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**AMENDED AND RESTATED DECLARATION AND COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS AND RESERVATIONS  
SAN JUAN PASSAGE  
ANACORTES, WA**

GRANTOR: SAN JUAN PASSAGE HOMEOWNERS ASSOCIATION

GRANTEE: SAN JUAN PASSAGE

LEGAL DESCRIPTION: SAN JUAN PASSAGE ACCORDING TO DECLARATION  
RECORDED UNDER SKAGIT COUNTY AUDITORS FILE NO.  
200811260100. ALONG WITH PLAT MAP RECORDED UNDER  
AUDITORS FILE NO. 200811260099 AS THEREAFTER  
AMENDED.

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REFERENCE # (If applicable): 200811260100

**AMENDED AND RESTATED DECLARATION AND COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS AND RESERVATIONS  
SAN JUAN PASSAGE  
ANACORTES, WA**

**RECITALS**

The Declaration and Covenants, Conditions, Restrictions, Easements and Reservations for San Juan Passage (the "Original Declaration") was recorded on November 26<sup>th</sup>, 2008 under Skagit County Auditor's file no. 200811260100, along with the Plat Map for Phase 1 which was recorded on November 26<sup>th</sup>, 2008 under Skagit County Auditor's file no. 200811260099.

The Declaration was previously amended by the First Amendment to Declaration and Covenants, Conditions, Restrictions, Easements and Reservations for San Juan Passage Anacortes, WA recorded under Skagit County Auditor's file no. 201105240062.

Plats for Phases 2 through 5 of the Community were recorded under Skagit County Auditor's file nos. 201105020052, 201112080064, 201212260122 and 201402140089, respectively

The San Juan Passage Homeowners Association (hereinafter the "Association") desires to replace and supersede the Original Declaration and its previous amendments.

To accomplish the foregoing purpose, the undersigned Declarant of the Association certifies that the procedures for amending the Declaration have been followed and acknowledge and attest, by their signature below, the adoption of the following Amended and Restated Declaration.

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by GP Anacortes, LLC, a Rhode Island Limited Liability Company duly registered with the Secretary of State of Washington, hereinafter referred to as the "Declarant,"

**AMENDED AND RESTATED DECLARATION AND COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS AND RESERVATIONS  
SAN JUAN PASSAGE  
ANACORTES, WA**

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ARTICLE I  
PRELIMINARY MATTERS, PURPOSE

1.1 Identification of Original Declaration of Covenants and Prior Amendments.

A certain "Declaration of Covenants, Conditions, Restrictions, Easements and Reservations - Plat of San Juan Passage" (the "Covenants") for the San Juan Passage Subdivision ("the Community") in Anacortes, Skagit County, Washington, was recorded by the Declarant at Auditor's File No. 200811260100 among the land records of Skagit County, Washington, along with the Plat of San Juan Passage, Phase 1 (the "Plat") which was contemporaneously recorded at Auditor's File No. 200811260099 among the land records of Skagit County, Washington. The Covenants have been amended by a First Amendment recorded at Auditor's File No. 201105240062. Plats for Phases 2 through 5 of the Community were recorded at Auditor's File Nos. 201105020052, 201112080064, 201212260122 and 201402140089, respectively. Said Plats, and any similar instruments prepared and recorded hereafter by Declarant in the exercise of Special Declarant Rights shall be known herein as the "Platting Documents." (See Exhibit C)

1.2 Purpose of Amended and Restated Declaration of Covenants.

The original Covenants for the Community were inadvertently written without reference to essential provisions of the Washington State Homeowners Association Act, chapter 64.38 RCW [the "Act"], and were skeletal in their approach to several issues of importance to the Community, including the rights and responsibilities of the Association in relation to its members, and in relation to the Common Areas of the Community. This Amended and Restated Declaration of Covenants is intended to rectify those oversights and provide a system of governance for the Community consistent with the provisions of the Washington Homeowners Association Act.

1.3 Description of Procedures Required for Amended and Restated Declaration of Covenants.

Pursuant to Article 8 of the original Covenants for this Community, the Covenants may be amended unilaterally by the Declarant at any time prior to the Transition Date specified in the Covenants. The Transition Date has not matured as of the date of the adoption of this instrument.

1.4 Applicability Following.

Except as otherwise expressly described hereinafter, this Amended and Restated Declaration of Covenants shall completely replace and supersede the original Covenants, as to all events and circumstances occurring after the date of the recordation of this Amended and Restated Declaration of Covenants, which shall be deemed to be the effective date hereof. The covenants, conditions, restrictions contained in this Amended and Restated Declaration of Covenants shall be binding in perpetuity upon all Property within the Community and upon each Lot or parcel therein as a parcel of realty, and upon their respective Owners and their family members, heirs, personal representatives, tenants, licensees, successors and assigns, through all successive transfers of a Lot or of any other part of the Property, irrespective of whether specifically referred to in deeds, contracts or security instruments, and regardless of any subsequent forfeitures, foreclosures, or sales of Lots under security instruments, or of any forfeitures, foreclosures, or sales instituted for nonpayment of government tax, levy or assessment of any kind.

1.5 Specific Purposes - Governance of Community.

The specific purpose of this Amended and Restated Declaration of Covenants is to maintain an effective governance structure for the Community to facilitate its perpetual existence so that facilities and services essential to the Upkeep of common Property and to the well-being of the Occupants of the Community may be assured. The Community shall be governed in perpetuity by the Community Association described at Section 7.1 of this Declaration of Covenants.

ARTICLE II  
DEFINITIONS

2.1. "Alleyway Lots" means those Lots along the private alleys constructed within the 20 foot Access and Utility Easement areas providing rights of ingress, egress and utilities to specifically; (i) Lots 28, 29 and 37 and (ii) the land contained within the Property on Lots 30 – 36 and Lots 41 - 44. Prior to adoption of this Amended and Restated Declaration of Covenants, these Lots were collectively the "Section 2.10 Lots".

2.2. "Allocated interest" means the undivided interest in the Common Areas, the Common Expense Liability, and votes in the Association allocated to each Lot by the provisions of Sections 5.4, 7.5.2 and 10.6 of this Declaration of Covenants.

2.3. "Architectural Review Committee" ("ARC") means the individual or group designated by the Declarant or the Board of Directors pursuant to Section 9.2 hereof, to coordinate compliance with the Design Guidelines of the Community.

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

2.5. "Association" means the nonprofit corporation identified in Article VII hereof, that has been incorporated at the direction of the Declarant to manage the Common Areas of this Community and perform other valuable functions.

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

2.7. "City" means the City of Anacortes.

2.8. "Common Areas" means all portions of the Community other than the Lots. Such areas are typically denoted as "Tracts" on the Platting Documents, include areas of land, along with specific facilities and improvements.



- 2.9. "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
- 2.10. "Common Expense Liability" means the liability for Common Expenses allocated to each Lot pursuant to Section 10.6 of this Declaration of Covenants.
- 2.11. "Community" means all the Property depicted within the Platting Documents, along with all the improvements constructed therein, and all other institutions and things serving the Owners of Lots therein governed by the Association.
- 2.12. "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.
- 2.13. "Declarant" means the entity, Person or group of Persons acting in concert (a) who executes this Declaration of Covenants, or (b) who reserves or succeeds to any Special Declarant Right under the Declaration of Covenants [a "Successor Declarant"]. An "Affiliate" of the Declarant means any Person who controls, is controlled by, or is under common control with the Declarant, in the sense described in RCW 64.34.010(1).
- 2.14. "Declarant Control" means the right of the Declarant or Persons designated by the Declarant to appoint and remove officers and members of the Board of Directors 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.
- 2.15. "Declaration of Covenants" or "Amended and Restated Declaration of Covenants" means this document, which facilitates the governance and management of this Community; the term also includes any lawful amendments to this document.
- 2.16. "Design Guidelines" means the standards developed by the Board of Directors or a Committee pursuant to Article IX hereof, and any standards established by the Declarant.
- 2.17. "Development Plan" means the formal plan of development approved by the City of Anacortes for the development of the Community, described in greater detail in Section 3.1 hereof, recorded with the Auditor of Skagit County, Washington as described in Section 1.1 hereof. The term also includes any amendments thereto approved by the City of Anacortes.
- 2.18. "Development Right" means any right or combination of rights reserved by the Declarant in the Declaration of Covenants: (a) To add real property or improvements to the Community; (b) to create Lots or Common Areas within real property included in or which may be added to the Community; (c) to subdivide or combine Lots or convert Lots into Common Areas; or (d) to withdraw real property from the Community. Development Rights affecting this Community are described in Section 3.3 hereof. Development Rights are personal to the Declarant and may be exercised, or not exercised, in Declarant's sole and absolute discretion.
- 2.19. "Dwelling" or "Dwelling Unit" shall mean a single-family residence constructed or proposed to be constructed on a Lot.

- 2.20. "Eligible Insurer" means the insurer or guarantor of a mortgage on a Lot 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. The term "Eligible Insurer" includes such entities as the Veterans Administration, the Federal Housing Administration or the like.
- 2.21. "Eligible Mortgagee" means the holder of a mortgage on a Lot 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. The term "Eligible Mortgagee" also includes the "servicer" of a mortgage which has been acquired or securitized by secondary mortgage market entities such as the Federal National Mortgage Association ("FNMA" or "Fannie Mae") or the Federal Home Loan Mortgage Corporation ("FHLMC" or "Freddie Mac") or the like.
- 2.22. "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a mortgage or a deed in lieu thereof.
- 2.23. "Governing Documents" means this Declaration of Covenants, the Platting Documents, the Design Guidelines, the Articles of Incorporation and Bylaws of the Association, the Development Plan for the Community approved by the City of Anacortes, along with any Rules and Regulations adopted by the Board of Directors, and any lawfully adopted amendments to any of the above.
- 2.24. "Governing Law" means the Washington Homeowners Association Act (Chapter 64.38 RCW, the "Act") or any successor statute, and any amendments thereto.
- 2.25. "Limited Common Area(s)" means a portion of the Common Areas or facilities or infrastructure thereon which is designed to serve one or more but fewer than all the Lots in the Community.
- 2.26. "Lot" means a physical portion of the Community designated for separate ownership, the boundaries of which are depicted on the Platting Documents as a separate lot of record.
- 2.27. "Lot Owner or 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.
- 2.28. "Mortgage" means a mortgage, deed of trust or real estate contract.
- 2.29. "Occupant" means a person lawfully occupying any Lot; the term includes without limitation Lot Owners, family members and tenants of Lot Owners.
- 2.30. "Ordinance" or "the Ordinance" means the ordinance or regulation authorizing the creation of this Community in the jurisdiction in which the Property is situated, described with greater particularity in Section 3.1 hereof, along with any administrative regulations implementing same. The term includes any changes, revisions, substitutions and/or deletions in such law or regulations which may exist from time to time.

- 2.31. "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entity.
- 2.32. "Platting Documents" mean the original Subdivision Plat and all amendments thereto, either as described in Section 1.1 hereof, or a similar map recorded by the Declarant to bring on a future Phase of the Community, along with any and all amendments thereto.
- 2.33. "Property" or "the Property" means the real property depicted on the Platting Documents and legally described thereon.
- 2.34. "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.
- 2.35. "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- 2.36. "Residential Purposes" means use for dwelling and human habitation, whether on an ownership or lease basis and for reasonable social, recreational or other uses normally incident to such purposes.
- 2.37. "Special Declarant Rights" means rights reserved for the benefit of the Declarant: (a) to complete improvements indicated on the Platting Documents filed with the Declaration of Covenants; (b) to exercise any Development Right described in Section 3.3 hereof; (c) to maintain sales offices, management offices, signs advertising the Community, and models; (d) to use easements through the Common Areas for the purpose of making improvements within the Community or within real property which may be added to the Community under Development Rights reserved hereinafter; or (e) to appoint or remove any Officer of the Association or any member of the Board of Directors or of any Committee, or to veto or approve a proposed action of the Board or of the Association during any period of Declarant Control reserved in this Declaration of Covenants. Special Declarant Rights are described in Section 16.6 hereof.
- 2.38. "Specially Allocated Assessment" means an Assessment made by the Association against one or more but fewer than all of the Lots pursuant to Section 10.8 of this Declaration of Covenants.
- 2.39. "Structure" means a Dwelling or any other addition constructed on or placed on a Lot. See Articles IV and IX for further detail.
- 2.40. "Transition Date" is the date sixty days following the date that the Declarant has conveyed to unrelated third parties all Lots created or remaining to be created in the Community under the Development Plan, or earlier as determined by the Developer in accordance with Section 16.6.2. See Section 16.6.2 hereof for further detail.
- 2.41. "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 high standards of the Community.

ARTICLE III  
DESCRIPTION OF DEVELOPMENT SCHEME AND DEVELOPMENT RIGHTS

3.1. Development Plan.

The Lots in this Community were authorized to be created by the City of Anacortes under Chapter 16.40, Anacortes City's Municipal Code [the "Ordinance"] that authorize the creation of Planned Unit Developments and real property Subdivisions, subject to certain conditions appearing on the face of the Platting Documents for San Juan Passage, some of which are reproduced in the text of the Covenants which follow.

3.1.1. Relevant Previous Permitting History. The Community was originally called "Ship Harbor Residential Community PUD," a preliminary development plan for which approval was granted in May of 2006; decision recorded in November 2008 at Auditor's File No. 2008112500001. Subsequent permitting history appears within the Notes and other text within the Plat for San Juan Passage Phase 1, and the subsequent Plats for Phases 2 through 5 (Exhibit C) as described more fully in Section 1.1 hereof.

3.1.2. Consistency with Development Plan Required. All further use and development of the Property in this Community shall be consistent with the Ordinance, the Development Plan, as the same may be modified by the City, and with any other City land use and platting requirements that may be applicable to land subject to Development Rights.

3.2. Community Attributes.

3.2.1. Zoning and Housing Types. The Community is zoned Commercial Marine (CM) but is in the process of being changed to R2 by the City of Anacortes. All Lots in the Community will contain detached "single family" Dwellings, separated by normal building setbacks. Dwellings will be constructed by the Declarant or its Successors and/or Affiliates.

3.2.2. Common Amenities. The Community's Common Amenities include, but are not limited to, an entrance sign and landscaping, community Park areas, Native Growth Protection Easement (NGPE) areas and landscape buffer areas. NGPE areas are protected from development or disturbance by protective easements in favor of the City. See Section 5.1 for a more complete list of Common Areas.

3.2.3. Scenic Views to be Protected. The project site is located on a hillside overlooking Guemes Channel; as a result, many of the Lots in the Community enjoy scenic views that these Covenants are designed to protect. See Sections 4.6 and 5.6 for further detail.

3.2.4. Roads. Most roads in the Community are public and as such are maintained by the City.

3.2.5. Utilities and Related Services Serving Community. The City of Anacortes provides police and fire protection, along with sewage disposal, storm water drainage facilities, garbage and recycling collection. Domestic water service is provided by Skagit County P.U.D. No. 1. Electric power is provided by Puget Sound Energy. Cascade Natural Gas supplies natural gas service. Telephone and communications cable service as well as yard waste pickup are available.

3.2.6. Community Association Maintains Common Amenities. An incorporated property owners' association described in Article VII hereof [the "Association"] has been formed to maintain, repair, replace, manage and insure the Common Amenities, hereof. All Lot Owners will be members of the Association; all Owners in good standing will have the right to elect the members of the Association's Board of Directors; and all Owners will be obligated to pay Common Expense Assessments to the Association so that the Association may properly perform its obligations to the Community described more fully hereinafter.

3.3. Development Rights.

The Declarant reserved the equivalent of Development Rights to expand the scope of development within the Community through a process of phased development that has been nearly completed. Existing Phases were developed through the recordation of approved Subdivision Plats, as described in Section 1.1 above in these Covenants. No more legal phases of development remain to be platted, but the Declarant still holds several platted Lots for sale.

ARTICLE IV  
LOTS, DWELLINGS & OTHER STRUCTURES

4.1. Number and Location.

The Community currently contains 99 Platted Lots and various Common Area Tracts described more fully in Section 5.1 hereof. No more Lots may be created by the Declarant. The locations of such Lots and Tracts appear on the Platting Documents. (See Exhibits C and G)

4.2. Initial Construction of Dwellings and Other Improvements Within Lots.

Dwellings and related improvements, including fencing and accessory Structures, will be constructed within the Lots by or under the direction of the Declarant, according to a common design scheme established by the Declarant (Exhibit "B"). No manufactured homes are permitted. Any addition, alteration or improvement upon any Lot shall be consistent with the Declarant's original scheme and shall be constructed in accordance with the building code and other ordinances of the City of Anacortes.

4.3. Subdivision.

No Lot shall be subdivided by its Owner.

#### 4.4. Architectural and Design Review.

4.4.1. Uniformity of Use and Appearance - Design Guidelines. One of the purposes of this Declaration of Covenants is to assure within the Property a uniformity of use and quality of workmanship, materials, design, maintenance and location of Structures with respect to topography and finish grade elevation. It is in the best interests of each Owner that such uniformity of use be maintained as herein provided. No building (except for approved accessory Structures) shall be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling. Accessory Structures, such as carports and storage buildings, are permitted with approval as allowed by the provisions contained herein. Notwithstanding anything herein set forth, the construction of any Structure shall comply with the more restrictive of either (a) the terms and conditions of this Declaration of Covenants or (b) the laws, codes, ordinances and regulations of any governmental entity having jurisdiction. Design for improvements constructed or placed within the Lots in the Community shall be consistent with the theme of the Community established in Design Guidelines initially prepared by the Declarant (Exhibit "B"). Regulated design features in the Design Guidelines include general architectural design, site development, siding materials, painting scheme, roofing materials, the color and pitch of roofing, along with fencing, accessory Structures and enhancements. No mobile homes, manufactured housing units or modular homes are permitted. All construction must be reviewed by the Architectural Review Committee ("ARC"), and approved by the Board, as provided in Sections 4.4.2 and 9.2 below. Following termination of the Declarant Control Period, or at such earlier time as the Declarant may permit, the Board of Directors shall have the authority to adopt more specific Design Guidelines and procedures to implement the basic theme contained herein, pursuant to Section 9.2 hereof. Notwithstanding the above, original construction and the installation of equipment and fixtures approved and installed by the Declarant are not subject to the more restrictive provisions of these Governing Documents.

4.4.2. Design Review. To preserve a harmonious architectural and aesthetic appearance of improvements constructed within the Community, no new construction or improvements of any nature whatsoever shall be constructed within or placed on any Lot by any Person other than the Declarant or its Affiliate(s) until detailed plans depicting all such improvements have been reviewed by the ARC and approved by the Board. Two complete copies of such detailed building plans, including construction specifics, surface water run-off control, landscaping plans and specifications, and a site plan showing the location of all proposed Structures (the plans, specifications and site plans are individually and collectively referred to herein as the "Plans") shall be submitted in a form satisfactory to the Board, which may withhold its approval because of its reasonable dissatisfaction with the location of the proposed Structure on the Lot, color scheme, finish, architecture, height, impact on view from another Lot or Lots, appropriateness of the proposed Structure, materials used therein, or because of its reasonable dissatisfaction with any other matter which, in the reasonable judgment of the Board, would render the proposed Structure inharmonious with the general plan of development of the Property or other Structures nearby. The Board's approval or disapproval of Plans shall be in writing and approval shall be evidenced by written endorsement on such Plans. Such Plans, specifications and related data must be submitted to the ARC at least thirty (30) days before commencing construction of any Structure on any Lot. Any costs incurred while researching or processing this application will be the

responsibility of the applicant. The applicant will be provided an estimate of any such costs before they are incurred. After review, the ARC shall forward their recommendation to the Board. Upon approval of the Board, one set of plans shall be retained among the permanent records of the Association and one copy shall be returned to the Owner, appropriately marked. The builder and/or Lot Owner are encouraged to submit plans to the ARC at the earliest possible date. Lots still owned by the Declarant or its Affiliates following a termination of the Declarant Control Period shall require no such review by the ARC and shall remain subject to the exclusive design review and control by the Declarant.

4.4.3. No Construction Prior to Approval. No construction activity by any Person other than the Declarant or its Affiliate(s) may commence prior to such approval. The Board's review and approval or disapproval of Plans on the basis of cost, aesthetic design, and harmony with previously approved Structures on or about other Lots in the Property, and location, shall be absolute and enforceable in any court of competent jurisdiction. Prior to undertaking legal action, the Board shall use all available lesser means to resolve any issues including, but not limited to, mediation, fines, Special Assessments, and placing of a lien on the property. The Board's approval of any Plans, however, shall not constitute any warranty or representation whatsoever by the Board or any of its members that such Plans were examined or approved for engineering or structural integrity or sufficiency or compliance with applicable governmental laws, codes, ordinances and regulations, and each Owner hereby releases any and all claims or possible claims against the Board or any of them, and their heirs, successors and assigns, or of any nature whatsoever, based upon engineering or structural integrity or sufficiency or compliance with applicable governmental laws, codes, ordinances and regulations.

4.4.4. Setbacks. All Structures shall be set back from the Lot boundaries such distances as provided in the Plat. Each residential Lot has a building construction envelope, which consists of zoning setbacks and/or easements as shown on said Plat. All improvements must be constructed within the Building Construction Envelope designated from time to time by the Declarant subject to zoning setbacks, except for detached garages, which are allowed to encroach on the rear yard setback, and front porches, which are allowed to encroach on the front yard setbacks, and accessory Structures which are allowed within zoning setbacks. On Lots 1 through 13 house foundations shall be setback a minimum of 40 feet from the top of the slope. The setback can be reduced to 30 feet for decks with post and pad foundations or 25 feet for decks with foundations consisting of poles installed on concrete sonotubes (as designed by an approved geo-technical engineer) per Geo-Engineers report dated May 10, 2005.

4.5. Construction on Lots.

4.5.1. No Deviation from Plans - Noncompliance Deemed a Nuisance. Any person obtaining approval of the Board shall not deviate from the approved plans and specifications without notifying the ARC. At the discretion of the Board, the ARC may approve minor changes to design that comply with the intent of the original request and that are in compliance with rules and regulations approved by the Board. Such person shall notify the ARC when the alterations or improvements are complete. Approval of any particular plans and specifications or design does not waive the right of the ARC 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. Any addition, alteration or improvement upon any Lot existing in violation of the Governing Documents shall constitute a nuisance and shall be removed or altered to conform to the Governing Documents by the Lot's Owner within thirty days after delivery of notice of the violation to the Owner by the Board. Approvals by the Declarant before the Transition Date shall not constitute a precedent for future approvals.

4.5.2. Governmental Permits. Approval by the Declarant or the Board shall not relieve an Owner from the obligation to obtain any required governmental permits. The Owner shall deliver all approvals and permits required by law to the ARC 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, then the application shall be executed on behalf of the Association by the Board, without incurring any liability on the part of 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.

4.5.3. Timing of Construction. Any person obtaining approval of the Board for construction of improvements on a Lot shall commence construction or alteration in accordance with plans and specifications approved within six (6) months after the date of approval and shall substantially complete any construction or alteration within five (5) months after start of excavation/construction, 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 and the Lot has been landscaped. Notwithstanding the foregoing, the Board'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.

4.5.4. Excavating. All construction performed on each Lot shall hereafter be maintained so that the natural character of the land and the existing ecology shall, insofar as possible, be preserved and enhanced. The Lot Owner shall utilize best efforts, including taking of desirable affirmative action and forbearance from acting where desirable, to ensure that the particular Lot and the surrounding environs shall be and remain free from air pollution, water pollution, noise pollution and other like environmental hazards. Unless approved by the Declarant in writing, neither a Lot Owner nor any person or persons claiming through or under him or her shall or will at any time raise the grade of any Lot or Lots above the grade established by Declarant prior to conveying such Lot. The Lot Owner or his agent shall be responsible for cleanup of any soil erosion onto the roads due to the removal of vegetation from said Lots. Any removal of vegetation is to be replaced by grass, shrubs, other mulch or other finished landscaping within ninety (90) days to ensure that soil erosion is kept to a minimum. A continuous line of hay bales or siltation fence shall be placed along all Lot lines and conservation and open space easement lines of each respective Lot during construction. During the period of excavation, construction and landscaping the Lot shall be kept clean by using trash receptacles or by the daily removal of all debris from the Lot. No tracked vehicles are to be unloaded, kept or used on the paved roadways.



4.5.5. Construction of Garage Required. Unless a variance is granted pursuant to Section 9.2.5 hereof because of difficulties associated with the grade of the Lot, a garage large enough to accommodate at least one full size automobile must be constructed on each Lot, to serve the Dwelling thereon. Each Lot must provide parking for a minimum of two (2) vehicles which may be satisfied by the driveway and/or the garage. Street parking is not encouraged, nor is it a substitute for each Lot providing off-street parking for two vehicles.

4.5.6. Landscaping and Irrigation Plan Required. Any landscaping plan included in the Plans submitted to the Declarant for approval shall contain an irrigation system for (i) the Lot; (ii) any planted public or private right of way areas between sidewalks and the street curb in front of its Lot; and (iii) any other public or private right-of-way or easement area which abuts the Lot and which is located between the boundary line of the Lot and the paved area of any street, alleyway, sidewalk or similar area, unless such an irrigation system for the Lot has already been installed and approved by the Declarant.

4.5.7. Landscaping Installation and Maintenance. The home builder will be responsible for landscaping each of the residential Lots as part of the building permit review process, as required by the City's Design Standards. Landscaping shall be maintained in conformance with standards established by the Board of Directors. All landscaping shall be maintained so as not to obstruct the views from the abutting Lots to the Common Areas, conservation easement and/or surrounding waters. Landscaping shall meet the standards established in the zoning code for the City of Anacortes for residential zones. Further, each Lot Owner shall keep all shrubs, trees, hedges, grass and other plantings or landscaping of any type or kind whatsoever located on (i) its Lot (including setback areas); (ii) planted public or private right of way areas between sidewalks and the street curb in front of its Lot, if any; (iii) any other public or private right-of-way or easement area which abuts the Lot Owner's Lot and which is located between the boundary line of its Lot and the paved area of any street, sidewalk or similar area; and (iv) any non-street public or private right-of-way or easement area adjacent to its Lot, neatly trimmed, and shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material; provided, however, that any of the areas described above which are owned by the Association or subject to any easement rights granted to the Association, whether as of the date hereof or in the future, shall be maintained by the Association, and the cost of such maintenance shall be included as a Common Expense. In addition to the foregoing, each Lot Owner shall keep all irrigation facilities, sidewalks, driveways, easement areas and other similar areas located on (i) its Lot (including setback areas); and (ii) any public or private right-of-way or easement area which abuts the Lot Owner's Lot and which is located between the boundary line of its Lot and the street curb in front of its Lot, if any, in good condition and, in the case of irrigation facilities and driveways, in good repair, and shall keep all such facilities and areas free of snow, ice, trash, weeds and other unsightly materials.

4.5.8. Driveways. All driveways shall be paved with Portland cement concrete paving from the edge of the paved street to connect with the paved surface of the floor of the carport or the garage. Exceptions can be made with permission of, and where deemed appropriate, by the Board.

4.5.9. Mailboxes. All mailboxes must be of a standard accepted by the U.S. Postal Authorities and must be located in those areas so designed by the U.S. Postal Department. Structures containing mailboxes must be approved by the Board. Newspaper boxes are not allowed.

4.5.10. No Permanent Construction Within Easements. No permanent building, deck, fencing or other Structure shall be constructed within the easements on the Lots depicted on the Platting Documents except as provided in the Covenants.

4.6. View Protection Covenants Affecting Construction, Trees and Vegetation.

4.6.1. Restrictions on Siting and Height of Improvements Within Lots. Scenic views available from most Lots shall be protected through the positioning of the Dwellings on the other Lots by the Declarant in locations that minimize the impact of constructed improvements within the Community on views available to Lots lying further uphill, and by restricting the height of the Dwellings and other improvements within the Lots. No Dwelling or other Structure shall exceed 35 feet in height; Lot 15 is restricted to a 25 foot maximum height, measured from the average curb elevation between lot lines along Cutter Drive to the highest point of the roof ridge of a sloping roof of minimum slope of 4:12. Lots 1-14 are restricted to a 20 foot maximum height, calculated in the same fashion. Detached garages shall not exceed 16 feet in height. The Declarant's decisions in regard to the siting of Dwellings and placing limits on the height of Dwellings and other Structures within a Lot shall be conclusive and not appealable. The locations of improvements and any height limitations approved by the Declarant and incorporated into initial construction of Dwellings and other Structures may not be altered by an Owner following the initial construction of improvements within a Lot that interferes with scenic views from other Lots, in the absence of the advance written consent of the Board and all affected Lot Owners.

4.6.2. Restrictions on Height of Trees and Vegetation Within Lots. Following the construction of a Dwelling Structure on a Lot, its Owner(s) shall endeavor to preserve mature trees on the Lot and properly maintain any landscaping vegetation on the Lot, so as to enhance the appearance and value of the Lots in the Community and to prevent the spread of noxious weeds. Trees or other landscape vegetation planted within the Lots shall not reasonably interfere with neighbor's views and shall not be permitted to grow to a height greater than the ridge of the roof of the Dwelling on the Lot. See Sections 3.2.3 and 5.6. for further details.

4.6.3. Compliance. Any deviation from these provisions may be considered a violation. Absent resolution within the Association and/or through mediation, any affected party may maintain an action in a court of competent jurisdiction to abate or enjoin any such violation; the prevailing party in any such action shall be entitled to an award of attorneys' fees and costs.

#### 4.7. Upkeep of Lots.

4.7.1. Owners' General Responsibility. Each Lot Owner shall, at his or her sole expense, have the right and the duty to keep their Lot and the Dwelling and other improvements erected within the Lot, including the roof gutters, down-spouts, and footing drains serving the Dwelling, landscaping, yards, and any equipment, appliances, and fixtures contained therein in good order, condition and repair and shall do all interior and exterior redecorating and painting at any time necessary to maintain the good appearance and condition of such property. This Section shall not be construed as permitting any interference with or damage to the structural integrity of either the Common Areas, Limited Common Areas or of any other Lot(s), nor shall it be construed to limit the powers or obligations of the Association hereunder. See also Section 8.4 hereof.

4.7.2. Upkeep by Association. If Upkeep to portions of any Dwelling or other portions of a Lot for which the Owner is responsible, is reasonably necessary, in the opinion of the Board, to protect the Common Areas or to preserve the appearance and value of the Community, and the Owner of said Lot has failed or refused to perform said maintenance or repair as required by Section 4.7.1 of this Declaration of Covenants, within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board to the Owner, the Association may, but is not obligated, to perform such Upkeep. The costs of such Upkeep shall constitute a Specially Allocated Assessment against such Lot, pursuant to Section 10.8 of this Declaration of Covenants.

4.7.3. Association's Additional Responsibility. Subject to the provisions of Section 10.8.1 hereof, the Association may provide Upkeep to any other portions of all the Dwellings or Lots in the Community that the Association, by resolution adopted by its members at a duly constituted meeting, may hereafter elect to maintain, or as to which an individual Lot Owner may request from the Association.

#### 4.8. Alterations of Dwellings and Lots.

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

4.8.1. May make any improvements or alterations to the interior portions of a Dwelling constructed within an Owner's Lot that do not affect the structural integrity or mechanical or electrical systems of any other Lot, the Common Areas or Limited Common Areas, or lessen the support of any portion of the Community.

4.8.2. May not materially change the appearance of the exterior of any building constructed within the Lot, nor construct or erect any additional improvements within the Lot without ARC review and Board approval. Views available to Lots within this Community are deemed sacred, and no new or modified Structure after initial construction shall be permitted if views of the water from other Lots would be deemed reasonably obstructed or impaired thereby.

4.8.3. May be required to post a performance and public improvement damage bond commensurate with the scope of the project, payable to the Association prior to commencing any work. Any damage to streets, Plat improvements, entry structure, fences, landscaping, mailboxes, lights and lighting standards by Lot Owners, their children, contractors, agents, visitors, friends, relatives or service personnel shall be repaired by such Owner within twelve (12) days from the occurrence of such damage and/or, at the option of the Association, the Association may perform necessary repairs, the costs of which shall constitute a Specially Allocated Assessment under Section 10.8.3 hereof.

4.8.4. Any reconstruction of the exterior portions of any building constructed within a Lot, and the construction of additional improvements within the Lot which receives ARC review and Board approval, shall be performed in a manner consistent with the provisions of Sections 4.7 and 4.8 hereof.

4.9. Damaged Improvements.

If a Dwelling or other major improvement located upon a Lot is damaged or destroyed, the Owner thereof shall restore the site either (i) by repairing or reconstructing such building or improvement or (ii) by clearing away the debris and restoring the site to an acceptable condition compatible with the remainder of the Property. Unless the Board of Directors permits a longer time period, such work must be commenced within four months after the casualty and 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.

4.10. Upkeep of Surface Drainage by Lot Owners.

Any and all drainage from a Lot, which in the reasonable opinion of the Board causes erosion problems, shall be piped at the Lot Owner's expense to the nearest underground public storm sewer line, street ditch or dry well. All roof drains shall be connected to public storm sewer system. Absolutely no dumping of any pollutants into the storm sewer systems shall be permitted. Storm water will not be allowed to flow across the shoreline trail path.

ARTICLE V

COMMON AREAS, LIMITED COMMON AREAS AND FACILITIES

5.1. Common Areas and Common Facilities.

The Common Areas and Facilities of the Community consist of, but are not limited to, the following:

5.1.1. The Community's identification signage facilities and associated entry landscaping located in Tract F, G, H and I along with the median on Ship Harbor Blvd (see Exhibit G).

5.1.2. Association owned Park Tracts B, K (including Government Lot 2), U and V, that are open to the public but shall be maintained by the Association. Tract B contains the Upper Overlook Park; Tract K contains the Lower Overlook Park and Evergreen Trail within Lower Overlook Park (including the split rail fence and retaining wall); Tract U contains the Picnic Park; and Tract V contains the Quarry Park. Tracts B, K, U and V contain a Community Water Viewing Area, a shelter with picnic tables and seating areas, a play area for small children, and benches at minimum 800 ft. intervals along the trails located thereon.

5.1.3. Association owned Park Tract R, and its pavilion structure, pickle ball court, and community fire pit, which are dedicated for private use only by lawful Occupants of the Community and their guests.

5.1.4. Areas protected by NGPE, and any trails or other facilities that may be constructed therein, including the two-rail cedar fence bordering the length of such easement.

5.1.5. Street trees within the Common Areas of the Community.

5.1.6. Any and all other Tracts or parcels depicted on the Platting Documents that have not been dedicated to public use, including areas of Lots burdened by easements depicted on the Platting Documents for drainage, support or other purposes.

## 5.2. Limited Common Areas.

The Limited Common Areas of the Community consist of two private alleys and a series of Retaining Walls. See Exhibit H, Financial Responsibilities by Lot and Sections 5.2.1 and 5.2.2.

5.2.1 Private Alleys. Two Limited Common Area private alleys were constructed by the Declarant within the 20 foot Access and Utility Easement areas providing rights of ingress, egress and utilities to the Alleyway Lots; (i) Lots 28, 29 and 37 (ii) the land contained within the Property on Lots 30 – 36 and Lots 41 - 44 (collectively the “Alley Way Lots”). The location of these alleys is shown on Exhibit G. Until the Transition Date, the Declarant shall conduct the necessary maintenance, repairs or replacement of the alleyway and utilities located within the 20-foot Access and Utility Easement area, and the costs and expenses related thereto shall be shared equally by each of the Owners of the Alleyway Lots; provided, however that, if any such maintenance, repair or replacement is required as a result of the acts or omissions of the Owner of any Alleyway Lot (or the acts or omissions of anyone for whom such Owner is responsible), such Owner shall be solely responsible for the costs and expenses related to such maintenance, repair or replacement. After the Transition Date, the Association shall conduct the necessary maintenance, repairs or replacement of the alleyway and utilities located within the 20-foot Access and Utility Easement area, and the costs and expenses related thereto shall be shared equally by each of the Owners of the Alleyway Lots (Exhibit H, Financial Responsibilities by Lot); provided, however, that, if any such maintenance, repair or replacement is required as a result of the acts or omissions of the Owner of any Alleyway Lot (or the acts or omissions of anyone for whom such Owner is responsible), such Owner shall be solely responsible for the costs and expenses related to such maintenance, repair or replacement.

5.2.2 Retaining Walls. There are 3 areas containing retaining walls within the Community:

(a) Street Retaining Walls. Limited Common Area retaining walls are located along the street line on the land contained within the Property designated as Lots 28, 29 and 37 (collectively, the "Street Retaining Wall Lots"). The approximate locations of the retaining walls are shown on Exhibit G. Until the Transition Date, the Declarant shall conduct the necessary maintenance, repairs or replacement of the retaining walls on the Street Retaining Wall Lots, and the costs and expenses related thereto shall be shared equally by each of the Owners of the Street Retaining Wall Lots; provided, however, that, if any such maintenance, repair or replacement is required as a result of the acts or omissions of the Owner of any such Street Retaining Wall Lot (or the acts or omissions of anyone for whom such Owner is responsible), such Owner shall be solely responsible for the costs and expenses related to such maintenance, repairs and replacement. After the Transition Date, the Association shall conduct the necessary maintenance, repairs or replacement of the retaining walls on the Street Retaining Wall Lots, and the costs and expenses related thereto shall be shared equally by each of the Owners of the Street Retaining Wall Lots (Exhibit H, Financial Responsibilities by Lot); provided, however, that, if any such maintenance, repair or replacement is required as a result of the acts or omissions of the Owner of any Street Retaining Wall Lot (or the acts or omissions of anyone for whom such Owner is responsible), such Owner shall be solely responsible for the costs and expenses related to such maintenance, repair or replacement.

(b) Rear Retaining Walls. Retaining walls were constructed by the Declarant; (i) along the rear property lines of Lots 23 and 24 and; (ii) the land contained within the Property of Lots 25 - 27 and Lots 37 - 40 (collectively, the "Rear Retaining Wall Lots"). These walls were constructed for the benefit of the Rear Retaining Wall Lots and the Alleyway Lots. The approximate locations of these retaining walls is shown on Exhibit G. Until the Transition Date, the Declarant shall conduct the necessary maintenance, repairs or replacement of the retaining walls on the Rear Retaining Wall Lots, and the costs and expenses related thereto shall be shared equally by each of the Owners of the Rear Retaining Wall Lots and the Alleyway Lots; provided, however, that if any such maintenance, repair or replacement is required as a result of the acts or omissions of the Owner of any Rear Retaining Wall Lot or Alleyway Lot (or the acts or omissions of anyone for whom such Owner is responsible), such Owner shall be solely responsible for the costs and expenses related to such maintenance, repair or replacement. After the Transition Date, the Association shall conduct the necessary maintenance, repairs or replacement of the retaining walls on the Rear Retaining Wall Lots, and the costs and expenses related thereto shall be shared equally by each of the Owners of the Rear Retaining Wall Lots and the Alleyway Lots (Exhibit H, Financial Responsibilities by Lot); provided, however, that if any such maintenance, repair or replacement is required as a result of the acts or omissions of the Owner of any Rear Retaining Wall Lot or any Alleyway Lot (or the acts or omissions of anyone for whom such Owner is responsible), such Owner shall be solely responsible for the costs and expenses related to such maintenance, repair or replacement.

(c) Oakes Avenue Retaining Walls. A single retaining wall in the case of Lots 51 - 60 and 70 - 73 and two retaining walls in the case of Lots 48 - 50 and 61 - 69 (collectively the "Oakes Avenue Retaining Wall Lots") were constructed for the benefit of all Lots. The approximate location of these walls is shown on Exhibit G. Until the Transition Date, the Declarant shall conduct the necessary maintenance, repairs or replacement of the retaining walls on the Oakes Avenue Retaining Wall Lots, and the costs and expenses related thereto shall be shared equally by all Lot Owners; provided, however, that, if any such maintenance, repair or replacement is required as a result of the acts or omissions of the Owner of any Lot (or the acts or omissions of anyone for whom such Owner is responsible), such Owner shall be solely responsible for the costs and expenses related to such maintenance, repairs or replacement. After the Transition Date, the Association shall conduct the necessary maintenance, repairs or replacement of the retaining walls on the Oakes Avenue Retaining Wall Lots, and the costs and expenses related thereto shall be shared equally by all Lot Owners (Exhibit H, Financial Responsibilities by Lot); provided, however, that if any such maintenance, repair or replacement is required as a result of the acts or omissions of the Owner of any Lot (or the acts or omissions of anyone for whom such Owner is responsible), such Owner shall be solely responsible for the costs and expenses related to such maintenance, repair or replacement.

5.3. Partition, Conveyance, or Encumbrance.

5.3.1. Except as permitted by this Declaration of Covenants 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.

5.3.2. 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.

5.4. Allocated Interests - Common Areas Declared an Appurtenance.

The Declarant declares that each Lot in the Community has allocated to it an equal undivided interest in the Common Areas of the Community, 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. Each Lot Owner shall thus be a tenant in common with all other Lot Owners with respect to the Common Areas. A conveyance of such areas by the Declarant shall be unnecessary to establish these Allocated Interests, but if such a conveyance is made by the Declarant to the Association, it shall be deemed to be in furtherance of such rights, rather than in derogation thereof.

5.5. Upkeep by Association.

Except as otherwise specifically provided herein, the Association is responsible for all necessary maintenance, repair, and replacement within the Common Areas. Provisions relating to Upkeep of the most important Common Areas, known as "Principal Common Amenities," appear in Article VI hereof. The Association shall conduct the necessary maintenance, repairs and replacements within the Common Areas, and the costs and expenses related thereto shall be shared equally by all Lot Owners; provided, however, that, if any such maintenance, repair or replacement is required as a result of the acts or omissions of the Owner of any Lot (or the acts or omissions of anyone for whom such Owner is responsible), such Owner shall be solely responsible for the costs and expenses related to such maintenance, repair or replacement. The Association shall have the authority to perform any required maintenance that an Owner fails to perform, and the costs so incurred by the Association shall constitute Specially Allocated Assessments against the affected Lot under Section 10.8 hereof.

5.6. Trees and Vegetation in Common Areas and Street Trees in the Public Right of Way.

5.6.1. General Provisions. Trees and vegetation located in the Common Areas other than NGPE areas shall be maintained by the Association such that they shall not be permitted to grow to heights that are greater than a height which would interfere with scenic views available to any Lot in the Community. The cutting of trees within the NGPE Areas is strictly prohibited unless in conformance with the Native Growth Protection Easement Agreement (Exhibit E) and approved by the City of Anacortes.

5.6.2. Street Trees. While a few Street Trees are on HOA owned property, the vast majority are within the Public Right of Way adjacent to individual residential Lots. While Lot Owners have primary responsibility for irrigating, maintaining and replacing the trees (see Section 4.5.6.), the HOA reserves the right to enter into neighborhood wide contracts with service providers to maintain these areas in a uniform and cost-efficient manner. All such actions by Lot Owners and the HOA must comply with the City Municipal Code Chapter 17.41 regarding Landscaping Requirements and in particular Sections 17.41.020 (General site landscaping) and 17.41.060 (Maintenance).

5.7. Right of Access.

Each Lot Owner shall afford to the Association and to its employees, agents, and licensed contractors, access through the Owner's Lot as may be reasonably necessary for the purposes of maintenance, repair and replacement within both the Common and Limited Common Areas. If damage is inflicted on the Common Areas, or on any Lot through which access is taken, the Lot Owner responsible for the damage, or the Association, as appropriate, shall be liable for the repair thereof, as provided in Section 8.4 hereof.



5.8. Use of Common Areas.

The Common Areas shall be used only for the furnishing of such services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the Lots. The improvements located on the Common Areas shall be used only for their intended purposes. Except as otherwise expressly provided in the Governing Documents, no Owner shall make any private, exclusive or proprietary use of any of the Common Areas.

5.9. No Interference with Common Areas.

No Lot Owner shall obstruct or damage 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.

5.10. Rights of the City of Anacortes.

5.10.1. General Rights and Benefits. These Covenants contain provisions which require the Owners of Lots within the Community and the Association to provide ongoing compliance with the conditions of approval of the Platting Documents. The obligations of the Lot Owners and of the Association 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 5.10 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.

5.10.2. Specific Rights. The City shall have the right, for the benefit of the City and of the public health, safety and welfare, to enter upon and perform or provide Upkeep to any or all of the Common Areas of the Community 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.

5.10.3. Rights to Approve Certain Amendments to Covenants. No Amendment to this Declaration of Covenants, the effect of which would alter or modify the provisions of Articles V and VI hereof, may be adopted in the absence of advance written approval of the City of Anacortes.

ARTICLE VI  
SPECIAL USE AND UPKEEP PROVISIONS

6.1. Description of Principal Common Amenities.

The NGPE areas, Park Tracts and Planting Easement areas in the Community provide Lot Owners of the Community with various benefits. No construction, clearing, grading, filling, landscaping, mowing, cutting, burning or chemical treatment of plants or trees shall occur within these areas, other than in a manner consistent with these Governing Documents, the Native Growth Protection Easement Agreement and applicable City codes and ordinances.

6.2. Responsibility for Operations and Upkeep.

The Association shall be responsible for the operation and Upkeep of the Principal Common Amenities. Notwithstanding, Special Assessments where required by Section 5.2, will be allocated to applicable Owners.

6.2.1. Upkeep of Private Alleys. Without limitation, the Association shall perform all necessary Structural Repair, Reactive Maintenance, Routine Maintenance and Shoulder Maintenance, as hereinafter defined:

(a) Structural Repair is defined as repairs or improvements necessitated by normal wear and tear and daily operation over the improved road surfaces, or those modifications required to provide adequate and efficient access to public thoroughfares. The alleys shall be maintained consistent with published City standards for such access roads and/or for signing and traffic control devices.

(b) Reactive Maintenance is defined as Upkeep necessitated by unanticipated failures of road surfaces, loss of signs, trees fallen across the road, and the like. It also includes response and repair necessitated by true emergency conditions such as flooding, windstorms, snowstorms, earthquakes and/or volcanoes.

(c) Routine Maintenance is defined as normal day-to-day activities that keep such alleys operational.

(d) Shoulder Maintenance is defined as periodic Upkeep of any unimproved portions of private roads, which shall include properly and reasonably caring for useful vegetation located in such unimproved areas, and by cutting and/or removing and disposing of any brush, trees, and other debris that are not useful and/or which may interfere with normal use of the alleys.

(e) See Section 5.2.1 and Exhibit H, Financial Responsibilities by Lot for further information.

6.2.2. Upkeep of Native Growth Protection Easement Areas. The NGPE areas depicted on the Platting Documents, further described in Section 16.5.2 hereof, exist for the protection of

trees and other vegetation to preserve and enhance the aesthetic and environmental values of the Community. The establishment of the NGPE was a result of conditions set forth in the Preliminary Plat Approval Facts and Findings adopted by the City on May 15, 2006 (Exhibit D) and the Native Growth Protection Easement Shoreline Landscape & Management Plan submitted by the Declarant on September 21, 2009 (Exhibit E) culminating in the Native Growth Protection Easement Agreement dated May 5, 2011 (Exhibit E). No structures or improvements are permitted to be constructed in these areas other than as identified on the face of the approved Platting Documents. Dumping of debris, yard waste or organic matter in such areas is prohibited. Diseased or dying trees or other vegetation that present a hazard may be removed, or an enhancement plan for the NGPE Tracts required or approved by the City may be undertaken, but only following the advance written approval of the City of Anacortes on a case by case basis. The City of Anacortes shall have the right, but not the obligation, to enforce requirements, terms and conditions of the NGPE Tracts, by any method available under law, and is granted easement rights in Section 16.5.2 to facilitate such rights.

6.2.3. Upkeep of Entrance Facilities. The landscaped entry to the Property shall be maintained by the Association, at its sole cost and expense, including, without limitation, all signs and landscape lighting therein and the landscaping described in 6.2.5 located within the public right-of-way of Oakes Avenue as well as the median on Ship Harbor Blvd.

6.2.4. Upkeep of Park and Landscape Facilities. The Park and landscaped Tracts described hereinafter shall be maintained in a first-class condition suitable for their intended use: Tracts B (Upper Overlook Park), F, G, H, & I (four corners and island of the San Juan Passage entrance including sign and landscaping), K (Lower Overlook Park, Evergreen Trail and including Government Lot 2), U (Picnic Park) and V (Quarry Park) on the Plat. Said areas shall be open to all Lot Owners, but shall be maintained by the Association, at the Association's sole cost and expense. These "Common Areas" shall be open to the general public. In addition to the foregoing, Tracts B, K, U and V on the Plats are reserved for park purposes and shall include, without limitation, a Community Water Viewing Area, a shelter with picnic tables and seating areas, a play area for small children, benches at a minimum 800 ft. intervals along the trails located thereon and ten (10) off-street parking spaces shall be provided in conjunction with the parks located on labeled Tracts U and V on the Plats. Tracts B, K, F, G, H, I as well as the island on the Plat shall be landscaped and maintained in such a way that passersby on Oakes Avenue have a clear view of the water for the full width of the public right-of-way across Edwards Way. Tract R contains a pavilion structure, pickle ball court, and community fire pit, and is reserved exclusively for private use only by lawful Occupants of the Community and their guests.

6.2.5. Oakes Avenue Landscape Buffer. Until such time that the Oakes Avenue right-of-way is fully developed, the Association shall maintain, at the sole cost and expense of the Association, a landscaped buffer within the unused right-of-way area on the north side of Oakes Avenue as it borders the Property (the "Oakes Avenue Landscape Buffer"). Such landscaping shall be maintained with sufficient plantings to substantially obscure the homes located on the Property along Oakes Avenue from viewing from Oakes Avenue; provided, however, at maturity such plantings shall not exceed 30 feet in height. Additionally, all Owners of Lots located along Oakes Avenue shall maintain, at such Owner's sole cost and expense, a 10-foot planting easement within

the area labeled 10.0' Planting Easement on the Plat. Such landscaping shall be in addition to and complementary with, the landscaping contained in the Oakes Avenue Landscape Buffer and shall be maintained with sufficient plantings to substantially obscure the homes within San Juan Passage along Oakes Avenue from viewing Oakes Avenue; however, at maturity these plantings shall not exceed 30 feet in height.

6.2.6. Upkeep of Drainage Facilities. The Association will coordinate all Storm Water Drainage Upkeep with The City as required. For Lots 1-20, Drainage Easement Agreements dated November 14, 2013 and May 10, 2014 (Exhibit F) establish responsibilities for the maintenance, repair and replacement of the Drainage System. The costs and expenses related thereto shall be shared equally by each of the Owners of the Lots located within the Easement Property; provided, however, that if any such maintenance, repair or replacement is required as a result of the acts or omissions of the Owner of any Lot within the Easement Property, such Owner shall be solely responsible for the costs and expenses related to such maintenance, repair or replacement.

6.2.7. Upkeep of Other Common Facilities. The Association will provide necessary Upkeep for street trees and any recreation facilities and/or other improvements constructed within the Common Areas.

6.2.8. Prohibition Against Dumping. The dumping of solvents, oil, concrete or concrete residue, or water that is heavily laden with sediments, is expressly prohibited anywhere in the Community.

6.3. Use by Lot Owners.

Owners and Occupants of the Community may use the Park Tracts for wildlife viewing, picnicking and other low-impact recreational uses which will not disturb wildlife or lawful Occupants of the Community.

6.4. Reserves to Maintain, Repair & Replace Common Facilities and Amenities.

6.4.1. Capital Reserves are for costs expected to occur less frequently than annually. Pursuant to Sections 8.3.2., 10.1., and 10.3. hereof, a portion of the Annual Budget for the Association shall be devoted to funding Capital Reserves for major maintenance or major repairs that extend the life of the assets, increase the value of the assets or to replace assets as they wear out or become obsolete.

6.4.2. The Board may also establish, fund and maintain an Operating Reserve as a contingency against cash flow timing differences within the Annual Budget and/or for operating expenses or expense levels not anticipated in the Annual Budget.

6.4.3. All Owners shall be assessed by the Association for their share of such costs and expenses in proportion to the Allocated Interest for Common Expense Liability, as described in Sections 10.4 and 10.6 hereof.

ARTICLE VII  
COMMUNITY ASSOCIATION

7.1. Name and Form of Association.

The name of the Association shall be "San Juan Passage Homeowners Association". The Association has been incorporated by the Declarant as a non-profit corporation under the laws of the State of Washington (Exhibit A). The rights and duties of the members and of said corporation shall be governed by its Governing Documents and Governing Law. The Association shall remain organized as a nonprofit corporation. In case of any conflict between Chapter 24.03 RCW, the Washington Nonprofit Corporation Act, and the Governing Law, the Governing Law shall control.

7.2. Powers & Duties of Association.

7.2.1. Duties & Responsibility of Association. The business of the Association shall be to maintain, repair, replace and manage the Common Areas of the project, to provide necessary insurance coverage, and to enforce provisions of the Governing Documents to preserve the long-term value of the Property for the benefit of the Lot Owners.

7.2.2. Statutory Powers Exercised by Board of Directors. The Association, through its Board of Directors, shall have all powers available to Homeowners' Associations under the Governing Law. Such powers are set forth with particularity in the Bylaws of the Association.

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

7.3.1. 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.

7.3.2. 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.

7.4. Membership Rights and Privileges.

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. Membership rights and privileges are specified in the Bylaws of the Association.

7.5. Voting.

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

7.5.2. Allocated Interests for Voting. The Declarant has allocated to each Lot in the Community an equal vote in the Association which is known as the Lot's Allocated Interest for voting, or "vote".

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 of Covenants have been prepared by the Declarant for adoption by the Board of Directors of the Association.

7.7. Perpetual Existence - Rights of City of Anacortes.

The Association shall have perpetual existence; it may not 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 Anacortes, following a public hearing before the City Council. 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.

ARTICLE VIII  
MANAGEMENT OF THE COMMUNITY

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". Limitations on the Declarant Control Period are specified in Section 16.6 hereof.

8.2. Professional Management.

The Association may be managed by a professional property manager with substantial Association management experience. Provisions for professional management of the Association appear in the Bylaws.

8.3. Authority of the Board.

8.3.1. General Authority. The Board, for the benefit of the Community 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. Without limitation, such Common Expenses may include:

(a) Common water and sewer, common electrical and, if deemed necessary or desirable by the Board of Directors, common garbage and/or trash collection, common gas, and any other necessary utility service as required for the Common Areas.

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

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

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

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

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

(g) If maintenance or repair to portions of any such Dwellings or other portions of the Lots for which the Owner is responsible is reasonably necessary, in the opinion of the Board, to protect the Common Areas or to preserve the appearance and value of the Community, and the Owner of said Lot has failed or refused to perform such Upkeep as required by Section 4.4.1 of the Declaration of Covenants within a reasonable time after written notice of such failure has been delivered by the Board to the Owner, the Association may cause such Upkeep to be performed. The cost of such maintenance or repair shall constitute a Specially Allocated Assessment against the Lot of such Owner, pursuant to Section 10.8 of the Declaration of Covenants.

#### 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.

8.4. Right of Entry.

The Board and its agents or employees may enter any Lot, Common Area or Limited Common Area when necessary in connection with any maintenance, landscaping or construction for which the Board is responsible, or in the event of 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 in any 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 maintenance, or repairs, to Common Areas 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.

8.5. 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.

ARTICLE IX  
PERMITTED USES; ARCHITECTURAL CONTROL

9.1. Permitted Uses.

9.1.1. Residential Use.

The Lots in the Community shall be used for single family Residential Purposes only, whether on an ownership or lease basis and for common social, recreational or other reasonable uses normally incident to such purposes.

9.1.2. Commercial and Business Uses Prohibited.

No commercial uses are permitted in the Community and no business or trade of any kind may be conducted in or from any Lot except that an Owner or Occupant residing in a Lot may conduct business activity within the Lot only if:

(a) the existence or operation of the business activity within the Lot is not apparent or detectable by sight, sound or smell outside the Lot boundaries;

(b) the business activity conforms to all zoning requirements for the Community;



(c) the business activity does not create a noticeable increase in the amount of traffic, either vehicular or pedestrian, entering or leaving the Community;

(d) the business activity does not increase the liability or casualty insurance obligation or premium of the Association; and

(e) in the sole discretion of the Board, the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or hazardous or offensive use.

9.1.3. Lease Restrictions. All leases shall be in writing. A lease, as defined herein, shall be for periods of not less than 180 days except when between a seller and a buyer during a reasonable transition period. "Vacation Rental by Owner" and similar arrangements are strictly prohibited in the Community. Any lease agreement shall be required and deemed to provide that the terms of the lease shall be subject in all respects to the provisions of the Governing Documents, 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. Any tenant shall be deemed to have assumed all the responsibilities of an Owner under Article IX of this Declaration of Covenants.

9.1.4. Vehicle Parking and Operation - Boats and Bikes.

9.1.4.1. General Restrictions. Vehicles parked in driveways are not allowed to extend into, or in any way obstruct the sidewalks which are in the public right of way. 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 the Rules and Regulations and only in such areas, if any, as may be designated for such purpose by the Board of Directors. 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. The Board of Directors may promulgate further rules and regulations governing vehicle parking. Vehicle repairs other than ordinary light maintenance is 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 areas. If the same is not removed, the Board may cause removal at the risk and expense of the owner thereof, under such reasonable procedures as may be provided by the Rules and Regulations adopted by the Association.

9.1.4.2. Parking and Driving on Alleys & Easement Areas. Parking is prohibited on any private lane or alley in the Community, except in designated parking areas, if any. The Board may regulate the speed and other operations of vehicles on such road surfaces and the other Common Areas.

9.1.4.3. RV Parking. Except as hereinafter provided, junk vehicles (as defined in RCW 46.55.010), Recreational Vehicles (including without limitation camper-trailers, mobile homes, motor homes, "fifth-wheels" off-road vehicles, boats, airplanes or etc.), large commercial-

style vehicles (including without limitation trucks, tractors, large vans or other types of vehicles or equipment which either require a commercial vehicle operator's license or which exceed 6,000 lbs. in gross vehicle weight) or any other type of vehicle or equipment which exceeds 24 feet in length may not be stored, kept or maintained anywhere within the Community. Such vehicles may be parked in the driveway of a Lot for up to 48 hours for the sole purpose of loading or unloading of same.

9.1.4.4. Boats. Any boat and/or accompanying trailer stored on a Lot must be kept concealed from public view in the Lot Owner's garage. No commercial or recreational boat, fishing gear, machinery, or rigging shall be stored within view on any Lot.

9.1.4.5. Bikes. No recreational use of motorized or non-motorized "dirt-bikes," "motocross bikes," "un-muffled motorcycles," "all-terrain vehicles," or "ski mobiles" shall be allowed on Association trails or easements or other common open space.

9.1.5. Signs. 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 normal realtor's sign for a period of time during which the Lot is for sale or lease. No signs advertising home businesses are permitted. The Board may by resolution establish further policies regarding signs, to reflect the sentiments of the Community while giving due regard to traditional democratic rights of free speech, religion and expression of Owners and Occupants of Lots in the Community. The Board's judgment in such matters shall be conclusive, except as to matters controlled by and within the bounds of applicable Federal or State law.

9.1.6. Animals. The maintenance, keeping, boarding and/or raising of animals, livestock, or poultry 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, reptiles contained within a terrarium, small mammals residing in a cage, and dogs and cats which normally do not leave the Lot is permitted, subject to the Rules and Regulations adopted by the Board of Directors. The Owner of any animal maintained on the Property shall exercise control over the animal in compliance with City leash and waste removal laws, 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 or on any Lot. 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 whatsoever arising by reason of keeping or maintaining such animal within the Community. All animals shall be registered and inoculated as required by law. Under no circumstances shall dogs be allowed to run free and must at all times be either leashed or confined to their Owner's Lot. The Board may at any time require the removal of any animal that it finds is disturbing other Owners or residents unreasonably, and may exercise this authority for specific animals even though other animals are permitted to remain. Such decision shall be subject to the due process procedures established in Section 9.3 and Article XIII of this document and the Bylaws. This section is in addition to and complementary to The City of Anacortes Municipal Code Title 6, Animals.

9.1.7. Noise. No person shall cause any unreasonably loud noise anywhere on the Property, nor shall any person permit or engage in any activity, practice or behavior which causes annoyance, discomfort or disturbance to any person lawfully present on any portion of the Property or to neighbors.

9.1.8. Offensive or Illegal Activity. No noxious, offensive, noisy, smelly, or illegal activity shall be carried on in any Lot or the Common Areas, nor shall anything be done therein which is or may become a nuisance or an unreasonable source of annoyance to other Owners or other lawful Occupants of the Community.

9.1.9. Hunting or Fishing. There shall be no hunting, fishing or trapping of any kind whatsoever and no activity shall be undertaken, other than as permitted in this Declaration of Covenants, which shall in any way interfere with the natural activities or movement of wildlife within said property. Rodents and other pests shall not be deemed "wildlife" within the meaning of this Section.

9.1.10. Disposal of Trash or Garbage. All trash shall be placed in sanitary containers screened so as not to be reasonably visible from adjoining structures or streets or roadways. No Lot or any portion thereof shall be used as a dumping ground for trash or rubbish of any kind. Yard rakings, dirt and debris resulting from landscaping work or Construction shall not be dumped onto adjoining Lots or streets, roadways, or anywhere else in the Community or area surrounding the Community. Composting may be kept upon the Lots provided it is kept in a clean, neat and sanitary condition and out of view.

9.1.11. Exterior Lighting. No exterior lighting fixture shall be installed within or upon any Lot without adequate and proper shielding of the fixture. Exterior lighting must be in compliance with City Municipal Code Chapter 17.54 Section 17.54.030 regarding exterior lighting.

9.1.12. Hazardous Substances - Restrictions on Chemicals and Fertilizers. 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 Property or to the public health or safety, or the health or safety of any lawful Occupants of the Community, any and all such substances being known herein as Hazardous Substances. Lot Owners shall not use fertilizers, chemical pesticides, or herbicides which negatively impact the watershed of the surrounding waterways or wetlands. No Lot Owner shall use his or her Lot for any purpose or in any manner that will result in pollution of the groundwater or otherwise impair the ecological balance of the surrounding land. Further, no Lot Owner shall take any action, during or after construction of buildings or structures which will alter the hydrological character or drainage patterns which existed at the time of Conveyance of the Lot by Declarant unless approved by the Board.

9.1.13. Television and Radio Antennas, Dishes. No television or radio aerial and no satellite receiving dish or other electronic receiving device shall be placed or erected outside of any building on any Lot without ARC review and Board approval and must be installed below the lowest ridge line of the house or other suitable location pursuant to FCC Rule 47 C.F.R. Section 1.4000. Larger satellite dishes and other types of reception or transmission antennas may be installed within a Lot only after review by the ARC and approval by the Board and must be reasonably screened from view from other Lots 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. No reception or transmission devices may be located within the Common Areas unless expressly permitted by the Board of Directors.

9.1.14 Solar Panels. No solar panel(s) shall be placed on any building or Lot without the review of the ARC and the written permission of the Board. For the purpose of this section, "solar energy panel" means a panel device or system or combination of panel devices or systems that relies on direct sunlight as an energy source, including a panel device or system or combination of panel devices or systems that collects sunlight for use in: a) The heating or cooling of a Structure or building; b) The heating or pumping of water; c) Industrial, commercial, or agricultural processes; or d) The generation of electricity. This section does not apply to common areas as defined in RCW 64.38.010. Pursuant to RCW 64.38.055, the mounted panels must not be visible above the roofline. The attachment of a solar energy panel to the slope of the roof facing the street is only permitted if: a) The solar energy panel conforms to the slope of the roof; and b) The top edge of the solar energy panel is parallel to the roof ridge. The solar energy panel frame, a support bracket, or any visible piping or wiring should be painted to coordinate with the roofing material. An Owner or resident is required to shield a ground-mounted solar energy panel if shielding the panel does not prohibit economic installation of the solar energy panel or degrade the operational performance quality of the solar energy panel by more than ten percent. Owners or residents who install solar energy panels are required to indemnify or reimburse the Association or its members for loss or damage caused by the installation, maintenance, or use of a solar energy panel. Pursuant to RCW 64.38.055, solar panels must: a) Meet applicable health and safety standards and requirements imposed by state and local permitting authorities; b) If used to heat water, is certified by the solar rating certification corporation or another nationally recognized certification agency. Certification must be for the solar energy panel and for installation; c) If used to produce electricity, meets all applicable safety and performance standards established by the national electric code, the institute of electrical laboratories, and, where applicable, rules of the utilities and transportation commission regarding safety and reliability.

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

9.1.16. Fencing. No fencing shall interfere with easement rights granted or reserved herein. No fence shall be constructed on any Lot without ARC review and Board approval, which approval may be granted or denied in the Board's sole discretion. All fences shall be constructed in a good and workman-like manner of suitable fencing materials and shall be artistic in design, not solid, and shall not detract from the appearance of any adjacent structures. All fences shall comply with the design guidelines adopted by the Board. To allow for wildlife movement there shall be no continuous fence along the perimeter of the development; however, with approval, individual Owners may fence their own yards.

9.1.17. Clothes Lines. No washing, rugs, clothing apparel or any other article shall be hung from the exterior of any Structure or on a Lot so as to be visible from the Lots, streets and roadways adjoining the Lots.

9.1.18. Play, Sport, or Exercise Equipment. No play, sport, or exercise equipment shall be erected, constructed, installed, or placed on any Lot except in accordance with a plan reviewed by the ARC and approved by the Board. If such approval is for a temporary period, the equipment shall be removed from the Lot following that temporary period unless a renewal is granted by the Board. Play, sport, or exercise equipment of a portable nature intended for short term use only is not subject to ARC review and Board approval. These items should be stored away, out of view after such use, and may be subject to the Rules and Regulations adopted by the Board.

9.1.19. Accessory or Temporary Structures. No Structure of a temporary character, including but not limited to any trailer, tent, shack, barn, pen, kennel, run, stable, swimming pool, outdoor clothes line, shed or other accessory buildings shall be erected nor placed, used or maintained on any Lot absent ARC review and Board approval. The Board may promulgate rules and regulations governing such matters.

9.1.20. Native American Midden. Any clearing, grading, or excavation undertaken within 200-feet of a Native American Midden (as mapped by the Washington State Department of Archeology) shall only occur in the presence of an archeologist approved by the Samish Indian Nation. In the event that any artifacts are encountered, the appropriate State law and Tribal guidelines shall be followed.

9.1.21. Permitted Uses in Front, Side and Rear Yard Areas. Any yard facing a roadway, shall be used for landscaping and for the placement of walkway and driveway areas providing pedestrian and vehicular access to the Dwelling and garage areas, and for no other purposes unless specifically permitted under the Rules and Regulations adopted by the Board. Rear yards and side yards not facing a roadway may be used for the maintenance of landscaping and private garden areas, and placement of patios, outdoor furniture and the like, and the use thereof for recreational purposes normally associated with private yard areas in single-family residential areas. See Sections 4.5.6 and 4.7.1 for landscape maintenance responsibilities.

9.1.22. Assignment or Leasing. An Owner or tenant may not exempt himself or herself from any liability under the Governing Documents by assignment or leasing the occupancy rights to his or her Lot.

9.1.23. 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.

9.2. Architectural Control.

9.2.1. General Authority of Declarant and Board of Directors. To assure the health, safety and enjoyment of persons lawfully using any portion of this Community, and to promote visual harmony within the Community, the Architectural Review Committee ("ARC") shall review and advise the Board regarding proposed improvements to be constructed or placed within the Community. Initially, as provided in Section 4.4 hereof and Section 9.2.2 below, the Declarant shall constitute or designate the ARC to perform such architectural control, and may regulate the external design, signage, appearance, construction, use and Upkeep of the Property in accordance with Design Guidelines (Exhibit "B") adopted for this purpose. The initial Design Guidelines approved by the City of Anacortes for San Juan Passage's overall design (Exhibit "B") are attached to the Platting Documents described in Sections 1.1 and 3.1.1 hereof. Following the termination of the Declarant Control Period, or at such earlier time as the Declarant may permit, the Board of Directors may promulgate or modify Design Guidelines for the Community, following any necessary approval from the City of Anacortes, and may perform architectural control to the extent permitted in this Declaration of Covenants, but Lots still owned by the Declarant shall be subject only to the provisions of Section 4.4.2 hereof. The Board of Directors shall have the power to impose reasonable application fees (see Section 4.4.2) to evaluate any additions or changes to a Dwelling proposed by an Owner; such fees shall constitute a Specially Allocated Assessment against the affected Owner.

9.2.2. Authority to Perform or Delegate Functions of ARC. The Declarant or its designee shall initially serve as the ARC for the Association. Following the termination of the Declarant Control Period, or at such earlier time as the Declarant may permit, the Board of Directors may directly perform the activities of the ARC, or the Board may designate an individual to be the ARC, or it may establish an Architectural Review Committee (also to be known as the "ARC"), to coordinate compliance with the Design Guidelines of the Community.

9.2.3. Time for Approval - No Construction Prior to Approval. The Board shall approve or disapprove plans, specifications, and details within thirty, (30) days of receipt thereof. Upon a failure to respond within such period, the plans shall be deemed approved. No construction activity may commence prior to such approval. See Section 4.4.3 hereof.

9.2.4. Status of Design Guidelines. Design Guidelines approved by the Declarant or by the Board of Directors shall be enforceable as if set forth herein in full.

9.2.5. Authority to Grant Variances. The Board shall have the authority, to waive enforcement of or grant variances from conditions contained in this Declaration of Covenants or the Design Guidelines regulating garage size and /or parking requirements, and setbacks, without a specific finding that enforcement of such guidelines would impose an unfair burden on such Owner, but describing the variance and the reasons therefor in a written instrument which shall be part of the records of the Association. Upon such written approval of any specific variance or exception from the requirements of the Design Guidelines, all development conforming to such variance or exception shall be deemed lawful. Nothing in this Section shall be interpreted as a waiver of enforcement of applicable County, Municipal or other governmental or quasi-governmental code requirements over which the Board has no control.

9.2.6. No Liability for Architectural Review. Neither the Declarant nor the Association nor any permitted designee shall be liable to any party for any good faith action or failure to act under the provisions of this Declaration of Covenants.

9.3. Deviations or Exceptions.

Notwithstanding any restrictions or conditions contained in this Article, the Board reserves the right to grant conditional deviations or exceptions to such restrictions or conditions at the request of an Owner for exceptional circumstances. Such deviations or exceptions are granted or denied on a case by case basis and the action taken in a particular instance does not constitute approval of similar deviations or exceptions for subsequent requests (also see 4.5.1.)

ARTICLE X  
COMMON EXPENSES AND ASSESSMENTS

10.1. Budget for Common Expenses.

Not less than sixty (60) 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 Sections 2.8 and 8.3.2 of this Declaration of Covenants, to be paid during such year. The Budget shall make provision for creating, funding and maintaining reserves required by Section 10.3 hereof, and shall take into account any expected income and any surplus available from the prior year's operating fund. Within the budget year, the Board may not authorize unbudgeted expenditures for an item or project that exceeds 5% of the dues budget without approval by the membership as described in Section 10.2.1.

10.2. Meeting of Association to Ratify Budget.

10.2.1. General Provisions. Within thirty days after adoption of any proposed regular or special budget for the Association, the Board of Directors shall provide a summary of the budget to all the Lot Owners and shall set a date for a meeting of the Lot Owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the Owners of Lots to which a majority of the votes in the Association are allocated reject the budget, the budget is ratified, whether or not a quorum is present pursuant to RCW

64.38.025 and subsequent statutes. 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 Lot 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; this Section of these Covenants may not be amended without the advice of counsel, since its terms are controlled by law.

10.2.2. Special Notice Requirements Related to Reserve Study & Reserve Accounts. As part of the summary of the budget provided to all Lot Owners pursuant to Section 10.10.3.2.1, the Board of Directors shall disclose to the Owners, pursuant to amendments to the Homeowners Association Act adopted in 2011, information concerning the Association's Reserve Account. Such information, as currently required by the Governing Law appears in the Bylaws. In the event that the Governing Law is amended to modify such notice requirements, the requirements of the Governing Law shall supersede the provisions of this Section of these Covenants.

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

10.3.1. Establishment of Capital Reserves. The Board shall establish and maintain reasonable Capital Reserves as described in 6.4.1. This reserve shall also include the deductible under insurance policies obtained by the Association, exclusive of earthquake and/or related coverage. The Annual Budget of the Association shall always contain provisions for funding this reserve and the Association shall allocate and deposit monthly to such reserves one-twelfth of the total amount budgeted for such reserves in the current fiscal year. All reserves and reserve activity shall be identified and segregated on the books of the Association. The portions of the Lots' Assessments paid into such reserves shall be conclusively deemed to be non-refundable contributions to the capital of the Association by the Lot Owners. Such reserves may be expended only for the purposes for which they were established [i.e., repair and replacement reserves may not be used to construct capital additions or capital improvements], unless another use for same may be ratified in the manner described in Section 10.2 hereof, or if the process described in Section 10.3.3 hereof is utilized.

10.3.2. Reserve Study May be Required under State Law. The Association shall prepare and update a Reserve Study, in accordance with the relevant 2011 amendments to the Homeowners Association Act now codified at RCW 64.38.065 and subsequent statutes. The initial Reserve Study must be based upon a visual site inspection conducted by a Reserve Study Professional. Unless doing so would impose an unreasonable hardship, the Association shall update the Reserve Study annually. At least every three years, an updated Reserve Study must be prepared, based upon a visual site inspection conducted by a Reserve Study Professional. In preparing a Reserve Study, the Association shall estimate the anticipated major maintenance, repair, and replacement costs, whose infrequent and significant nature make them impractical to be included in an annual budget.



10.3.3. Limitations on Withdrawals from Capital Reserve Account. The Association may withdraw funds from its Capital Reserve account to pay for unforeseen or unbudgeted costs that are unrelated to maintenance, repair, or replacement of the reserve components. The Board of Directors shall record any such withdrawal in the minute books of the Association, cause notice of any such withdrawal to be provided to the mailing address of each Owner or to any other mailing address designated in a Record by the Owner, and adopt a repayment schedule not to exceed twenty-four months unless it determines that repayment within twenty-four months would impose an unreasonable burden on the Lot Owners. Payment for items out of cycle with the reserve study projections or not included in the reserve study may be made from the reserve account without meeting the notification or repayment requirements under this Section.

10.4. Assessments for Common Expenses - Transfer Fees.

10.4.1. Liability of Lots. Except as provided in Sections 10.4.2 and 10.8 below, 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 Board of Directors for the fiscal year shall be assessed against the Lots in proportion to their respective Allocated Interests for Common Expense Liability described in Section 10.6 hereof.

10.4.2. Assessment of Undeveloped Lots. Until the Dwelling on a Lot is substantially completed and sold to a Purchaser other than the Declarant, such Lot shall be subject to Assessment liability.

10.4.3. Timing of Payments - Authority for Installment Payments. Unless otherwise determined by the Board of Directors, the annual Assessment against each Lot for its proportionate share of the Common Expenses shall be payable on or before February 1<sup>st</sup> of each year; the Board of Directors nevertheless shall have the authority to allow Assessments to be paid in installments.

10.4.4. Transfer Fees on Resales. A Transfer Fee may be collected at the Closing of a Lot's re-sale in addition to any outstanding Assessment obligations affecting the Lot and/or the fees or costs incurred by the Association and/or charged by its Manager in preparing "resale certificates".

10.5. Assessments to Pay Judgment Against Association.

Assessments to pay a judgment against the Association may be made only against the Lots in the Community at the time the judgment was entered, in proportion to their Allocated Interests for Common Expense Liability at the time the judgment was entered.

10.6. Allocated Interests.

The Declarant has allocated to each Lot in the Community an equal obligation to pay the general Common Expenses of the Association, which obligation is known as the Lot's Allocated Interest for Common Expense Liability. Notwithstanding the foregoing, Lots may be subject to differential Assessments for Common Expenses under Section 10.8 hereof.

10.7. Special Assessments.

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

10.8. Specially Allocated Assessments.

10.8.1. Upkeep by Association to Lot or Dwelling. All costs and expenses associated with Upkeep performed by the Association to or within a Lot shall constitute a Specially Allocated Assessment against such Lot.

10.8.2. Upkeep to Limited Common Areas. All costs and expenses associated with Upkeep performed by the Association to a private alley or other Limited Common Area shall constitute Specially Allocated Assessments against each Lot served by such Limited Common Area, to be shared equally by and among the Lots sharing such Limited Common Area (See Section 5.2 and Exhibit H, Financial Responsibilities by Lot).

10.8.3. Damage Caused by Negligence or Misconduct, Etc. 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 Specially Allocated Assessment for that expense against the Owner's Lot. In addition and without limitation, the liability of a Lot Owner to pay any and all costs, fees, charges, insurance deductibles or fines imposed or incurred by the Association associated with the Lot, along with any costs and/or attorney's fees recoverable under the Governing Documents, and interest on any delinquent account shall be deemed a Specially Allocated Assessment which, unless otherwise directed by the Board, shall be due and payable within thirty (30) days following its imposition.

10.8.4. Expenses that Vary Among the Lots. Any portions of the Common Expenses which vary among the Lots based upon divergent usage of special services or facilities, or other factors which justify differential assessment rates, shall be assessed differentially among the Lots. Any other Common Expense or portion thereof which benefits fewer than all of the Lots shall be assessed exclusively against the Lots so benefitted.

10.9. Accounts; Commingling Prohibited.

Amounts collected by the Board of Directors as Assessments against the Lots for operating expenses or Reserves shall be kept in accounts in the name of the Association and shall not be commingled with funds of any other Association, nor with the funds of any Managing Agent or any other Person responsible for the custody of such funds. Any capital reserve funds shall be kept in one or more insured, segregated accounts and any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two persons who are Directors of the Association.

10.10. Surplus Funds.

Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any budgeted funding of reserves may, in the discretion of the Board of Directors, be transferred to Capital or Operating Reserves, be paid to the Lot Owners in proportion to their Allocated Interest for Common Expense Liability or credited to them to reduce their future Common Expense Assessment liability.

10.11. Liability of Lot Owners for Association Obligations.

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

10.12. Owners Personally Liable for Common Expenses.

Each Assessment shall be the joint and several obligation of the Owner or Owners 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 Lot Owner shall continue to pay (with or without notice) their 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.

10.13. 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. Except as provided in Section 10.17 hereof, 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.

10.14. Statement of Unpaid Assessments.

The Association, upon written request, shall furnish to a Lot 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 Lot. The statement shall be furnished within fifteen days after receipt of the request and is binding on the Association, the Board of Directors, and every Lot Owner, unless and to the extent known by the recipient to be false.

10.15. Lien for Assessments.

The Association shall have a lien on each Lot for any unpaid Assessments levied against a Lot from the time the Assessment is due.

10.16. Perfection of Lien - Lien is Automatic.

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.

10.17. Priority of Lien.

10.17.1. 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.

10.17.2. 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 the "priority amount," that is, an amount equal to (1) the Common Expense Assessments against the Lot, excluding any amounts for capital improvements, based on the periodic Budget adopted by the Association pursuant to Section 10.2 hereof, which would have become due in the absence of acceleration during the six months immediately preceding the institution of proceedings to foreclose either the Association's lien or a lien described in Subsection 10.7.1(b) hereof; and unless the Governing Law otherwise provides, (2) the Association's actual costs and reasonable attorney's fees incurred in foreclosing its lien up to the time when any Person pays to the Association the full priority amount described above, including the Association's attorneys' fees and costs. The term "institution of proceedings," as used herein, shall mean either: (i) the date of recording of a notice of trustee's sale by a deed of trust beneficiary; (ii) the date of commencement, pursuant to applicable court rules, of an action for judicial Foreclosure either by the Association or by the holder of a recorded Mortgage; or (iii) the date of recording of a notice of intention to forfeit in a real estate contract forfeiture proceeding by the vendor under a real estate contract. The term "capital improvements," as used herein, does not include making, in the ordinary course of management, repairs to Common Areas or facilities or replacements thereof with substantially similar items, subject to: (a) availability of materials and products, (b) prevailing law or (c) sound engineering and construction standards then prevailing.

10.18. 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, subject to the provisions of Section 8.3.4 hereof, 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.

10.19. 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.

10.20. Lease Payments Subject to Lien for Assessments- Other Remedies for Nonpayment.

10.20.1. Lease Payments Payable to Association Upon Default of Owner. If a Lot is 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 lease 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 of Covenants,

and [c] notifying both parties that if such delinquency is not cured within ten (10) days of mailing, the tenant must commence paying lease payments 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 lease payments 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 lease payments, as provided immediately below in Section 10.20.2.

10.20.2. 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 lease payment for the Lot as and when due. If the lease payment is not paid, the receiver may obtain possession of the Lot, refurbish it for leasing up to a reasonable standard for Lots in this type of project, lease the Lot or permit its leasing to others, and apply the lease payments 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.

10.21. 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, DESTRUCTION, RESTORATION AND DISTRIBUTION

11.1. Authority, Name of Insured.

The Board of Directors will obtain and maintain casualty and liability insurance under such terms and for such amounts as shall be deemed necessary by the Board of Directors, unless not reasonably available. The name of the insured under each required policy shall be stated as follows: "San Juan Passage Homeowners Association."

11.2. Insurance Policies and Coverage.

11.2.1. Basic Coverage. Any insurable common improvements in this Community subject to the primary jurisdiction of the Association shall be insured against casualty or physical damage in an amount equal to the maximum insurable replacement value thereof i.e., 100% of replacement costs based upon the value of replacing all such insurable improvements in the Community exclusive of land, excavations and foundations, utilizing contemporary building materials and technology. Level(s) of coverage shall be determined annually by the Board of Directors with assistance of the agent of the insurance company affording such coverage. Such coverage shall afford protection against:

(a) loss or damage by fire, vandalism, malicious mischief, windstorm, and other hazards covered by the standard "broad form" and/or "special" extended coverage endorsements or their equivalent, and such other perils customarily covered by insurance for similar projects. The policy shall also cover other Common property including fixtures, building service equipment and common personal property and supplies owned by the Association or included in the Common Areas.

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

(c) medical payments coverage, in such amounts as are customarily provided in such policies.

11.2.2 Directors' and Officers' Insurance. The Board will acquire Directors' and Officers' errors and omissions insurance to satisfy the Association's indemnification responsibilities under the Bylaws of the Association.

11.2.3 Fidelity Insurance. The Association should also obtain blanket fidelity insurance for any Person who either handles (or is responsible for) funds that he or she holds or administers, whether or not that individual receives compensation for services; such a policy should name the Association as the insured and include a provision that calls for at least ten days' written notice to the Association before the policy can be canceled or substantially modified for any reason. The policy should cover the maximum funds that will be in the custody of the Association or its Manager at any time while the policy is in force. A Manager that handles funds for the Association shall be covered by its own fidelity insurance policy, which must provide the same coverage required of the Association.

11.2.4 Additional Insurance. The Board shall also acquire such additional insurance coverage as it may deem advisable and appropriate. Further, and notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity insurance meeting the insurance and fidelity bond requirements, if any, for similar projects established by Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, FHA, VA or other governmental or quasi-governmental agencies involved in the secondary mortgage market or loan guaranty programs, so long as any such agency is an Eligible Mortgagee, Eligible Insurer or Owner of a Lot within the Community, if such additional coverage is reasonably available.

11.2.5. General Insuring Scheme - Limited Coverage for Owners and Tenants. The Association is not a “guarantor” of the health, safety or property of the Lot Owners, tenants or other Occupants of the project. See Section 14.1 hereof for further details. The Association’s Policy does not and cannot provide coverage for real or personal property belonging to any Lot Owner, tenant or other Occupant of a Lot, nor does the Association’s Policy provide coverage for liability for harm arising within a Lot.

11.2.6. Owners and Tenants Responsible for Acquiring their Own Insurance. Because of the limitations in coverage afforded under the Association’s Policy, Lot Owners and tenants must acquire their own insurance coverage in order to be fully protected. In acquiring such insurance, Owners and tenants should pay particular attention to the general provisions of Sections 11.5 hereof.

11.3. Deductible.

Except as otherwise provided herein, the deductible under any policy of insurance purchased by the Board of Directors shall not exceed the lesser of \$10,000 or 1% of the face amount of the policy. Except as provided herein, the amount of the deductible shall be paid by the Association as a Common Expense. Funds to cover the amount of the deductible shall be included in the Association’s reserve accounts. The deductible should be established at a level that is sufficiently high to eliminate minor “nuisance” claims which could cause cancellation of the Association’s insurance policy.

11.4. Unavailability, Cancellation or Nonrenewal.

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

11.5. Owners’ Individual Policies Required.

11.5.1. Property & Liability Insurance.

Each Owner shall obtain, at such Owner’s expense, a policy or policies of insurance providing coverage against personal liability and against casualty or physical damage to the Dwelling and other insurable improvements on the Lot in an amount equal to the maximum insurable replacement value thereof i.e., 100% of replacement costs based upon the value of replacing all such improvements exclusive of land, excavations and foundations, utilizing contemporary building materials and technology. Such coverage shall afford protection against:

(a) loss or damage by fire, vandalism, malicious mischief, windstorm, and other hazards covered by the standard “broad form” and/or “special” extended coverage endorsements or their equivalent, and such other perils customarily covered by insurance for Dwellings in similar projects; and



(b) liability for death, personal injury and property damage arising from the use, ownership or maintenance of any part of the Lot.

11.5.2. No Obligation to Monitor. The Board of Directors is not obligated to monitor the existence or nonexistence of any insurance required under this Section 11.5; such responsibility, and the risks to the Owner of a failure to have proper insurance, are to be borne solely by the Lot Owner. A failure by the Owner to maintain insurance, which failure results in any economic loss or other harm or damage to the Association shall constitute misconduct on the Owner's part.

## ARTICLE XII CONDEMNATION

### 12.1. Condemnation of Common Areas.

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

### 12.2. Association Necessary Party to Proceeding.

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

### 12.3. Notice to Mortgagees.

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

### 12.4. Payment of Award.

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

## 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. Enforcement by Association.

The Board of Directors shall have full authority to enforce compliance with the covenants, conditions and restrictions contained in the Governing Documents. Prior to seeking legal action in a court of competent jurisdiction, the Board shall use all available lesser means to resolve an issue, including but not limited to mediation, arbitration, fines, Special Assessments and placing a lien on the property.

13.3. Legal Proceedings.

Failure to comply with any of the terms of the Governing Documents shall be grounds for legal relief, including without limitation, actions to recover any sums due for money damages, injunctive relief, Foreclosure of the lien for payment of Assessments, or any combination thereof and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Association or, if appropriate, by any aggrieved Owner, and shall not constitute an election of remedies.

13.4. Costs and Attorney Fees.

The Association shall be entitled to recover any costs and reasonable attorney 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 Association shall be entitled to recover costs and reasonable attorney fees if it prevails on appeal and in the enforcement of a judgment. In any other proceeding arising out of an alleged default by an Owner, the prevailing party shall be entitled to recover the costs of the proceeding, and such reasonable attorney fees as may be determined by the court. In the event that the prevailing party is the Association, the costs and attorney fees so awarded shall constitute a Specially Allocated Assessment against the Owner's Lot. An aggrieved Owner shall also be entitled to an award of costs and attorney fees in a proceeding initiated by such Owner.

13.5. No Waiver of Rights.

The failure of the Association, the Board of Directors or of an Owner to enforce any right, provision, covenant or condition which may be granted by the Governing Documents or the Governing Law, shall not constitute a waiver of the right of the Association, the Board or the Owner to enforce such right, provision, covenant or condition in the future.

13.6. Remedies Cumulative.

A suit to recover a money judgment for unpaid Assessments may be maintained without foreclosing or waiving the lien securing the same, and a Foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment. All rights, remedies and privileges granted to the Association, the Board of Directors or any Owner pursuant to any term, provision, covenant or condition of the Governing Documents or the Governing Law shall be deemed to cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Governing Documents or the Governing Law or at law or in equity.

13.7. Occupants Subject to Rights and Responsibilities of Owners.

Any tenant or other Occupant of a Lot 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 Utility Failure, Etc. - Association Not a Guarantor.

The Association is not a guarantor of the health or safety of any Occupant of the Community, or of the integrity and usefulness of any portions of the Property within the Community. Except to the extent covered by insurance obtained by the Board pursuant to Article XI, neither the Association nor the Board 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. Liability of Directors and Officers, Indemnification.

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

14.3. No Bailment.

Neither the Board of Directors, the Association, any Owner nor the Declarant shall be considered a bailee of any personal property stored or placed on the Common 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

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

15.1. Percentage of Eligible Mortgagees.

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

15.2. Notice of Actions.

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

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community or any Lot in which there is a first Mortgage held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable;

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

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

15.3. Inspection of Books.

The Association shall maintain current copies of the Declaration of Covenants, Bylaws, Articles of Incorporation, Rules and Regulations, books and records and financial statements. The Association shall permit any party eligible under Washington State law to inspect the books and records of the Association by appointment during normal business hours.

15.4. Financial Statements.

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

(a) The Association's budget for annual Assessments is fifty thousand dollars or more and said audit has not been waived under the provisions of RCW 64.38.045 (3), in which case the cost of the audit shall be a Common Expense; or

(b) The Association's budget for annual Assessments is less than fifty thousand dollars or the said audit has been waived under the provisions of RCW 64.38.045 (3) and any Eligible Mortgagee or Eligible Insurer requests it, in which case the Eligible Mortgagee or Eligible Insurer shall bear the cost of the audit.

15.5. Enforcement.

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

15.6. Attendance at Meetings.

Any representative of an Eligible Mortgagee or Eligible Insurer may attend and address any meeting which a Lot Owner may attend and is subject to the same standards as any Lot Owner.

15.7. Limitations on Mortgagees' Rights.

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

15.8. Implied Approval by Mortgagee.

The failure of an Eligible Mortgagee or Insurer to respond within sixty (60) days to any written request of the Association delivered by certified or registered mail, "return receipt requested" for approval of an amendment to the Governing Documents, or wherever Eligible Mortgagee or Insurer approval for an action of the Association is required, shall constitute an implied approval of the action or amendment.

15.9 Resale Information/Certificate.

Upon request of a new Lot Owner and/or their agent, the Association will provide information and/or complete a Resale Certificate with information or copies of the Governing Documents and agreements and any other information as required by law. Reasonable fees may be charged for the preparation and reproduction of these documents.

ARTICLE XVI  
EASEMENTS AND SPECIAL DECLARANT RIGHTS

16.1. Easements for Lots and Lot Owners.

Each Lot has an easement in and through each other Lot and the Common Areas for utilities and for lateral and/or subjacent support, and each Lot Owner has a perpetual right of ingress to and egress from his or her Lot over any sidewalks or roadways included in the Common Areas.

16.2. General Easement for Association Functions.

There is hereby reserved to the Association, or its duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Association as are set forth in the Declaration of Covenants, the Bylaws, or the Rules and Regulations. See Section 8.4 hereof.

16.3. Easements for Utilities and Drainage.

Declarant does hereby establish, create and reserve for the benefit of itself, the Association and all Owners, and their respective heirs and assigns, easements for the installation and maintenance of master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers and drainage systems and electrical, gas, telephone, water and sewer drainage systems and electrical, gas, telephone, water and sewer lines over the area designated for easements and shown on the Plat. No Lot Owner shall allow or permit any structure or landscaping to be located, installed or grow upon the area subject to the Utilities and Drainage Easement which might in any way damage or interfere with the installation and operation of such utilities and systems. Each Person utilizing the Utilities and Drainage Easement areas located on another's Lot shall promptly restore such area to a condition as close to its original condition as reasonably practical after making such use. Each Lot Owner shall maintain the area of his Lot subject to the Utilities and Drainage Easement in a condition which will not interfere with the operation and maintenance of said utilities and systems. See also Section 6.2.6 and Exhibits C, and F.

16.4. Easements for Declarant.

The Declarant reserves a blanket easement through the Property as may be reasonably necessary for the purpose of discharging the Declarant's obligations or for exercising Special Declarant Rights. Without limiting the generality of the foregoing, such easements include the following:

16.4.1. General Reservation. Declarant reserves non-exclusive easements for ingress, egress and utilities over and across all Common Areas and all Tracts depicted on Platting Documents as retained for future development.

16.4.2. Specific Rights. The easements reserved under this Section shall entitle the Declarant, for the development of the Community, to tie into water, sewer, storm sewer, irrigation, electrical, gas, telephone or other utility conduits or lines of all varieties, and to travel over and connect with roadways, driveways, walkways, open areas or utility systems developed and employed in any completed portions of the Community. The Declarant also reserves the right to grant easements to public or private utility companies and to convey to such companies' utility lines, pipes, wires, ducts, channels, conduits and/or other facilities in furtherance of such grants. The Declarant further reserves the rights to create or relocate utility lines, pipes, wires, ducts, channels, conduits and/or other facilities at any location within the Property.

16.5. Easements Shown on Platting Documents.

16.5.1. General Reservation. Any easement shown on the Platting Documents which benefits one or more Lots in the Community or which benefits any real property not included within the Community, confer various rights and benefits upon the owner(s) of such real property, and may also impose obligations upon the Association.

16.5.2. Native Growth Protection Easements. Lots 1 - 12 as shown on the Plat are subject to a Native Growth Protection Easement located 100-foot landward of the Ordinary High Watermark, as described in ASTI report dated March 10, 2005, and subject to the terms and conditions contained in that certain Native Growth Protection Easement Agreement dated the 5th of May 2011, and recorded in the records of Skagit County, Washington under Auditor's File No. 201105240061 on May 24th, 2011 ("the NGPE Agreement", Exhibit E). All current and future Owners of Lots subject to the NGPE Agreement shall perform any and all necessary maintenance of the landscaping as described therein and in conformance with the Native Growth Protection Easement Shoreline Landscape & Maintenance Plan, dated September 21, 2009 (Exhibit E) on which the "Agreement" is predicated. Such area, together with the face of the bluff, shall remain undisturbed and no cutting or clearing in such area shall be permitted without the expressed written permission of the City of Anacortes. NGPE areas are protected from development or disturbance by protective easements in favor of the City. In addition, notwithstanding anything to the contrary contained in the NGPE Agreement, the Owner of any portion of the NGPE Property shall be required to perform necessary pruning within the NGPE Zone, as defined in the NGPE Agreement, to maintain view corridors from the applicable portion of the NGPE Property to Guemes Channel approximating a 60% horizontal and vertical view of the water through the trees and shrubs, with an elevation not lower than the Lot curb-line elevation along Cutter Drive. Notwithstanding anything to the contrary contained in the Declaration of Covenants, a two-rail cedar fence is expressly permitted. The Association shall repair or replace such fence as described in Section 2(a) of the NGPE Agreement. In the event the Association is required to repair or replace the fence as a result of any acts or omissions of the Owner of any portion of the NGPE Property, such Owners shall reimburse the Association for any and all costs incurred by the Association in conjunction with such repair or replacement within thirty (30) days of such Owner's receipt of an invoice from the Association. The City is granted a perpetual easement on, over, along and across the NGPE Tracts for ingress and egress thereto and therefrom for the purposes of monitoring and enforcing proper operation and maintenance of the NGPE Tracts. See Section 6.2.2 hereof for specific maintenance requirements associated with the NGPE Tracts.

16.5.3. Oakes Avenue Planting Easement. All Owners of Lots located along Oakes Avenue shall maintain, at such Owners' sole cost and expense, a 10-foot planting easement within the area labeled 10.0' Planting Easement on the Platting Documents (Exhibits C and G). Such landscaping shall be in addition to, and complementary with, the landscaping contained in the Oakes Avenue Landscape Buffer and shall be maintained with sufficient plantings to substantially obscure the homes within San Juan Passage along Oakes Avenue from viewing from Oakes Avenue; however, at maturity these plantings shall not exceed 30 feet in height. Notwithstanding anything to the contrary contained in the Plat or any other documents, conditions or findings affecting the Property, the Owner of any of said Lots shall be solely responsible for such maintenance, at such Owner's sole cost and expense. If the Owner of any affected Lot under this Section fails to timely and adequately perform such required maintenance, the Association may elect to perform such Upkeep and recover the costs so incurred through a Specially Allocated Assessment pursuant to Section 10.8.1 hereof.

16.5.4. Portalis Planting Easement. Lots 75-79 abutting the Property located southwest and adjacent to the Property shall maintain a 20-foot planting easement within the 20-foot rear yard setbacks of such Lots (Exhibits C and G). Notwithstanding anything to the contrary contained in the Plat or any other documents, conditions or findings affecting the Property, the Owner of any of said Lots shall be solely responsible for such maintenance, at such Owner's sole cost and expense. If the Owner of any affected Lot under this Section fails to timely and adequately perform such required maintenance, the Association may elect to perform such Upkeep and recover the costs so incurred through a Specially Allocated Assessment pursuant to Section 10.8.1 hereof.

16.6. Special Declarant Rights.

16.6.1. General Reservation. The Declarant has reserved the following Special Declarant Rights for the purpose of furthering and completing the development of the Community: To exercise any Development Right reserved in Section 3.3.1 hereof; to complete any improvements indicated on the Platting Documents filed with the Declaration of Covenants; to maintain sales offices, management offices, signs advertising the Community, 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 Community; and to control the Association during the Declarant Control Period described in Section 16.6.2 below. Special Declarant Rights other than those specified in Sections 3.3.1 or 16.6.2 hereof shall persist until the last Lot in the Community is conveyed by the Declarant to a party other than an Affiliate of the Declarant, or until a date which is twenty (20) years following the recordation of this Amended and Restated Declaration of Covenants, whichever first occurs.

16.6.2. Declarant Control Period - Transition Date. The Declarant has reserved the rights to designate a majority of the members of the Board of Directors of the Association, and to appoint or remove any officer of the Association or any member of its Board of Directors or of any Committee, or to veto or disapprove a proposed action of the Association, its Board of Directors or any Committee, for a period of time known as the "Declarant Control Period." The Declarant Control Period shall persist until the last Lot in the Community is conveyed by the Declarant to a party other than an Affiliate of the Declarant. Within sixty (60) days following the Conveyance of



the last Lot, or earlier at Declarant's sole option, a Special Meeting of the Association shall be held, the purpose of which is to elect a Board of Directors elected entirely by the Members of the Association. The date of such election shall be known herein as the "Transition Date." If that Special Meeting is held prior to the Conveyance of the last Lot, Declarant shall relinquish the rights to designate a majority of the members of the Board of Directors and to appoint or remove any officer of the Association or any member of its Board of Directors or of any Committee, but shall retain the right to veto or disapprove a proposed action of the Association, its Board of Directors or any Committee until the Conveyance of the last Lot.

16.6.3. Legal Status of Special Declarant Rights. Each Special Declarant Right reserved by Declarant in this Declaration of Covenants has been, is and shall remain an equitable servitude burdening all lands subject thereto and running with such lands. Each Special Declarant Right shall exist for the benefit of the Declarant and/or any assignee of Declarant and/or any successor declarant. Declarant has and shall retain, with respect to each Special Declarant Right, a power coupled with Declarant's interest in said lands. The Special Declarant Rights reserved in this Declaration of Covenants include the right, but not the obligation, to create future interests or future estates in real property, and to own, convey, Mortgage, lease and/or otherwise use and deal with such real property and such future interests or future estates free and clear of any interest of other Lot Owners or the Association, except as may be otherwise specifically provided herein.

16.6.4. Special Declarant Rights Deemed Transferred - Limitations. Declarant shall have been deemed to have transferred, in any Conveyance by Declarant to an Affiliate of Declarant or to a Successor Declarant, all Special Declarant Rights reserved by Declarant herein relating to the Property so conveyed by Declarant, except to the extent expressly provided in the deed of Conveyance.

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 17.4 hereof, amendments may be adopted only at a meeting of the Owners if at least sixty-seven percent (67%) of the votes in the Association are cast for such amendment, or without any meeting if all Owners have been duly notified and Owners holding at least sixty-seven percent (67%) of the votes in the Association consent in writing to such amendment. In all cases, the amendment when adopted shall bear the acknowledged signature of the President of the Association.

17.2. Recordation Required.

Every amendment to the Declaration 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 Community and shall contain a cross-reference by recording number to the Declaration of Covenants and each previously recorded amendment thereto.

17.3. Special Restrictions.

No amendment may restrict, eliminate, or otherwise modify any Special Declarant Right provided in the Declaration of Covenants without the consent of the Declarant and any mortgagee of Record with a security interest in the Special Declarant Right or in any real property subject thereto, excluding mortgagees of Lots owned by Persons other than the Declarant.

17.4. Amendments by Declarant.

Subject to the provisions of Section 17.5 hereof, the Declarant may unilaterally adopt and file amendments to the Declaration of Covenants and to the Platting Documents for so long as the Declarant is the Owner of any Lot in the Community or until the expiration of the time limit for the exercise of any Special Declarant Rights reserved by the Declarant.

17.5. Certain Amendments Require Approval of City of Anacortes.

As provided in Section 5.10.3 hereof, no Amendment to this Declaration of Covenants, the effect of which would alter or modify the provisions of Articles V and VI hereof, may be adopted in the absence of advance written approval of the City of Anacortes.

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 a Record, 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. With the advance written consent of any Owner, required notice may be provided electronically. Mailing addresses may be changed from time to time by notice provided by the Owner in a Record 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 also may be provided to any Person in any manner permitted by statute.

18.1.2. New Lot Owners must supply their names and addresses, telephone numbers and, if so desired in order to receive notices from the Association, e-mail addresses, 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 Governing Law and furthers the common plan of this Subdivision.

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. No Discrimination.

The Association shall not discriminate on the basis of race, color, religion, national origin, familial status, handicap or other protected class. The Association shall make reasonable accommodations in its policies and procedures and permit reasonable modifications of premises where necessary or appropriate to comply with law.

18.5. Effective Date.

This Amended and Restated Declaration of Covenants shall take effect upon recording.

DATED this 23 day of July, 2018.

GP ANACORTES, LLC

By: Gilbane Development Company

Its: Managing Member

By: [Signature]  
Edward T Broderick (Print Name)  
Its President & CEO (Title)

STATE OF RHODE ISLAND )  
  ) ss.  
COUNTY OF PROVIDENCE )

I hereby certify that I know or have satisfactory evidence that EDWARD BRODERICK is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the PRESIDENT + CEO of Gilbane Development Company, the Managing Member of GP ANACORTES, LLC, a Rhode Island Limited Liability Company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: July 23, 2018.

[Signature]  
NOTARY PUBLIC for the State of Rhode Island  
Residing at CUMBERLAND, RI  
My Commission expires 3/11/20

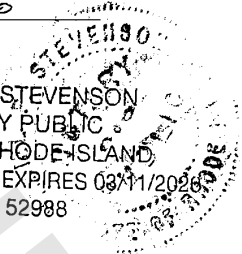
 DANIEL P. STEVENSON  
NOTARY PUBLIC  
STATE OF RHODE ISLAND  
MY COMMISSION EXPIRES 03/11/2020  
ID #: 52988

EXHIBIT A  
ARTICLES OF INCORPORATION

The Association's Articles of Incorporation were filed with the state of Washington's Secretary of State on December 17<sup>th</sup>, 2008 and are available for review upon Owner's request to the Board or Owner's accessibility to the Association's Property Manager's Website.

EXHIBIT B  
DESIGN GUIDELINES

The Association's Design Guidelines are available for review upon Owner's request to the Board or Owner's accessibility to the Association's Property Manager's Website.

EXHIBIT C  
PLAT MAPS AND OUTLINE OF ENTIRE DEVELOPMENT

The Plat Maps for Phases 1-5 were recorded under the following Skagit County Auditor's file nos.:

Phase 1: 200811260099

Phase 2: 201105020052

Phase 3: 201112080064

Phase 4: 201212260122

Phase 5: 201402140089

The Plat Maps and the updated map/outline of the entire development are available for review upon Owner's request to the Board or Owner's accessibility to the Association's Property Manager's Website.

EXHIBIT D  
PRELIMINARY PLAT PLAN APPROVAL AGREEMENT AND MEMORANDUM OF UNDERSTANDING

The Preliminary Plat Approval Facts and Findings was recorded on November 25<sup>th</sup>, 2008 under Skagit County Auditor's file no. 200811250001.

The Memorandum of Understanding Concerning Design and Construction of the Intersection of Edwards Way and Oakes Avenue was recorded on November 25<sup>th</sup>, 2008 under Skagit County Auditor's file no. 200811250002.

Both documents are also available for review upon Owner's request to the Board, or Owner's accessibility to the Association's Property Manager's Website.

EXHIBIT E  
NATIVE GROWTH PROTECTION EASEMENT AGREEMENT AND SHORELINE  
LANDSCAPE MANAGEMENT PLAN

The Native Growth Protection Easement was recorded on May 24<sup>th</sup>, 2011 under Skagit County Auditor's file no. 201105240061.

The Native Growth Protection Easement Shoreline Landscape & Management Plan is on file with the Association and is available for review upon Owner's request to the Board or Owner's accessibility to the Association's Property Manager's Website.

EXHIBIT F  
DRAINAGE EASEMENT AGREEMENTS

The Drainage Easement Agreement for Tract L, Lots 5-13 and Lots 15-20 was recorded on November 14<sup>th</sup>, 2013 under Skagit County Auditor's file no. 201311140049.

The Drainage Easement Agreement for Lot 14 was recorded on September 11<sup>th</sup>, 2014 under Skagit County Auditor's file no. 201409110050.

Both documents are also available for review upon Owner's request to the Board, or Owner's accessibility to the Association's Property Manager's Website.

EXHIBIT G  
COLOR-CODED MAP OF NEIGHBORHOOD AND PHYSICAL RESPONSIBILITY

The Color-Coded Map of Neighborhood and Physical Responsibility is on file with the Association and available for review upon Owner's request to the Board or Owner's accessibility to the Association's Property Manager's Website.

EXHIBIT H  
MATRIX OF FINANCIAL RESPONSIBILITY

The Matrix of Financial Responsibility is on file with the Association and available for review upon Owner's request to the Board or Owner's accessibility to the Association's Property Manager's Website.