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Skagit County Auditor

10/8/2009 Page

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**RETURN ADDRESS:**

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Mountlake Terrace, WA 98043

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## ORIGINAL COVER SHEET

**Document Title(s)** (or transactions contained herein):

DECLARATION FOR FIDALGO BUSINESS PARK, A CONDOMINIUM

**Reference Number(s)** of Documents assigned or released:

**Grantor(s)** (Last name first, then first name and initials):

FIDALGO STORAGE, LLC, a Washington Limited Liability Company

**Grantee(s)** (Last name first, then first name and initials):

Not Applicable **PUBLIC**

**Legal Description** (abbreviated: (i.e., lot, block, plat or section, township, range):

PARCEL A: The West 297 feet of the Northwest Quarter of the Northwest Quarter of the Southwest Quarter of Section 3, Township 34 North, Range 2 East of the Willamette Meridian, lying South of State Highway No. 1, as conveyed to the State of Washington by deed recorded January 12, 1961, under Auditor's File No. 603031, records of Skagit County, Washington.

PARCEL B: A non-exclusive easement for ingress and egress reserved in deed to Jerry Smith, et al., recorded August 16, 1994, under Auditor's File No. 9408160065, records of Skagit County, Washington.

**Assessor's Property Tax Parcel/Account Number(s):**

P19739 340203-3-008-0001

DECLARATION  
FOR  
**FIDALGO BUSINESS PARK**  
A CONDOMINIUM

Pursuant to the Act defined in Section 1.8.1 and for the purpose of submitting the Property hereinafter described to the provisions of said Act, the undersigned, being sole owner(s), lessees or possessors of said Property, make the following Declaration. By acceptance of a conveyance, contract for sale, lease, rental agreement, or any form of security agreement or instrument, or any privileges of use or enjoyment, respecting the Property or any Unit in the Condominium created by this Declaration, it is agreed that this Declaration, together with the Survey Map and Plans referred to herein, stated covenants, conditions, restrictions, and reservations effecting a common plan for the Condominium development mutually beneficial to all of the described Units, and that the covenants, conditions, restrictions, reservations and plan are binding upon the entire Condominium and upon each such Unit as a parcel of realty, and upon its owners or possessors, and their heirs, personal representatives, successors and assigns, through all successive transfers of all or part of the condominium or any security interests therein, without requirement of further specific reference or inclusion of deeds, contracts or security instruments and regardless of any subsequent forfeitures, foreclosures, or sales or Units under security instruments.

**Article 1**

**INTERPRETATION**

1.1 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of their Condominium under the provisions of Washington law. It is intended and covenanted also that, insofar as it affects this Declaration and Condominium, the provisions of the Act under which this Declaration is operative, shall be liberally construed to effectuate the intent of this Declaration insofar as reasonably possible.

1.2 Consistent with Act. The terms used herein are intended to have the same meaning given in the Act unless the context clearly requires otherwise or to so define the terms would produce an illegal or improper result.

1.3 Covenant Running With Land. It is intended that this Declaration shall be operative as a set of covenants running with the land, or equitable servitude, binding on Declarant, its successors and assigns, all subsequent owners of the Property, together with their grantees, successors, heirs, executors, administrators, devisees, or assigns, supplementing and interpreting the Act, and operating independently of the Act should the Act be, in any respect, inapplicable.

1.4 Percentage of Owners or Mortgagees. For purposes of determining the percentage of Owners or Mortgagees, or percentage of voting power for, approving a proposed decision or course



of action in cases where an Owner owns, or a Mortgagee holds Mortgages on, more than one Unit, such Owner shall be deemed a separated Owner for each such Unit so owned and such Mortgagee shall be deemed a separate Mortgagee for each such first Mortgage so held.

1.5 Declarant is Original Owner. Declarant is the original owner of all Units and Property and will continue to be deemed the Owner thereof except as conveyances or documents changing such ownership regarding specifically described Units are recorded.

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

1.7 Inflationary Increase in Dollar Limits. Any dollar amount specified in this Declaration in connection with any proposed action or decision of the Board or Association may, in the discretion of the Board, be increased proportionately by the increase in the consumer price index for the city of Seattle, Washington, for All Urban Consumers, prepared by the United States Department of Labor for the base period, January 1, 2009.

#### 1.8 Definitions

1.8.1 "The Act" means the Washington Condominium Act, Laws of 1989, Chapter 32 (RCW 64.34) as amended.

1.8.2 "Affiliate" means any person who controls, is controlled by, or is under common control with the referenced person. A person "controls" another person if the person (a) Is a general partner, officer, director, or employer of the referenced person; (b) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the capital of the referenced person. A person "is controlled by" another person if the other person: (i) Is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

1.8.3 "Allocated Interests" means the undivided interest in the Common Elements, the Common Expense Liability, and votes in the Association allocated to each Unit that are more particularly provided for in Article 8 and shown in Exhibit C.



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

1.8.5 "Association" or "Unit Owners' Association" means the unit owners' association organized under RCW 64.34.300, which Association is more particularly provided for in Article 9.

1.8.6 "Board of Directors" means the body, regardless of name, with primary authority to manage the affairs of the Association provided for in Section 10.3.

1.8.7 "Building" means the building or buildings containing the Units and comprising a part of the Property.

1.8.8 "Bylaws" shall mean the bylaws of the Association provided for in Article 9.

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

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

1.8.11 "Common Expense Liability" means the liability for Common Expenses allocated to each Unit pursuant to RCW 64.34.224 and as provided in Article 8.

1.8.12 "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 survey map and plans have been recorded pursuant to the Act.

1.8.13 "Contribution Rate" in a reserve study means the amount contributed to the reserve account so that the Association will have cash reserves to pay major maintenance, repair, or replacement costs without the need of a special assessment.

1.8.14 "Conversion Condominium" means a condominium (a) that at any time before creation of the condominium was lawfully occupied wholly or partially by a tenant or subtenant for residential purposes pursuant to a rental agreement, oral or written, express or implied, for which the tenant or subtenant had not received the notice described in (b) of this subsection; or (b) that, any time within twelve months before the conveyance of, or acceptance of an agreement to convey, any unit therein other than to a declarant or any affiliate of a declarant, was lawfully occupied wholly or partially by a residential tenant of a declarant or an affiliate of a declarant and such tenant was not notified in writing, prior to



lawfully occupying a unit or executing a rental agreement, whichever event first occurs, that the unit was part of a condominium and subject to sale. "Conversion Condominium" shall not include a condominium in which, before July 1, 1990, any unit therein had been conveyed or been made subject to an agreement to convey to any transferee other than a declarant or an affiliate of a declarant.

1.8.15 "Conveyance" means any transfer of the ownership of a Unit, including a transfer by deed or by real estate contract and, with respect to a Unit in a leasehold condominium, a transfer by lease or assignment thereof, but shall not include a transfer solely for security.

1.8.16 "Dealer" means a person who, together with such person's affiliates, owns or has a right to acquire either six or more units in a condominium or fifty percent or more of the units in a condominium containing more than two units.

1.8.17 "Declarant" means: (a) any person who executes as Declarant a Declaration as defined in subsection 1.8.15; or (b) any person who reserves any Special Declarant Right in the Declaration; or (c) any person who exercises Special Declarant Rights or to whom Special Declarant Rights are transferred; or (d) any person who is the owner of a fee interest in the real property which is subjected to the Declaration at the time of recording of an instrument pursuant to RCW 64.34.316 and who directly or through one or more affiliates is materially involved in the construction, marketing, or sale of units in the condominium created by the recording of the instrument.

1.8.18 "Declarant Control" means the right of the Declarant or persons designated by the Declarant to appoint and remove Association officers and Board members, or to veto or approve a proposed action of the Board or Association, pursuant to RCW 64.34.308 (4) or (5).

1.8.19 "Declaration" means the document, however denominated, that creates a condominium by setting forth the information required by RCW 64.34.216 and any amendments to that document.

1.8.20 "Development Rights" means any right or combination of rights reserved by the Declarant in the Declaration to: (a) add real property or improvements to the Condominium; (b) create Units, Common Elements, or Limited Common Elements within real property included or added to the Condominium; (c) subdivide Units or convert Units into Common Elements; (d) withdraw real property from the Condominium; or (e) reallocate Limited Common Elements with respect to Units that have not been conveyed by the Declarant.

1.8.21 "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.



1.8.22 "Effective Age" means the difference between useful life and remaining useful life.

1.8.23 "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.

1.8.24 "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a Mortgage or a deed in lieu thereof.

1.8.25 "Fully Funded Balance" means the value of the deteriorated portion of all the reserve components. The fully funded balance for each reserve component is calculated by multiplying the current replacement cost of that reserve component by its effective age, then dividing the result by that reserve component's useful life. The sum total of all reserve components' fully funded balances is the association's fully funded balance.

1.8.26 "Identifying Number" means the designation of each Unit in a Condominium.

1.8.27 "Interior Surfaces" (where that phrase is used in defining the boundaries of Units or Limited Common Elements) shall not include paint, wallpaper, paneling, carpeting, tiles, finished flooring, and other such decorative or finished surface coverings. Said decorative and finished coverings, along with pictures and other tangible personal property (including furniture, planters, mirrors, and the like) located in and used in connection with said Unit or Limited Common Element, shall be deemed a part of said Unit or Limited Common Element.

1.8.28 "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.

1.8.29 "Limited Common Element" means a portion of the Common Elements allocated by this 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.

1.8.30 "Master Association" means an organization described in RCW 64.34.276, whether or not it is also an association described in RCW 64.34.300.

1.8.31 "Manager" means the person retained by the Board to perform such management and administrative functions and duties with respect to the Condominium as are delegated to such person and as are provided in a written agreement between such person and the Association.

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

1.8.33 "Mortgagee" means the beneficial owner, or the designee of the beneficial owner, of an encumbrance of a Unit created by mortgage or deed of trust and shall also mean the vendor or the designee of a vendor of a real estate contract for the sale of a Unit. A Mortgagee of the Condominium and a Mortgagee of a Unit are included within the definition of Mortgagee.

1.8.34 "Mortgagee of a Unit" means the holder of a Mortgage on a Unit, which mortgage was recorded simultaneous with or after the recordation of this Declaration. Unless the context requires otherwise, the term "Mortgagee of a Unit" shall also be deemed to include the Mortgagee of the Condominium.

1.8.35 "Mortgagee of the Condominium" means the holder of a Mortgage on the Property which this Declaration affects; which Mortgage was either: recorded prior to the recordation of this Declaration; or was recorded against all Units after the recordation of this Declaration but prior to the conveyance of any Unit. The term "Mortgagee of the Condominium" does not include Mortgagees of the individual Units.

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

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

1.8.38 "Real Property" means any fee, leasehold or other estate or interest in, over, or under the land, including buildings, structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Real Property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

1.8.39 "Remaining Useful Life" means the estimated time, in years, that a reserve component can be expected to continue to serve its intended function.

1.8.40 "Renting or Leasing" a Unit means the granting of a right to use or occupy a Unit, for a specified term or indefinite term (with rent reserved on a periodic basis), in exchange for the payment of rent (that is, money, property, or other goods or services of value) but shall not mean and include joint ownership of a Unit by means of joint tenancy, tenancy-in-common or other forms of co-ownership.

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



1.8.42 "Reserve Components" means common elements whose cost of maintenance, repair, or replacement is too infrequent, significant, and impractical to include in an annual budget.

1.8.43 "Reserve Study Professional" means an independent person suitably qualified by knowledge, skill, experience, training, or education to prepare a reserve study in accordance with Sections 1 and 2 of the Act relating to Reserve Accounts and Studies for Condominiums.

1.8.44 "Special Declarant Rights" means rights reserved for the benefit of Declarant to: (a) complete improvements indicated on Survey Maps and Plans filed with the Declaration under RCW 64.34.232; (b) exercise any Development Right under RCW 64.34.236; (c) maintain sales offices, management offices, signs advertising the condominium, and models under RCW 64.34.256; (d) use easements through the common elements for the purpose of making improvements within the condominium or within real property which may be added to the condominium under RCW 64.34.260; (e) make the condominium part of a larger condominium or development under RCW 64.34.280; (f) make the condominium subject to a master association under RCW 64.34.276; or (g) appoint or remove any officer of the association or any master association or any member of the board of directors, or to veto or approve a proposed action of the board or association, during any period of declarant control under RCW 64.34.308(4).

1.8.45 "Survey Map and Plans" means the Survey Map and the Plans recorded simultaneously with this Declaration and any amendments, corrections, and addenda thereto subsequently recorded.

1.8.46 "Timeshare" shall have the meaning specified in the Timeshare Act, RCW 64.36.010(11).

1.8.47 "Unit" means a physical portion of the Condominium designated for separate ownership, the boundaries of which are described pursuant RCW 64.34.216(1)(d). "Separate Ownership" includes leasing a Unit in a leasehold condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the Unit from the Condominium.

1.8.48 "Unit Owner" means a Declarant or other person who owns a Unit or leases a Unit in a leasehold condominium under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the Unit from the condominium, but does not include a person who has an interest in a Unit solely as security for an obligation. "Unit Owner" means the vendee, not the vendor, of a Unit under a real estate contract.

1.8.49 "Useful Life" means the estimated time, in years, that a reserve component can be expected to serve its intended function.





**1.9 Construction and Validity.**

1.9.1 All provisions of the Declaration and Bylaws are severable.

1.9.2 The rule against perpetuities may not be applied to defeat any provision of the Declaration, Bylaws, rules or regulations adopted pursuant to RCW 64.34.304(1)(a).

1.9.3 In the event of a conflict between the provisions of the Declaration and the Bylaws, the Declaration prevails except to the extent the Declaration is inconsistent with the Act.

1.9.4 The creation of this Condominium shall not be impaired and title to the Unit and Common Elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of the Declaration or Survey Map and Plans or any amendment thereto to comply with the Act.

1.9.5 If the Declaration or Bylaws now or hereafter provide that any officers or directors of the Association must be Unit Owners, then notwithstanding the definition contained in Section 1.8.36, the term "Unit Owner" in such context shall, unless the Declaration or Bylaws otherwise provide, be deemed to include any director, officer, partner in, or trustee of any person who is, either alone or in conjunction with another person or persons, a Unit Owner. Any officer or director of the Association who would not be eligible to serve as such if he or she were not a director, officer, partner in, or trustee of such a person shall be disqualified from continuing in office if he or she ceases to have any such affiliation with that person, or if that person would have been disqualified from continuing in such office as a natural person.

**Article 2**

**DESCRIPTION OF REAL PROPERTY**

The Real Property included in the Condominium is described in Exhibit A attached hereto and incorporated herein by reference. The interest of the declaration in the Real Property included in the Condominium is a fee simple.

**Article 3**

**DESCRIPTION OF UNITS**

Either Exhibits B and C, or both, attached hereto set forth the following:

3.1 Number of Units. The number of Units which Declarant has created and reserves the right to create.



3.2 Unit Number. The identifying Number of Each Unit created by the Declaration.

3.3 Unit Description. With respect to each existing Unit:

3.3.1 The approximate square footage.

3.3.2 Reserved.

3.3.3 Reserved.

3.3.4 Reserved.

3.3.5 The level or levels on which each Unit is located.

3.3.6 The type of heat and heat service.

#### **Article 4**

#### **BOUNDARIES**

4.1 Unit Boundaries.

4.1.1 Boundaries. The centerline of the walls (or any other like partitions between Units) shall be designated as the boundaries of a Unit. The interior surfaces of a Unit, both finished and unfinished, and also the space between the centerline of the walls and the interior wall surfaces are part of the Unit.

4.1.2 Ducts, Wires, Etc. If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture 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 the Unit, and any portion thereof serving more than one Unit or any portion of the Common Element is a part of the Common Elements.

4.1.3 Partitions, Etc. Subject to the provisions of Section 4.1.2, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit

4.1.4 Shutters, Etc. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but which are located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.



4.2 Monuments as Boundaries. The physical boundaries of a Unit constructed in substantial accordance with the original Survey Map and Plans thereof become its boundaries rather than the metes and bounds expressed in the Survey Map and Plans, regardless of settling or lateral movements of the Building or minor variances between boundaries shown on the Survey Map and Plans and those of the building. This Section does not relieve a Declarant or any other person of liability for failure to adhere to the Survey Map and Plans.

4.3 Relocation of Boundaries: Adjoining Units. Subject to the provisions of the Declaration and other provisions of law, the boundaries between adjoining Units may only be relocated by an amendment to the Declaration upon 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. Unless the Board determines within thirty (30) days that the reallocations are unreasonable, the Association shall prepare an amendment that identifies the Units involved, states the reallocations, is executed by those Unit owners, contains words or conveyance between them, and is recorded in the name of the grantor and the grantee. 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.

## Article 5

### DESCRIPTION OF OTHER IMPROVEMENTS

Either Exhibits B and C, or both, attached hereto set forth the following:

5.1 Recreational Facilities. A description of the recreational facilities, if any, included within the Condominiums.

5.2 Parking. The number of covered, uncovered or enclosed parking spaces, if any, excluding those described in Section 7.1.2.

5.3 Moorage Slips. The number of moorage slips, if any.

## Article 6

### DESCRIPTION OF COMMON ELEMENTS

Except as otherwise specifically reserved, assigned or limited by the provisions of Section 4.1 and Article 7 hereof, the Common Elements consist of all portions of the Condominium except Units and include the following:

6.1 The Real Property described in Exhibit A.



6.2 Installations of utility services such as power, light, gas and hot water, and in general all apparatuses and installations existing for common use, but excluding plumbing, electrical and similar fixtures that are located within a Unit for the exclusive use of that Unit.

6.3 The driving areas (not assigned as Limited Common Elements in Article 7) which provide access to the Limited Common Elements for parking, and any guest parking or other parking areas not assigned to Units as Limited Common Elements pursuant to this Declaration.

6.4 The landscaped areas and walkways (not assigned as Limited Common Elements in Article 7) which surround and provide access to the Buildings or are used for recreational purposes.

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

## Article 7

### DESCRIPTION OF LIMITED COMMON ELEMENTS

7.1 Limited Common Elements. The Limited Common Elements are reserved for the exclusive use of the Owner or Owners of the Unit or Units to which they are allocated and, in addition to any Limited Common Elements provided by law or other provisions of the Declaration, shall consist of those other Limited Common Elements, if any, as may be described in Exhibit A or Exhibit B or depicted and labeled on the Survey Map and Plans.

7.2 Transfer of Limited Common Elements.

7.2.1 Renting. After Declarant's initial allocation, a Unit Owner may rent or lease a Limited Common Element allocated to that Unit to any other Unit Owner; provided, that the rental or lease term shall automatically expire on the date the lessor/Unit Owner disposes of its interest in the Unit (whether such disposition is by deed, contract, foreclosure or otherwise); and provided further, that the Board shall be notified in writing of the existence of any such rental or lease arrangement.

7.2.2 Reallocation Between Units. Except in the case of a reallocation being made by the Declarant pursuant to a Development Right reserved in this Declaration, a Limited Common Element may only be reallocated between Units with the approval of the Board and by an amendment to the Declaration executed by the Owners of, and approved in writing by the Mortgagees holding Mortgages against, the Units to which the Limited Common Element was and will be allocated. The Board shall approve the request of the Owner or Owners under this section within thirty (30) days unless the proposed reallocation does not comply with the Act or the Declaration. The failure of the Board to act upon a request within such period shall be deemed approval thereof. The amendment shall be recorded in the names of the parties and of the Condominium.



7.2.3 Common to Limited Common, Etc. Seventy-five percent (75%) of the Unit Owners, including the Owner of the Unit to which the Limited Common Element will be assigned or incorporated, must agree to reallocate a Common Element as a Limited Common into an existing Unit. Such reallocation or incorporation shall be reflected in an amendment to the Declaration, Survey Map, or Plans. Provided, however, this Section shall not apply with respect to any such reallocation or incorporation made as a result of the exercise of any Development Right reserved by Declarant.

## Article 8

### ALLOCATED INTERESTS

The Allocated Interests of each Unit (that is, the undivided interest in the Common Elements, the Common Expense Liability and the votes in the Association allocated to each Unit) are set forth in Exhibit C attached hereto. Any values used to establish the percentages required by the Act do not reflect, necessarily, the amount for which a Unit will be sold, from time to time, by Declarant or others. The Allocated Interest appertaining to each Unit cannot be changed except as provided in this Declaration. The Allocated Interest and the title to the respective Units shall not be separated or separately conveyed and each undivided interest shall be deemed to be conveyed with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the title to the Unit. Except where permitted by the Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an Allocated Interest made without the Unit to which that interest is allocated is void.

## Article 9

### OWNERS' ASSOCIATION

9.1 Form of Association. The Association shall be organized as a non-profit corporation under the laws of the State of Washington and shall be known as the Fidalgo Business Park Condominium Owners Association.

9.2 Membership.

9.2.1 Qualification. Each Unit Owner (including Declarant) shall be a member of the Association and shall be entitled to one (1) membership for each Unit so owned; provided, that if a Unit has been sold on contract, the contract purchaser shall exercise the rights of the Unit Owner for purposes of the Association, this Declaration, and the Bylaws, except as hereinafter limited, and shall be the voting representative unless otherwise specified. Ownership of a Unit shall be the sole qualification for membership in the Association.

9.2.2 Transfer of Membership. The Association membership of each Unit Owner (including Declarant) shall be appurtenant to the Unit giving rise to such membership, and



shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to said Unit and then only to the transferee of title to such Unit. Any attempt to make a prohibited transfer shall be void. Any transfer to a Unit shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

### 9.3 Voting.

9.3.1 Number of Votes. The total voting power of all Unit Owners shall be seventy-nine (79) votes and the total number of votes allocated to each Unit is set forth in Exhibit C attached hereto and incorporated herein by reference.

9.3.2 Multiple Owners. If only one (1) of the multiple Owners of a Unit is present at a meeting of the Association, then that owner is entitled to cast the vote(s) allocated to that Unit. If more than one (1) of the multiple Owners are present, the vote(s) shall be cast based on the majority agreement of the multiple Owners.

9.3.3 Proxies. Votes allocated to any Unit may be cast pursuant to a proxy duly executed by a Unit Owner. If a Unit is owned by more than one (1) person, each owner of this Unit may vote or register protest to the casting of votes by the other Owners of the Unit through a duly executed proxy. A Unit Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. Unless stated otherwise in the proxy, a proxy terminates eleven (11) months after its date of issuance.

9.3.4 Association Owned Units. No votes allocated to a Unit owned by the Association may be cast, and in determining the percentage of votes required to act on any manner, the votes allocated to Units owned by the Association shall be disregarded.

9.3.5 Pledged Votes. If a Unit Owner is in default under a first Mortgage on the Unit for ninety (90) consecutive days or more, the Mortgagee shall automatically be authorized to declare at any time thereafter that the Unit Owner has pledged his or her vote on all issues to the Mortgagee during the continuance of the default. If the Board has been notified of any such pledge to a Mortgagee, or in the event the record Unit Owner or Owners have otherwise pledged their vote regarding special matters to a Mortgagee under a duly recorded Mortgage, only the vote of such Mortgagee or vendor, will be recognized in regard to the special matter upon which the vote is so pledged, if a copy of the instrument with this pledge has been filed with the Board. Amendments to this subsection shall only be effective upon the written consent of all the voting Unit Owners and their respective Mortgagees, if any.



#### 9.4 Meetings, Notices and Quorums.

9.4.1 Meetings. A meeting of the Association must be held at least once each year. Special meetings of the Association may be called by the president, a majority of the Board, or by Unit owners having twenty percent (20%) of the votes in the Association. Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first class United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda to be voted on by the members, including the general nature of any proposed amendment to the Declaration or Bylaws, changes in the previously approved budget that result in change in Assessment obligations, and any proposal to remove a director or officer.

#### 9.4.2 Quorums.

(a) A quorum is present throughout any meeting of the Association if the owners of the Units to which twenty-five percent (25%) of the votes of the Association are allocated are present in person or by proxy at the beginning of the meeting.

(b) A quorum is deemed present throughout any meeting of the Board if persons entitled to cast seventy five percent (75%) of the votes on the Board are present at the beginning of the meeting.

#### 9.5 Bylaws of Association.

9.5.1 Adoption of Bylaws. Bylaws (and amendments thereto) for the administration of the Association and the Property, and for other purposes not inconsistent with the Act or with the intent of this Declaration shall be adopted by the Association upon concurrence of those voting Unit Owners holding a majority of the total voting power. Amendments to the Bylaws may be adopted at any regular or special meeting. Declarant may adopt initial Bylaws.

9.5.2 Bylaws Provisions. The Bylaws may contain supplementary, not inconsistent, provisions regarding the operation and administration of the Condominium.

### Article 10

#### MANAGEMENT OF CONDOMINIUM

10.1 Administration of the Condominium. The Unit Owners covenant and agree that the administration of the Condominium shall be in accordance with the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association, which are incorporated herein by reference and made a part hereof.



## 10.2 Election and Removal of Board.

10.2.1 Owner Election After Declarant Control. The Unit Owners (including Declarant and any Affiliate of Declarant to the extent Units are owned by Declarant or any such Affiliate) shall elect a Board of at least three (3) members, at least a majority of whom must be Unit Owners. The Board shall elect the officers. Such members of the Board and officers shall take office upon election.

10.2.2 Removal. The Unit Owners, by a seventy-five percent (75%) vote of the voting power in the Association present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Board with or without cause.

## 10.3 Management by Board.

10.3.1 On Behalf of Association. Except as otherwise provided in the Declaration, the Bylaws, Section 10.3.2 herein or the Act, the Board shall act in all instances on behalf of the Association. In performance of their duties, the officers and members of the Board are required to exercise: (a) if appointed by the Declarant, the care required of fiduciaries of the Unit Owners; or (b) if elected by the Unit Owners, ordinary and reasonable care.

10.3.2 Not on Behalf of the Association. The Board shall not act on behalf of the Association to amend the Declaration in any manner that requires the vote or approval of the Unit Owners pursuant to Section 21.1, to terminate the Condominium pursuant to RCW 64.34.268, or to elect members of the Board to determine the qualifications, powers, and duties, or terms of office of members of the Board; but the Board may fill vacancies in its membership for the unexpired portion of any term.

10.3.3 Budget Approval. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Board shall provide a summary of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than forty-five (45) days after mailing of the summary. Unless at that meeting the Owners of Units to which a majority of the votes in 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.

## 10.4 Powers and Authority of the Association.

10.4.1 The Association acting by and through the Board, or a Manager appointed by the Board, for the benefits of the Condominium and the Unit Owners, shall enforce the provisions of this Declaration and of the Bylaws and shall have all powers and authority





permitted to the Association under the Act and this Declaration, including without limitation:

- (a) Adopt and amend Bylaws, rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect Assessments for Common Expenses from Unit Owners;
- (c) Hire and discharge or contract with managing agents and other employees, agents and independent contractors;
- (d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two (2) or more Unit Owners on matters affecting the Condominium; provided, that the commencement of any suit by the Association as plaintiff must be approved in advance by a majority of the votes cast in person or by proxy at a special meeting of Owners held after written notice of such proposed suit being sent to all Owners, but no minimum quorum requirement shall apply to such voting;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- (g) Cause additional improvements to be made as a part of the Common Elements;
- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but Common Elements may be conveyed or subjected to a security interest only pursuant to RCW 64.34.348;
- (i) Grant easements, leases, licenses, and concessions through or over the Common Elements and petition for or consent to the vacation of streets and alleys;
- (j) Impose and collect any payments, fees, or charges for the use, rental, or operation of the Common Elements, other than Limited Common Elements described in RCW 64.34.204 (2) and (4), and for services provided to Unit Owners;
- (k) Impose and collect charges for late payment of assessments pursuant to RCW 64.34.364(13) and, after notice and an opportunity to be heard by the Board or by such representative by the Board and in accordance with such procedures as provided in the Declaration or Bylaws or rules and regulations adopted by the Board levy reasonable fines in accordance with a previously established schedule thereof adopted by the Board and furnished to the Owners for violation of the Declaration, Bylaws, and rules and regulations of the Association; provided, this subsection (d) shall only apply with respect to Assessments which are more than forty (40) days delinquent;



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

(m) Provide for the indemnification of its officers and board of directors and maintain directors' and officers' liability insurance;

(n) Assign its rights to future income, including the right to receive common expense assessments, but only to the extent the Declaration provides;

(o) Join in a petition for the establishment of a parking and business improvement area, participate in the rate payers' board or other advisory body set up by the legislative authority for operation of a parking and business improvement area, and pay special assessments levied by the legislative authority on a parking and business improvement area encompassing the condominium property for activities and projects which benefit the condominium directly or indirectly;

(p) Establish and administer a reserve account as described in Section 1 of the Act regarding Condominium Associations – Reserve Accounts and Studies;

(q) Prepare a reserve study as described in Section 1 of the Act regarding Condominium Associations – Reserve Accounts and Studies.

(r) Exercise any other powers conferred by the Declaration or Bylaws;

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

(t) Exercise any other powers necessary and proper for the governance and operation of the Association;

(u) Maintain and repair any Unit, its appurtenances and appliances, any Limited Common Elements, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect the Common Element or preserve the appearance and value of the Condominium, and the Owner of said Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board to the Unit Owner; provided that the Board shall levy a special charge against the Unit of such Owner for the cost of such maintenance or repair; and

(v) 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 Unit Owners. Where one (1) or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, any cost and expenses (including court costs and attorneys' fees) incurred by the Board by reason of



such lien or liens shall be specially charged against the Unit Owners and the Units responsible to the extent of their responsibility.

10.4.2 Reserved.

10.4.3 The Board's power hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the Association funds a capital addition or improvement (other than for purposes of restoring, repairing or replacing portions of the Common Elements) having a total cost in excess of Two Thousand Five Hundred Dollars (\$2,500.00), without first obtaining the affirmative vote of a majority of Unit Owners at a meeting called for such purpose, or if no such meeting is held, then the written consent of a majority of Unit Owners; provided that any expenditure or contract for each capital addition or improvement in excess of Twenty-Five Thousand Dollars (\$25,000.00) must be approved by Unit Owners having not less than seventy-five percent (75%) of the voting power.

10.4.4 Nothing herein contained shall be construed to give the Association authority to conduct an active business for profit on behalf of all of the Unit Owners or any of them.

10.4.5 The Board and its agents or employees, may enter any Unit or Limited Common Element when necessary in connection with any maintenance, landscaping or construction for which the Board is responsible or in the event of emergencies. Such entry shall be made with as little inconvenience to the Unit Owners as practicable, and any damage caused thereby shall be repaired by the Board paid for as a Common Expense if the entry was due to an emergency, 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; provided, if the repairs or maintenance were necessitated by or for the Unit entered or its Owners, or requested by its Owners, the costs thereof shall be specially charged to such Unit. In furtherance of the foregoing, the Board (or its designated agent) shall have the right at all times to possess such keys and/or lock combinations as are necessary to gain immediate access to Units and Limited Common Elements.

10.5 Borrowing by Association. In the discharge of its duties and the exercise of its powers as set forth in Section 10.3.1, but subject to the limitations set forth in this Declaration, the Board may borrow funds on behalf of the Association and, to secure the repayment of such funds, assess each Unit (and the Owner thereof) for said Unit's pro rata share of said borrowed funds and the obligation to pay said pro rata share shall be a lien against said Unit and the undivided interest in the Common Elements appurtenant to said Unit. Provided, that the Owner of Unit may remove said Unit and the Allocated Interest in the Common Elements appurtenant to such Unit from a lien of such assessment by payment of the Allocated Interest in Common Expense Liability attributable to such Unit. Subsequent to any such payment thereto, the Unit shall thereafter be free and clear of the liens so paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge shall not prevent the lienholder from proceedings to enforce his rights against any Unit and the Allocated Interest in the Common Elements appurtenant thereto not so paid, satisfied or discharged.



## 10.6 Association Records and Funds.

10.6.1 Records and Audits. The Association shall keep financial records sufficiently detailed to enable the Association to comply with RCW 64.34.425 in providing resale certificates. All financial and other records shall be made reasonably available for examination by any Unit Owner, the Owner's authorized agents and all Mortgagees. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association in accordance with generally accepted accounting principles. If this Condominium consists of fifty (50) or more Units, the financial statements of the Condominium shall be audited at least annually by a certified public accountant. If this Condominium consists of fewer than fifty (50) Units, an annual audit is also required but may be waived annually by Owners (other than the Declarant) of Units to which sixty percent (60%) of the votes are allocated, excluding the votes allocated to Units owned by the Declarant.

10.6.2 Funds Commingling. The funds of the Association shall not be commingled with the funds of any other Association or with the funds of any Manager of the Association or any other person responsible for the custody of such funds. Any reserve funds of the Association shall be kept in a segregated account and any transaction affecting such funds, including the issuance of checks, shall require the signature of a person who is an officer or director of the Association.

10.7 Association as Trustee. With respect to a third person dealing with the Association in the Association's capacity as a trustee, the existence of trust powers and their proper exercise by the Association may be assumed without inquiry. A third person is not bound to inquire whether the Association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the Association is exceeding or improperly exercising its powers, is fully protected in dealing with the Association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust asset paid or delivered to the Association in its capacity as trustee.

## 10.8 Common Elements, Conveyance, Encumbrance.

10.8.1 In General. The Common Elements may be conveyed or subjected to a security interest by the Association if the Owners of Units to which seventy five percent (75%) of the votes in the Association are allocated, including seventy five percent (75%) of the votes allocated to Units not owned by Declarant or an Affiliate of Declarant, agree to that 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 are an asset of the Association.

10.8.2 Agreement. An agreement to convey Common Elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratification thereof, in the same manner as a deed, 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 ratification thereof must be recorded in every county in which a portion of the Condominium is situated and is effective only upon recording.

10.8.3 Conditions Precedent. The Association, on behalf of the Unit Owners, may contract to convey Common Elements or subject them to a security interest, but the contract is not enforceable against the Association until approved pursuant to Sections 10.8.1. Thereafter, the Association has all powers necessary and appropriate to affect the conveyance or encumbrance, including the power to execute deeds or other instruments.

10.8.4 Void Transactions. Any purported conveyance, encumbrance, or other voluntary transfer of Common Elements, unless made pursuant to this Section, is void.

10.8.5 Support Right. A conveyance or encumbrance of Common Elements pursuant to this section shall not deprive any Unit of its rights of access and support.

10.8.6 Prior Encumbrances. A conveyance or encumbrance of Common Elements pursuant to this section shall not affect the priority or validity of pre-existing encumbrances either on Units (and their Allocated Interest in Common Elements) or on Common Elements.

10.9 Termination of Contracts and Leases. If entered into before the Board elected by the Unit Owners pursuant to Section 10.2.1 takes office, (1) any management contract, employment contract, or lease or recreational parking areas or facilities, (2) any other contract or lease between the Association and a Declarant or an Affiliate of a Declaration, or (3) any contract or lease that is not bona fide or was unconscionable to the Unit Owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the Association at any time after the Board elected by the Unit Owners pursuant to Section 10.2.1 takes office upon not less than ninety (90) days' notice to the other party or within such lessor notice period provided for without penalty in the contract or lease. This section does not apply to any lease, the termination of which would terminate the Condominium or reduce its size, unless the real property subject to that lease was included in the Condominium for the purpose of avoiding the right of the Association to terminate a lease under this section. Further, this section does not apply to any lease for equipment or services associated with the common fire, entry and security systems for the Condominium.

## Article 11

### USE; REGULATION OF USES; ARCHITECTURAL UNIFORMITY

11.1 Use of Units. The Units shall be used for any lawful purpose not in conflict with the provisions of this Declaration or with local zoning and other applicable laws.

11.2 Vehicle Parking Restrictions. Common Element and Limited Common Element parking spaces (other than fully enclosed garages) are restricted to use for parking of operable motor vehicles; other personal property may be parked or kept therein only subject to the rules or regulations of the Board. The Board may require removal of any vehicle (and any other equipment



or item) improperly stored in parking spaces. If the same is not removed, the Board shall cause removal at the risk and expense of the Owner thereof. No vehicles may be stored outside of a Unit between the hours of 2:00 am and 5:00 am.

11.3 Common Drive and Walks. Common drives, walks, corridors, stairways and other general Common Elements shall be used exclusively for normal transit and no obstructions and/or decorations or other items shall be placed thereon or therein except by express written consent of the Board.

11.4 Unit Maintenance. Subject to the provisions of Section 11.14:

11.4.1 Standard of Condition. Each Unit Owner shall, at his sole expense, have the right and the duty to keep the interior and exterior of his Unit and its structures, improvements, equipment, appliances and appurtenances in good order, condition and repair. Each owner shall be responsible for the construction, alteration, maintenance, repair or replacement of any structures, improvements, plumbing fixtures, water heaters, fans, heating or other equipment, electrical fixtures or appliances which may be in or connected with his Unit.

11.4.2 Additional Rights and Duties. Without limiting the generality of the foregoing, each Owner shall have the right, at his sole cost and expense, to construct, alter, maintain, repair, paint, paper, panel, plaster, tile, and finish the windows, window frames, doors, door frames and trim, and the ceilings, floors and the perimeter walls and the bearing and non-bearing walls of any structures located within his Unit, and shall not permit or commit waste of his Unit or the Common Elements. Each Owner shall have the right to substitute new finished surfaces for the finished surfaces then existing on said ceilings, floors and walls. This Section shall not be construed as permitting any violation of any other provision of this Declaration or any interference with or damage to, 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 Association or Board hereunder.

11.5 Alterations of Units. A Unit Owner:

11.5.1 Non-Structural. May make any improvements or alterations to the Owner's Unit that do not affect the structural integrity or mechanical or electrical systems or lessen the support of any other Units or any portion of the Condominium;

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

11.5.3 Adjoining Unit. After acquiring an adjoining Unit or an adjoining part of an adjoining Unit an Owner may, with approval of the Board, which approval shall not be unreasonably withheld or delayed, 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 or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this section is not a relocation of boundaries. The Board shall approve a Unit Owner's request, which request shall include the plans and specifications for the proposed removal or alteration, under this section within thirty days, unless the proposed alteration does not comply with the Act or Declaration or impairs the structural integrity or mechanical or electrical systems in the Condominium. The failure of this Board to act upon a request within such period shall be deemed an approval thereof.

11.6 Limited Common Element Maintenance. Limited Common Elements, as defined in Article 7, are for the sole and exclusive use of the Units for which they are reserved or assigned; provided, that the use, condition and appearance thereof may be regulated under provisions of the Bylaws, rules or this Declaration including the following:

11.6.1 Decisions by Board. Decisions with respect to the standard of appearance and condition of Limited Common Elements, and with respect to the necessity for, and manner of, caring for, maintaining, repairing, repainting or redecorating Limited Common Elements ("Maintenance Work") herein shall be made by the Board;

11.6.2 Performance of Work. Performance of such Maintenance Work shall be carried out by the Owner;

11.6.3 Board Approval. Unit Owners may not, however, modify, paint, or otherwise decorate, or in any way alter their respective Limited Common Elements without prior written approval of the Board;

11.6.4 Owner Pays Cost. Unit Owners will be responsible for the cost of such Maintenance Work for the Limited Common Elements reserved for or assigned to their Units;

11.6.5 Multiple Owners. With respect to a Limited Common Element reserved for or assigned to more than one (1) Unit for the mutual and joint use thereof, the cost of such Maintenance Work for such Limited Common Element shall be divided in equal shares among the Units for which such Limited Common Element is reserved;

11.6.6 Cost as Special Charge. With respect to any such Maintenance Work performed by the Board, the cost thereof (or the appropriate share thereof if the Limited Common Element in question has been assigned or reserved jointly to more than one Unit) shall be levied as a special charge against the Unit or Units (and the Owner or Owners thereof) to which such Limited Common Element is assigned or reserved.

11.7 Exterior Appearance. In order to preserve a uniform exterior appearance to the Building, and the Common and Limited Common Elements visible to the public, the Board shall require and provide for the painting and other decorative finish of the Building, lanais or patio/yard areas, or other Common or Limited Common Elements, and prescribe the type and color of such



decorative finishes, and may prohibit, require or regulate any modification or decoration of the Building, lanais, patio/yard areas or other Common or Limited Common Elements undertaken or proposed by any Unit Owner. This power of the Board extends to screens, doors, awnings, rails or other visible portions of each Unit and Building. The Board may also require use of a uniform color and kind of Unit window covering (including draperies, blinds, shades, etc.) visible from the exterior or from Common Elements.

11.8 Effect on Insurance. Nothing shall be done or kept in any Unit or in the Common or Limited Common Elements which will increase the rate of insurance on the Common Elements or Units without prior written consent of the Board. No Unit Owner and/or Purchaser shall permit anything to be done or kept in his Unit or in the Common or Limited Common Elements which will result in the cancellation of insurance on any Unit or any part of the Common or Limited Common Elements, or which would be in violation of any laws.

11.9 Signs. Without limiting the powers of the Association otherwise provided herein, the Association is expressly authorized to adopt and enforce Sign Rules and Standards for the Condominium. The initial Sign Rules and Standards are attached hereto as Exhibit "E" and incorporated herein by this reference. All Units shall comply with the Sign Rules and Standards as adopted, from time to time, by the Association. The Association may, at the Association's option, charge Unit Owners a reasonable fee for any signage that fronts Highway 20.

11.10 Pets. No pets may be kept on the premises.

11.11 Non-Smoking Building. Smoking shall NOT be permitted in any part of the Condominium, including all Units, all Common Elements and all Limited Common Elements.

11.12 Offensive Activity. No noxious or offensive activity shall be carried on in any Unit or Common or Limited Common Element, nor shall anything be done therein which may be or become an annoyance or nuisance to other Owners.

11.13 Common Element Alterations. Nothing shall be altered or constructed in, or (except for an Owner's personal property) removed from, the Common Elements except upon the written consent of the Board and after procedures required herein or by law.

11.14 House Rules. The Board or Association may pass, amend and revoke detailed, reasonable administrative rules and regulations, or "House Rules" from time to time that are necessary or convenient to insure compliance with the general guidelines of this Article. Such House Rules shall be binding on all Unit Owners, lessees, guests and invitees upon adoption by the Board or Association.

11.15 Rental Units. Owners may lease or rent a Unit in accordance with this Section 11.15, but timesharing is expressly prohibited.

11.15.1 No Transient Purposes. Reserved.





11.15.2 Written Leases. All Leasing or Rental agreements shall be in writing and be subject to this Declaration and Bylaws (with a default by the tenant in complying with this Declaration and/or Bylaws constituting a default under the Lease or Rental agreement). All leasing or rental agreements shall be for a minimum of six (6) months duration.

11.15.3 Rent to Association. If a Unit is Rented by its Owner, the Board may collect, and the tenant or lessee shall pay over to the Board, so much of the rent for such Unit as is required to pay any amounts due the Association hereunder, plus interest and costs if the same are in default over sixty (60) days. The renter or lessee shall not have the right to question payment over to the Board, and such payment will discharge the lessee's or renter's duty of payment to the Owner for rent, to the extent such rent is paid to the Association, but will not discharge the liability of the Owner or purchaser and the Unit under this Declaration for assessments and charges, or operate as an approval of the lease. The Board shall not exercise this power where a receiver has been appointed with respect to the Unit or Owner; nor in derogation of any rights which a Mortgagee of such Unit may have with respect to such rents. Other than as stated in Section 11.15, there is no restriction on the right of any Unit Owner to Lease or otherwise Rent his Unit.

## Article 12

### COMMON EXPENSES AND ASSESSMENTS

12.1 Estimated Expenses. Within sixty (60) days prior to the beginning of each calendar year, or such other fiscal year as the Board may adopt, the Board: shall estimate the charges, including Common Expenses and any special charges for particular Units to be paid during such year; shall make provision for creating, funding and maintaining reasonable reserves for contingencies and operations, as well as for maintenance, repair, replacement and acquisition of Common Elements; and shall take into account any expected income and any surplus available from the prior year's operating fund. Without limiting the generality of the foregoing but in furtherance thereof, the Board shall create and maintain from regular monthly Assessments a reserve fund for replacement or a major repair prior to the end of the useful life of the Buildings. The Board shall calculate the contributions to said reserve fund so that there are sufficient funds therein to replace, or perform such major repair, to each Common Element covered by the fund at the end of the estimated useful life of each such Common Element. The initial Board, whether appointed by Declarant or elected by Unit Owners, may at any suitable time establish the first such estimate. If the sum estimated and budgeted at any time proves inadequate for any reason (including non-payment for any reason of any Unit Owner's Assessment), the Board may at any time levy a further Assessment, which shall be assessed to the Owners according to Section 12.4. Similarly, if the sum estimated and budgeted, and being collected and/or already collected, at any time proves excessive, the Board may reduce the amount being assessed and/or apply existing funds (in excess of current needs and required reserves) against future Assessments and/or refund such excess funds.

12.2 Payment by Owners. Each Unit Owner shall be obligated to pay its share of Common Expenses and special charges made pursuant to this Article to the Treasurer for the Association in equal monthly installments on or before the first day of each month during such year,



or in such other reasonable manner as the Board shall designate. No Unit Owner may exempt himself from liability for payment of assessments for any reason, including waiver of use or enjoyment of any of the Common Elements or abandonment of the Owner's Unit.

**12.3 Commencement of Assessments.** The Declarant in the exercise of its reasonable discretion shall determine when the Association shall commence making Assessments; provided, that in all events Assessments shall commence no later than a date six (6) months after the date of first conveyance of a Unit to an Owner or a date on which seventy-five percent (75%) of the Units have been conveyed to Owners whichever date first occurs. Until the Association makes an Assessment, the Declarant shall pay all Common Expenses. After an Assessment has been made by the Association, Assessments must be made against all Units, based on a budget adopted by the Association; provided, for a period not to exceed twelve (12) months following the date of first conveyance of a Unit to an Owner, the Board (whether appointed by Declarant or elected by Unit Owners) may elect not to collect monthly assessments calculated as provided in Section 12.1 and instead elect to collect and expend monthly assessments based on the actual costs of maintaining, repairing, operating and insuring the Common areas.

**12.4 Allocated Liability.** Except for Assessments under Sections 12.5, 12.6, 12.7 and 12.8, all Common Expenses must be assessed against all Units in accordance with the allocations set forth in Exhibit C. Any past due Common Expense Assessments or installment thereof bears interest at the rate established by the Association pursuant to Section 12.9.10.

**12.5 Limited Common Element.** Any Common Expense associated with the operation, maintenance, repair, or replacement of a Limited Common Element shall be paid by the Unit Owner of or assessed against the Units to which that Limited Common Element is assigned, equally.

**12.6 Assessments for Judgment.** 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 Common Expense Liabilities at the time judgment was entered.

**12.7 Owner Misconduct.** To the extent that any Common Expense is caused by the misconduct of any Unit Owner, the Association shall assess that expense against the Owner's Unit.

**12.8 Reallocation.** If Common Expense Liabilities are reallocated, Common Expense Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense Liabilities.

**12.9 Lien for Assessments.**

**12.9.1 Priority.** A lien under Section 12.9 shall be prior to all other liens and encumbrances on a Unit except: (a) lien 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.



12.9.2 Mortgage Priority. Except as provided in Section 12.9.5, the lien shall also be prior to the Mortgages described in Section 12.9.1(b) to the extent of Assessments for Common Expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the Association pursuant to Section 12.1, which would have become due during the six (6) months immediately preceding the date of the sheriff's sale in an action for judicial foreclosure by either the Association or a Mortgagee, the date of a trustee's 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.

12.9.3 Mortgage Notice. The priority of the Association's lien against Units encumbered by a Mortgage held by an Eligible Mortgagee or by a Mortgagee which has given the Association a written request for a notice of delinquent Assessments shall be reduced but up to three (3) months if and to the extent that the lien priority under Section 12.9.3 includes delinquencies which relate to a period after such holder becomes an Eligible Mortgagee or have given such request for notice and before the Association gives the holder a written notice of the delinquency. This section does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other Assessments made by the Association.

12.9.4 Recording as Notice. Recording of the Declaration constitutes record notice and perfection of the lien for Assessments. While no further recording of any claim or lien for Assessment under this section shall be required to perfect the Association's lien, the Association may record a notice of claim of lien for Assessments under this section in the real property records of 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 12.9.3.

12.9.5 Limitation on Action. A lien for unpaid Assessments and the personal liability for payment of Assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three (3) years after the amount of the Assessments sought to be recovered becomes due.

12.9.6 Foreclosures. The lien arising under Section 12.9 may be enforced judicially by the Association or its authorized representative in the manner set forth in Chapter 61.12 RCW. 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 deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this section shall prohibit an Association from taking a deed in lieu of foreclosure.

12.9.7 Receiver. From the time of commencement of an action by the Association to foreclose a lien for nonpayment of delinquent Assessments against a Unit

that is not occupied by the Owner thereof, the Association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the Unit as and when due. If the rental is not paid, the receiver may obtain possession of this 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 delinquent Assessments. Only a receiver may take possession and collect rents under this section, and a receiver shall not be appointed less than ninety (90) days after the delinquency. The exercise by the Association of the foregoing rights shall not affect the priority of pre-existing liens on the Unit.

**12.9.8 Mortgagee Liability.** Except as provided in Section 12.9.3, 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 or installments thereof that became due prior to such right of possession. Such unpaid Assessments shall be deemed to be Common Expenses collectible from 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 Assessment accruing against the Unit prior to the date of such sale as provided in this Section.

**12.9.9 Owner Liability.** In addition to constituting a lien on the Unit, each Assessment shall be a 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. In a voluntary conveyance the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the latter up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee there for. 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.

**12.9.10 Late Charges.** The Association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent Assessments or installments thereof. In the absence of another established non-usurious rate, delinquent Assessments shall bear interest from the date of delinquency at the minimum rate permitted under RCW 19.52.020 on the date on which the Assessments became delinquent; provided, that this subsection shall only apply to Assessments which are more than forty (40) days delinquent.

**12.9.11 Attorneys' Fees.** The prevailing party shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent Assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of judgment.



12.9.12 Assessment Certificate. 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 (15) days after receipt of the request and is binding on the Association, the Board, and every Unit Owner, unless and to the extent known by the recipient to be false.

12.9.13 Acceleration of Assessments. In the event any monthly Assessment or special charge attributable to a particular Unit remains delinquent for more than sixty (60) days, the Board may, upon fifteen (15) days' written notice to the Owner of such Unit, accelerate and demand immediate payment of all, or such portion as the Board determines, of the monthly Assessments and special charges which the Board reasonably determines will become due during the next succeeding twelve (12) months with respect to such Unit.

12.10 Delinquent Assessment Deposit: Working Capital.

12.10.1 Delinquent Assessment Deposit.

(a) A Unit Owner who is more than forty (40) days delinquent in paying assessments may be required by the Board or by the Manager, from time to time, to make and maintain a deposit of not less than one (1) month nor in excess of three (3) months estimated monthly Assessment and charges, which may be collected as are other Assessments and charges. Such deposit shall be held in a separate fund, be credited to the Unit owned by such Owner, and be for the purpose of establishing a reserve for delinquent Assessments.

(b) Resort may be had thereto at any time when such owner is forty (40) days or more delinquent in paying his monthly or other Assessments and charges. Said deposits shall not be considered as advance payments of regular Assessments. In the event the Board should draw upon said deposit as a result of a Unit Owner's delinquency in payment of any Assessments, said Owner shall continue to be responsible for the immediate and full payment of said delinquent Assessment (and all penalties and costs thereon) and thus the full restoration of said deposit, and the Board shall continue to have all of the rights and remedies for enforcing such Assessment payment and deposit restoration as provided by the Declaration and by law.

(c) Upon the sale of a Unit, the Seller/Owner thereof shall be entitled to a refund from the Association of any deposit made with respect to such Unit pursuant to this section.

12.10.2 Working Capital Contribution. In connection with the closing of the sale of the first Unit and of the sale of each additional Unit, each initial purchaser of a Unit shall contribute to the Association as a nonrefundable initial contribution to the Association working capital, in an amount equal to two (2) months of monthly Assessments, as a contribution to working capital, which shall be applied to the Association's reserves and shall not be considered an advance payment of regular Assessments. Upon the sale of the first Unit, the Declarant shall make such contribution for any Units remaining unsold on that



date and shall be entitled to be reimbursed the amount so paid as each such Unit is conveyed. The Declarant shall not use any of the Association's reserves to defray any of its expenses, reserve contributions or construction costs, or to make up any budget deficits prior to the date the last Unit is sold by Declarant.

### Article 13

#### INSURANCE

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

13.1.1 Property insurance on the Condominium, which shall include equipment, improvements, and betterments in a Unit installed by the Declarant, insuring against all risks of direct physical loss commonly insured against, but shall not include the interior of each unit, the latter coverage which each Unit Owner shall provide for his own benefit. The total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

13.1.2 Liability insurance, including medical payments insurance, in an amount determined by the Board but not less than One Million Dollars (\$1,000,000.00), covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements.

13.1.3 Workmen's compensation insurance to the extent required by applicable law.

13.1.4 Fidelity bonds naming the members of the Board, the Manager and its employees and such other persons as may be designated by the Board as principals and the Association as obligee, in at least an amount equal to three (3) months aggregate Assessments for all Units plus reserves, in the custody of the Association or Manager at any given time during the term of each bond. Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definitions of "employees" or similar expression.

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

13.1.6 Such other insurance as the Board deems advisable; provided, that notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the



insurance and fidelity bond requirements for condominium projects established by Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Veteran's Administration or other governmental or quasi-governmental agencies involved in the secondary mortgage market, so long as any such agency is a Mortgagee or Owner of a Unit within the project, except to the extent such coverage is not available or has been waived in writing by such agency.

13.2 Coverage Not Available. If the insurance described in Section 13.1 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 certificate or memorandum of insurance has been issued at their respective last known addresses. The Association in any event may carry any other insurance it deems appropriate to protect the Association or the Unit Owners.

13.3 Required Provisions. Insurance policies carried pursuant to this Article shall provide that:

13.3.1 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;

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

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

13.3.4 If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary Insurance.

13.4 Claims Adjustment. Any loss covered by the property insurance under this Article must be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a Mortgage. The insurance trustee or the Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear. Subject to the provisions of Article 14, the proceeds must be disbursed first for the repair or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Condominium is terminated.



13.5 Owner's Additional Insurance. An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for the Owner's own benefit, and each Unit Owner shall obtain insurance covering his Unit and his share of the deductible applicable to the Association's insurance policy.

13.6 Certificate. An insurer that has issued an insurance policy under this Article shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Unit Owner or holder of a Mortgage. 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, cancel or refuse to renew the policy, without complying with the requirements of the Act.

13.7 Notification on Sale of Unit. Promptly upon the conveyance of a Unit, the new Unit Owner shall notify the Association of the date of the conveyance and the Unit Owner's name and address. The Association shall notify each insurance company that has issued an insurance policy to the Association for the benefit of the Owners under Article 13 of the name and address of the new Owner and request that the new Owner be made a named insured under such policy.

13.8 Additional Provisions. The Board shall obtain insurance policies which:

13.8.1 No Set-off. Provide that the liability of the insurer there under shall not be affected by any other insurance obtained by or for any Unit Owner or any Mortgagee, and that the insurer shall not claim any right of set-off, counterclaims, apportionment, proration, contribution or assessment by reason of such other insurance;

13.8.2 Act or Neglect. Contain no provision relieving the insurer from liability for loss because of any act or neglect that is not within the control of the Association or because of any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association does not have direct control;

13.8.3 Subrogation. Contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Owner of any Unit and/or their respective agents, employees or tenants and of any defenses based upon co-insurance or upon validity arising from the acts of the insured;

13.8.4 Restore vs. Cash. Provide that, despite any provision giving the insurer the right to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association, or when in conflict with the provisions of any insurance trust agreement to which the Association is a party, or any requirement of law;





13.8.5 Mortgagee Collection. Contain no provision (other than insurance conditions) which will prevent Mortgagees from collecting insurance proceeds; and

13.8.6 Inflation Guard. Contain, if available, an agreed amount of Inflation Guard Endorsement.

## Article 14

### DAMAGE OR DESTRUCTION; RECONSTRUCTION

#### 14.1 Definitions; Significant Damage; Repair; Emergency Work.

14.1.1 As used in this Article, the term "Significant Damage" means damage or destruction, whether or not caused by casualty, to any part of the Property which the Board is responsible to maintain or repair: (a) for which funds are not available in the maintenance and repair or contingency budget of the Association to make timely repairs; and (b) which has a significant adverse impact on the habitability of any Unit or the ability of a Unit Owner or Owners to use the Property or any significant portion of the Property for its intended purposes.

14.1.2 As used in this Article, the term "Repair" means to repair, reconstruct, rebuild or restore the Building or improvements which suffered Significant Damage to substantially the same condition in which they existed prior to the damage or destruction, with each Unit and the Common and Limited Common Element having substantially the same vertical and horizontal boundaries as before. Modifications to conform to then applicable governmental rules and regulations or available means of construction may be made.

14.1.3 As used in this Article, the term "Emergency Work" shall mean that work which the Board deems reasonably necessary to avoid further damage, destruction or substantial diminution in value to the improvements and to reasonably protect the Owners from liability arising out of the condition of the Property.

14.2 Initial Board Determination. In the event of Significant Damage to any part of the Condominium, the Board shall promptly, and in all events within thirty (30) days after the date of Significant Damage, or, if the Significant Damage did not occur at a particular identifiable time, after the date of its discovery, make the following determinations with respect thereto, employing such advice as the Board deems advisable:

14.2.1 The nature and extent of the Significant Damage, together with an inventory of the improvements and property directly affected thereby.

14.2.2 A reasonably reliable estimate of the cost to Repair the Significant Damage, which estimate shall, if reasonably practicable, be based upon a firm bid obtained from a responsible contractor.



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

14.2.4 The amount, if any, that the estimated cost of Repair exceeds the anticipated insurance proceeds there for and the amount of Assessment to each Unit if such excess was paid as a Common Expense as specially assessed against all Units in proportion to their Allocated Interest in the Common Elements.

14.2.5 The Board's recommendation as to whether such Significant Damage should be Repaired.

14.3 Notice of Damage or Destruction. The Board shall promptly, and in all events within thirty (30) days after the date of Significant Damage, provide each Owner and each first Mortgagee with a written notice summarizing the initial Board determinations made under Section 14.2. If the Board fails to do so within said thirty (30) days, then any Owner or Mortgagee may make the determinations required under Section 14.2.

#### 14.4 General Provisions.

14.4.1 Duty to Restore. Any portion of the Condominium for which insurance is required under this Article which is Significantly Damaged shall be Repaired promptly by the Association unless: (a) the Condominium is terminated; (b) repair 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 Repaired, vote not to Repair. Even if the Significant Damage is not to be Repaired, the Board shall still have authority to perform Emergency Work. The cost of Repair in excess of insurance proceeds and reserves is a Common Expense.

14.4.2 Damage not Restored. If all or any portion of the damaged portions of the Condominium are not Repaired (regardless of whether such damage is Significant): (a) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium; (b) the insurance proceeds attributable to Units and Limited Common Elements which are not Repaired 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 (c) the remainder of the proceeds shall be distributed to all the Unit Owners or lienholders, as their interests may appear, in proportion to the Common Element interests of all the Units.

14.4.3 Reallocation. If the Unit Owners vote not to Repair any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote as if the Unit had been condemned under Article 15, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting the reallocation.



14.5 Restoration by Board. If the damage (regardless of whether such damage is Significant) is to be Repaired pursuant to Section 14.4, then:

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

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

14.6 Decision to Terminate. In the event of a decision to terminate the Condominium and not to Repair damage, the Board may nevertheless expend such of the insurance proceeds and funds of the Association as the Board deems reasonably necessary for Emergency Work (which Emergency Work may include, but is not necessarily limited to, removal of the damaged or destroyed buildings and clearing, filling and grading the real property), and the remaining funds, if any, and the Property shall thereafter be held and distributed as provided in RCW 64.34.268.

## Article 15

### CONDEMNATION

15.1 In General. If a Unit is acquired by condemnation, or if part of a Unit is acquired by condemnation leaving the Unit Owner with a remnant of a Unit which may not practically or lawfully be used for any purpose permitted by the Declaration, the award must compensate the Unit Owner for the Owner's Unit and its appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, that Unit's Allocated interests are automatically reallocated to the remaining Units 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 a part of the Unit is taken under this section is thereafter a Common Element.

15.2 Partial Unit Condemnation. Except as provided in Section 15.1, 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.

15.3 Common Elements Condemnation. If part of the Common Elements is acquired by condemnation, the portion of the award attributable to the Common Element taken shall be paid to the Owners based on their respective interests in the Common Elements. Any portion of the award attributable to the acquisition of the 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.

15.4 Recording of Judgment. The court judgment shall be recorded in every county in which any portion of the Condominium is located.

15.5 Action by Owners. Should the Association not act on the Owners' behalf in a condemnation process, the affected Owners may individually or jointly act on their own behalf.

## **Article 16**

### **COMPLIANCE WITH DECLARATION**

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

16.2 No Waiver of Strict Performance. The failure of the Board in any one or more instances to insist upon the strict performance of this Declaration, of the Bylaws, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Board of any assessment of an Owner, with knowledge of any such breach shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.



## Article 17

### LIMITATION OF LIABILITY

17.1 Liability for Utility Failure, Etc. Except to the extent covered by insurance obtained by the Board pursuant to Article 13, neither the Association nor the Board nor the Manager shall be liable for: any failure of any utility or other service to be obtained and paid for by the Board; or for injury or damage to person or property caused by the elements, or resulting from electricity, noise, smoke, water, rain (or other liquid), dust or sand which may leak or flow from outside or from any parts of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other places; or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance or orders of a governmental authority. No diminution or abatement of Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

17.2 No Personal Liability. So long as a Board member, Association committee member, or Association officer has in good faith, without willful or intentional misconduct, upon the basis of such information as may be possessed by such person, no such person shall be personally liable to any Unit Owner, or other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence (except gross negligence), any discretionary decision, or failure to make a discretionary decision, by such person in such person's official capacity; provided, that this section shall not apply where the consequences of such act, omission, error or negligence are covered by insurance obtained by the Board pursuant to Article 13.

17.3 Indemnification of Board Members. Each Board member or Association committee member, or Association officer, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of being or having held such position at the time such expenses or liabilities are incurred, except in such cases wherein such person is adjudged guilty of intentional misconduct, or gross negligence or a knowing violation of the law in the performance of his duties and except in such cases where such person has participated in a transaction from which said person will personally receive a benefit in money, property or services to which said person is not legally entitled. Provided that, in the event of a settlement, the indemnification shall apply when the Board approves such settlement and reimbursement as being in the best interest of the Association.

## Article 18

### MORTGAGEE PROTECTION

18.1 Change in Manager. In the event that professional management is employed by the Association, at least thirty (30) days' notice of any contemplated change in the professional manager shall be given to any Eligible Mortgagee.



18.2 Abandonment of Condominium Status. Except when acting pursuant to the provisions of the Act involving damage, destruction or condemnation, the Association shall not, without prior written approval of seventy-five percent (75%) of all Eligible Mortgagees and seventy-five percent (75%) of the Owners of record of the Units, seek by act or omission to: abandon or terminate the condominium status of the project; or abandon, encumber, sell or transfer any of the Common Elements.

18.3 Partitions and Subdivisions. The Association shall not combine nor subdivide any Unit or the appurtenant Limited Common Elements, nor abandon, partition, subdivide, encumber or sell any Common Elements, or accept any proposal to so do, without the prior written approval of seventy-five percent (75%) of all Eligible Mortgagees and seventy-five percent (75%) of all Unit Owners, and without unanimous approval of the affected Eligible Mortgagee(s) and Unit Owner(s). The Declaration or Bylaws may not be changed (including changes in the percentages of interest in the Common Elements) without the prior written approval of seventy-five percent (75%) of Eligible Mortgagees and seventy-five percent (75%) of Unit Owners, and without unanimous approval of the Eligible Mortgagee(s) and Owner(s) of the Unit(s) for which the percentage(s) would be changed.

18.4 Copies of Notices. A Mortgagee of a Unit (and any insurer or guarantor of such Mortgage) shall be entitled to receive timely written notice: (a) that the Owner/Mortgagor of the Unit has for more than sixty (60) days failed to meet any obligation under the Condominium documents; (b) of all meetings of the Association and be permitted to designate a representative to attend all such meetings; (c) of any condemnation loss or casualty loss affecting a material portion of the Property or the Unit on which it holds a Mortgage; (d) of any lapse, cancellation or material modification of insurance policies or fidelity bonds maintained by the Association; and (e) of any proposed action that requires the consent of a specified percentage of Mortgagees. To be entitled to receive notices under this Section 18.4, the Mortgagee (or Mortgage insurer or guarantor) must send a written request to the Association stating both its name and address and the Unit number or address of the Unit on which it has (or insured or guaranteed) the Mortgage.

18.5 Effect of Declaration Amendments. No amendment of this Declaration shall be effective to modify, change, limit or alter the rights expressly conferred upon Mortgagees in this instrument with respect to any unsatisfied Mortgage duly recorded unless the amendment shall be consented to in writing by the holder of such Mortgage. Any provision of this Declaration conferring rights upon Mortgagees that are inconsistent with any other provision of said Declaration or the Bylaws shall control over such other inconsistent provisions.

18.6 Insurance.

18.6.1 Board Duties. With respect to a first Eligible Mortgagee of a Unit, the Board shall:

(a) Furnish such Mortgagee with a copy of any insurance policy or evidence thereof which is intended to cover the Unit on which such Mortgagee has a lien;



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

(c) Not make any settlement of any insurance claims for loss or damage to any such Unit, Common or Limited Common Element exceeding Five Thousand Dollars (\$5,000.00) without the approval of such Mortgagee; provided, that the withholding of such approval shall not be unreasonable or in conflict with the provisions of Article 14 and failure to respond within twenty (20) days of any written notice from the Board shall be deemed an approval;

(d) Give such Mortgagee written notice of any loss or taking affecting Common Elements, if such loss or taking exceeds Ten Thousand Dollars (\$10,000.00);

(e) Give such Mortgagee written notice of any loss, damage or taking affecting any Unit or Limited Common Elements in which it has an interest, if such loss, damage or taking exceeds One Thousand Dollars (\$1,000.00);

18.6.2 Additional Policy Provisions. In addition, the insurance policy acquired shall:

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

(b) Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or Unit Owners or any persons claiming under any of them;

(c) Waive any provision invalidating such Mortgage clause by reason of: the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy; any requirement that the Mortgagee pay any premium thereon; and any contribution clause.

18.7 Inspection of Books. Owners, Mortgagees, insurers and guarantors of any Mortgage on any Unit shall be entitled to inspect at all reasonable hours of weekdays (or under other reasonable circumstances) all of the books and records of the Association including current copies of this Declaration, Bylaws and other rules governing the Condominium, and other books, records and financial statements of the Association (within a reasonable time following request); and, upon written request of any holder, insurer or guarantor of a first Mortgage at no cost to the party so requesting (or if this project contains fewer than fifty (50) Units, upon the written request of the holders of seventy-five percent (75%) or more of first Mortgages at their expense if an audited statement is not otherwise available), to receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.



## Article 19

### EASEMENTS

19.1 General. It is intended that in addition to rights under the Act, each Unit has an easement in and through each other Unit and the Common and Limited Common Elements for all support elements and utility, wiring, heat and service elements, and for reasonable access thereto, as required to effectuate and continue proper operation of this Condominium plan. Without limiting the generality of the foregoing, each Unit and all Common and Limited Common Elements are specifically subject to an easement for the benefit of each of the other Units in the Condominium for all duct work for the several Units, and for heating, ventilation, air conditioning and fireplaces and associated flues or chimneys. In addition, each Unit and all of the Common and Limited Common Elements are specifically subject to easements required for any intercom, security and electrical entry system, electrical wiring and plumbing, air conditioning lines and equipment, vacuum system roughed-in each Unit, and master antenna cable system. Finally, each Unit as it is constructed is granted an easement to which each other Unit and all Common and Limited Common Elements are subject to the location and maintenance of all the original equipment and facilities and utilities for such Unit. The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for Common Elements reserved by law.

19.2 Utility. Etc., Easements. The Board, on behalf of the Association and all members thereof, shall have authority to grant utility, road and similar easements, licenses and permits under, through or over the Common Elements, which easements the Board determines are reasonably necessary to the ongoing development and operation of the Property.

19.3 Association Functions. There is hereby reserved to Declarant and the Association, or their duly authorized agents and representatives, such easements as are necessary for emergency repairs and/or to perform the duties and obligations of the Association as are set forth in this Declaration, or in the Bylaws, and the Association Rules and Regulations.

19.4 Encroachments. Each Unit and all Common and Limited Common Elements are hereby declared to have an easement over all adjoining Units and Common and Limited Common Elements, for the purpose of accommodating any encroachment due to engineering errors, or errors in original construction, reconstruction, repair of any portion of the Building, or any other similar cause, and any encroachment due to building overhang projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Unit Owners shall not be altered in any way by said encroachment; provided, however, that in no event shall a valid easement for encroachment be created in favor of a Unit Owner or Owners if said encroachment occurred due to the willful act or acts with full knowledge of said Unit Owner or Owners. In the event a Unit or Common or Limited Common Element is partially or totally destroyed, and then repaired or rebuilt, the Unit Owners agree that minor encroachments over adjoining Units and Common or Limited Common Elements shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so





long as they shall exist. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any Unit. The provisions of this Section 19.4 are intended to supplement Sections 4.2 and RCW 64.34.252 and, in the event of any conflict, the provisions of Section 4.2 and RCW 64.34.252 shall control.

## Article 20

### PROCEDURES FOR SUBDIVIDING OR COMBINING

20.1 Procedure. Subdivision and/or combining of any Unit or Units, are authorized as follows:

20.1.1 Owner Proposal. Any Owner of any Unit or Units may propose any subdividing or combining of any Unit or Units, and appurtenant Common Elements or Limited Common Elements in writing, together with complete plans and specifications for accomplishing the same and a proposed amendment to this Declaration and the Survey Map and Plans covering such subdividing or combining, to the Board, which shall then notify all other Unit Owners of the requested subdivision or combination.

20.1.2 Owner/Mortgagee Approval. Upon written approval of such proposal by seventy-five percent (75%) of the Owners and seventy-five percent (75%) of the Eligible Mortgagees, and of all Eligible Mortgagee(s) and Owner(s) of the Unit(s) to be combined or subdivided, the Owner(s) making the proposal may proceed according to such plans and specifications; provided that the Board may in its discretion (but it is not mandatory that the Board exercise this authority) require that the Board administer the work or that provisions for the protection of other Units or Common Elements or reasonable deadlines for completion of the work be inserted in the contracts for the work.

20.1.3 Survey Map and Plans. The changes in the Survey Map, if any, and the changes in the Plans and Declaration shall be placed on record as amendments to the Survey Map, Plans and Declaration of Condominium in accordance with the provisions of Article 21.

20.1.4 Allocated Interests. The Allocated Interests formerly allocated to the subdivided Units shall be reallocated to the new Units in any reasonable and equitable manner prescribed by that Owner of the subdivided Unit. The Allocated Interests of the new Unit resulting from a combination of Units shall be the aggregate of the Allocated Interests formerly allocated to the Units being combined.

## Article 21

### AMENDMENT OF DECLARATION, SURVEY MAP, PLANS

21.1 In General. Except in cases of amendments that may be executed by a Declarant (in the exercise of any Development Right), the Association (in connection with Sections 4.1.6



or 7.2.3, Articles 15 or 20, or termination of Condominium), or certain Unit Owners (in connection with Sections 4.1.6 or 7.2.3, or termination of Condominium), and except as limited by Section 21.4, the Declaration, including the Survey Maps and Plans, may be amended only by vote or agreement of Owners of Units to which at least seventy-five percent (75%) of the votes in the Association are allocated.

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

21.3 Recording. Every amendment to the Declaration must be recorded 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. All amendments adding Units shall contain a cross-reference by recording number to the Survey Map and Plans relating to the added Units and set forth all information required by RCW 64.32.216(1).

21.4 General Limitation. Except to the extent expressly permitted or required by other provisions of the Act, no amendment may create or increase Special Declarant Rights to increase the number of Units.

21.5 Execution. Amendments to the Declaration required by Act to be recorded by the Association shall be prepared, executed, recorded and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

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

21.7 Material Amendments. Any amendment to a provision of this Declaration establishing, providing for, governing or regulating the following (all of which shall be deemed "Material Amendments") shall require the consent of seventy-five percent (75%) of the Eligible Mortgagees: voting rights, Assessments, Assessment liens, or the priority of Assessment liens; reserves for maintenance, repair, and replacement of Common Elements; responsibility for maintenance and repairs; reallocation of interests in the Common Elements, or rights to their use; redefinition of any Unit boundaries; convertibility of Units into Common Elements or vice versa; expansion or contraction of the Condominium, or the addition, annexation, or withdrawal of property to or from the Condominium; insurance or fidelity bond; leasing of Units; imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit; a decision by the Association to establish self-management when professional management had been required previously by the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration; any action to terminate the legal status of the



Condominium after substantial destruction or condemnation occurs; or any provisions that expressly benefit Mortgage holders, insurers or guarantors. A Mortgagee who fails to respond within thirty (30) days of a written request to approve the request (if such request was delivered by certified or registered mail with a return receipt requested) shall be deemed to have approved the request.

21.8 Map and Plans Amendments. Except as otherwise provided herein, the Survey Map and Plans may be amended by revised versions of revised portions thereof referred to and described as to affect in an amendment to this Declaration adopted as provided for herein. Copies of any such proposed amendment to the Survey Map and Plans shall be made available for the examination of every Unit Owner. Such amendment to the Survey Map and Plans shall also be effective, once properly adopted, upon recordation in the appropriate county office in conjunction with the Declaration amendment.

## Article 22

### MISCELLANEOUS

#### 22.1 Notice for All Purposes.

22.1.1 Delivery of Notice. Any notice permitted or required to be delivered under the provisions of this Declaration or the Bylaws may be delivered either personally or by mail. If delivery is made by mail, any such notice shall be deemed to have been delivered twenty-four (24) hours after a copy has been deposited in the United States mail, postage prepaid, for first class mail, addressed to the person entitled to such notice at the most recent address given by such person to the Board, in writing, for the purpose of service of such notice, or to the most recent address known to the Board. Notice to the Owner or Owners of any Unit shall be sufficient if mailed to the Unit of such person or persons if no other mailing address has been given to the Board by any of the persons so entitled. Mailing addresses may be changed from time to time by notice in writing to the Board. Notice to be given to the Board may be given to Declarant until the Board has been constituted and thereafter shall be given to the President or Secretary of the Board.

22.1.2 Mortgagee Notice. Upon written request therefor, and for a period specified in such notice, the Mortgagee of any Unit shall be entitled to be sent a copy of any notice respecting the Unit covered by his security instrument until the request is withdrawn or the security instrument discharged. Such written request may be renewed an unlimited number of times.

#### 22.2 Mortgagee's Acceptance.

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



22.2.2 Acceptance Upon First Conveyance. Unless otherwise expressly approved by the Purchaser of a Unit, Declarant shall not consummate the conveyance of title of such Unit until said Mortgagee shall have accepted the provisions of this Declaration and made appropriate arrangements, in accordance with the Act, for partial release of Units with their appurtenant Limited Common Elements and Allocated Interest in Common Elements from the lien of said Mortgage. The issuance and recording of the first such partial release by said Mortgagee shall constitute its acceptance of this provisions of this Declaration and the Condominium status of the Units remaining subject to its Mortgage as well as its acknowledgment that such appropriate arrangements for partial release of Units have been made; provided, that, except as to the Units (and their allocated interests in Common Elements) so released, said Mortgage shall remain in full effect as to the entire Property.

22.3 Severability. The provisions hereof shall be deemed independent and severable, and the validity or partial invalidity or unenforceability of any one (1) provision or portion thereof shall not affect the validity or enforceability of any other provision hereof if the remainder complies with the Act.

22.4 Conveyances; Notice Required. The right of a Unit Owner to sell, transfer, or otherwise convey the Unit shall not be subject to any right of approval, disapproval, first refusal, or similar restriction by the Association or the Board, or anyone acting on their behalf. An owner intending to sell a Unit shall deliver a written notice to the Board, at least two (2) weeks before closing, specifying: the Unit to be sold; the name and address of the Purchaser, of the closing agent, and of the title insurance company insuring the Purchaser's interest; and the estimated closing date. The Board shall have the right to notify the Purchaser, the title insurance company, and the closing agent of the amount of unpaid assessments and charges outstanding against the Unit, whether or not such information is requested. It is understood, however, that a violation of this Section shall not invalidate a sale, transfer or other conveyance of a Unit which is otherwise valid under applicable law.

22.5 Reserved.

22.6 Effective Date. This Declaration shall take affect upon recording.

22.7 Reference to Survey Map or Plans. The Survey Map and Plans of the Condominium referred to herein were prepared by \_\_\_\_\_, and were filed with the Recorder of \_\_\_\_\_ County, Washington, simultaneously with the recording of this Declaration under File No. \_\_\_\_\_ of Condominiums.



## Article 23

### SPECIAL DECLARANT RIGHTS DEVELOPMENT RIGHTS

23.1 Special Declarant Rights. As more particularly provided in this Article, Declarant, for itself and any successor Declarant, has reserved the following Special Declarant Rights:

23.1.1 Completion of Improvements. Declarant, its agents, employees and contractors shall have the right to complete improvements and otherwise perform work: authorized by the Declaration; indicated on the Survey Map and Plans; authorized by building permits; necessary to satisfy any express or implied warranty under which Declarant is obligated; or otherwise authorized or required by law.

23.1.2 Sales Facilities of Declarant. Reserved.

23.1.3 Exercise of Development Rights. Declarant shall have the right to exercise Development Rights, if any, under this Declaration and the Act.

23.2 Development Rights. As more particularly provided in this Article, the Declarant, for itself and any successor Declarant, has reserved the following Development Rights.

23.2.1 Parking Assignment. Declarant reserves the right to make the initial allocation of parking spaces, which parking spaces shall be used in accordance with the rules and regulations established from time to time by the Board. The initial allocation of parking spaces is shown on Exhibit "D" attached hereto and incorporated herein by this reference.

23.2.2 Development in Phases.

(a) Right to Phase. This Condominium will be developed and established in more than one (1) phase. This Declaration provides a description of the land within all phases, the general Common and Limited Common Elements for all phases, and the Units for Phase 1 (and herein or an amendment hereto, for the remainder of possible phases.) The Survey Map and Plans, filed simultaneously herewith, depict certified as-built with respect to Phase 1 the following: a survey of the surface of the land for Phase 1 and all possible phases, showing as to each Unit in Phase 1 the vertical and horizontal boundaries, the location of all such Units, and the number and dimensions of all such Units. Said Survey Map and Plans, or amendments thereto, shall show such data with respect to the remainder of phases. The provisions regarding Phase 1 shall be effective immediately to establish Phase 1 (including the Phase 1 land and all Units, Buildings and other improvements constructed thereon) as a Condominium under the Act until Declarant records an amendment to the Declaration (and an amendment to the Survey Map and Plans, if necessary.)



(b) Declaration, Survey Map and Plans Amendments. For each subsequent phase following Phase 1, the Declarant shall execute and record an amendment to this Declaration stating that said subsequent phase (including the subsequent phase land, and all Units, Buildings and other improvements thereon) is established as a Condominium under the Act. From and after the recording of said amendment, all of the land within Phase 1 and within subsequent phases for which such an amendment has been recorded, together with all Units, Buildings and other improvements constructed thereon, shall constitute a single Condominium pursuant to the Act and the provisions of this Declaration. In conjunction with said amendment to the Declaration, an updated or revised Survey Map, or Plans, or both, shall be filed if the previous Map and Plans filed affecting or describing said subsequent phase lack required detail, certification of other matters required under the Act. The Declarant is the Unit Owner of any Units thereby created. The amendment to the Declaration shall assign an Identifying Number to each new Unit created, and reallocate the Allocated Interests among all Units. The amendment must 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. Development Rights may be reserved within any real property added to the Condominium if the amendment adding that real property includes all matters required by RCW 64.34.216 or 64.34.220, as the case may be, and the Survey Map and Plans include all matters required by RCW 64.34.232. This provision does not extend the time limit on the exercise of Development Rights imposed by this Declaration.

(c) Common Elements. All Common Elements for each phase will be utilized by Unit Owners of the next succeeding phase as it is established, and the additional Owners will, after the effective date of the subsequent phase, also share in the expenses of such Common Elements. Owners in a prior phase will utilize the Common Elements for the subsequent phases and also share in the expense thereof.

(d) Completion. Declarant shall complete subsequent phases in accordance with the plans and specifications prepared from time to time by or for Declarant and as approved from time to time by governmental authorities having jurisdiction thereof and by the lender or lenders financing the construction of subsequent phases. Improvements within subsequent phases will be reasonably consistent with improvements in prior phases in terms of quality of construction. Completion of subsequent phases will be pursued by Declarant as expeditiously as reasonably possible, subject to delays for reasons (including, but not limited to, financing availability, labor disputes, material shortages, and acts of God) reasonably beyond the control of Declarant. All improvements for subsequent phases shall be substantially completed before such phase is incorporated into the Condominium by amendment as provided in subsection 23.2.2 (b) above.

(e) Allocated Interests. It is specifically covenanted that the Allocated Interests for Phase 1 are calculated with respect to the Units within Phase 1. At such time as additional phases are made effective by the filing of the above-described Declaration



Amendment by Declarant, the Allocated Interests thereafter effective for all Units in Phase 1 and those added in each subsequent phase shall be reallocated as provided in Exhibit B attached hereto.

(f) Assessments Based on Allocated Interests for Phases. All Assessments for the various phases shall utilize and be based on the Allocated Interests stated for that phase until the succeeding phase is activated and commenced. The Declarant or Board may upon the activation of any phase, based on the reallocation of Allocation Interests, recompute the budget and the Assessments, and impose the revised Assessments.

(g) Easements for Phased Development.

(i) In addition to the general easements reserved by statute and by reference in other sections of this Declaration, there is reserved a non-exclusive easement in favor of Declarant (and Declarant's heirs, successors, assigns and purchasers) over and across the Phase 1 land (and across the land hereafter described in Exhibit A, as hereafter amended, for any subsequently completed phase) for ingress and egress and over and across easements, roadways, and utility lines specified or established in and for completed phases, and the right to connect thereto is reserved. Such reservations are for the purpose either of completing subsequent phases, or otherwise developing portions of the land for other purposes if not completed as a Condominium phase.

(ii) The easements reserved under this Section shall entitle the Declarant (and Declarant's heirs, successors, assigns), for development of each successive phase of the Condominium, or for development and utilization of the lands to have been included in any phase if such lands are utilized for other purposes under the powers reserved to Declarant, to tie into water, sewer, storm sewer, electrical, gas, telephone or other utility lines of all varieties, to connect with roadways, or utility systems developed and emplaced in the completed phases of the Condominium, and, to the extent as owners and occupants within the Condominium, utilize any recreational facilities developed in completed phases of the Condominium.

(iii) Declarant shall bear the cost of tie-ins to said utilities and roads and will not connect with said utilities in a manner that impairs or significantly reduces the quality of the utility service to the land described in Exhibit A as Phase 1 and for the land in a subsequently completed phase, provided, that if said tie-ins cause an increase in the cost of delivering affected utility services to Phase 1 and for land in any subsequently completed phase, that cost shall be borne by the Declarant.

(iv) Any land which is not developed as a subsequent phase of the Condominium and which utilizes and benefits from the utility, roadway easements and recreational facility reserved to Declarant hereunder, shall,



pursuant to an irrevocable covenant running with the land, be obligated to pay a pro rata share (based on relative number of living units) of the costs of subsequent repairs, maintenance and operation of said utilities, roadways and recreational facilities.

(v) Declarant (and Declarant's heirs, successors and assigns) shall have a non-exclusive easement to construct and maintain (at any time and at Declarant's sole cost and expense and in the exercise of Declarant's sole discretion and at such locations within Phase 1 and within any subsequently completed phases of the Condominium as Declarant may determine) such signs as Declarant may deem necessary for the identification of the name, location and direction, and for the sale or renting, of Buildings and Units, regardless of whether such Buildings and Units are located on land which is within a subsequent phase of the Condominium or on land which the Declarant under powers reserved hereunder has elected not to develop as a phase of the Condominium.

(h) Liens Arising in Connection with Phases. At the time the amendment incorporating a subsequent phase into the Condominium is made, no lien arising in connection with the Declarant's ownership of, and construction of improvements upon, the subsequent phase land will adversely affect the rights of existing Unit Owners or the priority of first Mortgages on Units in the existing Condominium Property. All taxes, assessments, mechanics liens, and other charges affecting land for a subsequent phase will be paid or otherwise satisfactorily provided for by the Declarant.

(i) Withdrawal of Subsequent Phases. If, despite the good faith efforts of Declarant, and for reasons (including, but not limited to, financing availability, labor disputes, material shortages and acts of God) beyond the reasonable control of Declarant, all or any of the subsequent phases are not completed and/or the amendment(s) provided for in this Section is not recorded, then Declarant at any time may elect not to incorporate all or some of such subsequent phases into the subject Condominium project and elect not to record the amendments provided on in this section. To effectuate the foregoing, Declarant, upon its sole signature and without further consent of any of the other Owners being required, may file such amendment to this Declaration and to the Survey Map and Plans as is necessary to withdraw the land within such subsequent phases (and improvements constructed thereon) from the provisions of this Declaration and to relinquish Declarant's rights under this Section. In the event Declarant should exercise its rights under this Section to withdraw the land within such subsequent phases (and improvements thereon), from the provisions of this Declaration, or if the Declarant's right to add phases expires, then the phases in fact made a part of the condominium shall thereafter continue to constitute a complete, fully operational Condominium, land within such subsequent phases (and improvements thereon) may be used for any other lawful purpose in Declarant's discretion, and the easements provided for in this Section (including without limitation Section 23.2.2(g)) shall continue for the benefit of land within such subsequent phases and Declarant (and its heirs, successors and assigns) for the development and utilization of land within such subsequent phases.





(j) Limitation of Declarant's Rights. At the time of recording this Declaration, Declarant may not have acquired title to or an interest in the land for some or all of the land for phases subsequent to Phase 1. Declarant shall not be entitled to exercise its rights to include the land for phases subsequent to Phase 1 (and improvements thereon) as a part of this Condominium until such time as Declarant has acquired title to or an interest in the land necessary for such subsequent phase.

(k) Parking not in Condominium.

- (i) Some parking spaces, which are assigned for the exclusive use of a Unit within this Condominium, may be physically located within a phase which has not yet been made part of this Condominium. The owner of such Unit shall have a perpetual and exclusive easement to use such parking space for its intended purpose. Said parking space shall for all purposes be treated as a Limited Common Element subject to the provisions of this Declaration. At such time as the phase in which said parking space is located is recorded and made a part of this Condominium, said parking space shall be a Limited Common Element of the Unit to which it has been assigned.
- (ii) Some parking spaces, which are intended for the exclusive use of a Unit located in a phase that has not yet been made a part of this Condominium, may be physically located within this Condominium. The owner of such Unit (whether or not then constituting a condominium unit under the Act) shall have a perpetual and exclusive easement to use such parking space for its intended purposes. Such parking space shall for all purposes be subject to the provisions of this Declaration to the same extent as if such parking space was a Limited Common Element assigned to a Unit within the Condominium. At such time as the phase in which said Unit is located, is recorded and made a part of this Condominium, said parking space shall be a Limited Common Element of the Unit to which it has been assigned.

23.2.3 Subdivision and Combination. Declarant shall have the right to subdivide or combine Units (owned by Declarant) or convert Units (owned by Declarant) into Common Elements, and to convert Common Elements into Units or Limited Common Elements.

- (a) If Declarant converts the Unit entirely to Common Elements, the amendment to the Declaration must reallocate all the Allocated Interests of that Unit among the other Units as if that Unit had been taken by condemnation under Article 15.
- (b) If Declarant subdivides the Unit into two or more Units, whether or not any part of the Unit is converted into Common Elements, the amendment to the



Declaration must reallocate all the Allocated Interests of the Unit among the Units created by the subdivision in any reasonable and equitable manner prescribed by the Declarant.

- (c) If Declarant combines two or more Units, the amendment to the Declaration must reallocate to the new Unit all of the Allocated Interests formerly allocated to the Units so combined.
- (d) If Declarant converts Common Elements into a new additional Unit, the amendment to the Declaration must reallocate the Allocated Interests among all Units using the method or formula utilized upon the initial creation of the condominium.

23.2.4 Different Parcels, Different Times.

- (a) Any Development Right may be exercised with respect to different parcels of Real Property at different times,
- (b) No assurances are made as to final boundaries of such parcels or as to the order in which those parcels may be subjected to the exercise of each Development Right, and
- (c) Even though a Development Right is exercised in any portion of the Real Property subject to that right, that right need not be exercised in all or in any other portion of the remainder of that Real Property.

23.2.5 Exercise of Development Right. To exercise any Development Right reserved under Section 23.2, the Declarant shall prepare, execute, and record an amendment to the Declaration under Article 21 and comply with RCW 64.34.232.

23.2.6 Termination of Development Rights. Except as otherwise provided in this Declaration, the foregoing Development Rights shall continue so long as Declarant is completing improvements which are within or may be added to this Condominium, or Declarant owns any Units, or any Special Declarant Rights remain in effect, provided, that Declarant may voluntarily terminate any or all of such Rights at any time by recording an amendment to the Declaration, which amendment specifies which Right is thereby terminated.

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

DATED this 1st day of October, 2009.

By Robert Howe  
Robert Howe  
Its Manager

COUNTY OF King ) : SS.

51 of 61 3:57PM

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



Print name:

*Dale J Galvin*

[SEAL/STAMP]

NOTARY PUBLIC in and for the state of *Washington*

Washington, residing at: *Seattle, WA.*

My commission expires: *3/1/13*



## EXHIBIT "A" TO DECLARATION

1. Legal description of real property in Condominium:

### PARCEL A:

The West 297 feet of the Northwest Quarter of the Northwest Quarter of the Southwest Quarter of Section 3, Township 34 North, Range 2 East of the Willamette Meridian, lying South of State Highway No. 1, as conveyed to the State of Washington by deed recorded January 12, 1961, under Auditor's File No. 603031, records of Skagit County, Washington.

### PARCEL B:

A non-exclusive easement for ingress and egress reserved in deed to Jerry Smith, et al., recorded August 16, 1994, under Auditor's File No. 9408160065, records of Skagit County, Washington.

Situated in Skagit County, Washington.

2. Legal description of real property that may still be added to Condominium upon completion of subsequent phases: None.

3. Legal description of real property which development rights or special Declarant rights under Article 23: None.

4. Legal description of real property (except real property subject to development rights) which may be allocated subsequently as Limited Common Elements (specified in Articles 4 and 7): None.

EXHIBIT "A"



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## EXHIBIT "B" TO DECLARATION

1. Recreational Facilities: None.
2. Additional Limited Common Elements: None.
3. Moorage Slips: None.
4. Parking: See Exhibit "D" attached hereto.
5. Description of Unit Types: All units are storage spaces and all are located on ground level. See Exhibit "C" attached hereto for the Unit Number, Building location and square footage of each individual Unit.

Type of heat and heat service. None. Natural gas is available.



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# EXHIBIT "C" TO DECLARATION

UNIT NO.	LOCATION	DECLARED VALUE *	NO. OF PARKING SPACES	SQ. FT OF UNITS
101	Building 1	\$160,000.00	1	1,369
102	Building 1	\$160,000.00	1	1408
103	Building 1	\$160,000.00	1	1408
104	Building 1	\$160,000.00	1	1408
105	Building 1	\$160,000.00	1	1408
106	Building 1	\$160,000.00	1	1408
107	Building 1	\$160,000.00	1	1408
108	Building 1	\$160,000.00	1	1408
109	Building 1	\$160,000.00	1	1408
110	Building 1	\$160,000.00	1	1408
111	Building 1	\$160,000.00	1	1369
101	Building 3	\$ 82,000.00	1	684
102	Building 3	\$ 82,000.00	1	684
103	Building 3	\$ 82,000.00	1	704
104	Building 3	\$ 82,000.00	1	704
105	Building 3	\$ 82,000.00	1	704
106	Building 3	\$ 82,000.00	1	704
107	Building 3	\$ 82,000.00	1	704
108	Building 3	\$ 82,000.00	1	704
109	Building 3	\$ 82,000.00	1	704
110	Building 3	\$ 82,000.00	1	704
111	Building 3	\$ 82,000.00	1	704
112	Building 3	\$ 82,000.00	1	704
113	Building 3	\$ 82,000.00	1	704
114	Building 3	\$ 82,000.00	1	704
115	Building 3	\$ 82,000.00	1	704
116	Building 3	\$ 82,000.00	1	704
117	Building 3	\$ 82,000.00	1	704
118	Building 3	\$ 82,000.00	1	704
119	Building 3	\$ 82,000.00	1	704
120	Building 3	\$ 82,000.00	1	704
121	Building 3	\$ 82,000.00	1	704



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123	Building 3	\$ 82,000.00	1	704
124	Building 3	\$ 82,000.00	1	704
125	Building 3	\$ 82,000.00	1	704
126	Building 3	\$ 82,000.00	1	704
127	Building 3	\$ 82,000.00	1	704
128	Building 3	\$ 82,000.00	1	704
129	Building 3	\$ 82,000.00	1	704
130	Building 3	\$ 82,000.00	1	704
131	Building 3	\$ 82,000.00	1	684
132	Building 3	\$ 82,000.00	1	684

\* These values are the "Declared Values" used by Declarant in determining each Unit's Allocated Interest and do not necessarily reflect the prices for which Units may be sold by Declarant or others.



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**EXHIBIT C-1 TO DECLARATION**

**ALLOCATED INTERESTS**

Unit Number Building 1	Allocated Interests * (Voting, Common Expense, Common Elements)
101	3.65%
102	3.65%
103	3.65%
104	3.65%
105	3.65%
106	3.65%
107	3.65%
108	3.65%
109	3.65%
110	3.65%
111	3.65%

Unit Number Building 3	Allocated Interests * (Voting, Common Expense, Common Elements)
101	1.87%
102	1.87%
103	1.87%
104	1.87%
105	1.87%
106	1.87%
107	1.87%
108	1.87%
109	1.87%
110	1.87%
111	1.87%
112	1.87%
113	1.87%
114	1.87%
115	1.87%



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116	1.87%
117	1.87%
118	1.87%
119	1.87%
120	1.87%
121	1.87%
122	1.87%
123	1.87%
124	1.87%
125	1.87%
126	1.87%
127	1.87%
128	1.87%
129	1.87%
130	1.87%
131	1.87%
132	1.87%
<b>TOTAL</b>	100.00%

\* The Allocated Interest of each Unit in the Common Elements, the Common Expense Liability and votes in the Association was established by dividing the "Declared Value" of the Units and (as set forth in Exhibit "C") by the aggregate "Declared Value" of all Units (as set forth in Exhibit "C"). The results were rounded so that the aggregate of all Allocated Interests equaled 100.



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# EXHIBIT "D" TO DECLARATION

## FIDALGO CONDO WAREHOUSE SPACES

⊗ indicates the parking spaces reserved to a particular unit, Declarant reserves right to change the parking space allocation

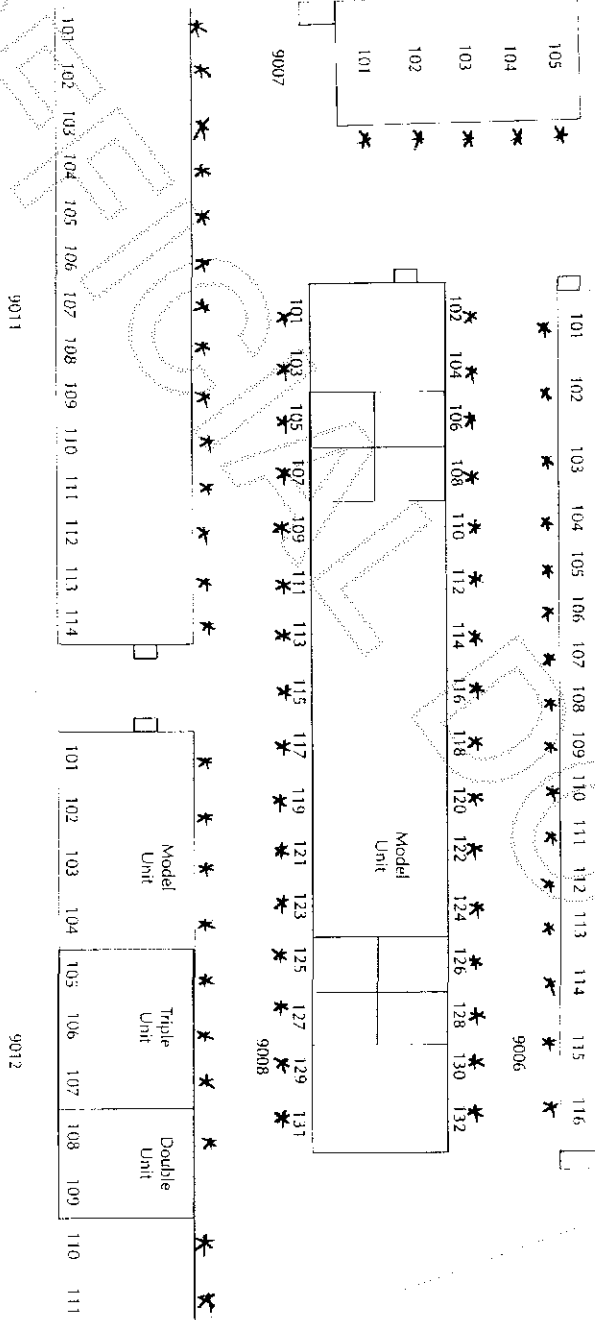


Exhibit D



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## **EXHIBIT "E" TO DECLARATION**

### **SIGN RULES AND STANDARDS**

Pursuant to Article 11 of the Declaration, the criteria below have been established for the purpose of assuring a coordinated sign program for the mutual benefit of all unit owners. Conformance shall be strictly enforced. In the event of any conflict of interpretation as to the meaning, intent or application of these criteria, the Declarant's decision shall be final and binding. If the period of Declarant control has passed, then the decision of the Board of Directors shall be final and binding. All installed, nonconforming or unapproved signs shall be brought into conformance within thirty (30) days of Declarant's notification (or Board of Director's notification, as the case may be) to the unit owner at that unit owner's sole cost and expense.

Unit owners shall be responsible for the fulfillment of all signage requirements, specifications and controlling governmental ordinances. For purposes of these Rules, the term Signage includes, but is not limited to, banners, flags (other than the flag of the United States of America), directional signs, sandwich boards, and all permanent signs, whether or not said permanent sign has electrical components.

1. A unit owner shall submit or cause to be submitted to the Declarant (or Board of Directors, as the case may be) for approval before installation of any Signage a minimum of three (3) copies of the detailed drawings indicating the location, materials, size, layout, design and color of the proposed sign, including all lettering and/or graphics and electrical requirements, if any.
2. All permits for signs and their installation shall be obtained by the unit owner (or its representative) at that unit owner's sole cost and expense. All signs shall be constructed and installed at that unit owner's sole cost and expense.
3. Unit Owners may not attach Signage of any kind to his/ her Unit, unless the Declarant or Board of Directors, as the case may be, amends these Rules to allow such attached Signage.
4. No signs of any sort shall be permitted on the building roof.
5. No sign or any portion thereof may project above or below the fascia on which it is mounted.
6. No flashing, moving, or audible signs shall be permitted.
7. All electrical signs shall bear the UL label and their installation must comply with all governing codes and/or ordinances.



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8. All conductors, transformers and other equipment shall be concealed.
9. Electrical service to the Unit Owner's sign, if any, shall be on the Unit Owner's electrical meter and shall be installed at the sole cost of the Unit Owner.
10. No sign maker's label or other identification shall be permitted on the exposed surface of a sign, except for those required by local ordinance which then shall be placed in an inconspicuous location.
11. A Unit Owner must remove any Signage erected by that Unit Owner upon his/her vacation of the Unit.
12. Unit Owners shall cause to be repaired any damage caused by a sign contractor or sign installation and shall be fully responsible for the operation of the Unit Owner's sign contractor and shall indemnify, defend and hold harmless from or liabilities on account thereof.



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