from the location of those boundaries for those Units depicted on the Survey Map and Plans. The upper and lower boundaries of Development Units consist of planes existing at elevations levels described particularly on the Survey Map.

#### 4.3. Monuments in Relation to Boundaries of Units.

The physical boundaries of a Unit, in conjunction with the physical boundaries of the building containing such Unit, constructed in substantial accordance with the original Survey Map and Plans, define the boundaries of the Unit rather than any metes and bounds expressed in the Survey Map or Plans, regardless of settling or lateral movement of the building or minor variance between boundaries shown on the Survey Map or Plans.

#### 4.4. Additional Items Included in Units.

Each Unit contains: (i) any nonstructural interior partitions located within the boundaries of the Unit; (ii) the interior surfaces of all boundary walls, ceilings and floors, including any paint, floor coverings and other finishing materials; and (iii) any visible electrical and mechanical fixtures, systems and equipment, commencing at the point of disconnection from the structural body of the building or from utility lines, pipes or systems serving any other Unit or the Common Elements.

#### 4.5. Items Excluded from a Unit.

A Unit shall be deemed not to include: pipes, wires, conduits and other public or private utility lines, bearing columns, structural roofing members, or other structural portions of the building running through a Unit which are utilized for or serve more than one Unit or the Common Elements, and all other property and fixtures of any kind which are not removable without jeopardizing the soundness, safety or usefulness of the remainder of the Condominium.

#### 4.6. Maintenance of Units.

Each Unit Owner shall, at its sole expense, have the right and the duty to keep the interior of its Unit and its fixtures, equipment, and appurtenances in good order, condition and repair and shall do all Preventative Maintenance, repairs and/or replacements at such times as are necessary to maintain the good appearance and condition of such Unit. Each Owner shall also be responsible for the maintenance, repair or replacement of any electric door opening equipment and any individual heating, ventilating or air-conditioning equipment, wherever located, installed for the sole and exclusive use of the Unit, and of any device or equipment lying outside the boundaries of the Unit but installed for the sole and exclusive use of the Unit, and of any other fixtures, systems or equipment described in Section 4.4(iii) hereof. This Section shall not be construed as permitting any interference with or damage to the structural integrity of the building



or interference with the use and enjoyment of the Common Elements or of the other Units or any of them, nor shall it be construed to limit the powers or obligations of the Board hereunder. See also Section 8.4 hereof.

4.7. Alterations of Units.

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

4.7.1. May make any improvements or alterations to the Owner's Unit that do not affect the structural integrity or mechanical or electrical systems of any other Unit or the Common Elements, lessen the support of any portion of the Condominium, or violate use restrictions imposed by law;

4.7.2. May not change the appearance of the Common Elements or the exterior appearance of a Unit without permission of the Association;

4.7.3. May, after acquiring an adjoining Unit or an adjoining part of an adjoining Unit, and following approval of the Board of Directors, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not adversely affect the structural integrity or mechanical or electrical systems of any other Units or the Common Elements, or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this Subsection is not a relocation of boundaries. The Board of Directors shall approve a Unit Owner's request, which request shall include the plans and specifications for the proposed removal or alteration, under this Subsection within thirty days, unless the proposed alteration does not comply with the Condominium Act or the Declaration or impairs the structural integrity or mechanical or electrical systems in the Condominium. The failure of the Board of Directors to act upon a request within such period shall be deemed approval thereof.

4.8. Combining Units and Relocation of Unit Boundaries.

4.8.1. Subject to the provisions of any applicable building, zoning or other applicable regulations, and with the consent of any Eligible Mortgagees holding mortgages in the affected Units pursuant to Schedule 15.3 of Exhibit B to this Declaration, the boundaries between adjoining Units may be relocated, or Units may be combined, but only by an amendment to the Condominium Instruments as provided in Article XVII hereof, following application to the Association by the Owners of those Units. If the Owners of the adjoining Units have specified a reallocation between their Units of their Allocated Interests, the application must state the proposed reallocations. Where two or more entire Units are combined, the Allocated Interests allocated to the resulting Unit shall equal the sum of the Allocated Interests formerly allocated to each of the Units which were combined. Unless the Board of Directors determines within thirty days that the reallocations are unreasonable, the Association shall prepare an amendment to the Declaration that identifies the Units involved, states the reallocations, is executed by those Unit Owners, contains words of conveyance between them, and is recorded in the name of the grantor and the grantee in the Office of the County Auditor. The Owner of any Unit which has been previously combined with another, or which has had its common boundary adjusted with another, may later cause such adjustment to be reversed with the consent of the Owner(s) of any other Unit(s) affected thereby, in the manner provided in the Act.

4.8.2. The Association shall obtain and record Survey Maps or Plans complying with the requirements of RCW 64.34.232(4) necessary to show the altered boundaries between adjoining Units and their dimensions and identifying numbers.





4.8.3. The reasonable costs incurred in preparing and recording amendments to the Condominium Instruments shall be paid by the Owners of the adjoining Units to the Association prior to recordation of such amendments.

## ARTICLE V

### COMMON ELEMENTS

#### 5.1. Common Elements.

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

5.1.1. The land above described, including all driveway and/or private roadway areas, landscaped areas and open spaces depicted on the Survey Map.

5.1.2. The roofs, foundations, columns, girders, studding, joists, beams, supports, main walls, and all other structural parts of the building, to the boundaries of the Units as described above in Section 4.2.

5.1.3. Installations of services for common use such as main power lines, exterior lighting, main water or sewer lines, septic system, pipes, conduits, and wires; any common restrooms, trash receptacles, containers or "dumpsters"; any equipment for fire suppression systems or security systems; any common mailbox facilities, and in general any and all apparatus and installations existing for common use rather than for any one Unit.

5.1.4. The controlled entrance gate and perimeter fencing.

5.1.5. The engineered stormwater system, which shall be maintained as provided in Section 5.7 hereof.

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

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

5.2.1. Except as permitted by this Declaration or the Condominium Act, the Common Elements shall remain undivided and shall not be abandoned by act or omission, and no Unit Owner or other person may bring any action for partition or division of the Common Elements, except as provided in Section 9.3 hereof. Portions of the Common Elements which are not necessary for the commercial use of a Unit may be conveyed or subjected to a security interest by the Association, subject to RCW 64.34.348, if the Owners of Units to which at least eighty percent of the votes in the Association are allocated, including eighty percent of the votes allocated to Units not owned by the Declarant or an affiliate of the Declarant, along with that percentage of Eligible Mortgagees specified in Article XV of this Declaration consent to this action; but all the Owners of Units to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a security interest. Proceeds of the sale or financing of General



Common Elements are an asset of the Association. Proceeds of the sale or financing of a Limited Common Element may be allocated between the Association and the Unit(s) to which it was appurtenant, in such reasonable proportion as the Association and Unit Owner(s) may agree, subject to Section 5.2.2 hereof.

5.2.2. An agreement to convey Common Elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as required for deeds, by the requisite number of Unit Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the Condominium is situated and is effective only upon recording.

5.2.3. Any purported conveyance, encumbrance, or other voluntary transfer of Common Elements, unless made pursuant to this section, is void. A conveyance or encumbrance of Common Elements pursuant to this section shall not deprive any Unit of its rights of access and support, nor shall it affect the priority or validity of preexisting encumbrances.

5.3. Allocated Interests.

5.3.1. Initial Allocation.

Pursuant to RCW 64.34.224(1), the Declarant has allocated to each Unit in the Condominium an undivided interest in the Common Elements of the Condominium, which is known as the Unit's Allocated Interest in the Common Elements. The allocation of these undivided interests has been determined generally on the basis of each Unit's size relative to all other Units in the Condominium and/or the number of commercial Units which may be created within it. Each Unit's Allocated Interest in the Common Elements is expressed as a percentage and is stated with particularity on the attached Exhibit B.

5.3.2. Reallocation.

In the event that the Declarant exercises a Development Right to create additional Units in the Condominium, these initial Allocated Interests shall be reallocated pursuant to Section 3.3.2 hereof.

5.4. Maintenance, Repair and Replacement.

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

5.5. Schedules for Preventative Maintenance, Other Routine Maintenance and Reserves.

The Board, with the assistance of the Association's Manager and/or other competent professionals, shall develop a schedule of routine Preventative Maintenance for all components of the Common Elements which require same, establishing appropriate times during each year when such maintenance should occur, and identifying qualified contractors to conduct such inspections and Preventative Maintenance. The Board should take particular care to inspect and properly maintain the exterior weather-proofing elements of the building, including at minimum the roof, roof drains and scuppers, gutters, down-spouts, siding, flashing systems, caulking, deck membranes, exterior windows and doors, and all major building systems including the plumbing, storm and sanitary sewer lines, ventilation systems, electrical systems, and any other areas of the building which are susceptible to premature structural failure as a result of water intrusion or other



factors, and to regularly inspect and re-caulk, re-seal or otherwise appropriately maintain such areas. The Board should also periodically undertake an analysis of the adequacy of the Association's reserve fund; such analysis should (i) ascertain the probable remaining useful life of each component of the Common Elements which will require replacement or major repairs, (ii) estimate the probable cost of such replacement or repair for each such component, (iii) establish an annual reserve budget which would, when funded, minimize the necessity for the imposition of a special assessment upon the Owners within the foreseeable future.

5.6. Declarant to Receive Inspection Reports.

The Association shall promptly provide Declarant with copies of all inspection reports obtained by the Association in this regard, identifying any inspections which have been performed and what items of maintenance have been performed, for a period of five years following the sale of the last Unit in the Condominium. The Declarant reserves the right, but not the obligation, to undertake such inspection(s), maintenance and/or repair(s) should the Association fail to do so.

5.7. Upkeep of Stormwater System.

The engineered portions of the storm-water detention and transport system shall be maintained by the Association in accordance with any manual or guidelines prepared for such facilities for the Declarant by Declarant's engineers, and otherwise in accordance with the provisions of the DOE Stormwater Management Manual for Western Washington ["DOE Stormwater Manual"], as the same may be updated from time to time. Such maintenance shall be performed by experienced, appropriately-licensed contractors familiar with the type of functional components of the system. The dumping of solvents, oil, concrete or concrete residue, or water that is heavily laden with sediments, is expressly prohibited anywhere in the Condominium. Any buffered areas adjacent to components of the Stormwater system shall be perpetually maintained.

5.8. Right of Access.

Each Unit Owner shall afford to the Association and the other Unit Owners, and to their agents or employees, access through the Owner's Unit and Limited Common Elements appurtenant thereto as may be reasonably necessary for the purposes of maintenance, repair and replacement. If damage is inflicted on the Common Elements, or on any Unit through which access is taken, the Unit Owner responsible for the damage, or the Association if it is responsible, shall be liable for the repair thereof, as provided in Section 8.4 hereof.

5.9. Interference with Common Elements.

No person shall obstruct any of the Common Elements nor shall any person place or cause or permit anything to be placed on or in any of the Common Elements (except those areas designated for storage by the Condominium Instruments) without the approval of the Board. Nothing shall be damaged, altered, constructed in or removed from the Common Elements except with the prior written consent of the Board of Directors.



5.10. Parking Spaces.

The Condominium contains a total of twenty-eight (28) parking spaces, which are described with particularity on Exhibit C to this Declaration. Parking spaces may be assigned for the exclusive use of individual Unit Owners pursuant to Section 6.1 of this Declaration. Any unassigned parking spaces shall be considered to be visitors parking spaces or handicapped spaces, as the case may be. Use of all parking spaces shall be governed by the provisions of Section 9.1.3 hereof.

ARTICLE VI

LIMITED AND RESERVED COMMON ELEMENTS

6.1. Limited Common Elements.

Limited Common Elements are those portions of the Common Elements allocated to and reserved for the exclusive use of one or more, but fewer than all of the Units. They consist of:

6.1.1. All exterior doors and any windows, awnings, or other fixtures designed to serve a single Unit, but which are located outside the Unit's boundaries. If any individual heating, ventilating or air conditioning equipment lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the General Common Elements. The exterior doors constitute Special Limited Common Elements, as defined at Section 2.28 hereof.

6.1.2. The parking areas which are shown on the Survey Map and Plans, and are assigned as indicated on Exhibit C to this Declaration. .

6.1.3. A portion of the Common Elements is marked on the Survey Map as "Common Elements which may be allocated as Limited Common Elements". This portion of the Common Elements includes some of the uncovered parking spaces. The Declarant reserves the exclusive right to assign these parking spaces as Limited Common Elements for the exclusive use of certain Unit Owners to whose Units these Limited Common Elements shall become allocated. The Declarant may assign such a Common Element as a Limited Common Element pursuant to the provisions of RCW 64.34.216(1)(i), through an amendment to this Declaration requiring only Declarant's signature. If a person at any time acquires the right to the assignment of such a Limited Common Element, the Declarant shall evidence the right to such an assignment by preparing an amendment to the Declaration for such purpose, in the manner described in Section 3.3.2 hereof.

6.2. Maintenance.

6.2.1. General Responsibility as Between Owner and Association.

Each Owner of a Unit to which any of the above-described Limited Common Elements are appurtenant shall be responsible for cleaning and caring for all such Limited Common Elements, and keeping them in sightly condition. Except as provided in Section 6.2.2 below, the Association shall have exclusive

control of painting, repairing, replacing and performing necessary periodic Preventative Maintenance to all Limited Common Elements.

6.2.2. Owners' Special Rights and Responsibilities.

Any mechanical or electrical equipment comprising any heating, ventilating or air conditioning system serving only one Unit, or any other form of equipment installed by a Unit Owner within the Common Elements and serving only such Unit, shall be maintained, repaired, replaced and insured by the Unit's Owner in a functional, clean and tidy condition.

6.2.3. Financial Responsibilities as Between Owner and Association.

Maintenance, painting, repair or replacement of the structure and finish of the Limited Common Elements shall be a Common Expense. Notwithstanding the foregoing, the Board shall recover the costs of repairs to and replacement of any Special Limited Common Elements defined in Section 2.31 hereof through Limited Common Assessments levied pursuant to Section 10.8 hereof.

ARTICLE VII

UNIT OWNERS ASSOCIATION

7.1. Name and Form of Association.

The name of the Association shall be the "Padilla Heights Suites Association." The Association has been or will be incorporated by the Declarant prior to the first conveyance of a Unit in the Condominium as a non-profit corporation under the laws of the State of Washington. The rights and duties of the members and of said corporation shall be governed by the provisions of the Condominium Act and of this Declaration. The Association shall remain organized as a profit or nonprofit corporation. In case of any conflict between Chapter 24.06 RCW, the Nonprofit Miscellaneous and Mutual Corporations Act, and the Condominium Act, the Condominium Act shall control.

7.2. Powers of Association.

7.2.1. Statutory Powers Exercised by Board of Directors.

The Association shall have, through its Board of Directors, all powers available to condominium associations under the Condominium Act. Such powers are set forth with particularity in the Bylaws of the Association.

7.2.2. Power to Assign Right to Future Income.

The Association shall also have the power to assign its right to future income (including the right to receive common expense assessments), provided that such assignment is approved in advance by the vote or agreement of Owners holding a majority of the voting power in the Association.



7.2.3. Power to Determine Types of Commercial Uses Permitted in Units.

The Board of Directors shall also have the right to determine, exercising reasonable business judgment and giving due deference to the needs of existing Unit Owners and their investment-backed expectations, the types of commercial uses and purposes to which Units in the Condominium may be put from time to time.

7.3. Membership.

Membership rights are specified in the Bylaws of the Association

7.4. Voting.

7.4.1. Voting Rights.

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

7.4.2. Allocated Interests.

Pursuant to RCW 64.34.224(1), the Declarant has allocated to each commercial Unit in the Condominium an equal vote in the Association which is known as the Unit's Allocated Interest for voting, or "vote". In the event that the Declarant exercises a Development Right to create additional Units in the Condominium, these initial Allocated Interests shall be reallocated pursuant to Section 3.3.2 hereof.

7.5. Bylaws of Association.

Bylaws for the administration of the Association and for other purposes not inconsistent with the Condominium Act and this Declaration have been or will be prepared by the Declarant, subject to the approval of the initial Board of Directors of the Association.

ARTICLE VIII

MANAGEMENT OF CONDOMINIUM ASSOCIATION

8.1. Management by Declarant.

The Declarant, pursuant to RCW 64.34.308, has reserved the rights to (a) appoint and remove the Officers and members of the Board of Directors of the Association, and (b) veto or approve a proposed action of the Board or the Association, for a period of time known as the "Declarant Control Period". Limitations on the Declarant Control Period are specified in Section 5.1 of the Bylaws. At the termination of the Declarant Control Period, the Declarant shall provide the Association with all documents and things required under RCW 64.34.312.

8.2. Professional Management.

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



8.3. Authority of the Board.

8.3.1. General Authority.

The Board, for the benefit of the Condominium and the Owners, shall enforce the provisions of the Condominium Instruments and shall have all powers and authority granted to the Board or the Association under the Condominium Act and this Declaration which are not expressly subject to the approval of Unit Owners.

8.3.2. Common Expenses.

The Board shall acquire and shall pay for, as Common Expenses, all goods and services requisite for the proper functioning of the Condominium, including, but not limited to, the items described in Schedule 8.3.2 to Exhibit D to this Declaration.

8.3.3. Liens or Encumbrances.

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 Elements, rather than merely against the interest therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs and expenses incurred by the Board by reason of such lien or liens shall constitute Special Assessments against the Units responsible, to the extent of their responsibility.

8.3.4. Acquisition of Property.

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

8.4. Right of Entry.

The Board and its agents or employees may enter any Unit or Limited Common Elements when necessary in connection with any maintenance, landscaping or construction for which the Board is responsible, or in the event of a *bona fide* emergency. Except in the case of an emergency, reasonable advance notice shall be given to the Unit Owner and, if applicable, to any lawful tenant or subtenant in the Unit. Such entry shall be made with as little inconvenience to the Owners and/or occupants as practicable, and any damage caused thereby shall be repaired by the Association out of the Common Expense fund if the entry was due to an emergency (unless the emergency was caused by the Owner or lawful occupant of the Unit entered, in which case the cost shall be specially assessed to the Unit entered) or for the purpose of maintenance, or repairs, to Common or Limited Common Elements where the repairs were undertaken by or under the direction or authority of the Board. If the repairs or maintenance were necessitated by or for the Unit entered or its Owners or lawful occupants, or requested by its Owners, the costs thereof shall be specially assessed to such Unit. See also Schedule 8.3.2(g) of Exhibit D to this Declaration.



8.5. Board as Attorney in Fact.

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

8.6. Limitations on Power of Board.

The Board of Directors shall not act on behalf of the Association to amend the Declaration in any manner that requires the vote or approval of the Unit Owners pursuant to RCW 64.34.264, to terminate the Condominium pursuant to RCW 64.34.268, or to elect members of the Board of Directors or determine the qualifications, powers, and duties, or terms of office of members of the Board of Directors pursuant to Section 8.2 hereof; but the Board of Directors may fill vacancies in its membership for the unexpired portion of any term.

8.7. Board's Authority Exclusive - Owners May Not Direct Association Employees.

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

ARTICLE IX

PERMITTED USES; ARCHITECTURAL UNIFORMITY

9.1. Permitted Uses.

9.1.1. Storage Uses Permitted.

The Units and Common Elements in this Condominium may be used only for storage purposes hereinafter defined and for such other light commercial uses and purposes, for which appropriate liability insurance protecting the Association may be obtained pursuant to Section 11.5.1 hereof, so long as any and all such purposes are consistent with all other applicable laws, ordinances and regulations of any governmental authority with jurisdiction. Initially, there shall be no such other uses permitted.

9.1.2. Residential Use.

No residential uses of any sort are permitted on the Property.

9.1.3. Vehicle Parking.

Parking areas are restricted to use for temporary parking of operable, properly registered motor vehicles during periods of time when materials are being loaded into or out of storage Units. In no





event shall any vehicle be parked in such an area for a period of time greater than 24 consecutive hours, it being intended that such areas not serve as permanent "parking spaces" for any vehicle. Vehicles maintained within the Condominium Property for periods of time in excess of 24 hours must be stored within a Unit. Other items and equipment may be parked or kept in parking areas only if expressly permitted by Rules and Regulations and only in such areas, if any, as may be designated for such purpose by the Board of Directors. Vehicle repairs are not permitted anywhere in the Common Elements of the Condominium. The Board may require removal of any inoperative or unregistered vehicle, and any other vehicles, equipment or item improperly stored in parking areas. If the same is not removed, the Board may cause removal at the risk and expense of the owner thereof, under such reasonable procedures as may be provided by Rules and Regulations adopted by the Association. Handicapped spaces shall remain open for use by vehicles properly designated for handicapped use.

#### 9.1.4. Limitations on Storage.

The Units are restricted to storage of items that pose no unreasonable health, safety or fire risks to persons or property. No munitions or explosives may be stored within the Condominium Property. No person may store goods or materials that are unlawful to own or possess.

#### 9.1.5. Animals.

The maintenance and keeping of animals is discouraged, but may be permitted, subject to Rules and Regulations adopted by the Board of Directors. The owner of any animal maintained on the Property shall exercise appropriate control over the animal, and shall clean up after such animal and shall not permit deposits of fecal matter, urinary residue or foodstuffs from or for such animal to remain anywhere on the Common Elements. Any person who keeps or maintains any animal upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Unit Owners Association, each Unit Owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such animal within the Condominium. All animals shall be registered and inoculated as required by law. The Board of Directors may establish reasonable fees not to exceed the additional costs incurred by the Unit Owners Association resulting from the presence of such animals. The Board may at any time require the removal of any animal which it finds is or has become an unreasonable source of annoyance, and may exercise this authority for specific animals even though other animals are permitted to remain.

#### 9.1.6. Signs.

Reasonable signage for business purposes is permitted, pursuant to the terms of a Signage Plan to be adopted by the Board of Directors under Section 9.3 hereof. No sign of any kind shall be displayed to the public view on or from any Unit or Common Elements without the prior consent of the Board; provided that this Subsection shall not apply to Declarant or Declarant's agents, nor shall it be deemed to prohibit the Owner of a Unit from displaying a sign not larger than 3' X 5' in size, not located in the Common Elements, for a period of time in which the Owner's Unit is for sale or rent.

#### 9.1.7. Offensive or Illegal Activity.

No noxious, offensive, smelly, excessively noisy, or illegal activity shall be carried on in any Unit or the Common Elements, nor shall anything be done therein which is or may become a nuisance or an unreasonable source of annoyance to other Owners or other lawful occupants of the Property, nor shall any



activity which may in any way create a nuisance or public health or safety hazard, or obstruct or interfere with the rights of other Owners or occupants of the Property, or which could interfere with or prevent the normal operation, maintenance, use, enjoyment, alteration or further development of the Property.

9.1.8. Compliance with Environmental Laws.

Use of the Units and Common Elements of this Condominium is subject to various federal, state and local laws, regulations and guidelines now in effect and/or hereafter enacted, relating to or affecting the Property, concerning the impact on the environment of construction, land use, the maintenance and operation of structures and the conduct of business. No Unit Owner shall cause, or permit to be caused, any act or practice by negligence, or omission, or otherwise, that would adversely affect the environment or do anything or permit anything to be done that would violate any of the said laws, regulations or guidelines. The foregoing shall cover all requirements whether or not foreseeable at the present time and regardless of their expense.

9.1.9. Reportable Uses.

A Reportable Use shall mean (i) the installation or use of any above or below ground storage tank, or (ii) the generation, possession, storage, use, transportation or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with any governmental authority. Reportable Use shall also include an Owner's being responsible for the presence in, on or about the Property of a Hazardous Substance with respect to which any applicable law, ordinance or regulation requires that a notice be given to persons entering or occupying the Property or any adjacent or neighboring property.

9.1.10. Hazardous Substances.

A person shall maintain or store on or in the Property only such property and materials which may be legally possessed by such person. No person shall improperly store or release from a Unit or the Common Elements any Hazardous Substances, as that term is defined in CERCLA, 42 USC 9601, et. seq. or the Washington Model Toxics Control Act, which without limitation include petroleum distillates, liquid or aromatic hydrocarbons, medical wastes or infectious biological agents, acids, caustics, carcinogens, mutagens, heavy metals, or any other inflammable, toxic, explosive, radioactive, or other type of substance which may be hazardous to either the public health or safety, to the Property or to the health or safety of any lawful occupants of the Property, any and all such substances also being known herein as Hazardous Substances.

9.1.11. Notice of Actions and Reportable Uses; Inspections.

Any person lawfully occupying any portion of the Property shall promptly provide written notice to the Association of any Reportable Uses or of any receipt of notice of governmental action or third party claims alleging noncompliance or suspected noncompliance with environmental laws or laws relating to hazardous substances. The Association shall have the right but not an obligation to enter any Unit and its Limited Common Elements at any reasonable time in order to inspect for compliance with environmental laws or laws relating to hazardous substances.



9.1.12. Duty to Cleanup.

In the event of a spill or release of any hazardous substances within or from the Property, the person(s) causing or otherwise responsible for such spill or release shall promptly undertake thorough cleanup measures and provide notice to the Association, and to any governmental entity with appropriate jurisdiction, of the occurrence of the spill or release, and of the measures taken for cleanup and remediation.

9.1.13. Effect on Insurance.

Nothing shall be done or maintained in any Unit or in the Common Elements which will increase the rate of insurance on the Common Elements or Units without the prior written consent of the Board. No Owner shall permit anything to be done or maintained in its Unit or in the Common Elements which will result in the cancellation of insurance on any Unit or any part of the Common Elements.

9.1.14. Security Systems.

In the event that either the Declarant or the Association shall install a central security system within the Condominium, no Owner shall install or maintain any alternative security system which shall interfere with the proper operation of the central system, nor shall any Unit's individual security system be connected in any way with any such central system without the advance written approval of the Board of Directors.

9.1.15. Lease Restrictions.

With the exception of an institutional lender in possession of a Unit following a default under a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Unit Owner shall be permitted to lease its Unit for periods of less than thirty (30) days. Any lease agreement shall be required and deemed to provide that the terms of the lease shall be subject in all respects to the provisions of the Condominium Instruments, and that any failure by the Lessee to comply with such provisions shall be a default under the lease, entitling the Association to enforce such provisions as a real party in interest. All leases shall be in writing. A lease, as defined herein, shall include month-to-month rentals. Any tenant or subtenant of any portion of a Unit shall be deemed to have assumed all the responsibilities of an Owner under Article IX of the Declaration. Tenants must obtain liability insurance which names the Association as an additional insured. See Section 11.5 hereof.

9.1.16. Assignment or Subletting.

The assignment or subleasing of a Unit shall be subject to the same limitations as are applicable to the leasing or renting thereof. An Owner or tenant may not exempt itself from any liability under the Condominium Instruments by assigning or subleasing the occupancy rights to its Unit.

9.1.17. Timesharing.

Timesharing is not permitted in this Condominium, and no Unit in the Condominium may be conveyed or held pursuant to any timeshare plan.



9.2. Architectural Consistency.

In order to preserve a common exterior appearance to the building and the other Common Elements visible to the public, the Board shall provide for the painting and other decorative finish of the building and other Common Elements, and may prohibit or regulate any modification or decoration of the Common Elements proposed by any Owner. This power of the Board extends to screens, doors, awnings, rails or other visible portions of each Unit and any Limited Common Elements appurtenant thereto.

9.3. Signage Plan.

The Board of Directors shall develop a Signage Plan for the Condominium, to create a common theme for signs, devices and displays [collectively, "signs"] advertising the business activities conducted within the project. The Signage Plan shall contain provisions regulating the placement of signs on or within the Common Elements, and may also regulate the placement of signs within Units which are visible from other Units and/or the Common Elements. Further provisions for signs appear in Sections 9.1.6 hereof.

ARTICLE X

COMMON EXPENSES AND ASSESSMENTS

10.1. Budget for Common Expenses.

Within thirty (30) days following the Annual meeting of the Association, or at such other time as may be deemed necessary or desirable by the Board of Directors or the Association's accountant, the Board shall prepare an Annual Budget which shall estimate the Common Expenses, described generally in Section 2.6 of this Declaration, to be paid during such year. The Budget shall make provision for creating, funding and maintaining reserves required by Section 10.3 hereof, and shall take into account any expected income and any surplus available from the prior year's operating fund. The Declarant or the initial Board may at any suitable time establish the first such estimate. If deemed necessary by the Board of Directors, any annual budget may be revised prior to the end of its budget year, subject to the provisions of Sections 10.2 and 10.7 hereof.

10.2. Meeting of Association to Ratify Budget.

Within thirty days after adoption of any proposed budget for the Condominium, the Board of Directors shall provide a summary of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the Owners of Units to which a majority of the votes in the Association are allocated reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board of Directors.

10.3. Reserves for Capital Replacements, Repairs, Improvements & Insurance Deductibles.

The Board of Directors shall establish and maintain reasonable reserves for major repairs and/or replacement of components of the project that are the responsibility of the Association, along with the



amount of any insurance deductible(s), by providing for such reserves in the Annual Budget, segregating such reserves on the books of the Condominium, and allocating and paying monthly to such reserves one-twelfth of the total amount budgeted for such reserves for the current fiscal year. The Board may also establish and maintain reserve funds for operations and for capital improvements and such other purposes as may appear advisable from time to time. The portion of the Units' Assessments paid into such reserves shall be conclusively deemed to be non-refundable contributions to the capital of the Association by the Unit Owners. Such reserves may be expended only for the purposes for which they were established unless the Unit Owners, at a duly-constituted meeting of the Association, otherwise decide. The Budget may include reserves for any Special Limited Common Elements, to be assessed against only the Unit(s) benefitted thereby.

10.4. Assessments for Common Expenses.

10.4.1. Liability of Units.

Except as provided in Sections 10.4.2 and 10.8 below, the total amount of the Common Expenses of the Condominium set forth in the Annual Budget adopted by the Board of Directors for the fiscal year shall be assessed against the Units in proportion to their respective Allocated Interests for Common Expense liability described in Section 10.6 hereof.

10.4.2. Payable in Installments.

Unless otherwise determined by the Board of Directors, with the written approval of all Eligible Mortgagees, the annual Assessment against each Unit for its proportionate share of the Common Expenses shall be payable in 12 equal, monthly installments, and each installment shall be payable in advance on the first day of the month.

10.5. Assessments to Pay Judgment Against Association.

Assessments to pay a judgment against the Association pursuant to RCW 64.34.368(1) may be made only against the Units in the Condominium at the time the judgment was entered in proportion to their Allocated Interests for Common Expense Liability at the time the judgment was entered.

10.6. Allocated Interests; Procedure on Reallocation.

10.6.1. Allocated Interests.

Pursuant to RCW 64.34.224(1), the Declarant has allocated to each commercial Unit in the Condominium a liability for payment of the Common Expenses of the Association which is known as the Unit's Allocated Interest for Common Expense Liability. The allocation of this liability among the Units has been determined generally on the basis of the size of each commercial Unit relative to all other commercial Units in the Condominium. Each Unit's Allocated Interest for Common Expense Liability is expressed as a percentage and is stated with particularity on the attached Exhibit B. A Unit's liability for Common Expense Assessments under such Allocated Interests may be subject to adjustment under the provisions of Sections 3.3.2, 10.4.1 and 10.8 hereof.



10.6.2. Reallocation.

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

10.7. Special Assessments.

The Board of Directors may levy a Special Assessment for the purpose of defraying the cost of any unexpected repair or other nonrecurring contingency, or to meet any other deficiencies in operations or reserves occurring from time to time. The Board of Directors shall give notice to the Unit Owners of any such Special Assessment by a statement in writing giving the amount and reasons therefor, along with a date for a Special Meeting of the Association to be held not less than 14 days following such notice, for approval of the Special Assessment. Subject to the provisions of Section 10.2 hereof, such Special Assessments shall become due and payable, unless otherwise specified in the notice, with the next monthly Assessment payment which is due more than thirty days after the delivery or mailing of such notice. All Unit Owners shall be obligated to pay the adjusted monthly amount or, if the Special Assessment is not payable in installments, the full amount of such Special Assessment, in proportion to their Allocated Interests for Common Expense Liability.

10.8. Limited Common Assessments.

10.8.1 To the extent that any Common Expense is caused by the negligence or misconduct of any Unit Owner, the Association may, subject to the provisions of Section 7.10 of the Bylaws, levy a Limited Common Assessment for that expense against the Owner's Unit.

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

10.8.3 Any Common Expense associated with the operation, maintenance, repair, or replacement of a Special Limited Common Element shall constitute a Limited Common Assessment against the Unit to which that Limited Common Element is assigned. In addition and without limitation, the liability of a Unit Owner to pay any insurance deductibles or fines imposed by the Association, along with the costs and attorney's fees described in RCW 64.34.364(14), and interest on any delinquent account shall be deemed a Limited Common Assessment which, unless otherwise directed by the Board, shall be due and payable within thirty (30) days following their imposition.

10.8.4 The Association may, by resolution adopted by the Owners at any duly constituted meeting, provide that any Common Expense or portion thereof benefitting fewer than all of the Units shall be assessed exclusively against the Units benefitted.

10.9. Accounts; Commingling Prohibited.

Amounts collected by the Board of Directors as Assessments against the Units for operating expenses or Reserves shall be kept in accounts in the name of the Association and shall not be commingled with funds



of any other Association, nor with the funds of any Managing Agent or any other person responsible for the custody of such funds. Any reserve funds shall be kept in one or more insured, segregated accounts and any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two persons who are officers or Directors of the Association.

10.10. Surplus Funds.

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

10.11. Liability of Unit Owners for Association Obligations.

The liability of any Unit Owner arising out of any contract made by the Board of Directors, or tort of the Association not fully covered by insurance, or arising out of the indemnification of the Board of Directors, shall be limited to that proportion of the total liability thereunder as the Allocated Interest of its Unit bears to the aggregate Allocated Interests of all Units.

10.12. Declarant Control Period.

During the Declarant Control Period, until the Association makes a Common Expense Assessment, pursuant to RCW 64.34.360(1), the Declarant shall pay all Common Expenses.

10.13. Owners Personally Liable for Common Expenses.

Each Assessment shall be the joint and several obligation of the Owner or Owners of the Unit to which the same are assessed as of the time the Assessment is due. Suit to recover a personal judgment for any delinquent Assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums. No Unit Owner may exempt himself or herself from liability with respect to any portion of the Common Expenses for any reason, including without limitation a waiver of the enjoyment of the right to use any of the Common Elements or by leasing, rental or abandonment of its Unit or otherwise. The failure or delay of the Board of Directors to adopt the Annual Budget for any year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay its allocable share of the Common Expenses as herein provided, and in the absence of an Annual Budget or adjusted Annual Budget, each Unit Owner shall continue to pay (with or without notice) a monthly Assessment at the rate established for the preceding fiscal year until an Assessment is made under a current Annual Budget or adjusted Annual Budget and notice thereof has been sent to the Unit Owner.

10.14. Liability Following Conveyance of Unit.

A selling Unit Owner shall not be liable for the payment of any part of the Common Expenses assessed against its Unit subsequent to a sale, transfer or other conveyance by him of such Unit. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid Assessments against the Unit up to the time of the conveyance without prejudice to the purchaser's right to recover from the selling Unit Owner the amounts paid by the purchaser therefore. Except as provided in Section 10.18.2 hereof, the holder of a mortgage or other purchaser of a Unit who obtains the right of possession of the Unit through foreclosure shall not be liable for Assessments that became due prior to such



right of possession. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Unit Owners, including such mortgagee or other purchaser of the Unit. Foreclosure of a mortgage does not relieve the prior Owner of personal liability for Assessments accruing against the Unit prior to the date of such sale as provided above.

10.15. Statement of Unpaid Assessments.

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

10.16. Lien for Assessments and Power of Sale.

10.16.1. Pursuant to RCW 64.34.364, the Association has a lien on a Unit for any unpaid Assessments levied against a Unit from the time the Assessment is due. If an Assessment is payable in installments, the Association has a lien for the full amount of the Assessment from the time the first installment thereof is due.

10.16.2. Each and every Unit Owner of any Unit in the Condominium, by virtue of its acquisition by any means of title to such Unit, shall take such title subject to the Association's lien for Assessments. Pursuant to RCW 64.34.364(9), the Declarant as "Grantor" does hereby grant, bargain, sell and convey to Land Title Company, a corporation, as "Trustee" in trust WITH POWER OF SALE, all the real property in the Condominium described in Exhibit A to this Declaration, which property is not used principally for agricultural purposes, together with all tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any manner appertaining, and the rents, issues and profits thereof, to secure the obligations of the Unit Owners to the Association, as "Beneficiary", for the payment of any Assessments lawfully levied under this Declaration. Each and every Unit Owner shall be deemed for all purposes, as of the time of its acquisition of title to any Unit in the Condominium, to have joined as an additional "Grantor" in the conveyance in trust above described, and to have at that time bargained, sold and conveyed its Unit, along with its undivided Allocated Interest in the Common Elements and any Limited Common Elements assigned thereto, to such Trustee, to secure all obligations imposed by this Declaration on such Unit Owner to pay Assessments to the Association. The Power of Sale provided and granted herein shall be operative in the case of a default in the obligation to pay Assessments; upon default by such Grantor in the payment of any indebtedness secured hereby, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In such event and upon written request of Beneficiary, Trustee shall sell the trust property, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expenses of sale, including a reasonable Trustee's fee and attorney's fee; (2) to the obligations secured by this Declaration; (3) the surplus, if any, shall be distributed to the persons entitled thereto.

10.17. Perfection of Lien.

Recording of the Declaration constitutes record notice and perfection of the lien for Assessments. While no further recording of any claim of lien for Assessments shall be required to perfect the Association's lien, the Association may record a notice of claim of lien for Assessments under this section in the real





property records of any county in which the Condominium is located. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to in Section 10.18.3 hereof.

#### 10.18. Priority of Lien.

10.18.1. A lien under this Section shall be prior to all other liens and encumbrances on a Unit except: (a) Liens and encumbrances recorded before the recording of the Declaration; (b) a mortgage on the Unit recorded before the date on which the Assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the Unit.

10.18.2. Except as provided in Sections 10.18.3 and 10.19.2 hereof, the lien shall also be prior to the mortgages described in subpart (b) of Section 10.18.1 hereof, to the extent of Assessments for Common Expenses, excluding any amounts for capital improvements, based on the annual Budget adopted by the Association which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the Association or a mortgagee, the date of a trustee' sale in a non-judicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.

10.18.3. The priority of the Association's lien against Units encumbered by a mortgage held by an Eligible Mortgagee, or by a first mortgagee which has given the Association a written request for a notice of delinquent Assessments, shall be reduced by up to three months if and to the extent its foreclosure includes delinquencies which relate to a period after such holder becomes an Eligible Mortgagee or has given such notice and before the Association gives the holder a written notice of the delinquency. This Subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other Assessments made by the Association.

#### 10.19. Enforcement of Lien.

10.19.1. The lien arising under this section may be enforced judicially by the Association or its authorized representative in the manner set forth in chapter 61.12 RCW, or non-judicially in the manner set forth in chapter 61.24 RCW for non-judicial foreclosure of deeds of trust. The Association or its authorized representative shall have the power to purchase the Unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. The Association may elect to take a deed in lieu of foreclosure in any such proceeding.

10.19.2. If the Association forecloses its lien non-judicially pursuant to Chapter 61.24 RCW, the Association shall not be entitled to the lien priority provided for under Section 10.18.2 hereof.

#### 10.20. Limitation of Lien Enforcement.

A lien for unpaid Assessments and the personal liability for payment thereof is extinguished unless proceedings to enforce the lien are instituted within three years after the amount of the Assessments sought to be recovered becomes due.



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

10.21.1. Rent Payable to Association Upon Default of Owner.

If a Unit is rented or leased by its Owner, the Association may collect and the tenant shall pay over to the Association so much of the rent for such Unit as is required to pay any delinquency in assessments that has existed for greater than 30 days, plus interest, attorneys' fees and other costs of collection. The tenant shall not have the right to question payment to the Association, and such payment shall discharge both the tenant's duty to pay rent to the Unit Owner and also the Unit Owner's obligation to pay assessments, *pro tanto*. The Association shall not resort to this remedy where a receiver has been appointed and is collecting such rents.

10.21.2. Appointment of Receiver During Foreclosure.

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

10.21.3. Termination of Utility Services.

If an Owner shall become delinquent in the payment of amounts in excess of three (3) months' worth of regular assessment obligations, the Board shall have the right, following ten (10) days' notice to such Owner, to cut off any or all utility services to such Owner's Unit until such assessments are paid; PROVIDED, however that this remedy shall not be utilized during cold weather where a danger of freezing pipes is present, and further provided that if the Association knows the Unit is not occupied by its Owner, that any tenant in the Unit be given not less than 20 days' notice in advance of termination of such utilities.

10.22. Remedies Cumulative.

The remedies provided herein are cumulative and the Board may pursue them concurrently, along with any other remedies which may be available under the law although not expressed herein.



## ARTICLE XI

### INSURANCE, DESTRUCTION, RESTORATION AND DISTRIBUTION

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

The Board of Directors shall obtain and maintain casualty and liability insurance under such terms and for such amounts as shall be deemed necessary by the Board of Directors, but unless not reasonably available, for not less than the terms, conditions and amounts required by Section 11.2 hereof. The name of the insured under each required policy shall be stated as follows: "Padilla Heights Suites Association."

#### 11.2. Coverage.

See Schedule 11.2 under Exhibit D to this Declaration.

#### 11.3. Deductible.

##### 11.3.1. General Provisions.

Except as otherwise provided herein, the deductible under any policy of insurance purchased by the Board of Directors shall not exceed the lesser of \$10,000 or 1% of the face amount of the policy. Except as provided herein, the amount of the deductible shall be paid by the Association as a Common Expense. Funds to cover the amount of the deductible shall be included in the Association's reserve accounts. The deductible should be established at a level that is sufficiently high to eliminate minor "nuisance" claims which could cause cancellation of the Association's master policy, but not so high that Unit Owners will have difficulty obtaining their own owners' insurance coverage to cover their potential liability under Section 11.3.2 hereof.

##### 11.3.2. Owner May Be Responsible for Insurance Deductible.

Where damage is limited to a single Unit, or where damage to property is caused by the fault of an Owner or that Owner's tenant or family member, or where the damage is caused by the failure of some portion of the Condominium Property which the Owner is responsible for maintaining, the Owner may be held responsible and specially assessed for any uninsured amount and/or for any loss for which the Owner's or occupant's insurance may provide primary coverage. In cases where damage affects more than one Unit, or a Unit and the Common Elements, responsibility for the uninsured amount shall be pro-rated among the affected parties. See Sections 10.8.1 and 11.5 for further details.

#### 11.4. Notice of Insurance Coverage or Termination Thereof.

11.4.1. The Board of Directors shall promptly furnish to each Unit Owner and each Eligible Mortgagee written notice of the procurement, subsequent changes, or termination of each insurance policy or fidelity bond obtained on behalf of the Association.

11.4.2. An insurer that has issued an insurance policy under this Section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Unit Owner or holder of a mortgage.



11.5. Individual Policies for Unit Owners and Tenants.

11.5.1. Each Unit Owner shall obtain and keep in force a commercial general liability policy providing Bodily Injury and Property Damage insurance, insuring the Owner and the Association against any liability arising out of the Owner's use, occupancy or maintenance of the Unit and the Common Elements. Until changed by resolution of the Board following advice of counsel, such insurance shall be in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, and may not contain exclusions from coverage for any readily foreseeable hazards posing an unreasonable risk of harm to persons or property in or around the Condominium and associated with the business use to which the Unit will be put by its Owner or other lawful occupant.

11.5.2. The Owner of any Unit which is used for any purpose for which special insurance is required by any statute or regulation shall obtain and keep in force such special insurance, which in each case shall name the Association as an additional insured, and shall provide that the insurance provided thereunder may not be canceled, substantially modified or reduced without at least 30 days' prior written notice to the Association.

11.5.3. Each Unit Owner should also obtain a "Condominium Unit Owner's Policy" or its equivalent, to insure against loss or damage to any HVAC equipment, and tenant improvements, upgrades, or betterments to the Unit not covered by any "master" policy obtained by the Association, or to other personal property stored within the Unit, including coverage for vandalism or malicious mischief, theft, loss assessment coverage to help the Owner pay a special assessment due to casualty losses which exceed the amount of coverage under the master policy, any loss arising from the application of Section 11.3.2 hereof, and the like.

11.5.4. In the event that any Unit Owner obtains permission from the Board of Directors to construct or maintain any Special Limited Common Element or other improvements within the Common Elements for the exclusive use of such Owner, the Board may require that such Owner shall acquire liability insurance with respect to such improvements, in such form and amount as may be required by the Board from time to time, which shall name the Association as an additional insured, and such Owner shall be solely responsible for all costs of insurance, maintenance, replacement and repair of such improvements.

11.5.5. No Unit Owner shall maintain insurance coverage which will tend to decrease the amount which the Association may realize under any insurance policy which it may have in force at any particular time; the Board of Directors may require that each Unit Owner shall file with the Secretary or the Manager a copy of each individual policy of insurance purchased by the Unit Owner within 30 days after its purchase.

11.5.6. A tenant or subtenant of any Unit or portion thereof shall obtain insurance coverage equivalent to that described above for Owners; any such policy shall name the Association as an additional insured.

11.6. Unavailability, Cancellation or Nonrenewal.

If the insurance described in Section 11.2 hereof is not reasonably available, or is modified, canceled or not renewed, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by first class United States mail to all Unit Owners, to each Eligible Mortgagee, and to each mortgagee to



whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

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

All policies shall provide that adjustment of loss shall be made by the Board of Directors, and that proceeds payable pursuant to the policies shall be paid directly to the Board of Directors as Insurance Trustee, to be held in trust for Unit Owners and all lienholders as their interests may appear. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the Unit Owners and Mortgagees entitled thereto, after first paying or making provisions for the payment of the expenses of the Insurance Trustee, in the following manner:

(a) Proceeds are to be paid first to repair or restore damage or destruction. After completely defraying the cost of the repair or restoration, any surplus proceeds shall be payable jointly to the Unit Owners and Mortgagees, if any, entitled thereto.

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

**11.8. Reconstruction Following Casualty Loss.**

See Schedule 11.8 in Exhibit D to this Declaration.

**11.9. Assessments if Insurance is Inadequate.**

Immediately after a casualty causing damage to property for which the Board of Directors has the responsibility of maintenance and repair, the Board shall obtain reliable and detailed estimates of the cost to replace the damaged property in as good a condition as it was before the casualty. Such costs may include professional fees and premiums for such bonds as the Board desires or as may be required. If the proceeds of insurance, coupled with any available reserve funds and/or any payments from Owners under Section 11.3.2 hereof, are not sufficient to defray such estimated costs, the Board shall present to the Owners a Budget containing a Special Assessment to be made against all the Units as provided in Section 10.7 hereof, in sufficient amounts to provide funds to pay the shortfall. If at any time during reconstruction and repair, or upon completion of reconstruction or repair, the funds for payment of the costs thereof are insufficient, the Board shall present a further Budget containing a Special Assessment, in sufficient amounts to provide funds for the payment of such costs.

**11.10. Notice to Mortgagees.**

The Board of Directors shall give written notice to: (a) an Eligible Mortgagee of the Unit whenever damage to the Unit covered by the mortgage exceeds \$1,000; and (b) all Eligible Mortgagees whenever damage to the Common Elements exceeds \$10,000.

**11.11. Miscellaneous.**

The provisions of this Article XI shall constitute the procedure by which a determination is made by the Unit Owners to repair, restore, reconstruct or rebuild the Condominium following casualty thereto. The purpose of this Article XI shall be to provide a fair and equitable method of allocating the costs of repair



and restoration and making a determination for repair and restoration if all or a portion of the improvements are damaged or destroyed. The provisions of this Article XI shall be liberally construed to accomplish such purpose.

## ARTICLE XII

### CONDEMNATION

Provisions dealing with the effect of condemnation proceedings affecting this Condominium appear in Schedule 12 in Exhibit D to this Declaration.

## ARTICLE XIII

### COMPLIANCE WITH LAW AND COVENANTS

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

Each Owner and occupant of a Unit shall comply strictly with the provisions of the Condominium Act or the Condominium Instruments. All remedies provided the Association in this Article may be enforced against any tenant or other occupant of a Unit.

#### 13.2. Enforcement by Association.

The Board of Directors shall have primary responsibility for maintaining and enforcing compliance with the covenants, conditions and restrictions contained in the Condominium Instruments. Without limiting the authority and powers conferred upon the Board by the Condominium Act, the Board shall have the rights and powers described in Section 7 of the Bylaws.

#### 13.3. Tenants Subject to Rights and Responsibilities of Owners.

Any tenant of an Owner shall be deemed to be bound by all portions of the Condominium Instruments that are binding upon the Owner. All rights, remedies and procedures available to the Association when dealing with Owners under the Condominium Instruments shall be available to the Association when dealing with any tenant of an Owner. In addition, the Association shall have the right (but not the obligation) to terminate the lease of a tenant who, following a proceeding under Section 7.10 hereof, has been found to have violated the Condominium Instruments; the Association shall be deemed a "real party in interest" in any legal proceeding brought to enforce this right. The Association shall not resort to this remedy unless the Owner of the Unit occupied by such tenant has failed and refused to take steps designed to cure the tenant's violation(s) within sixty (60) days following notice from the Association to the Owner of the necessity for such curative action.



## ARTICLE XIV

### LIMITATION OF LIABILITY

#### 14.1. No Liability for Utility Failure, Etc.

Except to the extent covered by insurance obtained by the Board pursuant to Article XI, neither the Association nor the Board nor the Declarant shall be liable for any failure of any utility or other service obtained by the Board, or for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of the building, or from any pipes, drains, conduits, appliances, or equipment, or from any other place, or for inconvenience or discomfort resulting from any action taken to make repairs to the Property, or to comply with any law, ordinance or orders of a governmental authority. No diminution or abatement of liability for Common Expense Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

#### 14.2. Liability of Officers and Directors, Indemnification.

The Directors and Officers shall exercise ordinary and reasonable care in discharging their responsibilities and shall not be liable to the Association or to the Unit Owners for mistakes of judgment or for negligence not amounting to gross negligence, willful misconduct or bad faith. The Association shall indemnify and hold harmless each of the Directors and Officers from and against all contractual liability to others arising out of contracts made by the Board of Directors or Officers on behalf of the Association or the Unit Owners unless such contract was made in bad faith or contrary to the provisions of the Condominium Instruments. The Directors and Officers shall not be personally liable for contracts made by them on behalf of the Association. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that (s)he is or was a Director or Officer of the Association, against amounts paid in settlement incurred by him in connection with such action, suit or proceeding if (s)he acted in good faith and in a manner (s)he reasonably believed to be in, or not opposed to, the best interests of the Condominium or the Association, to the fullest extent authorized by RCW 23B.08.510, 520, 530, and 570, and any amendments thereto, whether or not the Association is incorporated under RCW 23B.

#### 14.3. No Bailment.

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



## ARTICLE XV

### MORTGAGEE PROTECTION

Mortgagees (lenders) in this Condominium project have various rights which are set forth with particularity in Schedule 15 in Exhibit D to this Declaration.

## ARTICLE XVI

### EASEMENTS, LICENSES AND SPECIAL DECLARANT RIGHTS

#### 16.1. Easements for Units and Unit Owners.

Each Unit has an easement in and through each other Unit and the Common and Limited Common Elements for support, and each Unit Owner has a perpetual right of ingress to and egress from its Unit over the Common Elements.

#### 16.2. Easement for Association Functions.

There is hereby reserved to the Association, or its duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Association as are set forth in the Condominium Instruments. See Section 8.4 hereof for further details.

#### 16.3. Easements for Declarant.

The Declarant reserves an easement through the Common Elements as necessary for the purpose of discharging the Declarant's obligations or for exercising Special Declarant Rights.

#### 16.4. Easements Shown on Survey Map.

Easements shown on the Survey Map filed concurrently with this Declaration are hereby declared and established. Any easement shown on the Survey Map which benefits one or more Units in the Condominium, or which benefits any real property not included within the Condominium, confers various rights and benefits upon the owner(s) of such real property, and may also impose obligations upon the Association. Reference should be made to the Survey Map and, if relevant, to Schedule 8.3.2 in Exhibit D to this Declaration.

#### 16.5. Special Declarant Rights.

Pursuant to RCW 64.34.020(29), the Declarant has reserved the following Special Declarant Rights for the purpose of furthering and completing the development of the Condominium: To complete any improvements indicated on the Survey Map and Plans filed with the Declaration; to exercise any Development Right under Section 3.3 hereof; to maintain sales offices, management offices, signs advertising the Condominium, and models on the Condominium Property; to use easements through the Common Elements for the purpose of making improvements within the Condominium, and to appoint or remove any officer of the Association or any member of the Board of Directors, or to veto or approve a proposed action of the Board or Association during the Declarant Control Period described in Section 5.1 of the Bylaws. A





failure by the Declarant to veto or approve any such proposed action within thirty (30) days after receipt of written notice of the proposed action shall be deemed to constitute approval thereof by the Declarant. Except with respect to the right to exercise Development Rights, which is governed by Section 3.3.3 hereof, or as limited in Section 5.1 of the Bylaws, Special Declarant Rights shall terminate upon the sale of the last Unit in the Condominium, or seven (7) years from the date of conveyance of a Unit to a purchaser other than the Declarant, whichever is earlier.

## ARTICLE XVII

### AMENDMENT OF DECLARATION, SURVEY MAP, PLANS

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

Amendments to the Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets 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 Owners. Except in cases of amendments that may be adopted by the Declarant unilaterally pursuant to Section 17.6 hereof, by the Association under Section 9.3 hereof or under statutory authority in the case of condemnation or a termination of the condominium, or by certain Unit Owners under Sections 4.8, 4.9 or 6.3 hereof, amendments may be adopted only at a meeting of the Owners if at least sixty-seven percent (67%) of the votes in the Association are cast for such amendment, or without any meeting if all Owners have been duly notified and Owners holding at least sixty-seven percent (67%) of the votes in the Association consent in writing to such amendment. In all cases, the amendment when adopted shall bear the acknowledged signature of the President of the Association.

#### 17.2. Recordation Required.

Every amendment to the Declaration must be recorded with the County Auditor and is effective only upon recording. An amendment shall be indexed in the name of the Condominium and shall contain a cross-reference by recording number to the Declaration and each previously recorded amendment thereto.

#### 17.3. Special Restrictions.

Except to the extent expressly permitted or required by other provisions of this Declaration, or of the Condominium Act, no amendment may create or increase Special Declarant Rights, increase the number of Units, change the boundaries of any Unit, the Allocated Interests of a Unit, or the uses to which any Unit is restricted, in the absence of the vote or agreement of the Owner of each Unit particularly affected and its Mortgagee and the Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated other than the Declarant, and that percentage of Eligible Mortgagees and/or Eligible Insurers specified in Article XV hereof. No amendment may restrict, eliminate, or otherwise modify any Special Declarant Right provided in the Declaration without the consent of the Declarant and any mortgagee of record with a security interest in the Special Declarant Right or in any real property subject thereto, excluding mortgagees of Units owned by persons other than the Declarant.



17.4. Amendment of Survey Map and Plans.

The Survey Map and Plans may be amended by revised versions referred to and described as to effect in an amendment to the Declaration adopted as required above. Copies of any such proposed amendment to the Survey Map and Plans shall be made available for examination by every Owner. Such amendment to the Survey Map and Plans shall also be effective, once properly adopted, upon recordation in the appropriate county offices, along with the amendment to the Declaration which accompanies it.

17.5. Consent of Mortgagees Required.

The consent of specified percentages of Eligible Mortgagees and/or Eligible Insurers may be required, pursuant to Article XV of this Declaration, prior to recordation of certain amendments to the Condominium Instruments.

17.6. Amendments by Declarant.

The Declarant may unilaterally adopt and file amendments to the Declaration and to the Survey Map and Plans for so long as the Declarant is the Owner of any Unit in the Condominium or until the expiration of the time limit for the exercise of any Development Rights reserved by the Declarant, in order to:

- (a) conform them to the actual location of any of the constructed improvements and to establish, vacate and relocate utility easements, access road easements and parking areas;
- (b) exercise any Development Right reserved by the Declarant under Section 3.3 of this Declaration;
- (c) correct any nonmaterial technical errors contained in the Condominium Instruments or clarify provisions of same; or
- (d) conform them to requirements of the City or County in which the Condominium is situated, or of *bona fide* title insurance companies, secondary mortgage market entities or loan guarantors.

ARTICLE XVIII

TERMINATION OF CONDOMINIUM

The Unit Owners may elect to terminate the Condominium status of the property only in accordance with the provisions of RCW 64.34.268, with the requisite approval of such Mortgagees and other lienholders as may be required by law, or by Article XV hereof.

## ARTICLE XIX

### MISCELLANEOUS

#### 19.1. Notices for All Purposes, Delivery.

19.1.1. Except as otherwise provided by law, or by Article 15 hereof as to certain notices to Eligible Mortgagees, any notice permitted or required to be delivered under the provisions of the Declaration or the Bylaws may be delivered either personally or by mail, addressed to the person entitled to such notice at the most recent address given by such person to the Board in writing, or to the most recent address known to the Board. Notice to the Owner of any Unit shall be sufficient if mailed to its Unit if no other mailing address has been given to the Board. Mailing addresses may be changed from time to time by notice in writing to the Board. Notice to be given to the Association may be given to the President or Secretary of the Association, or to the Association's Registered Agent.

19.1.2. New Unit Owners must supply their names, addresses, telephone numbers and e-mail addresses to the Secretary of the Association promptly after conveyance.

#### 19.2. Severability.

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof, if the remainder complies with the Condominium Act and furthers the common plan of this Condominium.

#### 19.3. No Right of First Refusal.

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

#### 19.4. Effective Date.

This Declaration shall take effect upon recording.



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ARTICLE XX

CERTIFICATE OF COMPLETION

Declarant hereby certifies, pursuant to RCW 64.34.200(2), that all structural components and mechanical systems of all buildings containing or comprising any Units in the Condominium are substantially completed.

DATED this 28 day of April, 2008.

DECLARANT:

KNORR HOMES, LLC

By Edward Knorr  
Edward Knorr, Its Manager

Z & D II, L.L.C.

By Zwi Anthony Pechthalt  
Zwi Anthony Pechthalt, Its Manager

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Whatcom )

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

DATED: April 28, 2008.



Jeanne Quinn  
NOTARY PUBLIC for the State of  
Washington. My Commission  
expires 03/19/2012

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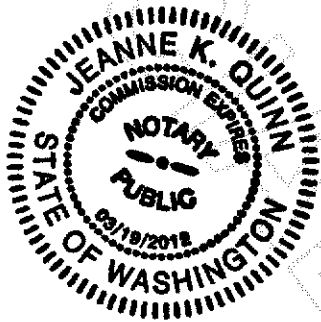


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STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Whatcom )

I hereby certify that I know or have satisfactory evidence that Zwi Anthony Pechthalt is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager of the Declarant, Z & D II, L.L.C., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: April 28, 2008.



Jeanne Quinn  
NOTARY PUBLIC for the State of  
Washington. My Commission  
expires 03/19/2012



EXHIBIT "A"  
TO DECLARATION FOR  
PADILLA HEIGHTS SUITES, A CONDOMINIUM

LEGAL DESCRIPTION OF LAND WITHIN THE CONDOMINIUM

The legal description of the land on which the building and other improvements of the Condominium are located is as follows:

Parcel "A"

That Portion of the Southwest 1/4 of the Southeast 1/4 of Section 3, Township 34 North, Range 2 East, W.M., Described as Follows:

Beginning at a Point on the South Line of the Country Road 154 Feet East of the West Line of Said Southwest 1/4: Thence South 7 1/3 Rods; Thence East 6 1/3 Rods; Thence North 7 1/3 Rods to the South Line of the Country Road; Thence West Along the South Line of Said Country Road 6 1/3 Rods to the Point of Beginning.

Parcel "B"

The West 154 Feet of That Portion of the Southwest 1/4 of the Southeast 1/4 Lying South of Country Road in Section 3, Township 34 North, Range 2 East, W.M..

Situate in Skagit County, Washington.

Subject to covenants, conditions, restrictions, reservations, agreements, encumbrances and other matters of record.



**EXHIBIT "B"**  
**TO DECLARATION FOR PADILLA HEIGHTS SUITES, A CONDOMINIUM**

Unit No.	Square Footage	Address	Level(s) in Building	Bath room	Type of Heat	Limited Common Elements**	Allocated Interest Common Elements*	Allocated Interest Assessment*
A-101	940.49	9642 Padilla Heights Rd.	1 & mezzanine	1		Exterior Doors and Windows, Awning	1.585%	6.75%
A-102	1,439.37	9642 Padilla Heights Rd.	1	1		Exterior Doors and Windows, Awning	2.00%	9.50%
A-103	1,031.50	9642 Padilla Heights Rd.	1	n/a		Exterior Doors and Windows, Awning	1.585%	6.75%
A-104	1,027.82	9642 Padilla Heights Rd.	1	n/a		Exterior Doors and Windows, Awning	1.585%	6.75%
A-105	1,028.41	9642 Padilla Heights Rd.	1	n/a		Exterior Doors and Windows, Awning	1.585%	6.75%
A-106	1,027.82	9642 Padilla Heights Rd.	1	n/a		Exterior Doors and Windows, Awning	1.585%	6.75%
A-107	1,028.56	9642 Padilla Heights Rd.	1	n/a		Exterior Doors and Windows, Awning	1.585%	6.75%
A-108	1,027.54	9642 Padilla Heights Rd.	1	n/a		Exterior Doors and Windows, Awning	1.585%	6.75%
A-109	1,027.39	9642 Padilla Heights Rd.	1	n/a		Exterior Doors and Windows, Awning	1.585%	6.75%
A-110	1,027.39	9642 Padilla Heights Rd.	1	n/a		Exterior Doors and Windows, Awning	1.585%	6.75%



Unit No.	Square Footage	Address	Level(s) in Building	Bath-room	Type of Heat	Limited Common Elements**	Allocated Interest Elements*	Allocated Interest Assessment*
A-111	1,028.56	9642 Padilla Heights Rd.	1	n/a		Exterior Doors and Windows, Awning	1.585%	6.75%
A-112	1,027.53	9642 Padilla Heights Rd.	1	n/a		Exterior Doors and Windows, Awning	1.585%	6.75%
A-113	1,440.60	9642 Padilla Heights Rd.	1	n/a		Exterior Doors and Windows, Awning	2.00%	9.50%
A-114	1,027.23	9642 Padilla Heights Rd.	1	n/a		Exterior Doors and Windows, Awning	1.585%	6.75%
D-1							23%	0%
D-2							23%	0%
D-3							23%	0%
D-4							8%	0%
Totals	15,130.21						100.02%	100.000%

\*\* Allocated interests are the percentages of undivided interests in the Common Elements and fractional liability for the Common Expenses of the Association allocated to each Unit under Sections 5.3, and 10.6 of the Declaration, pursuant to RCW 64.34.224(1). Pursuant to Section 7.4.2 of the Declaration, each unit is allocated an equal portion of the votes in the Association. Each Unit has an undivided interest in the Common Elements which is roughly proportional to its size and/or the number of commercial Units which may be created within it. The Assessment Interests described above are those which will be assessed until the Development Unit is subdivided, as provided in Sections 10.4 and 10.6 hereof. ALL ALLOCATED INTERESTS ARE SUBJECT TO CHANGE UPON AN EXERCISE OF DEVELOPMENT RIGHTS, as described at Section 3.3.2(a) of the Declaration.

\*\* Items listed are Limited Common Elements permanently assigned to their respective Units as identified above, pursuant to Section 6.1 of the Declaration.



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EXHIBIT "C"  
TO DECLARATION FOR PADILLA HEIGHTS SUITES, A CONDOMINIUM  
ASSIGNMENT, IDENTIFICATION AND DESCRIPTION OF PARKING SPACES

<u>Parking Space No.</u>	<u>Description*</u>	<u>Unit Assignment**</u>
1	U	A-101
2	U	A-101
3	U/HC	A-102
4	U	A-102
5	U	A-103
6	U	A-103
7	U	A-104
8	U	1-104
9	U	A-105
10	U	A-105
11	U	A-106
12	U	A-106
13	U	A-107
14	U	A-107
15	U	A-108
16	U	A-108
17	U	A-109
18	U	A-109
19	U	A-110
20	U	A-110



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<u>Parking Space No.</u>	<u>Description*</u>	<u>Unit Assignment**</u>
21	U	A-111
22	U	A-111
23	U	A-112
24	U	A-112
25	U	A-113
26	U/HC	A-113
27	U	A-114
28	U	A-114

\* U = uncovered (open); HC = handicapped space.

\*\* Numbered parking spaces depicted on the Survey Map and Plans are either already assigned as Limited Common Elements to Units as indicated above on this Exhibit, or are Common Elements which are Subject to Assignment ("SA") by the Declarant to particular Units as Limited Common Elements pursuant to Section 6.1 of the Declaration and RCW 64.34.216(1)(i), or are unassigned visitors parking spaces ("UA") described in Sections 5.1.4 and 5.10 of this Declaration.



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EXHIBIT "D"  
TO DECLARATION FOR PADILLA HEIGHTS SUITES, A CONDOMINIUM

**SCHEDULE OF MISCELLANEOUS PROVISIONS AFFECTING THE CONDOMINIUM**

SCHEDULE 8 – MANAGEMENT OF CONDOMINIUM ASSOCIATION

8.3.2 Common Expenses.

Common Expenses of the Association include, but are not limited to the following:

(a) Water and sewer, common electrical and, if deemed necessary or desirable by the Board of Directors, common garbage and/or trash collection, common gas, and any other necessary utility service as required for the Common Elements. If one or more Units or the Common Elements are not separately metered, the utility service may be paid as a Common Expense, and the Board may by reasonable formula allocate a portion of such expense to each such Unit involved as a portion of its Common Expense, or reimburse any Unit Owner who pays, in whole or in part for utilities serving the Common Elements.

(b) Policies of insurance or bonds required by Article XI.

(c) The services of persons or firms as required to properly manage the affairs of the Condominium to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine are necessary or proper for the operation of the Common Elements, whether such personnel are employed directly by the Board or are furnished by a Manager.

(d) The services of attorneys, along with bookkeepers and accountants qualified to maintain Association records in the manner required by Section 8.4 of the Bylaws, and to perform the independent audit required under Section 8.5 of the Bylaws.

(e) Painting, maintenance, repair and replacement of the Common Elements, landscaping and gardening work, and such furnishings and equipment for the Common Elements as the Board shall determine are necessary and proper.

(f) Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is required to by law to pay or procure or which in its opinion shall be necessary or proper for the operation of the Condominium, the maintenance, repair or replacement of the Common Elements, or for the enforcement of this Declaration.

(g) Maintenance and repair of any Unit, its Limited Common Elements, other appurtenances and appliances, if such maintenance or repair is reasonably necessary, in the opinion of the Board, to protect the Common Elements or to preserve the appearance and value of the Condominium development, and the Owner of said Unit has failed or refused to perform said maintenance or repair as required by Sections 4.6 and 6.2 of the Declaration, within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board to the Owner. The cost of such maintenance or repair shall constitute a special Assessment against the Unit of such Owner, pursuant to Section 10.8 of the Declaration.

(h) All costs of maintenance, repair or replacement of the shared roadway which may be required under the terms of the easement described with more particularity on the attached Exhibit A.

SCHEDULE 11 – INSURANCE

11.2 Insurance Policies and Coverage.

11.2.1 Principal Coverage.

The insurable improvements within the Units in this Condominium shall be insured under one or more policies of insurance, against casualty or physical damage in an amount equal to at least the cost of replacing the "vanilla shell" of the building(s) created by the Declarant, subject to reasonable "deductible" limits. The master insurance policy obtained by the Association thus will cover only the buildings and their basic mechanical equipment. This coverage need not insure the Unit's interior "tenant improvements" above and beyond the "vanilla shell" created by the Declarant, nor any personal property belonging to a Unit



Owner nor any improvements or betterments to a Unit made by the Unit Owner, nor any interior furnishings or trade fixtures used in the Owner's business. The coverage will also be exclusive of land, excavations and foundations, utilizing contemporary building materials and technology. Level(s) of coverage shall be determined annually by the Board of Directors with assistance of the agent of the insurance company affording such coverage. Such coverage shall afford protection against:

(a) loss or damage by fire, vandalism, malicious mischief, windstorm, and other hazards covered by the standard extended coverage endorsement together with coverage for Common Expenses with respect to Condominium Units during any period of repair or reconstruction; and such other perils customarily covered by insurance for similar condominium projects. Such coverage shall insure all buildings and other General and Limited Common Elements that are normally included in commercial coverage. The policy shall also cover other Condominium property including fixtures, building service equipment and common personal property and supplies owned by the Association or included in the Common Elements. An insurance policy that includes a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement (which waives the requirement for coinsurance.

(b) the following Special Endorsements, or their functional equivalent:

(i) an Inflation Guard Endorsement, when it can be obtained; and

(ii) Building Ordinance or Law Endorsement, if the enforcement of any building, zoning, or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs. (The endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction).

(c) liability for death, personal injury and property damage arising from the use, ownership or maintenance of any of the Common Elements. The insurance should also cover any commercial spaces that are owned by the Association, even if they are leased to others. Coverage should be afforded under a commercial general liability policy for the entire project, including all areas under the supervision of the Association. Limits of liability shall in no event be less than \$1,000,000 with respect to any single occurrence, and shall also include medical payments coverage.

#### 11.2.2 Flood and Earthquake Insurance.

If desirable and reasonably available, flood and/or earthquake insurance may be obtained. Funds to cover any deductible applying to such coverage should be included in the Association's operating reserve account, as provided in Section 10.3.

#### 11.2.3 Directors' and Officers' Insurance.

If reasonably available, the Board shall acquire Directors' and Officers' errors and omissions insurance to satisfy the Association's indemnification responsibilities under Section 14.2 of this Declaration.

#### 11.2.4 Fidelity Insurance, Manager Coverage & Other Insurance.

The Association shall obtain blanket fidelity insurance for any person who either handles (or is responsible for) funds that he or she holds or administers, whether or not that individual receives compensation for services. The policy shall name the Association as the insured and must include a provision that calls for ten days' written notice to the Association and all Eligible Mortgagees before the policy can be canceled or substantially modified for any reason, in the manner provided in Section 15.2 hereof. The policy should cover the maximum funds that will be in the custody of the Association or its Manager at any time while the policy is in force. A Manager that handles funds for the Association may be named as an additional insured under the Association's policy, or covered by its own fidelity insurance policy, which should provide the same coverage required of the Association. The Board may also acquire such additional insurance coverage as it may deem advisable and appropriate or as may be requested from time to time by a vote of the Unit Owners.

#### 11.2.5 General Policy Provisions and Limitations.

Insurance obtained pursuant to the requirements of this Article XI shall be subject to the following provisions:

(a) Each policy shall be written with a company or companies which are licensed to do business in the State of Washington and which hold a B general policyholder's rating or a financial performance index of 6 or better in the latest edition of Best's Key Rating Guide, or an A or better rating from Demotech, Inc.



(b) The master policy will be primary, and no insurance coverage obtained and maintained pursuant to the requirements of this Article XI shall be brought into contribution with insurance purchased individually by any of the Unit Owners or their Mortgagees, as herein permitted, and any "no other insurance" or similar clause in any policy obtained by the Board of Directors pursuant to the requirements of this Section shall exclude such policies from consideration.

(c) Each policy shall provide that it may not be canceled, substantially modified or reduced without at least 30 days' prior written notice to all insureds named thereon, including all named Mortgagees.

(d) Each policy of casualty insurance shall contain a waiver of any right of the carrier to elect to restore, or repair damage or reconstruct in lieu of making a cash settlement if a decision is made pursuant to this Declaration not to do so.

(e) Each policy shall contain a waiver of subrogation by the insurer as to any and all claims against the Unit Owners, the Association, the Board of Directors, the Manager, and their respective agents, arising from the acts of any Unit Owner, member of the Owner's household, or lessee of the Owner.

(f) Policy contracts shall provide that each Unit Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association.

(g) Each policy shall provide that (i) the policy's coverage shall not be prejudiced by any act or neglect of any occupants or Unit Owners of the Condominium or their agents, employees, tenants, Mortgagees or invitees when such act or neglect is not within the control of the insured or the Unit Owners collectively; and (ii) the policy shall not be prejudiced by failure of the insured or the Unit Owners collectively to comply with any warranty or condition with regard to any portion of the Condominium over which the insured or the Unit Owners collectively have no control.

(h) Each policy must contain a standard mortgage clause and must name as covered Mortgagees each such covered Mortgagee, followed by the phrase "its successors and assigns."

(i) The insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of chapter 48.18 RCW pertaining to the cancellation or non-renewal of contracts of insurance. The insurer shall not modify the amount or the extent of the coverage of the policy, or cancel or refuse to renew the policy without complying with RCW 64.34.352.

#### 11.8 Reconstruction Following Casualty Loss.

##### 11.8.1 Duty to Reconstruct.

Any portion of the Condominium for which insurance is required under this Section and for which the Board of Directors has the responsibility of maintenance and repair which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (a) the Condominium is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent (80%) of the Unit Owners, including every Owner of a Unit or assigned Limited Common Element which will not be rebuilt, along with any Mortgagees whose approval must be sought under applicable provisions of the Declaration, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a Common Expense.

##### 11.8.2 Decision Not To Reconstruct.

If all of the damaged or destroyed portions of the Condominium are not repaired or replaced: (i) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium; (ii) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the Unit Owners or lienholders, as their interest may appear, in proportion to the Common Element interests of all the Units. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned under RCW 64.34.060(1), and the Association promptly shall prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Notwithstanding the provisions of this Subsection, RCW 64.34.268 governs the distribution of insurance proceeds if the Condominium is terminated.

##### 11.8.3 Manner of Reconstruction.



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

#### 11.8.4 Payment of and Procedure for Reconstruction.

The proceeds of insurance collected on account of casualty, and funds received by the Board of Directors from collections of Assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

(a) If the damages exist only to parts of an Unit for which the responsibility of maintenance, repair and insurance is borne by the Unit Owner, then the Owner shall be responsible for reconstruction and repair after casualty and shall be entitled, with the assistance of the Board of Directors, to apply for and use any applicable insurance proceeds. In such instances, the Association shall not be required to pay any of the insurance deductible. In all other instances the responsibility of reconstruction and repair after casualty shall be that of the Board of Directors.

(b) If the amount of the estimated costs of reconstruction and repair is \$50,000 or less, (as estimated by the Board of Directors) then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors, provided, however, that upon request of a Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided in Subsection (iii) hereof;

(c) If the estimated costs of reconstruction and repair of the buildings or other improvement is more than \$50,000, then costs and expenses so incurred from the construction fund shall be disbursed from time to time as the work progresses upon approval by an engineer or architect (hereinafter referred to as the "Reconstruction Supervisor") licensed to practice in the State of Washington and employed by the Board of Directors to supervise such work. The Reconstruction Supervisor shall be required to furnish a certificate giving a brief description of the services rendered and materials furnished by various contractors, subcontractors, materialmen, the Reconstruction Supervisor, or other persons who have rendered services or furnished materials in connection with the work, and stating that: (a) the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (b) there is no other outstanding indebtedness known to the Reconstruction Supervisor for the services and materials described; and (c) the cost as estimated by the Reconstruction Supervisor for the work remaining to be done subsequent to the date of such certificate, does not exceed the amount of the construction fund remaining after payment of the sum so requested.

### SCHEDULE 12 – CONDEMNATION.

#### 12.1. Condemnation Affecting Whole Unit.

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

#### 12.2. Condemnation of Part of Unit.

Except as provided in Section 12.1 hereof, if part of a Unit is acquired by condemnation, the award must compensate the Unit Owner for the reduction in value of the Unit and its appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides: (a) that Unit's Allocated Interests are reduced in proportion to the reduction in the size of the Unit; and (b) the portion of the Allocated Interests divested from the partially acquired Unit are automatically reallocated to that Unit and the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests.

#### 12.3. Condemnation of Common Elements.



If part of the Common Elements is acquired by condemnation, the portion of the award attributable to the Common Elements taken shall be paid to the Owners based on their respective Allocated Interests in the Common Elements unless the Association at a special meeting called for such purpose, decides otherwise.

12.4. Condemnation of Limited Common Elements.

Any portion of an award attributable to the acquisition of a Limited Common Element must be equally divided among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

12.5. Association Necessary Party to Proceeding.

The Association, through its Board of Directors, shall be a necessary party to any condemnation proceedings and shall, to the extent feasible, act as a fiduciary on behalf of and in the best interests of any and all Unit Owners affected by such proceedings. Should the Association not act on the Owners' behalf in a condemnation proceeding, the affected Owners may individually or jointly act on their own behalf.

12.6. Complete Taking.

In the event of a complete taking of the Condominium, or in the event that the taking by the condemning authority is so substantial as to render the remainder of the Condominium unsuitable or undesirable for use by the remaining Unit Owners, then the Condominium shall (in the case of complete taking) or may (as to a partial taking) be terminated in accordance with the terms and conditions of RCW 64.34.268, and Article XV hereof.

12.7. Reconstruction and Repair.

Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XI hereof, 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 XI.

12.8. Notice to Mortgagees.

The Board of Directors shall promptly give written notice to all Eligible Mortgagees of the pendency of any condemnation proceedings affecting any portion of the Condominium.

12.9. Payment of Award.

When a Unit Owner becomes entitled to receipt of a condemnation award, or of any portion of such an award, or of any payment in lieu of such an award, then any such payment shall be made payable jointly to such Unit Owner and to the holders of any Mortgages encumbering such Owner's Unit, as their interests may appear.

SCHEDULE 15 – PROTECTION OF MORTGAGEES

This Schedule establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain mortgages. This Article is supplemental to, and not in substitution for, any other provisions of the Condominium Instruments, but in the case of conflict, this Schedule shall control.

15.1. Percentage of Eligible Mortgagees.

Wherever in this Declaration the approval or consent of a specified percentage of Mortgagees is required, it shall mean, pursuant to RCW 64.34.272, the approval or consent in writing of Eligible Mortgagees holding first lien mortgages on Units, and the percentage shall be based upon the votes attributable to Units with respect to which Eligible Mortgagees have an interest.

15.2. Notice of Actions.

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



(a) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit in which there is a first mortgage held by such Eligible Mortgagee;

(b) Any delinquency in the payment of Common Expense Assessments owed by a Unit Owner whose Unit is subject to a first mortgage held, insured, or guaranteed, by such Eligible Mortgagee, as applicable, which remains uncured for a period of sixty (60) days;

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

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

(e) Any judgment rendered against the Association in excess of \$2,500 which is not covered by insurance.

15.3. Consent and Notice Required.

15.3.1. Document Changes.

Notwithstanding any lower requirement permitted by this Declaration or the Condominium Act, no amendment of any material provision of the Condominium Instruments by the Association or Unit Owners described in this Subsection may be effective without notice to all Eligible Mortgagees, as required by Section 15.2(d) above, and the approval by Owners of Units to which at least 67% (or any greater Unit Owner vote required in Section 17.3 of this Declaration or the Condominium Act) of the votes in the Association are allocated, and approval in writing by Eligible Mortgagees who represent at least 51% (or any greater Eligible Mortgagee approval required by this Declaration) of the votes of Unit estates that are subject to mortgages held by Eligible Mortgagees. The foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right. A change to any of the following would be considered material:

(a) Voting rights;

(b) Increases in Assessments that raise the previously assessed amount by more than 25%, Assessment liens or priority of Assessment liens;

(c) Reductions in reserves for maintenance, repair and replacement of Common Elements;

(d) Responsibility for maintenance and repairs;

(e) Reallocation of interests in the General Common Elements or Limited Common Elements, or rights to their use, except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only the Eligible Mortgagees holding mortgages in such Units need approve such action;

(f) Redefinitions of boundaries of Units, except that when boundaries of only adjoining Units are involved, then only those Unit Owners and the Eligible Mortgagees holding mortgages in such Unit or Units need must approve such action;

(g) Convertibility of Units into Common Elements or Common Elements into Units;

(h) Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;

(i) Hazard or fidelity insurance requirements;

(j) Imposition of any restrictions on the leasing of Units;

(k) Imposition of any restrictions on a Unit Owner's right to sell or transfer its Unit;

(l) If the Condominium consists of 50 or more Units, a decision by the Association to establish self-management when professional management had been required previously by the Condominium Instruments or by an Eligible Mortgagee;





(m) Restoration or repair of the project after damage or partial condemnation in a manner other than that specified in the Condominium Instruments;

(n) Any provision that expressly benefits mortgage holders, insurers, or guarantors.

15.3.2. Actions.

Notwithstanding any lower requirement permitted by this Declaration or the Condominium Act, the Association may not take any of the following actions (other than rights reserved by the Declarant as Development Rights), without notice to all Eligible Mortgagees and eligible Insurers as required by Section 15.2(d) above, approval by Owners of Units to which at least 67% (or the indicated percentage, if different) of the votes in the Association are allocated, and approval in writing by Eligible Mortgagees who represent at least 51% (or the percentage indicated below, if different,) of the votes of Unit estates that are subject to mortgages held by Eligible Mortgagees:

(a) Any action to abandon or terminate the legal status of the Condominium after condemnation or substantial destruction.

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

(c) Abandon, partition, subdivide, encumber, sell, transfer or convey the Common Elements or any portion thereof, as to which the approval of Owners to which at least eighty percent (80%) of the votes in the Association are allocated is required, and the procedures specified in Section 5.2 hereof must be followed. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Association will not be deemed a transfer within the meaning of this clause;

(d) Change any of the Allocated Interests allocated to any Unit other than as permitted in Sections 4.5 or 4.6 hereof; in any other case the vote or agreement of the Owner of each Unit particularly affected and its Mortgagee and the Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated other than the Declarant must be obtained, pursuant to Section 17.3 hereof and to RCW 64.34.264 (4).

(e) Increase the number of Units, change the boundaries of any Unit (other than as provided in Sections 4.8 and 4.9 hereof) or change the uses to which any Unit is restricted, as to which the approval of Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated must be obtained, pursuant to Section 17.3 hereof and to RCW 64.34.264 (4).

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

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

15.3.3. Implied Approval by Mortgagee.

The failure of an Eligible Mortgagee or Insurer to respond within thirty (30) days to any written request of the Association delivered by certified or registered mail, "return receipt requested" for approval of an amendment to the Condominium Instruments, wherever Eligible Mortgagee or Insurer approval is required, shall constitute an implied approval of the addition or amendment.

15.4. Development Rights.

No Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding mortgages in the Development Rights consent to the exercise, abandonment, or termination.

15.5. Inspection of Books.



The Association must maintain current copies of the Declaration, Bylaws, Articles of Incorporation, Rules and Regulations, books and records and financial statements. The Association shall permit any Eligible Mortgagee or other first mortgagee of a Unit, to inspect the books and records of the Association during normal business hours.

15.6. Financial Statements.

The Association shall provide any Mortgagee who submits a written request, a copy of an annual financial statement within one hundred twenty (120) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if:

- or
- (a) The Condominium contains fifty or more Units, in which case the cost of the audit shall be a Common Expense;
  - (b) The Condominium contains fewer than fifty Units and any Eligible Mortgagee or Eligible Insurer requests it, in which case the Eligible Mortgagee or Eligible Insurer shall bear the cost of the audit.

15.7. Enforcement.

The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors, and may be enforced by any of them by any available means, at law, or in equity.

15.8. Attendance at Meetings.

Any representative of an Eligible Mortgagee may attend and address any meeting which a Unit Owner may attend.

15.9. Appointment of Trustee.

In the event of damage or destruction under Article XI or condemnation of all or a portion of the Condominium, any Eligible Mortgagee may require that such proceeds be payable to a Trustee established pursuant to Section 11.7 of this Declaration. Proceeds will thereafter be distributed pursuant to Article XI or pursuant to a condemnation award.

15.10. Limitations on Mortgagees' Rights.

No requirement for approval contained in this Article may operate to (1) deny or delegate control over the general administrative affairs of the Association by the Unit Owners or the Board of Directors, or (2) prevent the Association or the Board of Directors from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to RCW 64.34.352.



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Skagit County Auditor