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201102030114  
Skagit County Auditor

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DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND  
RESERVATIONS  
FOR  
EAST FAIRHAVEN TOWNHOMES

TITLE OF DOCUMENT:

DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND  
RESERVATIONS FOR EAST FAIRHAVEN  
TOWNHOMES

GRANTOR:

ROGER W. HELGESON

GRANTEE:

THE GENERAL PUBLIC

ABBREV. LEGAL DESCRIPTION

LOTS 1, 2, 3, 4, 5 & 6, CITY OF BURLINGTON  
S.P. NO. SS 210, AF# 201102030113

FULL LEGAL APPEARS:

P. 1, Section 1.2

TAX PARCEL NOS.:

P 72334

Draft Date 1/19/11

## ARTICLE I

### SUBMISSION OF PROPERTY; PURPOSE

#### 1.1. Submission of Property - Relevant Municipal Ordinance.

ROGER W. HELGESON, hereinafter collectively referred to as the "Declarant," being the owner in fee simple of certain land located in Burlington, Skagit County, Washington and described in Section 1.2 below, has submitted said land to the provisions of Chapter 16.12, Burlington Municipal Code ("the Ordinance") in order to create a Short Plat of said land, and has created from and within such Property a residential project which shall be known as "EAST FAIRHAVEN TOWNHOMES", which shall hereinafter be referred to as the "Project".

#### 1.2. Reference to Platting Documents - Legal Description of Land Burdened.

Concurrently herewith, the Declarant has recorded with the Auditor of Skagit County, Washington, a Short Plat Map showing the location and dimensions of all the land included within the Project, the location and dimensions of the Lots and Common Areas within the Project, and other necessary information. This map is hereinafter referred to as the "Short Plat". This Declaration of Covenants thus benefits and burdens the following described real property: Lots 1 through 6, inclusive, City of Burlington Short Plat No. SS - 210, as per the Map thereof recorded at Auditor's File No. 201102030113, Records of Skagit County, Washington

#### 1.3. Purpose.

This Declaration of Covenants, together with the Short Plat referred to herein, state covenants, conditions, restrictions and reservations intended by the Declarant to effect a common plan for the development of the Property mutually beneficial to all of the described Lots. The covenants, conditions, restrictions, reservations and plan, are binding upon and run with the entire property and upon each such Lot as a parcel of realty, and upon its Owners or Occupants, and their heirs, personal representatives, family members, guests, invitees, tenants, licensees, successors and assigns, through all successive transfers of all or part of the Property or any security interest therein, without requirement of further specific reference or inclusion in deeds, contracts or security instruments, and regardless of any subsequent forfeiture, foreclosures, or sales of Lots under security instruments, or of any forfeiture, foreclosures, or sales instituted for nonpayment of government tax, levy or assessment of any kind.

## ARTICLE II

### DEFINITIONS

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



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2.2. "Association" or "Owners Association" means the nonprofit corporation which has been or will be incorporated to manage the Common Areas of this Project and enforce the provisions of the Governing Documents, as described in Section 7.1 hereof.

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

2.4. "Common Areas" means those portions of the property within the Project so designated on the Short Plat or burdened with easements for common uses and purposes, along with any other real property owned by the Association or for which the Association has been or may be assigned maintenance responsibilities under this Declaration. Common Areas are further defined and described in Article V hereof.

2.5. "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves; without limitation, such expenses include those necessary or desirable for maintaining, repairing, replacing, insuring or managing the Common Areas, along with taxes, other insurance, professional services and all other goods and services provided by the Association to its members.

2.6. "Common Expense liability" means the liability for Common Expenses allocated to each Lot pursuant to Section 10.1.1 of this Declaration.

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

2.8. "Declarant" means the entity, person or group of persons acting in concert who executed this Declaration of Covenants, or any lawful successor thereto.

2.9. "Declarant control" means the right of the Declarant or persons designated by the Declarant to appoint and remove officers and members of the Board of Directors or to veto or approve a proposed action of the Board or Association pursuant to Sections 8.1 and 16.6 of this Declaration of Covenants.

2.10. "Declaration of Covenants" means this document, which facilitates the creation and management of this Project; the term also includes any lawful amendments to this document.

2.11. "Design Guidelines" means the standards developed by the Board of Directors pursuant to Article IX hereof, and any standards established by the Declarant.

2.12. "Development Plan" means any formal plan of development, however termed under the Ordinance, approved by the City of Burlington. The term also includes any amendments thereto approved by applicable governmental entities.

2.13. "Dwelling" means the principal housing structure constructed within a Lot within a Townhouse Building.

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



2.15. "Governing Documents" means the Declaration of Covenants, the Short Plat, the Bylaws of the Association along with any Rules and Regulations adopted by the Board of Directors.

2.16. "Limited Common Expenses" are portions of the Common Expenses for which one or more, but fewer than all Lot Owners may become liable under the terms of the Governing Documents.

2.17. "Lot" means a physical portion of the Project designated for separate ownership, the boundaries of which are depicted on the Short Plat.

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

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

2.20. "Occupant" means a person who lawfully occupies a Dwelling for a period of time greater than 24 consecutive hours in duration.

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

2.22. "Property" or "the Property" means all the real property subject to these Covenants contained within the Short Plat and all improvements, easements, rights and appurtenances associated therewith. The term, where appropriate, also includes all real property which may be acquired by the Association pursuant to Section 8.3.3 hereof.

2.23. "Purchaser" means any person, other than the Declarant or a dealer, who by means of a disposition acquires a legal or equitable interest in a Lot other than as security for an obligation.

2.24. "Residential purposes" means use for dwelling and human habitation, whether on an ownership, rental or lease basis and for reasonable social, recreational or other uses normally incident to such purposes.

2.25. "Special Declarant Rights" means rights reserved for the benefit of the Declarant: (a) to complete improvements indicated on the Short Plat; (b) to maintain sales offices, management offices, signs advertising the Project, and models; (c) to use easements through the Common Areas for the purpose of making improvements within the Project; (d) to appoint or remove any officer of the Association or any member of the Board of Directors; or (e) to veto or approve a proposed action of the Board or Association during any period of Declarant Control reserved in this Declaration of Covenants. Special Declarant Rights are described in Section 16.6 hereof.

2.26. "Townhouse Building" means a dwelling structure constructed on adjacent Lots in which party walls support the Dwellings and also separate each Dwelling from the other Dwelling(s) in the building.

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



### ARTICLE III

#### DESCRIPTION OF LAND, PROJECT AND DEVELOPMENT PLAN

##### 3.1. Land Within the Project.

The Lots, Common Areas and other improvements of this Project are situated on real property located on East Fairhaven Avenue, between Skagit and Section Streets in Burlington, Skagit County, Washington, and are more particularly described on the Short Plat.

##### 3.2. Development Plan.

The Project is being developed in accordance with conditions of approval imposed by the City of Burlington in City of Burlington Short Plat File No. SS - 210, and in particular requirements appearing on the face of the Short Plat, which may be collectively known herein as the "Development Plan". In general, the residential component of the Project will be developed incrementally as a "townhouse" or "zero lot line" project where each separately-owned Lot will contain and support one Dwelling constructed as part of a Townhouse Building, and where each Dwelling will share at least one party wall with an adjacent Dwelling on an adjacent Lot.

##### 3.3. Owners' Association Maintains Common Areas.

The driveway areas in the Project are private and will be maintained in perpetuity by the Association. The Owners' Association described in Section 7.1 hereof will also maintain in perpetuity all the other Common Areas of this Project, described in Article V hereof, for the common benefit of the Lot Owners, and may perform maintenance to portions of the Lots, as described in Section 4.3.1 hereof.

### ARTICLE IV

#### LOTS AND BUILDING STRUCTURES

##### 4.1. Number and Location.

The Project contains six (6) Lots which are depicted on the Short Plat. All the Lots in the Project are located on private driveways which consists of areas on each Lot burdened with easements for common ingress, egress and utilities. Each Lot contain portions of a Townhouse Building. Addresses for the Lots have been assigned by the City of Burlington, as indicated on Exhibit A attached hereto.

##### 4.2. Construction of Buildings and Other Improvements Within Lots.

###### 4.2.1. Initial Construction by Declarant.

Buildings and related improvements such as fencing and accessory structures have been or will be constructed within the Lots by or under the direction of the Declarant, according to a common design scheme established by the Declarant.



#### 4.2.2. Accessory Structures.

Any accessory building structures constructed within a Lot, such as service or storage sheds, fencing or decks, shall conform to the same theme of design described in Section 4.2.1 hereof, and shall be of such size, constructed of such materials and colors as to present a harmonious appearance in relation to the Dwelling or other permitted structures within the Lot. No such structure may be constructed at any time within a Lot by any person other than the Declarant without the advance written approval of the Board of Directors. See Section 9.1.2 hereof.

#### 4.2.3. Construction of Additional Improvements by Lot Owner.

To preserve the architectural integrity of the Project, no construction of any other additional improvements within a Lot, whether to the Dwelling or otherwise, may be undertaken absent the advance written approval of the Board of Directors.

#### 4.2.4. Governmental Permits.

Approval by the Board of Directors shall not relieve the Owner of a Lot from the obligation to obtain any required governmental permits from the City of Burlington. The Owner shall deliver all approvals and permits required by law to the Board of Directors, as appropriate, prior to the commencement of any construction requiring such approval or permit. If any application to any governmental authority for a permit to make any such structural addition, alteration or improvement to any Lot or improvement located on any Lot requires execution by the Association, and provided consent has been given by the Board of Directors, then the application shall be executed on behalf of the Association by an Officer, without incurring any liability on the part of the Board of Directors or the Association to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having a claim for personal injury or property damage arising therefrom.

#### 4.2.5. Timing of Construction.

Any person obtaining approval of the Board of Directors as required by Section 9.2 hereof shall commence construction or alteration in accordance with plans and specifications approved within six months after the date of approval and shall substantially complete any construction or alteration within eighteen months after the date of approval, or within such other period as specified in the approval. Construction shall not be deemed to be completed until the improvement is finished, the Lot has been cleaned of construction debris. Notwithstanding the foregoing, the Board of Directors's approval may provide for a different period during which to commence or complete construction. If any such person does not commence work within six months after approval, or such other time period determined by the Board, then approval shall lapse.

#### 4.2.6. No Deviation from Plans.

Any person obtaining approval of the Board of Directors shall not deviate materially from the approved plans and specifications without the prior written consent of the Board. Such person shall notify the Board when the alterations or improvements are complete. Approval of any particular plans and specifications or design does not waive the right of the Board to disapprove such plans and specifications, or any elements or features thereof, if such plans and specifications are subsequently submitted for use in any other instance or by any other person.



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#### 4.2.7. No Permanent Construction Within Easements.

No permanent building structure shall be constructed within the easements on the Lots depicted on the Short Plat Map. Landscaping may be planted within such easement areas, but may be subject to removal when easement access rights are exercised. Replacement thereof will be at the expense of the Lot Owner.

#### 4.3. Upkeep of Dwellings and Lots.

##### 4.3.1. Association's Responsibility.

The Association shall have primary responsibility for [i] maintenance of all front yard landscaping within the Lots, [ii] Maintenance of gutters, roof drains, down-spouts and associated drain lines to their point of connection with common drain lines located within easement areas, [iii] painting the exterior portions of the Dwellings, [iv] developing reserves to replace [but not to repair partial damage to] the roofs of the Dwellings, and [v] Upkeep of any other portions of the Dwellings or Lots that the Association, by vote or agreement of its members, may hereafter elect to maintain.

##### 4.3.2. Owners' Responsibility.

Each Lot Owner shall have, at his or her sole expense, the right and the duty to keep the Dwelling and its equipment, appliances, and fixtures contained therein in good order, condition and repair and shall do all interior redecorating at any time necessary to maintain the good appearance and condition of the Dwelling. Each Owner shall also be responsible for the painting, repairing and replacing of roofing, gutters, down-spouts, exterior doors, windows, decks and all other exterior portions of the Dwelling not maintained by the Association, along with individual heating, ventilating or air-conditioning equipment, wherever located, installed for the sole and exclusive use of the Lot, and of any hot tub or other structure, device or equipment lying outside the Dwelling but lying within the Lot. This Section shall not be construed as permitting any interference with or damage to the structural integrity of a building or interference with the use and enjoyment of either the Common Areas or of any other Lot(s), nor shall it be construed to limit the powers or obligations of the Board hereunder. See also Sections 5.9 and 8.4 hereof.

#### 4.4. Interior Alterations and Improvements.

Subject to the provisions of this Declaration and other provisions of law, a Lot Owner may make any improvements or alterations to the interior portions of a Dwelling or Building that do not affect the structural integrity or mechanical or electrical systems of any other Lot or the Common Areas, or lessen the support of any portion of the Project. Municipal building permits shall be obtained for any work which requires a permit.

#### 4.5. Damaged Improvements - Reconstruction is Mandatory - Remedies for Noncompliance.

##### 4.5.1. Mandatory Reconstruction of Damaged Improvements.

If a Dwelling or other major improvement located upon a Lot is damaged or destroyed, the Owner thereof shall restore the site by repairing or reconstructing such building or improvement to a condition and appearance equal to or better than its condition immediately prior to such damage or destruction. Unless the Board of Directors permits a longer time period, such work must be commenced



within four months after the casualty and must be substantially completed within twelve months after the casualty. The four-month period may be extended for a reasonable period thereafter in the event that repairs or reconstruction have not commenced because of factors beyond the control of the Owner, provided that the Owner has exercised and does thereafter continue to exercise due diligence in an effort to commence required work. The exterior appearance of the Dwelling, as it existed immediately prior to the casualty, shall be maintained or re-created during reconstruction, except as may be authorized by the Board of Directors under Section 9.2 hereof.

4.5.2. Remedies for Noncompliance.

The architectural scheme of design for the entire Project would be harmed in the event that a Dwelling or other portion of a Townhouse Building were not repaired or reconstructed following its damage or destruction. An Owner's failure to properly rebuild damaged improvements shall constitute a nuisance for which the remedy of damages at law shall be considered inadequate. The Association or any aggrieved Owner may sue to abate such nuisance.

ARTICLE V

COMMON AREAS

5.1. Common Areas.

Except as otherwise specifically reserved, assigned or limited by the provisions of Article VI hereof, the Common Areas of the Project consist of the following:

5.1.1. All areas depicted on the Short Plat and thereon described as being subject to easements, including those portions of the private driveway system, and the stormwater system components serving same in the driveway easement areas.

5.1.2. Parking areas and any and all other areas or things depicted on the Short Plat that serve the Lots in the Project and which are not dedicated to public use on the Short Plat.

5.2. Partition, Conveyance, or Encumbrance.

5.2.1. Except as permitted by this Declaration or the Ordinance, the Common Areas shall remain undivided and shall not be abandoned by act or omission, and no Lot Owner or other person may bring any action for partition or subdivision of the Common Areas.

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





5.3. Allocated Interests - Interest in Common Areas Declared an Appurtenance.

The Declarant declares that each Lot in the Project has allocated to it an equal undivided right-of-use interest in the Common Areas of the Project, subject to restrictions appearing in this Declaration of Covenants, in common with all the other Owners, which interest shall be conclusively presumed to be a perpetual appurtenance to such Lot, and which is known as the Lot's Allocated Interest in the Common Areas. This Allocated Interest shall be deemed included with each Lot in any conveyance of such Lot, irrespective of whether so stated in the conveyance deed. No Allocated Interest in the Common Areas may be severed from, mortgaged or conveyed separately from the Lot. Any purported severance, mortgaging or conveyance shall be void. Notwithstanding the foregoing, the Association shall have sole responsibility to deal with the Common Areas on behalf of the Owners, and Owners' easement rights in the Common Areas are limited by the provisions of Section 16.1.3 hereof.

5.4. Maintenance, Repair and Replacement - Upkeep.

5.4.1. General Authority.

The Association, through its Board of Directors, shall be responsible for all required Upkeep of the Common Areas. *The City is not responsible for maintenance of any of the Common Areas*, but has the authority to do so under Section 5.8 hereof.

5.4.2. Upkeep of Driveway Areas, Stormwater Facilities.

All necessary Upkeep of the private driveway areas and their associated stormwater drainage facilities shall be conducted by the Association in accordance with the provisions of Section 6.1 of these Covenants.

5.4.3. Upkeep of Front, Rear and Side Yard Landscaping.

The Association shall also be responsible for Upkeep of the front yard landscaping adjacent to each Building.

5.4.4. Upkeep of Guest Parking Areas, Perimeter Fencing.

Any common guest parking areas and perimeter fencing shall be perpetually maintained by the Association.

5.5. Schedules for Preventative Maintenance.

The Board, with the assistance of the Association's Manager and/or other competent professionals, shall develop a schedule of routine Preventative Maintenance for all components of the Common Areas which require same, establishing appropriate times during each year when such maintenance should occur, and identifying qualified contractors to conduct such inspections and Preventative Maintenance.

5.6. Reserves for Major Repairs and Replacement.

The Board shall maintain reserves to repair and replace components of the Project which are subject to Upkeep by the Association. Periodically, the Board shall undertake an analysis of the adequacy of the



Association's reserve fund; such analysis should (i) conservatively ascertain the probable remaining useful life of each component of the Common Areas which will require replacement or major repairs, (ii) liberally estimate the probable cost of such replacement or repair for each such component, (iii) establish an annual reserve budget which would, when funded, eliminate the necessity for the imposition of a special assessment upon the Owners within the foreseeable future.

5.7. No Interference with Common Areas.

No Lot Owner shall obstruct any of the Common Areas nor shall any Lot Owner place or cause or permit anything to be placed on or in any of the Common Areas without the approval of the Board. Nothing shall be altered or constructed in or removed from the Common Areas except with the prior written consent of the Board of Directors.

5.8. Rights of the City of Burlington.

5.8.1. General Rights and Benefits.

These Covenants contain provisions which require the owners of Lots within the Project to provide ongoing compliance with the conditions of approval of the Short Plat. The obligations of the Lot Owners to the City are for the benefit of the City, and shall not operate to create an obligation of the City or by the City to the Owners or to any third party. The rights of the City contained in this Section 5.8 are cumulative, and in addition to all other rights and privileges held by the City, and are not in lieu thereof. The obligations of the Owners to the City shall not be amended or altered without the express written consent of the City.

5.8.2. Specific Rights.

The City shall have the right, for the benefit of the City and of the public health, safety and welfare, to perform or provide Upkeep to any or all of the Common Areas of the Project in the event that the Association or the Owners, or any of them, should fail to perform or provide such Upkeep in a competent and/or timely manner. In the event that the City shall incur any costs or expend any funds, directly or indirectly [including without limitation the cost of the City's own equipment and employees in performing or providing any such Upkeep], the Association shall be liable to the City for all costs and expenses so expended or incurred.

5.9. Right of Access.

Each Lot Owner shall afford to the Association, and to its agents or employees, access through the Owner's Lot as may be reasonably necessary for the purposes of maintenance, repair and replacement of the Common Areas. If damage is inflicted on the Lot or its any improvements or appurtenances as a result of such activities, the Association shall be liable for the repair thereof.

ARTICLE VI

MAINTENANCE OF COMMON AREAS



6.1. Driveways and Associated Drainage Facilities.

The private driveways and their associated drainage facilities are designed to provide means of ingress and egress, utilities and stormwater drainage capacity for the Project. No uses of any such areas may be made which interfere with the proper functioning of such facilities. The Association shall perpetually maintain all such areas in good and sightly condition for their intended purposes, continuously providing all maintenance, repair and replacement thereof. The dumping of solvents, oil, concrete or concrete residue, or water that is heavily laden with sediments, is expressly prohibited anywhere in the Project. All necessary Upkeep of the private components of the stormwater drainage system shall be conducted by the Association in accordance with the provisions of the DOE Stormwater Management Manual for Western Washington ["DOE Stormwater Manual"], as the same may be updated from time.

6.2. Perpetual Existence - Rights of the City of Burlington.

The restrictions contained in this Article VI shall exist in perpetuity. No changes in the uses described herein for any of the Common Areas may occur without the advance written approval of the City of Burlington.

ARTICLE VII

OWNERS ASSOCIATION

7.1. Name and Form of Association.

The name of the Association shall be "East Fairhaven Townhomes Owners Association." The Association has been or will be incorporated by the Declarant as a non-profit corporation under the laws of the State of Washington. The rights and duties of the members and of said corporation shall be governed by the provisions of the Homeowners Association Act and of this Declaration of Covenants. The Association shall remain organized in perpetuity as a nonprofit corporation. In case of any conflict between Chapter 24.06 RCW, the Nonprofit Miscellaneous and Mutual Corporations Act, and the Homeowners Association Act, Chapter 64.38 RCW, the Homeowners Association Act shall control.

7.2. Lapse of Corporate Status - Personal Lot-Owner Liability Created.

7.2.1. Association Must Remain Incorporated.

The Association shall have perpetual existence. The Lot Owners shall not permit its corporate charter to be dissolved or abandoned, nor may the Association's obligations under this Declaration of Covenants with respect to the Common Areas be altered or abandoned absent the advance written approval of the City of Burlington.

7.2.2. Incorporation Protects Owners - Owners Personally Liable Upon Abandonment.

Should the corporate charter for the Association be dissolved for any reason in violation of the foregoing, the Lot Owners shall become jointly and severally liable for all obligations imposed upon the Association under these Covenants. The corporate status of the Association exists to protect Lot Owners from personal liability, to the fullest extent provided by law.



7.3. Powers of Association.

The Association, through its Board of Directors, shall have all powers available to homeowners associations under the Homeowners Association Act, along with such additional powers as may be prescribed in the Bylaws of the Association.

7.4. Membership.

The Owner of each Lot shall be a member of the Association, and such membership shall be an inseparable appurtenance to the Owner's Lot.

7.5. Voting.

7.5.1. Voting Rights.

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

7.5.2. Allocated Interests.

The Declarant has allocated to each Lot in the Project an equal vote in the Association which is known as the Lot's Allocated Interest for voting, or "vote". Each Lot's Allocated Interest for voting is expressed as a percentage of the total voting power and is stated with particularity on the attached Exhibit A.

7.6. Bylaws of Association.

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

ARTICLE VIII

MANAGEMENT OF ASSOCIATION

8.1. Management by Declarant.

The Declarant has reserved the rights to (a) appoint and remove the Officers and members of the Board of Directors of the Association, and (b) veto or approve a proposed action of the Board or the Association, for a period of time known as the "Declarant Control Period" which, subject to the provisions of Section 17.3 hereof, shall persist until 5 of the Lots in the Project have been sold and closed.

8.2. Professional Management.

Provisions for professional management of the Association may appear in the Bylaws.



8.3. Authority of the Board.

8.3.1. General Authority.

The Board, for the benefit of the Project and the Owners, shall enforce the provisions of the Governing Documents and shall have all powers and authority granted to the Board or the Association under the Homeowners Association Act and this Declaration of Covenants which are not expressly subject to the approval of the Owners.

8.3.2. Incurring and Payment of Common Expenses.

The Board shall acquire and shall pay for, as Common Expenses, all goods and services deemed necessary or desirable for the proper functioning of the Association.

8.3.3. Acquisition of Property.

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

8.3.4. No Business Authority.

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

8.3.5. Board as Attorney in Fact.

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

8.4. Right of Entry.

The Board and its agents or employees may enter any Lot when necessary in connection with any Upkeep for which the Board is responsible, or in the event of emergencies. Except in the case of an emergency, reasonable advance notice shall be given to the Lot Owner and, if applicable, to any lawful tenant or subtenant in the Dwelling on the Lot. Such entry shall be made with as little inconvenience to the Occupant(s) as practicable, and any damage caused thereby shall be repaired by the Association out of the Common Expense fund if the entry was due to an emergency (unless the emergency was caused by the Owner or lawful occupant of the Lot entered, in which case the cost shall be specially assessed to the Lot entered) or for the purpose of Upkeep where the repairs were undertaken by or under the direction or authority of the Board. If the repairs or maintenance were necessitated by or for the Lot entered or its Owners or lawful occupants, or requested by its Owners, the costs thereof shall be specially assessed to such Lot.



## ARTICLE IX

### PERMITTED USES; ARCHITECTURAL UNIFORMITY

#### 9.1. Permitted Uses.

##### 9.1.1. Residential Uses.

The Lots and Dwellings in this Project shall be used for permanent residential purposes only, whether on an ownership, rental or lease basis and for common social, recreational or other reasonable uses normally incident to such purposes. Portions of a Dwelling may also be used for a professional office or other low impact "home office" use, provided that such use is consistent with all applicable laws, ordinances and regulations of any governmental authority, and so long as such use does not generate any appreciable levels of client or customer traffic, bulk shipping and receiving, noise or other disturbance to other Occupants of the Project.

##### 9.1.2. Temporary Structures - Service Sheds Excepted.

No structure of a temporary character, and no trailer, shack, shed or other temporary accessory buildings shall be erected, used or maintained on any Lot except in connection with construction activities, and then only during such time periods for construction as provided in Section 4.2.5 hereof. Small service sheds designed to contain gardening equipment and/or other small items, may be constructed and maintained within rear or side yard areas, following the written approval of the Board of Directors on a case by case basis, provided that any such structure shall be constructed and painted in a manner consistent with the architectural and color scheme of the Dwelling within the Townhouse Building and further provided that the Owner of such structure shall provide proper and consistent Upkeep to the structure; approval to maintain such a structure shall be revoked in the event that proper Upkeep is not provided. See Section 4.2.2 hereof.

##### 9.1.3. Vehicle Parking and Use.

Garage parking spaces are restricted to use for parking of automobiles, motorcycles, light trucks, family vans and other similar vehicles, and for storage of such other items that pose no unreasonable health, safety or fire risks to persons or property. Parking of up to two vehicles in driveways shall be permitted. Driveway parking spaces are restricted to use for parking of operable, properly registered automobiles, light trucks and family vans; other items and equipment may be parked or kept therein only if expressly permitted by Rules and Regulations and only in such parking areas, if any, as may be designated for such purpose by the Board of Directors. Oil and other fluid changes are prohibited. Vehicle repairs other than ordinary light maintenance are not permitted on the Property. The Board may require removal of any inoperative or unregistered vehicle, and any other equipment or item improperly stored in parking spaces. If the same is not removed, the Board may cause removal at the risk and expense of the owner thereof, under such reasonable procedures as may be provided by Rules and Regulations adopted by the Association. Any designated visitors parking areas shall be left open for use by visitors, guests, invitees and licensees of Lot Owners and their tenants. Vehicles shall be operated in a safe and responsible manner at all times within the Common Areas.



9.1.4. Private Yard Areas Within Lots.

Any portions of the yard areas of a Lot that are not maintained by the Association shall be maintained by the Lot's Owner in a neat and tidy manner, consistent with any rules and regulations adopted by the Board of Directors.

9.1.5. No Interference with Association Agents/Employees.

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

9.1.6. Effect on Insurance.

Nothing shall be done or maintained in any Lot or in the Common Areas which will increase the rate of insurance on the Common Areas or Lots without the prior written consent of the Board. No Owner shall permit anything to be done or maintained in his or her Lot or in the Common Areas which will result in the cancellation of insurance on any Lot or any part of the Common Areas.

9.1.7. Signs.

Initially, no sign of any kind shall be displayed to the public view on or from any Lot or the Common Areas without the prior consent of the Board; provided that this Section shall not apply to Declarant or Declarant's agents, nor shall it be deemed to prohibit the Owner of a Lot from displaying a sign for a period of time in which the Lot is for sale or rent. No signs advertizing home businesses are permitted. The Board may by resolution establish further policies regarding signs, to reflect the sentiments of the Project while giving due regard to traditional democratic rights of free speech, religion and expression of Persons owning or occupying Lots in the Project. The Board's judgment in such matters shall be conclusive, except as to matters controlled by applicable Federal or State law.

9.1.8. Animals.

The maintenance, keeping, boarding and/or raising of animals, livestock, poultry, or reptiles of any kind, regardless of number, shall be and is prohibited within any Lot or upon the Common Areas, except that the keeping of small birds, aquarium fish, well-behaved dogs and/or cats and other well-behaved domestic animals which are quiet and do not normally leave the Lot is permitted, subject to Rules and Regulations adopted by the Board of Directors. The owner of any animal maintained on the Property shall exercise appropriate control over the animal, and shall clean up after such animal and shall not permit deposits of fecal matter, urinary residue or foodstuffs from or for such animal to remain anywhere on the Common Areas. Any Lot Owner who keeps or maintains any animal upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association, each Lot Owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such animal within the Project. All animals shall be registered and inoculated as required by law. The Board may at any time require the removal of any animal which it finds is or has become an unreasonable source of annoyance, and may exercise this authority for specific animals even though other animals are permitted to remain. The Board may also adopt rules and regulations governing pets, which may restrict the number and type of animals that may be permitted within a Lot.



9.1.9. Noise.

No person shall cause any unreasonably loud noise anywhere in the Project, nor shall any person permit or engage in any activity, practice or behavior for the purpose of causing annoyance, discomfort or disturbance to any person lawfully present on any portion of the Property. Quiet hours shall be observed from 10:00 p.m to 7:00 a.m., during which only minimal noise shall be permitted to emanate from any Lot.

9.1.10. Offensive or Illegal Activity.

No noxious, offensive or illegal activity shall be carried on in any Lot or Common Areas, nor shall anything be done therein which may be or become an unreasonable source of annoyance or nuisance to other Owners. No firearms or explosive devices may be discharged within the Project

9.1.11. Compliance with Environmental Laws.

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

9.1.12. Hazardous Substances.

A person shall maintain or store on or in the Property only such property and materials which may be legally possessed by such person. No person shall improperly store within or release from a Lot or into the Common Areas any petroleum distillates, liquid or aromatic hydrocarbons, medical wastes or infectious biological agents, acids, caustics, carcinogens, mutagens, heavy metals, or any other inflammable, toxic, explosive, radioactive, or other type of substance which may be hazardous to either the Project or to the public health or safety, or the health or safety of any lawful occupants of the Project, any and all such substances being known herein as Hazardous Substances.

9.1.13. Trash and Recycling Facilities.

Garbage and recycling containers shall be maintained so as to be not visible from the driveway areas, except on scheduled collection days. Trash and garbage shall not be permitted to accumulate within a Lot other than in approved containers in approved locations.

9.1.14. Open Fires.

Open burning is not permitted on the Property, except that outdoor fireplaces or grills may be used if equipped with fire screens to prevent the discharge of embers or ashes.



9.1.15. Lighting.

Exterior lighting on the Dwellings shall be maintained in accordance with the common scheme for such lighting established during initial construction of the Dwellings by the Declarant. Exterior lighting should be generally unobtrusive and shielded from direct view, so that it does not shine into windows of other Dwellings.

9.1.16. Clotheslines.

No clotheslines may be installed within portions of the Lot that are visible from the driveway areas or from other Dwellings.

9.1.17. Television and Radio Antennas, Dishes.

Per published regulations of the Federal Communications Commission, Satellite TV antennas/dishes 1 meter or less (approximately 36") in diameter may be installed within portions of the Lot that are not generally visible from the driveway areas. Larger satellite dishes and other types of reception or transmission antennas may be installed within a Lot only if reasonably screened from view from other Dwellings and the Common Areas. Ham radio and "citizens band" antennas may be used for transmission purposes only so long as they do not cause interference with electronic equipment of neighboring property owners.

9.1.18. Construction Activities.

This Section shall not be construed as forbidding any work involved in the construction or Upkeep of any portion of the Property so long as such work is undertaken and carried out (i) with the minimum practical disturbance to persons occupying other portions of the Property; (ii) in such a way as does not violate the rights of any person under other provisions of this Declaration of Covenants; (iii) consistent with any and all municipal permitting requirements; and (iv) in accordance with all applicable restrictions in the Rules and Regulations, the resolutions of the Board of Directors and the other provisions of this Declaration of Covenants. The Board of Directors may approve temporary structures for construction purposes which may otherwise be in violation of the Governing Documents or the Rules and Regulations.

9.1.19. Uses by Declarant.

Nothing in the Governing Documents shall be construed to prohibit the Declarant or its designees from using any Lot owned by the Declarant (or any other Lot with the permission of the Owner thereof) or any portion of the Common Areas for promotional, marketing, display or customer service purposes (such as a visitors' center) or for the closing of sales of Lots. Further, the Declarant specifically reserves the right to operate a construction office or a rental, brokerage and management office at any time on Lots owned or leased by the Declarant (or any other Lot with the permission of the Owner thereof) and on any portion of the Common Areas, to the extent permitted by law. The Declarant may assign its rights under this subsection to or share such rights with one or more other persons, exclusively, simultaneously or consecutively with respect to the Common Areas and Lots owned or leased by the Declarant or such persons.



9.1.20. Lease Restrictions.

With the exception of an institutional lender in possession of a Lot following a default under a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Lot Owner shall be permitted to lease all or any portion of a Lot for periods of less than thirty days, except in cases of pre-closing or post-closing occupancy agreements to facilitate *bona fide* lot sales. Any lease agreement shall be required and deemed to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration of Covenants, the Bylaws and Rules and Regulations, and that any failure by the Lessee to comply with such provisions shall be a default under the lease, entitling the Association to enforce such provisions as a real party in interest. All leases shall be in writing. A lease, as defined herein, shall include month-to-month rentals. Any tenant or subtenant of any portion of a Lot shall be deemed to have assumed all the responsibilities of an Owner under this Section of the Declaration of Covenants.

9.1.21. Assignment or Subletting.

The assignment or subleasing of a Lot shall be subject to the same limitations as are applicable to the leasing or renting thereof. An Owner or tenant may not exempt himself or herself from any liability under this Declaration of Covenants or the Bylaws or Rules and Regulations by assigning or subleasing the occupancy rights to his or her Lot.

9.2. Architectural Control.

9.2.1. General Authority of Board of Directors.

To assure the health, safety and enjoyment of persons lawfully using any portion of this Project, and to promote visual harmony within the Project, the Board of Directors shall have the power and the duty to enforce architectural control over the improvements constructed within the Project, and may adopt Design Guidelines for any and all items of construction within the Lots not undertaken by the Declarant. The Board shall regulate the external design, signage, appearance, use and maintenance of the Property in accordance with the provisions of the Declaration of Covenants and any Design Guidelines. Following termination of the Declarant Control Period described in Section 8.1 hereof, no construction within the Project may occur absent the approval of the Board of Directors.

9.2.2. Uniform Appearance of Townhouse Buildings.

Generally, no improvements may be constructed which will alter those portions of a Dwelling which constitute the front of a Townhouse Building. In the event that a change to the front or side of a Dwelling is proposed, the consent of a majority of other Lot Owner(s) in the affected Townhouse Building shall be a prerequisite to an application to the Board for approval of such improvements.

9.2.3. No Liability for Architectural Review.

Neither the Declarant nor the Board of Directors shall be liable to any party for any good faith action or failure to act under the provisions of this Declaration.



## ARTICLE X

### ASSESSMENTS AND LIENS FOR COMMON EXPENSES

#### 10.1. Assessments for Common Expenses.

##### 10.1.1. Liability for Assessments - Allocated Interests for Common Expense Liability.

Except as provided in Section 10.1.4 hereof, the total amount of the estimated funds required to pay the Common Expenses of the Association set forth in the Annual Budget adopted by the Association pursuant to Section 10.2 hereof for the fiscal year shall be assessed against the Lots in proportion to their respective Allocated Interest for Common Expense Liability. The allocation of this liability among the Lots has been determined generally on the basis of the size and type of the Building or portion thereof located within each Lot relative to those located within all other Lots in the Project. Each Lot's Allocated Interest for Common Expense Liability is expressed as a percentage and is stated with particularity on the attached Exhibit A.

##### 10.1.2. Timing of Payments.

Until changed by resolution of the Board of Directors, Assessments against each Lot for its share of the Common Expenses shall be due and payable on the first day of each month. The Board may adopt further payment policies which permit payment in installments under conditions to be determined by the Board.

##### 10.1.3. Special Assessments.

The Board of Directors may levy a Special Assessment for the purpose of defraying the cost of any unexpected repair or other nonrecurring contingency, or to meet any other deficiencies in operations or reserves occurring from time to time, but by statute, the Budget Ratification process described in Section 10.2 must be undertaken by the Board with respect to any such Assessment.

##### 10.1.4. Limited Common Assessments.

(a) Common Expenses incurred exclusively for the benefit of fewer than all Lots shall be assessed solely against those Lots as Limited Common Assessments.

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

(c) Common Expenses associated with any Upkeep provided by the Association to a Lot, and any other costs, fees, charges, insurance deductibles or fines imposed or incurred by the Association associated with the Lot under this Declaration of Covenants, along with any costs and/or attorney's fees recoverable under the Governing Documents, and interest on any delinquent account shall constitute Limited Common Assessments.

(d) Unless otherwise directed by the Board, any Limited Common Assessment shall be due and payable within thirty (30) days following its imposition.



**10.1.5. Owners Personally Liable for Common Expenses.**

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

**10.2. Annual Budget - Development and Ratification.**

**10.2.1. Budget for Common Expenses - Reserve Fund.**

Not less than 45 days prior to the Annual meeting of the Association, or at such other time as may be deemed necessary or desirable by the Association's accountant, the Board shall prepare an Annual Budget which shall estimate the Common Expenses, described generally in the Covenants, to be paid during such year. Costs or expenses required to be assessed against fewer than all the Lots will be properly assessed only against the affected Lots. The Budget shall also contain provisions for creating, funding and maintaining reasonable reserves for major repairs to and replacements of the Common Areas, capital improvements and the amount(s) of any deductible from insurance policies obtained by the Association, and shall further take into account any expected income and any surplus available from the prior year's operating fund.

**10.2.2. Meeting of Association to Approve Budget.**

Within thirty days after adoption of any proposed budget for the Association, the Board of Directors shall provide a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the Owners to which a majority of the votes in the Association are allocated reject the budget, the budget 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 Lot Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors. Pursuant to RCW 64.38.025(3), this procedure shall be deemed to govern both general assessments and special assessments.

**10.3. Liability Following Conveyance of Lot.**

A selling Lot Owner shall not be liable for the payment of any part of the Common Expenses assessed against his or her Lot subsequent to a sale, transfer or other conveyance by him of such Lot. The purchaser of a Lot shall be jointly and severally liable with the selling Lot Owner for all unpaid Assessments against the Lot up to the time of the conveyance without prejudice to the purchaser's right to recover from the selling Lot Owner the amounts paid by the purchaser therefore. The holder of a mortgage or other



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

10.4. Lien for Assessments.

The Association shall have a lien on a Lot for any unpaid Assessments levied against a Lot from the time the Assessment is due. If an Assessment is payable in installments, the Association has a lien for the full amount of the Assessment from the time the first installment thereof is due.

10.5. Perfection of Lien.

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

10.6. Priority of Lien.

10.6.1. A lien under this Section shall be prior to all other liens and encumbrances on a Lot except: (a) Liens and encumbrances recorded before the recording of the Declaration of Covenants; (b) a mortgage on the Lot 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 Lot.

10.6.2. The Association's lien shall also be prior to the mortgages described in subpart (b) of Section 10.7.1 hereof, to the extent of Assessments for Common Expenses, excluding any amounts for capital improvements, based on the annual Budget adopted by the Association which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the Association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.

10.7. Enforcement of Lien.

The lien arising under this section shall 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 Lot at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. The Association may elect to take a deed in lieu of foreclosure in any such proceeding.

10.8. Limitation of Lien Enforcement.

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



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

10.9.1. Rent Payable to Association Upon Default of Owner.

If a Lot is rented or leased by its Owner, and if the Owner becomes delinquent in the payment of assessments for more than 90 days, the Association may collect the delinquent amount from the tenant, who shall pay over to the Association so much of the rent for such Lot as is required to pay such delinquency, plus interest, attorneys' fees and other costs of collection. In order to avail itself of the remedy contained in this Subsection, the Association shall first send a notice jointly to the Owner and the Tenant by First Class U.S. Mail, advising both parties [a] of the Owner's delinquency in assessments [b] of the tenant's obligations under this Subsection of the Declaration, and [c] notifying both parties that if such delinquency is not cured within ten (10) days of mailing, the tenant must commence paying rent to the Association until the delinquency has been cured. The tenant shall not have the right to question payment to the Association, and such payment shall discharge both the tenant's duty to pay rent to the Lot Owner and the Lot Owner's obligation to pay assessments, *pro tanto*. The Association shall not resort to this remedy where a receiver has been appointed and is collecting such rents, as provided immediately below in Section 10.9.2.

10.9.2. Association Entitled to Appointment of Receiver.

From the time of commencement of an action by the Association to foreclose a lien for nonpayment of delinquent Assessments against a Lot 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 Lot as and when due. If the rent is not paid, the receiver may obtain possession of the Lot, refurbish it for rental up to a reasonable standard for rental Lots in this type of project, rent the Lot 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 Lot, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent Assessments. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Lot.

10.10. Remedies Cumulative.

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

ARTICLE XI

INSURANCE MATTERS

11.1. Authority for Association Coverage, Name of Insured.

The Board of Directors may obtain and maintain casualty and liability insurance under such terms and for such amounts as shall be deemed necessary by the Board of Directors. The name of the insured under all such policies shall be "East Fairhaven Townhomes Owners Association."



11.2. Deductible.

Funds to cover the amount of any deductible shall be included in the Association's reserve accounts.

11.3. Insurance for Lot Owners.

11.3.1. Property Insurance - Townhouse Policy.

Each Lot Owner shall promptly obtain, at such Owner's expense, a "townhouse owner's policy" of property insurance which covers the Owner's Dwelling, its bathroom, laundry and kitchen equipment, all fixtures and cabinets, together with all included electrical and plumbing fixtures and equipment, any heating and ventilating and other equipment. The policy may also cover the Owner's furniture, furnishings, clothing or other personal property supplied or installed by the Owner. Such coverage shall be provided on a 100% replacement value basis, subject to a deductible not to exceed 2% of such replacement value, absent the written approval of the Board of Directors. All Owners in each Townhouse Building are encouraged to obtain insurance from the same carrier in order to avoid gaps in or duplication of coverage. The Association will not maintain insurance covering any of the Owners' property.

11.3.2. Residential Liability Insurance.

Each Owner should also obtain liability coverage insuring against all risks normally covered under a policy providing insurance for a dwelling constructed in a "zero lot line" or "townhouse" project.

11.3.3. Association Named Additional Insured.

Each policy shall also designate the Association as an additional insured for any coverage for which the Association may be so designated.

11.3.4. Waiver of Right to Make Cash Settlement in Lieu of Rebuilding.

The policy shall provide that no loss may be adjusted to provide a cash payment to the Owner in lieu of rebuilding the Dwelling absent the consent of the Association; see Section 4.5 hereof for justification.

11.3.5. Certificate of Insurance to Association.

An insurer that has issued an insurance policy under this Section shall issue a certificate or memorandum of insurance to the Association at the inception of coverage, and for each renewal thereof, and shall also provide the Association with a notice of any cancellation or non-renewal thereof.

ARTICLE XII

CONDEMNATION

In the event that Common Areas of the Project become subject to eminent domain proceedings, the Association shall be a necessary party to such proceedings. In the event that a Lot becomes subject to eminent domain proceedings, the Association may, at the request of the Owner of such Lot, intervene in such proceedings.



## ARTICLE XIII

### COMPLIANCE WITH LAW AND COVENANTS

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

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

#### 13.2. Liability for Conduct Causing Common Expense.

##### 13.2.1. General Liability.

Each Owner shall be liable for the cost of all maintenance, repair or replacement rendered necessary by his or her act, neglect or carelessness, or the act, neglect or carelessness of any member of his or her family or his or her employees, agents, tenants or licensees. See Section 10.1.4 hereof.

##### 13.2.2. Owner's Liability For Damages Arising from Unoccupied Lot.

Without limiting the provisions of Section 13.2.1 hereof, an Owner will be liable for all damages to the Owner's Dwelling or Lot, to the Common Areas or to any other Lot, which result from any condition which arises within the Owner's Lot, such as broken or plugged pipes, during a period of time that the Owner has left the Lot unoccupied for a period of thirty days or more. Owners are encouraged to notify the Board of any such period of absence so that the Board may cause inspections to be made of the Lot pursuant to Section 8.4 hereof.

#### 13.3. Enforcement by Association.

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

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

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





## ARTICLE XIV

### LIMITATION OF LIABILITY

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

Except to the extent covered by insurance obtained by the Board pursuant to Article XI, neither the Association nor the Board nor the Declarant shall be liable for any failure of any equipment or services obtained by the Board, or for injury or damage to person or property caused by the elements, 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 liability for Common Expense Assessments shall be claimed or allowed for any such injury or damage, or for such inconvenience or discomfort.

#### 14.2. No Bailment.

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

## ARTICLE XV

### MORTGAGEE PROTECTION

Any representative of a Mortgagee or the institutional insurer of any mortgage may attend and address any meeting which a Lot Owner may attend. Any such party shall be entitled to copies of the Association's financial statements, at the expense of such party, upon written request.

## ARTICLE XVI

### EASEMENTS AND SPECIAL DECLARANT RIGHTS

#### 16.1. Easements for Lots and Lot Owners.

##### 16.1.1. In General.

Each Lot has an easement in and through each other Lot and the Common Areas for ingress and egress, for utilities, for lateral and/or subjacent support, and for the performance of any Upkeep which necessitates access.

##### 16.1.2. Specific Easements Shown on Short Plat.

Easements shown on the Short Plat are hereby confirmed. Any easement shown on the Short Plat which benefits one or more Lots in the Subdivision, or which benefits any third parties or any real property not included within the Project, confers various rights and benefits upon such third parties or



owner(s) of any such real property, and may also impose obligations upon the Association. Reference should be made to the Short Plat.

**16.1.3. Limitations on Easements Shown on Short Plat.**

Each driveway easement or easement for stormwater or utilities lying on the perimeter of the Property is designed to serve the Dwellings abutting such easement. No uses may be made of any such easement which would interfere with any lawful uses of the Dwelling or the Lot on which it is situated.

**16.2. Easements for Townhouse Dwellings on Adjacent Lots.**

Dwellings in Townhouse Buildings constructed on adjacent Lots share common improvements and facilities, which require that all such Lots be perpetually benefitted and burdened, as the case may be, by the following additional easements and covenants:

**16.2.1. Interior Boundary Walls - Party Walls.**

All Dwellings have been constructed such that each Dwelling includes at least one separately-framed interior wall abutting upon the common boundary separating the Lots sharing such common boundary; both such walls shall share a common foundation. Those portions of the walls and foundations which serve both Dwellings in the Townhouse Building shall at all times be considered party walls. Each Lot has an easement of support over the foundation areas on adjacent Lots for maintenance of and Upkeep to the Lot's portions of the party wall. The costs of Upkeep to such foundations shall be borne equally by the Owners of the Dwellings served thereby. Each interior wall abutting upon the common boundary shall be deemed to exist to provide lateral support and protection from the elements for the adjacent Dwelling. Each such interior wall shall be perpetually maintained by the Owner of its Dwelling for such purposes.

**16.2.2. Roofs, Gutters & Siding.**

The Owner of each Dwelling shall be responsible for the maintenance, repair and replacement of that portion of the siding materials and the common roof and gutter system as is located or installed upon or attached to the Dwelling, except to the extent that the Association may elect to provide such Upkeep. Each Lot has an easement over all structural members of Dwellings on adjacent Lots, for the purpose of supporting the roof structure on the Lot. An easement is granted over all portions of all roofs in the Project and all portions of all Lots that are necessary to provide access to such roofs to facilitate Upkeep of such roofs by Owners and/or the Association.

**16.2.3. Shared Fencing, Entrance Areas and Walkways.**

Any shared entry area within or adjacent to a Townhouse Building, along with any fence, private landscaping or other improvements constructed along the common boundary line between two Lots, exist for the benefit of the Dwellings served thereby. Each Owner of a Dwelling sharing such facilities shall be jointly responsible for the maintenance, repair and replacement of those facilities, except to the extent that the Association may elect to provide such Upkeep.



16.2.4. Lien for Upkeep Expenses.

If an Owner fails to properly maintain, repair or replace any of the improvements which are the responsibility of such Owner under this Section 16.2, or to pay his or her fair share of a shared obligation after thirty (30) days written notice, then the Association or the other Owner may have such work done, by licensed, bonded contractors, on the account of the responsible Owner. The responsible Owner's obligation to pay such costs of maintenance, repair or replacement shall constitute an equitable lien, in favor of the party actually paying such costs, against the responsible Owner's Lot; said lien, if not paid within thirty (30) days following delivery by mail of a reasonably itemized invoice therefor, may be foreclosed in the manner of a mortgage on real property.

16.2.5. Encroachments.

Each Lot has an easement over an adjoining Lot for encroachments resulting from errors in engineering, surveying or original construction, from shifting or settlement of constructed improvements, for building projections and/or overhangs, from repair or reconstruction following partial or total destruction, and from other similar causes, but not from any construction undertaken by the Lot Owner undertaken without the approval of the Board of Directors which inadvertently or intentionally causes an encroachment. Any permitted encroachments shall be permitted to remain in place for so long as the encroaching structure continues to exist within the Lot, and shall not be deemed to create a condition of unmarketable title with respect to the Lot upon which the encroachment exists.

16.3. Easement for Association Functions.

There is hereby granted and reserved to the Association, or its duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Association as are set forth in the Governing Documents.

16.4. Easement for Utilities and Emergency Access.

16.4.1. Easement for Utilities.

A non-exclusive perpetual blanket easement is hereby granted over and through the Property for ingress, egress, installation and Upkeep of any utility lines, pipes, wires, ducts, conduits and/or other facilities and equipment for providing to any portion of the Property utilities of any type, whether public or private; such easement is hereby granted to any person installing or providing Upkeep for such utilities. Any pipes, conduits, lines, wires, transformers or any other apparatus necessary for the provision or metering of any utility may be installed, maintained or relocated where permitted by the Declarant or where approved by resolution of the Board of Directors.

16.4.2. Easement for Emergency Access.

A non-exclusive perpetual easement is hereby granted on, over, under and across the Common Areas to all police, fire, ambulance and other rescue personnel for the lawful performance of their functions during emergencies.



16.5. Easements for Declarant.

The Declarant reserves to itself and its any lawful successors an easement through the Common Areas for any and all activities necessary or desirable to complete the development of the Project or for exercising Special Declarant Rights.

16.6. Special Declarant Rights.

The Declarant has reserved the following Special Declarant Rights for the purpose of furthering and completing the development of the Project: To complete the construction of any Dwelling or other Building or any improvements indicated on the Short Plat or described earlier in the Declaration of Covenants; to maintain sales offices, management offices, signs advertising the Project, and models on the Property, all in such location or locations as the Declarant may unilaterally determine; to use easements through the Common Areas for the purpose of making improvements within the Project; and to appoint or remove any officer of the Association or any member of the Board of Directors, or to veto or approve a proposed action of the Board or Association during the Declarant Control Period described in Section 8.1 hereof; the Declarant shall be deemed to hold a proxy from all Lot Owners during the Declarant Control Period for such purposes.

ARTICLE XVII

AMENDMENT OF DECLARATION OF COVENANTS

17.1. Procedure for Amendment of Declaration of Covenants.

Amendments to the Declaration of Covenants shall be made by an instrument in writing entitled "Amendment to Declaration of Covenants" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration of Covenants, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Owners. Except in cases of amendments that may be adopted by the Declarant unilaterally pursuant to Section 17.3 hereof, amendments may be adopted only at a meeting of the Owners if at least two-thirds of the votes in the Association are cast for such amendment, or without any meeting if all Owners have been duly notified and Owners holding at least two-thirds of the votes in the Association consent in writing to such amendment. In all cases, the amendment when adopted shall bear the acknowledged signature of the President of the Association.

17.2. Recordation Required.

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

17.3. Amendments by Declarant.

The Declarant may unilaterally adopt and file amendments to the Declaration of Covenants and to the Short Plat for so long as the Declarant is the Owner of any Lot in the Project or until the expiration of the time limit for the exercise of any Development Rights or Special Declarant Rights reserved by the Declarant, in order to conform them to the actual location of any of the constructed improvements and to



establish, vacate and relocate utility easements, access easements and parking areas, to satisfy the requirements of the City of Burlington, any title insurance company or institutional lender, or to correct any nonmaterial technical errors contained in the Governing Documents or to clarify provisions of same.

17.4. Amendment Requiring Approval of City of Burlington.

No provision of this Declaration of Covenants which confers any rights on the City of Burlington may be amended absent the advance written approval of the City of Burlington.

ARTICLE XVIII

MISCELLANEOUS

18.1. Notices for All Purposes, Delivery.

18.1.1. Any notice permitted or required to be delivered under the provisions of the Declaration of Covenants or the Bylaws may be delivered either personally or by mail, addressed to the person entitled to such notice at the most recent address given by such person to the Board in writing, or to the most recent address known to the Board. Notice to the Owner of any Lot shall be sufficient if mailed to his or her Lot if no other mailing address has been given to the Board. Mailing addresses may be changed from time to time by notice in writing to the Board. Notice to be given to the Association may be given to the President or Secretary of the Association, or to its Registered Agent. Notice may also be provided to any person in any manner permitted by statute.

18.1.2. New Lot Owners must supply their names, addresses and telephone numbers to the Secretary of the Association promptly after conveyance.

18.2. Severability.

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

18.3. No Right of First Refusal.

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

18.4. Effective Date.

This Declaration of Covenants shall take effect upon recording.

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DATED this 2nd day of FEBRUARY, 2011.

DECLARANT:

Roger W. Helgeson  
ROGER W. HELGESON

STATE OF WASHINGTON )

) ss.

COUNTY OF SKAGIT )

I hereby certify that I know or have satisfactory evidence that ROGER W. HELGESON is the person who appeared before me, and said person acknowledged that he signed this instrument and on oath stated that he acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: FEB. 2, 2011.

BRUCE G. LISSER  
STATE OF WASHINGTON  
NOTARY --- PUBLIC  
My Commission Expires 7-14-2012

[Signature]  
NOTARY PUBLIC for the State of  
Washington. My Commission  
expires 7-14-12



**EXHIBIT "A"**  
**TO DECLARATION OF COVENANTS**  
**FOR**  
**EAST FAIRHAVEN TOWNHOMES**

<b>Lot No.</b>	<b>Street Address</b>	<b>Lot Size†</b>	<b>Allocated Interest*</b>
1	1225 E. Fairhaven Avenue	2759	16.67%
2	1227 E. Fairhaven Avenue	2718	16.67%
3	1229 E. Fairhaven Avenue	2601	16.67%
4	1231 E. Fairhaven Avenue	2552	16.67%
5	1233 E. Fairhaven Avenue	1411	16.67%
6	1235 E. Fairhaven Avenue	1359	16.67%
<b>Totals</b>		<b>13,400</b>	<b>100.00%</b>

\* Allocated interests are the percentages of undivided interests in the Common Elements, fractional liability for the Common Expenses of the Association, and portions of the votes in the Association, allocated to each Lot under Sections 5.3, 7.5.2, and 10.1.1 of this Declaration of Covenants.

† Square footage is inclusive of easement areas.



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