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CHMELIK SITKIN & DAVIS P.S.
1500 Railroad Avenue
Bellingham, WA 98225
(360) 671-1796



202104270117

04/27/2021 02:18 PM Pages: 1 of 62 Fees: \$184.50
Skagit County Auditor

DOCUMENT TITLE:

**DECLARATION OF COVENANTS, CONDITIONS, RESERVATIONS AND RESTRICTIONS
FOR BRICKYARD PARK**

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

N/A

GRANTOR:

BRICKYARD PARK, LLC

GRANTEES:

THE GENERAL PUBLIC

ABBREVIATED LEGAL DESCRIPTION (Lot, block, plat or section, township, range):

PTN. E1/2 SW 1/4, 18-35-5

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER

P39374

DECLARATION OF COVENANTS, CONDITIONS,
RESERVATIONS AND RESTRICTIONS - 1

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**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVATIONS
FOR BRICKYARD PARK**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS ("Declaration") is made on this ___ day of April, 2021, by Brickyard Park LLC, a Washington Limited Liability Company hereafter referred to as the "Declarant," and "Developer."

INTRODUCTION

PRELIMINARY MATTERS, PURPOSE

A.1 Preliminary Matters.

a. Declarant is the owner in fee simple of the land located in Skagit County, Washington and as more particularly described in Article A.2 of this Declaration, including all improvements, easements, rights and appurtenances thereunto belonging (all collectively referred to hereinafter as the "Property").

b. Declarant desires to subject the Property to the provisions of this Declaration to create a residential community of single-family housing and related uses as defined in **Article 11**. Declarant has submitted the Property to the provisions of Sedro-Woolley Municipal Code (hereinafter referred to as the "Ordinance"), and has thus created from such Property a Subdivision known as "Brickyard Park" (the "Community").

c. The Community is a "plat community" as defined in, and is subject to, the Washington Uniform Common Interest Ownership Act, RCW Ch. 64.90. Declarant is creating "Units" as defined in RCW 64.90.010(57)(a) within the Community in phases pursuant to those Development Rights reserved in **Article 3.2** below. In general, for each subsequent phase, Declarant will record an amendment to this Declaration and the Plat Map defined below to add Units to the Community after Declarant completes construction of Homes on the applicable Lots.

d. Certain obligations of Declarant (e.g., the obligation to pay assessments for unimproved Lots) apply only to Lots included within the Community and do not apply to Lots that have not yet been included in the Community.

A.2 Units Included in the Community.

This Declaration binds the Property described on the attached **Exhibit A** which is comprised of 85 Lots and Common Areas (Common Elements) in the Plat. The Property, by recording of this Declaration, shall be subject to the covenants and restrictions hereafter set forth and the Lots shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration. However, this Declaration creates a common interest community and a plat community governed by the Act only with regard to those Lots in Phase I which are described on the attached **Exhibit A-1**.

A.3 Units in Subsequent Phase. Declarant has reserved the right in **Section 3.2** of this Declaration to create up to forty-three (43) additional Units in a subsequent phase. If Declarant adds all Units in Phase II, there will be a total of 85 lots in the Community. The Units

to be created in Phase II shall not be considered to be Units in the Community unless and until Declarant: (i) completes the construction of Homes within those Units, and (ii) records an amendment to this Declaration adding those Units to the Community. Each amendment to this Declaration which adds Units to the Community will reallocate the Allocated Interests in accordance with the formula stated in **Section 2.2** of this Declaration (equally among all Units in the Community).

A.4 Boundaries of the Units. The boundaries of the Units are the same as the boundaries of the Lots. Those boundaries are vertical planes shown on the Plat for the Lots. The designation of each Unit is also the same as the designation for the corresponding Lot.

A.5 Reference to Platting Documents- Legal Description of Property Affected

Concurrently here within, the Declarant has recorded with the Auditor of Skagit County, Washington the "Plat of Brickyard Park," this map hereinafter referred to as the "Plat Map," which shows the location and dimensions of the Lots and Common Areas within the Community, together with other necessary information. The Plat Map was approved by the City of Sedro-Wooley and recorded at Auditor's File No. _____, Records of Skagit County, Washington.

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A.6 Purpose. This Declaration of Covenants, together with the Plat Map referred to herein, state covenants, conditions, restrictions and reservations intended by the Declarant to effect a common plan for the development of the Property mutually beneficial to all of the described Lots. These covenants, conditions, restrictions, reservations and plan are intended to become, and by the recordation of this instrument shall be conclusively deemed to be legal and equitable servitude which shall run with the land of the Property and shall be binding upon the entire Property and upon each such Lot therein as a parcel of realty, and upon its Owners, their family members, their heirs, personal representatives, successors and assigns, and their tenants, licensees and other lawful occupants, through all successive transfers of all or part of the Property or any security interest therein, without requirement of further specific reference or inclusion in deeds, contracts or security instruments, and regardless of any subsequent forfeiture, foreclosures, or sales of Lots under security instruments, or of any forfeiture, foreclosures, or sales instituted for nonpayment of government tax, levy or assessment of any kind.

A.7 Community Attributes. The Community is designed for occupancy by persons of retirement age as provided in **Section 11.2.2** herein.

**Article 1
DEFINITIONS**

The following terms shall have the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

1.1 Act means the Washington Uniform Common Interest Ownership Act, RCW Ch. 64.90, as may be amended from time to time.

1.2 Allocated interest(s) means the common expense liability and the votes in the Association allocated to each Lot.

1.3 Assessments(s) shall mean all assessments imposed pursuant this Declaration, including fines or fees levied or imposed by the Association pursuant to the Governing Documents, interest and late charges on any delinquent account, and all costs of collection incurred by the Association in connection with the collection of a delinquent account, including reasonable attorneys' fees.

1.4 Association shall mean Brickyard Park Homeowners Association, which shall be incorporated as a nonprofit corporation in accordance with the Act, its successors, and assigns.

1.5 Association Lien shall mean a lien in favor of the Association imposed pursuant to the Declaration.

1.6 Board shall mean and refer to the Board of Directors of the Association, as provided for in this Declaration.

1.7 Budget shall mean the operating budget for the Association adopted pursuant to this Declaration.

1.8 Building shall mean any of the detached buildings on the Property.

1.9 Bylaws shall mean the bylaws of the Association.

1.10 City shall mean the City of Sedro-Woolley Washington, including the employees and agents thereof.

1.11 Committee shall refer to any committee of the Association created by the Governing Documents or the Board.

1.12 Common Driveway means any those driveways, or portions thereof, utilized by two (2) or more separate Lots to access their respective Dwelling Units.

1.13 Common Elements shall mean the tracts and improvements thereon shown on the Plat Map as Common Elements.

1.14 Common Expenses shall mean all costs and expenses incurred by the Association, including, but not limited to, allocations to reserves allocated to all of the Owners in accordance with common expense liability.

1.15 Common Wall Lots means those Dwelling Units contained in one building structure and are separated by a common wall ("Party Wall"). The Common Wall Lots are depicted on the Plat and on **Exhibit D**.

1.16 Control Termination Date shall mean the date that is the earlier of: (a) sixty days after Declarant has transferred title to the purchasers of Lots representing 75% of the total lots in the Plat (including all phases); (b) two years after the last conveyance of a Lot, except to a dealer (as such term is defined by RCW 64.90.010); (c) two years after any right to add new Lots was last exercised; or (d) the date on which Declarant, by written Notice to all Owners, records an amendment to the Declaration voluntarily surrendering all rights to appoint and remove officers and board members.

1.17 County shall mean Skagit County, Washington, including the employees and agents thereof.

1.18 Declarant shall mean and refer to Brickyard Park, LLC, a Washington Limited Liability Company, or any Successor Declarant.

1.19 Declaration shall mean this Declaration and Covenants, Conditions and Restrictions.

1.20 Development Period shall mean the period prior to the Control Termination Date.

1.21 Dwelling or Dwelling Unit means an improved portion of a Lot designed for separate ownership and intended to serve as a personal residence.

1.22 First Mortgage and First Mortgagee shall mean, respectively, (a) a recorded mortgage on a Lot that has legal priority over all other Mortgages thereon, and which is held by an Institutional Lender, and (b) the holder of a First Mortgage which is an Institutional Lender.

1.23 Governing Documents means this Declaration; the Plat, Association Rules and Regulations, and the Articles and Bylaws of the Association, all as amended from time to time.

1.24 Improvement shall mean all Structures and appurtenances thereto of every kind, whether above or below the land surface, including by not limited to, buildings (including Residences), garages, utility systems, walkways, driveways, parking areas, loading areas, landscaping items, swimming pools, sports courts, fences, walls, decks, stairs, poles, landscaping vegetation including street trees, irrigation systems, stormwater facilities, streets, signs, exterior fixtures, recreational facilities, play structures, lighting including without limitation street lighting, paving, striping, curbs, picnic structures and any other Structure of any kind.

1.25 Institutional Lender shall mean one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds or business trusts, including, but not limited to real estate investments trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any private or governmental institution which has insured the loan of such a lender, including Federal Mortgage Agencies, or any combination of any of the forgoing entities.

1.26 Limited Common Element shall mean a portion of the common elements allocated by the declaration or by operation of law for the exclusive use of one or more, but fewer than all, of the unit owners.

1.27 Lot shall mean each of the lots designated any plot of land shown upon any recorded subdivision plat of the Property.

1.28 Mortgage shall mean the recorded mortgage or deed of trust that creates a lien against a Lot and shall also mean a real estate contract for the sale of a Lot.

1.29 Mortgagee shall mean the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a Lot created by a mortgage or deed of trust and shall also mean the vendor, or the designee of a vendor, of a real estate contract for the sale of a Lot.

1.30 Occupant shall mean a lessee or licensee of an Owner or any other person or entity, other than an Owner, in lawful possession of a Lot, or a portion of a Lot, with the permission of the Owner.

1.31 Owner shall mean and refer to record owner (whether on or more persons or entities) of a fee interest in any Lot, including the Declarant, but excluding Mortgagees or other persons or entities having such interest merely as security for the performance of any obligation. Purchasers or assignees under recorded real estate contracts shall be deemed Owners as against their respective sellers or assignors.

1.32 Party Wall shall mean and refer to the dividing wall between each adjoining Dwelling Unit on the Common Wall Lots. Any matters concerning a Party Wall which are not covered by the terms of this Declaration shall be governed by the general rules of law regarding party walls.

1.33 Person shall include natural persons, and legal entities of all kinds.

1.34 Plat shall mean and refer to the approved plat of **Brickyard Park**, contained therein recorded at under Skagit County Recording Number 202104270117 and any additions that may be made pursuant to **Section 3.5** thereof.

1.35 Property shall mean and refer to the real property described with particularity in **Exhibit A** and such additions to that Property which may hereafter be brought within the jurisdiction of the Association.

1.36 Residence shall mean and refer to a residential structure occupying any Lot.

1.37 "Single family" shall mean a single housekeeping unit, without regard to the construction type or ownership of such unit, that includes not more than four (4) adults who are legally unrelated.

1.38 "Single Family Home" shall mean a home intended for occupancy by a Single Family which is constructed on a Lot in accordance with this Declaration.

1.39 Specially Allocated Expenses shall mean any expense of the Association, including allocations to reserves and other income to the Association, allocated to some or all of the appropriate Lots in Accordance with this Declaration.

1.40 Structure shall mean any dwelling, building, fence, wall, driveway, walkway, patio, garage, storage shed, carport, mailboxes, rockery, or the like.

1.41 Subdivision shall mean the Property and all improvements thereto.

1.42 Transition Date means the date that is 30 days after the Control Termination Date.

Article 2
HOMEOWNERS' ASSOCIATION

2.1 Non-Profit Corporation. The Association shall be incorporated as a nonprofit corporation in accordance with RCW 24.03.

2.2 Membership and Allocation of Common Expenses and Votes. Every Person that is an Owner of any Lot shall be a member of the Association. Membership shall be appurtenant to the Lot and may not be separated from ownership of any Lot and shall not be assigned or conveyed in any way except upon the transfer of title to said Lot and then only to the transferee of title to the Lot. All Owners shall have the rights and duties specified in the Governing Documents.

2.2.1 All Common Expenses and votes in the Association shall be allocated equally among all Units in the Community. This means that no Common Expenses are allocated to Units designated for subsequent phases that have not been added to the Community.

2.3 Voting. Owners, including the Declarant unless otherwise provided herein, shall be entitled to one vote for each Lot owned. When more than one Person owns an interest in any Lot, the vote for that lot shall be exercised as the Owners of such lot decide to exercise that vote, but in no event shall more than one vote be cast with respect to any Lot, nor shall any vote be divided.

2.3.1 Voting Representative. There shall be one (1) voting representative of each Lot. Declarant shall be considered and "Owner" and shall be the voting representative with respect to any Lot owned by Declarant. If a Person (including Declarant) owns more than one lot, such Person shall have the votes for each Lot owned.

2.3.2 Joint Owner Disputes. The vote of a Lot must be cast as a single vote, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their votes shall be cast, they shall lose their right to vote on the matter in question. In the event more than one vote is cast for a particular Lot, none of such votes shall be counted and such votes shall be deemed void.

2.3.3 Pledged Votes. If an Owner is in default under a First Mortgage on a Lot for ninety (90) consecutive days or more, the Mortgagee shall automatically be authorized to declare at any time thereafter that the Owner has pledged his or her vote on all issues to the Mortgagee during the continuation of the default. If the Association has been notified of any such pledge to a Mortgagee, or in the event the record Owner has otherwise pledged its vote regarding special matters to a Mortgagee under a fully recorded mortgage or deed of trust, or to the vendor under a duly recorded real estate contract, only the vote of such Mortgagee or vendor will be recognized in regard to the special matters upon which the vote is so pledged, if a copy of the instrument with this pledge has been filed with the Association. Amendments to this Section shall only be effective upon the written consent of all of the voting Owners of their Lot and their respective Mortgagees and vendors, if any.

2.4 Bylaws of Association. Bylaws may be adopted and amended by the Board. The Bylaws may contain provisions which are supplementary to, and consistent with this Declaration and the Act.

2.5 Powers of the Association.

2.5.1 The Association shall:

2.5.1.1 Adopt organizational documents;

2.5.1.2 Adopt Budgets for revenues, expenditures, and reserves, and impose and collect Assessments for Common Expenses from Owners;

2.5.1.3 Prepare financial statements; and

2.5.1.4 Deposit and maintain the funds of the association in accounts in accordance with **Section 6.16**.

2.5.2 The Association shall also have the powers enumerated below, any powers reasonably implied from the grant of enumerated powers, any powers necessary and proper for the governance and operation of the Association, and all other powers that may be exercised in Washington state by a plat community:

2.5.2.1 Purchase policies of liability and property insurance on the Common Elements, directors' and officers' liability insurance and such other insurance as the Board deems advisable, and take all actions which may be necessary or convenient in dealing with any insurance recovery or any insurance company;

2.5.2.2 Contract for legal and accounting services, if necessary, for the administration of Association affairs, administration of the Common Elements, or the enforcement of this Declaration;

2.5.2.3 Arrange for the maintenance, repair, and replacement of the Common Elements;

2.5.2.4 If necessary, maintain any Lot if such maintenance is reasonably necessary in the judgment of the Board to preserve the appearance and value of the subdivision as a whole pursuant to 10.2.

2.5.2.5 Pay any amount necessary to discharge any lien or encumbrance levied against the entire Property or any part thereof which is claimed or may, in the opinion of the Board, constitute a lien against the Property or a portion thereof and/or against the Common Elements. Where one or more Owners are responsible for the existence of such liens, they shall be jointly and severally liable for the cost of discharging it and any cost or expenses, including reasonable attorneys' fees and costs of title search incurred by the board by reason of such lien or liens. Such fees and costs shall be assessed against the Owner or Owners and the Lot responsible to the extent of their responsibility.

2.5.2.6 Pay all utility charges attributable to Common Elements;

2.5.2.7 The Association may, but shall not be obligated to, maintain, or support certain activities within the Property designed to make the Owners and Occupants safer than they might otherwise be. However, neither the Association nor Declarant shall in any way

be considered an insurer or guarantor of security within the Property nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken;

2.5.2.8 Hire and discharge managing agents and other employees, agents, and independent contractors;

2.5.2.9 Adopt and publish Association Rules and Regulations governing the Owners, Occupants, guests and establish reasonable penalties for any infraction thereof;

2.5.2.10 Employ a property manager, to keep the books of the Association, and take such other actions as the Association may deem appropriate;

2.5.2.11 Impose Special Assessments to pay for Common Expenses;

2.5.2.12 Exercise all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of the governing Documents;

2.5.2.13 Acquire by gift pledge or otherwise, own, hold, improve, build upon, operate, maintain, insure, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

2.5.2.14 Borrow money, and with the consent of at least 80% of the Owners, mortgage, pledge, encumber or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

2.5.2.15 With the consent of at least 80% of the Owners, dedicate, sell, transfer, all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Board. Notwithstanding anything to the contrary, the Association shall not transfer or convey any Common Elements or permanently remove any landscaping or recreational equipment on the Common Elements which were included in the design plans approved by the City without the City's prior written consent;

2.5.2.16 Participate in mergers and consolidations with other non-profit corporations created for the same purposes.

2.5.2.17 Amend organizational documents;

2.5.2.18 Amend budgets;

2.5.2.19 Institute, defend, or intervene in litigation or in arbitration, mediation, or administrative proceedings or any other legal proceeding in its own name on behalf of itself or two or more Owners on matters affecting the Subdivision;

2.5.2.20 Make contracts and incur liabilities as provided in the Governing Documents;

2.5.2.21 Grant easements, leases, licenses, and concessions through or over the Common Elements, and petition for or consent to the vacation of streets and alleys;

2.5.2.22 Impose and collect any reasonable payments, fees, or charges for: (a) the use, rental, or operation of the Common Elements, (b) services provided to Owners; (c) moving in, moving out, or transferring title to Lots; (d) recordation of amendments to the Declaration, and (e) preparation of resale certificates required pursuant to Act, lender questionnaires, or statements of unpaid assessments; and

2.5.2.23 Provide for the indemnification of its officers and board members, to the extent provided in RCW 24.03.035 (14) and 23B.08.500 – 23B.08.600.

2.5.3 The Association and Declarant shall have no authority, liability or responsibility with respect to construction defects in any residence, and such issues shall be governed solely by the purchase and sale contract between each Owner and the builder constructing the residence.

2.6 Records. The Board shall cause to be kept complete, detailed, and accurate records of the following (collectively, "Records"):

2.6.1 Current budget, detailed records of receipts and expenditures affecting the operation and administration of the Association, and the other appropriate accounting records within the last seven years;

2.6.2 Minutes of all meetings of the Owners and the Board, other than executive sessions; a record of all actions taken by the Owners or Board without a meeting; and a record of all actions taken by a Committee in place of the Board on behalf of the Association;

2.6.3 The names of current Owners and the addresses used by the Association to communicate with them;

2.6.4 The original or restated Declaration and Organizational Documents and amendments thereto;

2.6.5 Current Association Rules and Regulations;

2.6.6 All financial statements and tax returns of the Association for the past seven years;

2.6.7 List of the names and addresses of the current Board members and Officers;

2.6.8 The Association's most recent annual report delivered to the secretary of state, if any;

2.6.9 Financial and other records sufficiently detailed to enable to the Association to provide the information required for resale certificates as required by the Public Offering Statement and RCW 64.90.640;

2.6.10 Copies of contracts to which the Association is or has been a party to within the last seven years;

2.6.11 Materials relied upon by the Architectural Reviewer to approve or deny any requests for design or architectural approval for a period of seven years after such decision is made;

2.6.12 Materials relied upon by the board and/or a Committee concerning a decision to enforce the Governing Documents for a period of seven years after such a decision is made;

2.6.13 Copies of insurance policies under which the Association is a named insured;

2.6.14 Any current warranties provided to the Association;

2.6.15 Copies of all notices provided to Owners or the Association as required by the Governing Documents or the Act; and

2.6.16 Ballots, proxies, absentee ballots, and other records related to voting by Owners for one year after the election, action, or vote to which they relate.

2.7 Examination of Records. Subject to the following, all Records must be made available for examination and copying by all Owners, mortgagees of Lots, and their respective authorized agents:

2.7.1 Records may be inspected during reasonable business hours at the Association's offices or at a mutually convenient time and location;

2.7.2 Records retained by the Association may be withheld from inspection and copying to the extent that they concern: (a) personnel and medical records relating to specific individuals; (b) contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated; (c) Existing or potential litigation, mediation, arbitration, or administrative proceedings; (d) existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the Governing Documents; (e) legal advice or communications that are otherwise protected by the attorney-client privilege or the attorney work product doctrine, including communications with any agents of the Association; (f) information the disclosure of which would violate a court order or law; (g) records of an executive session of the Board; (h) Individual Lot files other than those requested by the Lot Owner; (i) unlisted telephone number or electronic address of any Owner or Occupant; (j) security access information provided to the Association for emergency purposes and; (k) Agreements that for good cause prohibit disclosure to the Owners.

2.7.3 The Association shall provide copies by photocopy or through electronic transmission, if available, upon request by the person inspecting the Records. The Association may charge a reasonable fee for producing and providing copies of any Records and for supervising the inspection. The Association is not obligated to compile or synthesize any information.

2.7.4 Records provided for inspection shall not be used for commercial purposes.

Article 3
DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS OF DECLARANT

3.1 Reserved Development Rights. Declarant hereby reserves the following Development Rights:

3.1.1 The right to add improvements to the Community as indicated on the Plat Map.

3.1.2 The right to create Units within the Community (43 additional Units) pursuant to subsequent phases.

3.1.3 The right to withdraw real estate from the Community (all Lots owned by the Declarant).

3.1.4 The right to subdivide or combine Lots owned by Declarant or convert Lots owned by Declarant into Common Elements. Whenever Declarant exercises a Development Right to subdivide, combine or convert a Lot previously created into additional Lots, Common Elements, or both:

- a. If Declarant converts the Lot entirely to Common Elements, the amendment to this Declaration must reallocate all the Allocated Interests of that Lot among the other Lots as if that Lot had been taken by condemnation under **Article 17**
- b. If Declarant subdivides the Lot into two (2) or more Lots, whether or not any part of the Lot is converted into Common Elements, the amendment to this Declaration must reallocate all the allocated Interests of the Lot among the Lots created by the subdivision in any reasonable and equitable manner prescribed by the Declarant; and
- c. If Declarant combines two (2) or more Lots, the amendment to this Declaration must reallocate to the new Lot all of the Allocated Interests formerly allocated to the Lots so combined;

3.1.5 The right to add Real Estate or improvements to the Subdivision.

3.1.6 The right to withdraw Property from the Subdivision; provided, however, no portion of the Property may be withdrawn if a Lot in that portion of the Property is owned by a Person other than the Declarant

3.2 Phased Development.

(a) **Phases.** Declarant reserves the right to develop the Community in multiple phases. Improvements intended for all phases shall be constructed on the land described on attached **Exhibit A** and in the Plat. The land upon which improvements will be constructed for Units to be added in subsequent phases is described on attached **Exhibit A-2** and is shown on the Plat Map attached as **Exhibit B** and labelled as "SUBJECT TO DEVELOPMENT RIGHTS TO ADD UNITS THAT WILL RESULT IN A REALLOCATION OF ALLOCATED INTERESTS." This Declaration, the Plat, and the Plat Map attached as **Exhibit B** describe the boundaries of all Units for all phases. Improvements for Units added in

subsequent phases shall be consistent with the improvements for the first phase in structure type and quality of construction. Units in the first phase shall become a part of the Community upon the recording of this Declaration. Units included in the first phase of the Community upon recording of this Declaration are located on that portion of the land described on attached **Exhibit A-1**.

(b) **Adding Units.** Units within a subsequent phase shall become part of the Community when Declarant records an amendment to this Declaration and, if necessary to show the matters required by the Act for the subsequent phase, a revised Plat Map. The amendment shall assign an identifying number to each new Unit created (which will be the same as the identifying number of the Lot) and shall reallocate the allocated interests and votes among all Units in accordance with the formulas stated in **Section 2.2.1** of this Declaration.

(c) **New Budget.** Upon the addition of Units within a subsequent phase, the Board shall establish a new budget suitable to the expanded Community and shall thereafter impose monthly assessments based upon that revised budget.

(d) **Reserved Easements for Development of Phases.** Declarant reserves a non-exclusive easement over, under and across all Lots for ingress, egress, construction of improvements for both phases, and installation of utilities. The purpose of these reserved easements shall be to permit Declarant to perform all acts necessary to complete the construction of improvements for both phases to be added to the Community and shall be construed broadly to effectuate this purpose. Declarant shall be solely responsible for the cost of installing roads and utilities, and utility connection charges.

(e) **Reallocation of Allocated Interests.** Declarant shall recalculate the Allocated Interests whenever the exercise of a Development Right or Special Declarant Right results in the increase or decrease in the total number of Units. Declarant shall state the reallocations in an amendment to this Declaration signed by Declarant alone. Declarant shall use the formula stated in **Section 2.2.1** to calculate those reallocations.

3.3 Termination of Development Rights. Except as otherwise provided in this Declaration, Declarant's Development Rights and Special Declarant Rights shall continue so long as the Declarant is completing improvements which are within or may be added to this Subdivision, or the Declarant owns any Lots, or any Special Declarant Rights remain in effect but in no event later than the tenth anniversary of the recording of this Declaration; provided that Declarant may voluntarily terminate any or all of such Development Rights at any time by recording an amendment to this Declaration, which amendment specifies which Right is thereby terminated.

3.4 Assignment of Declarant Rights. Declarant may, at any time, by recorded instrument (a "Declarant Assignment"), assign and/or delegate all or a portion of its rights and obligations under this Declaration to another Person. The scope of the rights assigned, and the liability assumed, shall be limited solely to those specified in such Declarant Assignment. The original Declarant shall be deemed released from any obligation which is assumed by a Successor Declarant, and shall not be liable for any act or omission by a successor Declarant.

3.5 Expenditures During Development Period. During the Development Period, the Board shall have the sole discretion to use and consume all or so much of the dues paid, and initial capital contributions, as in the Board's judgment is necessary or expedient in maintaining the Common Elements and carrying out the other functions of the Association.

Maintenance of Common Elements may include, but are not limited to, (1) replacement of all dead or missing landscaping; (2) irrigation costs and repairs; and (3) costs of repairing damage due to vandalism or other destruction. Other expenditures may include, but are not limited to, any legal fees associated with carrying out any duties during the Development Period, including all costs associated with turning over the Association after the expiration of said Development Period.

3.6 Special Declarant Rights. As more particularly provided in this Section, Declarant, for itself and any successor Declarant, has reserved the following Special Declarant Rights with respect to the Property, which rights may only be transferred in accordance with RCW 64.90.425:

3.6.1 to complete any improvements indicated on the Plat, in this Declaration or the Public Offering Statement;

3.6.2 to exercise any development right;

3.6.3 to maintain sales offices, management offices, models, and signs advertising the Subdivision and Lots for sale therein;

3.6.4 to use easements through the Common Elements for the purpose of making improvements within the Subdivision or within real estate that may be added to the Subdivision. By way of example and not limitation, the scope of the easements reserved by Declarant under this Section allow Declarant to enter all Lots and Common Elements, following reasonable advance notice to the Association and affected Owners, to perform all obligations of Declarant under this Declaration, any agreements with Owners including purchase and sale agreements, any warranty obligations, any development obligations to maintain plat improvements and to satisfy any development obligations for which Declarant has posted a bond.

3.6.5 to make the Association subject to a master association;

3.6.6 to merge or consolidate the Subdivision or Association with another common interest community of the same form of ownership;

3.6.7 to appoint or remove any Officer or Board Member of the Association in accordance with **Section 5.2.1**, and / or to veto or approve a proposed action of the Board or Association;

3.6.8 to control any construction, design review, or aesthetic standards or process;

3.6.9 to attend meetings of the Owners, the Association, and, except during an executive session, the Board; and

3.6.10 to have access to the records of the Association to the same extent as an Owner.

3.7 Exercise of Development Right. To exercise any Development Right or Special Declarant Right reserved under **Article 3**, the Declarant shall prepare, execute, and record an amendment to this Declaration in accordance with **Article 18**. With regard to Development

Rights: (i) any Development Right may be exercised with respect to different portions of the Property at different times; (ii) no assurances are made regarding boundaries or portions of the Property which may be subjected to the exercise of a Development Right or the order in which a Development Right may be exercised; and (iii) if a Development Right is exercised, it is not necessary that the Development Right be exercised in all or in any other portion of the remainder of the Property.

3.8 Limitation of Declarant's Rights. It is understood that the total Subdivision shall include Lots not exceeding in number the maximum permitted by law.

Article 4 TRANSITION OF MANAGEMENT TO ASSOCIATION

4.1 Notice of Transition Meeting. Within thirty days following the end of the Control Termination Period, but in no case later than sixty days after Declarant has transferred title to the purchasers of lots representing 75% of the total lots in the Plat (including all phases), the Board shall send written Notice to Owners of the transition meeting of the association ("Transition Meeting"). The Notice shall be given in the manner prescribed by **Article 20.1**, and specify that the purpose of the Transition Meeting is to elect new Officers and Board members of the Association. Notwithstanding any provision of the Articles or Bylaws to the contrary, for the purpose of this meeting, the presence, either in person or by proxy, of the owners of 10% of the Lots shall constitute a quorum. The Board of Directors and officers of the Association may be elected by a majority vote of said quorum. The Owners shall adopt voting procedures designed to assure that the expiration dates for the term of the Board members are staggered. If a quorum shall not be present, the Development Period shall nevertheless terminate on that date specified in said Notice, the term in office of any Board member or Officer appointed by Declarant shall be deemed terminated, and it shall thereafter be the responsibility of the Lot Owners to provide for the operation of the Association.

4.2 Transfer of Property. No later than thirty days following the date of the Transition Meeting, Declarant shall deliver or cause to be delivered to the Board elected at the Transition Meeting all Property of the Owners and Association, including but not limited to:

- 4.2.1** The original or a copy of the recorded Declaration and any amendments thereto;
- 4.2.2** The organizational documents of the Association;
- 4.2.3** The minute books, including all minutes, and other books and records of the Association;
- 4.2.4** All current Association Rules and Regulations as may have been adopted;
- 4.2.5** Resignations of Officers and members of the board who were appointed by Declarant and not qualified as Board members;
- 4.2.6** The financial records, including canceled checks, banks statements, and financial statements of the Association, and source documents from the time of formation of the Association through the Transition Date;

- 4.2.7** Originals or copies of any recorded instruments of conveyance for Common Elements;
- 4.2.8** All tangible personal property of the Association;
- 4.2.9** Except for alterations to a Lot or Residence made by an Owner other than Declarant, a copy of the most recent plans and specifications used in the construction or remodeling of the Property and Structures;
- 4.2.10** Originals or copies of insurance policies for the Association and Property;
- 4.2.11** Originals or copies of any certificates of occupancy that may have been issued for the Subdivision;
- 4.2.12** Originals or copies of any other permits obtained by or on behalf of Declarant for the Subdivision and issued by any governmental agency with jurisdiction over the Subdivision;
- 4.2.13** Originals or copies of all written warranties that are still in effect for the Common Elements or any other areas or facilities that the Association has the responsibility to maintain and repair, from the contractor, subcontractors, suppliers, and manufacturers and all owners' manuals or instructions furnished to the Declarant with respect to installed equipment or building systems;
- 4.2.14** A roster of Owners and First Mortgagees, along with their addresses and telephone numbers, if known, as shown on the Declarant's records and the date of closing of the first sale of each Lot sold by the Declarant.
- 4.2.15** Originals or copies of any leases to which the Association is a party;
- 4.2.16** Originals or photocopies of any employment contracts or service contracts in which the Association is one of the contracting parties or service contracts in which the Association or the Owners have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service;
- 4.2.17** Originals or copies of any qualified warranty issued to the Association as provided for in RCW 64.35.505; and
- 4.2.18** Originals or copies of all other contracts to which the Association is a party.

4.3 Transition Audit. Within sixty days of the Transition Meeting, the Board must retain the services of a certified public accountant to audit the records of the Association as of the date of the Transition Meeting, in accordance with generally accepted auditing standards, unless a majority of the Owners, excluding the Declarant, elect to waive the audit. The cost of the audit must be a Common Expense. The accountant performing the audit must examine supporting documents and records, including the cash disbursements and related paid invoices, to determine if expenditures were for Association purposes and the billings, cash receipts, and related records to determine if the Declarant was charged for and paid the proper amount of Assessments.

Article 5
BOARD OF DIRECTORS, OFFICERS, AND COMMITTEES

5.1 Management of Association. The Board shall have the power and authority to exercise all the rights, duties and functions and generally exercise all powers necessary to carry out the provisions of this Declaration, including but not limited to enacting Association Rules and Regulations, contracting for required services, obtaining property and liability insurance, and collecting and expending all Assessments and Association funds. The Board shall have the exclusive right to contract for all goods and services, payment for which is to be made from any monies collected from Assessments.

5.1.1 Association Rules and Regulations. All Association Rules and Regulations shall be reasonable. Following the adoption or amendment of any Association Rules and Regulations, the Board shall notify Owners of its action and provide a copy of any new or revised Association Rule and Regulation.

5.2 Board Members. All Board Members other than those appointed by Declarant pursuant to **Section 3.4** must be Owners, or the officer, director, or agent of an Owner which is an entity; any Board Member who no longer qualifies shall cease to be a Board member, Board Members shall serve for two-year terms of office unless otherwise provided in the Bylaws.

5.2.1 Prior to Control Termination Date. Until the Control Termination Date, Declarant may appoint and remove Association officers and Board Members, provided the Board shall be constituted as follows:

5.2.1.1 Upon creation of the Association, the Declarant shall have sole authority to appoint and remove all officers and Board Members who need not be members of the Association.

5.2.1.2 Not later than 60 days after the conveyance of 25% of the Lots owned by Owners other than Declarant, Owners other than Declarant shall elect at least one Board Member, but in no case less than 25% of the total number of Board Members.

5.2.1.3 Not later than 60 days after conveyance of 50% of the Lots owned by Owners other than Declarant, one third of the Board Members shall be elected by Owners other than Declarant.

5.2.1.4 Until such Board Members are elected and take office, the existing Board may continue to act on behalf of the Association.

5.3 Organizational Board Meeting. The first meeting of a newly elected Board shall be held immediately following the Transitional Meeting of the Association at which they were elected, and no Notice shall be necessary to the newly elected Board Members in order legally to constitute such meeting.

5.4 Board Meetings.

5.4.1 Prior to Control Termination Date. Prior to the Control Termination Date, the Board must meet at least four times a year. At least one of those meetings must be held at the Association or at a place convenient to the Owners.

5.4.2 Following Transition Meeting. Meetings shall be held as provided in the Bylaws for the Association.

5.4.3 Unanimous Consent. The Board may act by unanimous consent as documented in a record by all its members. Actions taken by unanimous consent must be kept as a record of the Association with the meeting minutes. After the Transition Meeting, the Board may only act by unanimous consent only to undertake ministerial actions, actions subject to ratification by the Owners, or to implement actions previously taken at a Board meeting.

5.4.4 Declarant Actions. Prior to the Control Termination Date, Declarant may veto or approve any proposed action of the Board.

Article 6

BUDGETS AND ASSESSMENTS

6.1 Budget Preparation. Not less than thirty days prior to the beginning of each fiscal year, the Board shall adopt a proposed Budget containing:

6.1.1 The projected income to the Association by category;

6.1.2 The projected Common Expenses and those specially Allocated Expenses that are subject to being budgeted, both by category;

6.1.3 The amount of Assessments per Lot and the date the Assessments are due.

6.1.4 The current amount of regular Assessments budgeted for contribution to the Reserve Account;

6.1.5 A statement of whether the Association has a reserve study pursuant to RCW 64.90.550, or is exempt because the cost of the reserve study or update exceeds 10% of the annual Budget;

6.1.6 If a reserve study has been prepared, a statement of the extent to which the Budget meets or deviates from the recommendations of that reserve study; and

6.1.7 The current deficiency or surplus in reserve funding expressed on a per Lot basis.

The Budget shall be based on an estimate of the charges for Common Expenses to be paid during the year, which may also make provision for creating, funding and maintaining reserves for contingencies, operations, insurance, and maintenance, improvement, repair, replacement and acquisition of Common Area, including Common Area Structures, and which takes into account any expected income and any surplus available from the prior year's operating fund.

6.2 Ratification of Budget. With respect to any Budget adopted after the Transition Date, the Board shall set a date for a meeting of the Owners to consider ratification of the Budget. The date of the meeting shall be not less than ten days and no more than fifty days after a summary of the annual Budget or special assessment supplemental Budget is mailed to each Owner. Unless at that meeting a majority of the Owners reject the Budget, the Budget is ratified, whether or not a quorum is present. If the proposed Budget is rejected or the required

Notice is not given, the periodic Budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent Budget proposed by the Board.

6.3 Supplemental Budget/Special Assessment. If during the fiscal year the Budget proves to be inadequate for any reason, including nonpayment for any reason of any Owner's Assessment or an unbudgeted Common Expense, the Board may prepare a supplemental budget for the remainder of the year that includes a Special Assessment. Any supplemental Budget that results in an increase in the Assessment charged to a Lot must be ratified pursuant to **Section 6.2** above. The Board shall have the authority to determine the date payment of any special Assessment is due. The Board has the duty and/or right under various provisions of the Declaration to assess particular sums against specific Owners (and not against all Owners.) Such Assessments against particular Owners shall be Assessments for all other purposes under this Declaration.

6.3.1 In addition, the Association may levy specific Assessments against a particular Lot for the costs incurred by the Association to bring the Owner's Lot into compliance with this Declaration or the other Governing documents. Special assessments may be levied either before or after the work is done, in the discretion of the Board.

6.4 Assessment of Budgeted Common Expenses Against Lots. The annual expenditures contained in the Budget, net of budgeted income, shall be assessed in equal shares against each Lot. Annual assessments shall commence on and become due and payable in twelve equal monthly installments, due on the first day of each month, or in any other manner as the board may reasonably require. Each Owner shall be obligated to pay Assessments made pursuant to this Declaration as provided above, or in any other reasonable manner as the Board shall designate. Any Assessment not paid in full when due shall be delinquent and shall bear interest as specified herein until paid. Each Owner of a Lot, for himself or herself, and for his or her heirs, personal representatives, successors and assigns, hereby covenants and agrees, and each subsequent Owner of a Lot by acceptance of a deed therefore, whether or not it shall be so expressed in the deed, is deemed to covenant and agree to pay to the Association for each lot owned any and all Assessments charged by the Association pursuant to this Declaration. No Owner may exempt himself or herself from liability for payment of Assessments for any reason, including waiver of use or enjoyment of any of the Common Areas or abandonment of the Owner's Lot.

6.5 Purpose of Assessments. The Assessments imposed by the Association shall be used (a) to promote the recreation, health, safety, and welfare of the residents of the Property, (b) for the improvement, maintenance, upkeep, repair, replacement, operation, and use of the Common Elements, (c) for legal fees and damages incurred in any action in which the Association or a member of the Board, acting on behalf of the Association is named as a party, (d) for legal fees incurred by the Association, and (e) for any other reasonable expenses incurred by the Association.

6.6 Commencement of Assessments. Upon the conveyance of the first Lot, Assessment shall commence on all Lots; provided Declarant may delay commencement of Assessments for some or all Common Expenses or Specially Allocated Expenses, provided Declarant pays all such expenses that have been delayed in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Board shall designate.

6.7 Omission of Assessment. The omission by the Board before the expiration of any year to adopt the Budget and Assessments for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of an Owner from the obligation to pay the Assessments or any installment thereof for that or any subsequent year, but the Assessment established for the preceding year shall continue until a new Assessment is fixed.

6.8 Initial Assessment as Contribution to Working Capital. Upon the sale of each Lot by Declarant, each Owner, at the time of such Owner's purchase of the Lot, shall pay an initial start-up assessment to the Association equal to \$2,650 ("Initial Assessment"). The initial assessment shall be in addition to any other assessment provided in this Declaration. Declarant shall not use any of the working capital fund to defray any of its expenses which are the obligation of Declarant.

6.9 Special Assessments. In addition to the annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment pursuant to **Section 6.3**, applicable to that year only, for the purpose of defraying, in whole or in part, (a) the cost of any capital improvements to the Common Elements, (b) legal fees and damage costs, or (c) any other reasonable expenses incurred by the Association.

6.10 Some Lots Benefitted. The Board may elect that any Common Expense or portion thereof benefitting fewer than all of the Lots must be assessed exclusively against the Lots benefitted.

6.11 Insurance Costs. The Board may elect that the costs of insurance must be assessed in proportion to risk.

6.12 Utility Costs. The Board may elect that the costs of utilities, if any, must be assessed in proportion to usage.

6.13 Assessments for Judgment. Assessments to pay a judgment against the Association may be made only against the Lots in the Subdivision at the time the judgment was entered in proportion to their Allocated Common Expense Liabilities at the time the judgment was entered.

6.14 Owner Misconduct.

6.14.1 Willful Misconduct or Gross Negligence. To the extent that any Common Expense is caused by the willful misconduct or gross negligence of any Owner or their tenant, invitee, guest or occupant, the Association shall assess that expense against the Owner's Lot after notice and opportunity to be heard, even if the Association maintains insurance with respect to that damage or Common Expense.

6.14.2 Negligence. To the extent any Common Expense is caused by the negligence of any unit owner or that unit owner's tenant, guest, invitee, or occupant, the Association may assess that expense against the unit owner's unit after notice and an opportunity to be heard, to the extent of the Association's deductible and any expenses not covered under an insurance policy issued to the Association.

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

6.16 Association Funds. The Association shall prepare an annual financial statement in accordance with accrual-based accounting practices. If the Association's annual Assessments total fifty thousand dollars or more, the financial statements must be audited annually by a certified public accountant. If the Association's annual Assessments are less than fifty thousand dollars, the audit may be waived on an annual basis by a majority vote of the Owners, excluding the vote for Lots owned by Declarant. The Association shall keep all funds of the Association in the name of the Association with a qualified financial institution. The funds shall not be commingled with the funds of any other person or entity, or kept in any trust account or custodial account in the name of any trustee or custodian.

6.17 Account Reconciliation. The Association shall establish and maintain its accounts and records in a manner that enables it to credit Assessments for Common Expenses and Specially Allocated Expenses, including Allocations to Reserves, and other income to the Association, and to charge expenditures, to the account of the appropriate Lots in accordance herewith. Unless the Board determines that a reconciliation would not result in a material savings to any Owner, the accounts must be reconciled at least annually. Any surplus funds remaining after the payment of or provision for Common Expenses and any prepayment of reserves shall be credited to Owners to reduce future Common Expense Assessments.

6.18 Lien for Assessments.

6.18.1 Lien. The Association has a lien on a Lot for any unpaid Assessments levied against a Lot from the time the Assessment is due.

6.18.2 Priority. A lien under **Section 6.18** shall be prior to all other liens and encumbrances on a Lot except: (a) liens and encumbrances recorded before the recording of this Declaration; (b) a Security Interest on the Lot recorded before the date on which the Assessment sought to be enforced became delinquent; and (c) liens for Real Estate taxes and other governmental Assessments or charges against the Lot.

6.18.3 Security Interest Priority. Except as provided in **Sections 6.18.4** and **6.18.5**, the lien for Assessments shall also be prior to the Security Interests described in **Section 6.18.2(b)** to the extent of Assessments for Common Expenses, excluding any amounts for capital improvements, based on the periodic Budget adopted by the Association pursuant to **Section 6.1**, which would have become due during the six months immediately preceding the institution of proceedings to foreclose the Association's lien or a Mortgagee's security interest, the date of a trustee's sale in a non-judicial Foreclosure by a Mortgagee, or the date of recording of the Declaration of forfeiture in a proceeding by the vendor under a real estate contract.

6.18.4 Mortgagee Notice. The priority of the Association's lien against Lots encumbered by a Security Interest held by a First Mortgagee or by a Mortgagee which has given the Association a written request for a notice of delinquent Assessments shall be reduced by up to three months if and to the extent that the lien priority under **Section 6.18.3** includes delinquencies which relate to a period after such holder becomes a First Mortgagee or has given such request for notice and before the Association gives the holder a written notice of the

delinquency. This Section does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other Assessments made by the Association.

6.18.5 Recording as Notice. Recording of the Declaration constitutes record notice and perfection of the lien for Assessments. While no further recording of any claim of lien for Assessment under this Section shall be required to perfect the Association's lien, the Association may record a notice of claim of lien for Assessments under this Section in the real estate records of the County in which the Subdivision is located. Such recording shall not constitute the written notice of delinquency to a Mortgagee referred to in **Section 6.18.3**.

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

6.18.7 Foreclosure. The Association may not commence foreclosure unless unpaid amounts on a Lot being foreclosed total the equivalent of not less than three months of Common Expense Assessments; the Board approves commencement of the foreclosure action that Lot; and methods of collection, foreclosure, sale, or other conveyance under this Section, are commercially reasonable.

6.18.7.1 Judicial. The lien arising under **Section 6.18** may be enforced judicially by the Association or its authorized representative in the manner set forth in Chapter 61.12 RCW. The Association or its authorized representative shall have the power to purchase the Lot at the Foreclosure sale and to acquire, hold, lease, security interest, 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. Nothing in this Section shall prohibit an Association from taking a deed in lieu of Foreclosure.

6.18.7.2 Non-Judicial. A lien arising under this Article may be foreclosed non-judicially in the manner set forth in RCW 61.24 for non-judicial foreclosure of deeds of trust. For the purpose of preserving the Association's non-judicial foreclosure option, this Declaration shall be considered to create a grant of each Lot in trust to Chicago Title Insurance Company or its successors or assigns ("Trustee"), to secure the obligations of each Owner ("Grantor") to the Association ("Beneficiary") for the payment of Assessments. Grantor shall retain the right to possession of the Grantor's Lot so long as Grantor is not in default of an obligation to pay Assessments. The Trustee shall have a power of sale with respect to each Lot, which becomes operative in the case of a default in a Grantor's obligation to pay Assessments. The Lots are not used principally for agricultural or farming purposes. If the Association forecloses its lien non-judicially pursuant to this Section, it shall not be entitled to the lien priority over Security Interests provided in **Section 6.18.3**.

6.18.8 Receiver. From the time of commencement of an action by the Association to foreclose a lien for nonpayment of delinquent Assessments against a Lot that is not occupied by the Owner thereof, the Association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the Lot as and when due. If the rent is not paid, the receiver may obtain possession of the Lot, refurbish it for rental up to a reasonable standard for rental Lots in this type of Subdivision, rent the Lot or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the Lot, then to applicable charges, then to costs, fees, and charges of the Foreclosure action, and then to the payment of the delinquent Assessments. Only a receiver

may take possession and collect rents under this Section, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Lot.

6.18.9 Mortgagee Liability. Except as provided in **Section 6.18.3**, the holder of a Security Interest or other Purchase of a Lot who obtains the right of possession of the Lot through Foreclosure shall not be liable for Assessments or installments thereof that became due prior to such right of possession. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Owners, including such Mortgagee or other Purchaser of the Lot. Foreclosure of a Security Interest does not relieve the prior Owner of personal liability for Assessments accruing against the Lot prior to the date of such sale as provided in this Section.

6.18.10 Lien Survives Sale. The lien arising under **Section 6.18** shall not be affected by the sale or transfer of the subject Lot except in the event of sale through Foreclosure, as provided in **Section 6.16.9**.

6.19 Owner Liability. In addition to constituting a lien on the Lot, each Assessment shall be the joint and several obligation of the Owner of the Lot to which the same are assessed as of the time the Assessment is due. In a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid Assessments against the latter up to the time of the grantor's Conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Suit to recover a personal judgement for any delinquent Assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums. No Owner shall be entitled to assert as a setoff or defense against his or her obligations to pay Assessments for the amount of any obligation or liability due from, or claim asserted against, the Association or any other person.

6.20 Late Charges. The Association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent Assessments or installments thereof. In the absence of another established non-usurious rate, delinquent Assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the Assessments became delinquent.

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

6.22 Assessment Certificate. The Association, upon written request, shall furnish to an Owner or a Mortgagee a statement signed by an Officer or authorized agent of the Association setting forth the amount of unpaid Assessments or the priority amount against that Lot, or both. The statement shall be furnished within fifteen days after receipt of the request and is binding on the Association, the Board, and every Owner, unless and to the extent known by the recipient to be false.

6.23 Acceleration of Assessments. In the event any monthly Assessment or special charge attributable to a particular Lot remains delinquent for more than sixty days, the

Board may, upon fifteen days' written notice to the Owner of such Lot, accelerate and demand immediate payment of all, or such portion as the Board determines, of the monthly Assessments and special charges which the Board reasonably determines will become due during the next succeeding twelve months with respect to such Lot.

6.24 Delinquent Assessment Deposit.

6.24.1 Delinquent Assessment Deposit. An Owner may be required by the Board, from time to time, to make and maintain a deposit equal to not less than one month nor in excess of three months estimated monthly Assessment and charges, which may be collected as are other Assessments and charges. Such deposit shall be held in a separate fund, be credited to the Lot owned by such Owner, and be for the purpose of establishing a reserve for delinquent Assessments.

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

6.24.1.2 Upon the sale of a Lot, the seller/Owner thereof shall not be entitled to a refund from the Association of any deposit or reserve account made or maintained with respect to such Lot pursuant to this or any other Section of this Declaration; rather, any such deposit or reserve account shall continue to be held by the Association for the credit of such Lot, and the Lot purchaser shall succeed to the benefit thereof, and the Lot seller shall be responsible for obtaining from the purchaser appropriate compensation therefor.

Article 7 RESERVE STUDY AND ACCOUNTS

7.1 Reserve Study. Unless the cost to prepare or update a reserve study exceeds ten percent (10%) of the Association's annual budget, the Association shall:

7.1.1 Cause to be prepared an initial reserve study and annual updates in accordance with RCW 64.90.545 and 64.90.550 (collectively, "Reserve Study"); and

7.1.2 Establish one or more income-earning accounts ("Reserve Account") for the deposit of any funds for the replacement costs of reserve components ("Reserve Components") identified in the Reserve Study.

7.2 Reserve Account. The Reserve Account shall be administered and under the direct control of the Board.

7.2.1 The Board may withdraw funds from the Reserve Account to pay for replacement costs of Reserve Components not included in the Reserve Study.

7.2.2 The Board may withdraw funds from the Reserve Account to pay for unforeseen or unbudgeted costs that are unrelated to replacement costs of the Reserve Components, provided:

7.2.2.1 The Board shall adopt a schedule to replace the withdrawn reserves within twenty-four months unless the Board determines that repayment within twenty-four months would impose an unreasonable burden on the Owners.

7.2.2.2 The amount of any such withdrawal, the current deficiency in reserve funding on per Lot basis, and the repayment plan shall be included with the annual Budget provided to Owners.

7.2.3 All withdrawals from the Reserve Account shall be recorded in the Association's minute books.

7.3 Owner's Demand for Reserve Study. Should the Board fail to prepare a required Reserve Study for a period of three years or more, 20% or more of the Owners may issue a written demand, which shall reference RCW 64.90.555, to the Board that the cost of a Reserve Study be included in the next annual Budget and that the Reserve Study be prepared by the end of that Budget year. Upon receipt of the demand, the Board shall include the cost of a Reserve Study in the next Budget and, if that Budget is not rejected by a majority vote of the Owners, arrange for the preparation of a Reserve Study. One or more Owners may bring an action to enforce the requirements of this **Article 7**. In such an action, a court may order specific performance and may award reasonable attorneys' fees and costs to the prevailing party. An Owner's duty to pay Assessments is not excused because of the Association's failure to comply with this **Article 7**. A Budget ratified by the Owners is not invalidated because of the Association's failure to comply with this **Article 7**.

7.4 Immunity from Liability. Except for an award for attorney's fees and costs under **Section 7.3**, the Association shall not be liable for monetary damages or other liability awarded against or imposed upon the Association, its Officers, or Board Members, or upon any person who may have provided advice or assistance to the Association, its Officers, or Board Members, for failure to establish or replenish a Reserve Account or have a current Reserve Study prepared or updated, or to include information regarding Reserve Account withdrawals in the Budget.

Article 8

CONVEYANCE OF COMMON ELEMENTS AND EASEMENTS

8.1 Conveyance of Common Elements. As further described on the Plat, Declarant grants, confirms and conveys to the Association for the common use and enjoyment of the Association and Owners, the Common Elements, subject to the easements on the Plat and described herein.

8.2 Association to Maintain Common Elements. The Association shall have the right and the obligation to maintain the Common Elements, (except to the extent such maintenance is required to be provided by utility purveyors) and all expenses relating thereto shall be Common Expenses.

8.3 Easements. The following nonexclusive, perpetual, appurtenant easements and those shown on the Map are hereby reserved for the benefit of and created, granted and

conveyed to the Lot Owners Association or other parties as identified below (as used herein, the term "Map" shall additionally include subsequent Maps of phases of Brickyard Park which are recorded):

8.3.1 Utility Easements. Utility easements are granted to utility entities. The utility entities shall use the easements in such manner as to minimize inconvenience to the Lot Owners, damage to any roadway and existing structures and interference with other utilities. Said utility entities shall, at their own expense, repair any damage and restore the Property to as good a condition as existed prior to the performance of said work by said utility companies. Each Lot Owner agrees not to place locks on structures enclosing utility meters or to, in any manner, interfere with utility representatives' access to said meters at all times.

8.3.2 Driveway Easements. The Subdivision contains three driveway easements which shall be maintained by the Association: (i) an easement encumbering Lots 47, 48, 49, 50, and 51; (ii) an easement encumbering Lots 1, 2, 3, and 4; and (iii) an easement encumbering Lots 25 - 30. Such driveway easements shall be maintained by the Association as a common expense.

8.3.3 Landscaping Easement. The seven (7)-foot wide landscaping easement bordering McGarigle Road and encumbering Lots 14 - 27. The Association shall have the right of access and obligation to maintain the landscaping on such easement; otherwise, the use of any portion of such easement encumbering a lot shall be limited to the owner of such burdened lot.

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

8.3.5 There is hereby reserved to the Association, or their duly authorized agents and representatives, such easements and rights of access over, across, under or into the Property (and any part thereof) as are necessary for repairs, maintenance or replacement and/or to perform the rights, duties and obligations of the Association as are set forth, provided for or authorized in the Governing Documents.

8.3.6 An easement is granted over, across and under Common Elements for the benefit of Declarant, the Association and the Owners, and their respective heirs and assigns, for ingress and egress to and from the Lots, for emergency vehicle access to the Lots, and for the purposes of exercising all other rights granted in this Declaration. Such easement includes, without limitation, the right to go upon the Lots for the purpose of removing vehicles or other similar objects which are parked or stored in violation of the terms of this Declaration, or otherwise exercise remedial rights under this Declaration.

8.3.7 The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for Common Elements reserved by law.

8.3.8 Each Lot and all Common Elements are hereby declared to have an easement over all adjoining Lots and Common Elements, for the purpose of accommodating any encroachment due to engineering errors, or errors in original construction, reconstruction, repair of any portion of the Lot Improvements, or any other similar cause, and any encroachment due to building overhang or Subdivision. There shall be valid easements for the

maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful act or acts with full knowledge of said Owner or Owners. In the event a Lot or Common Element is partially or totally destroyed, and then Repaired or rebuilt, the Owners agree that minor encroachments over adjoining Lots and Common Elements shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any Lot.

8.3.9 The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for Common Elements reserved by law.

Article 9 ADMINISTRATION, USE AND MAINTENANCE OF COMMON ELEMENTS

9.1 Association Responsibility for Maintaining Common Elements. The Association is responsible for maintaining, repairing, and replacing as necessary all Common Elements and Improvements thereon and all expenses related thereto shall be Common Expenses.

9.2 Use of Common Elements. The Developer shall have and hereby reserves for itself, its successors, agent and assigns, an easement for the right during the Development Period to utilize the Common Areas for its' business uses and purposes, including, but not limited to, uses and purposes related to the construction, promotion and development of Brickyard Park. Upon termination of the Development Period, said Developer's easement shall automatically terminate. Current Areas include:

- a. Tract 900 including the park and clubhouse amenities.
- b. Landscape island in the entrance to the Subdivision.
- c. Walkways from the City sidewalk to the park sidewalk that are in a 10' easement.
- d. Four (4) Gravel Trench Beds with four (4) bioretention swales comprising the Storm Treatment/drainage for the Subdivision, all of which are located in Tract 900. **Exhibit C** contains the Operations and Maintenance Manual for the bioswale.
- e. Fences for each Lot in the Subdivision.

9.2.1 Except as otherwise provided herein, each Owner shall have the right to use the Common Elements in common with all other Owners. The right to use the common Elements extends not only to each Owner, but also to such Owner's agents, servants, tenants, family members, invitees, and licensees. The right to use the Common Elements shall be governed by the provisions of the Governing Documents.

9.3 Repair of Damaged Improvements in Common Elements. Any damage to Common Elements or Improvements thereon, if any, by the Owner, Owner's agents, servants, tenants, family members, invitees, and licensees shall be repaired by the Association and the responsible Owner will be obliged to immediately remit funds for the repair in accordance with **Section 6.14**. If the Owner fails to promptly make a payment for such repairs, the payment due shall be treated as a late Assessment and the Owner shall be subject to the late payment and

lien provisions described in **Sections 6.18** and **6.20** and as otherwise set forth in this Declaration.

9.4 Alteration of the Common Elements. Nothing shall be altered, or constructed in, or removed from the common Elements except by the Declarant or the Association. Notwithstanding the foregoing, the Declarant or the Association shall not modify those portion of the Common Elements which were included in the design plans approved by the City without the City's prior written consent.

9.5 Dumping in Common Elements. No trash, plant or grass clippings or other debris of any kind shall be dumped, deposited, or placed on or within the Common Elements.

9.6 Management. Each Owner expressly covenants that the Association and/or the Declarant, during the Development Period, may delegate all or any portion of their management authority to a managing agent, manager or officer of the Association and may enter into such management contracts or other services contracts to provide for maintenance and the operation of Common Elements and any portion thereof. Any management agreement or employment agreement for the maintenance or management of the Common Elements or any portion thereof shall be terminable by the Association without cause and without payment of penalty upon ninety days' written notice thereof; the term of any such agreement shall not exceed one year, renewable by agreement of the parties for successive one-year periods. Each Owner is bound to observe the terms and conditions of any such management agreement or employment contract, all of which shall be made available for inspection by any Owner on request.

Article 10 MAINTENANCE OF LOTS

10.1 Maintenance by Owner. Each Lot and Residence shall be maintained by the Owner in a lawful, neat, clean, and attractive condition at all times. Without limiting the generality of the foregoing, each Owner's obligations include the following:

10.1.1 Exterior Maintenance. Each Owner shall maintain, repaint, repair, and replace the roof, gutters, exterior siding, windows, doors, lighting (including relamping) and other weather protection and related improvements on such Owner's Lot in good condition and repair. Without limiting the generality of the foregoing, exterior maintenance shall include (but not be limited to) repairing, maintaining, and/or replacing the Lot's roof drain infiltration system including all underground pipes and catch basins associated therewith.

10.1.2 Yards. Landscape Maintenance of yards (including front, side and back yards) and Common Driveways will be provided by the Association as a common expense to include, at a minimum, the following: maintenance and repair of fences installed as common elements, maintenance or repair of the irrigation system on each Lot, watering, mowing, pruning weed and fertilizing. The cost of water involved in watering and irrigation shall be the responsibility of the Owner of the Lot; provided, however, that damage of the irrigation system by an Occupant shall be the responsibility of the Owner. Each Owner shall be responsible to keep their yard in a neat and tidy condition including, but not limited to, any fence installed by an Owner which is not a common element.

10.1.3 Window Coverings. All window coverings and treatments on windows visible from any Common Area, sidewalk, or public or private roadway shall be commercial or

formal blinds or curtains in good repair; blankets, sheets, bedspreads, newspapers, sheets, aluminum foil, or the like are not permitted as window coverings.

10.2 Maintenance by the Association. In the event any Owner fails to perform any obligation required under this Declaration, as determined by the Board in its sole discretion, after reasonable written Notice to the Owner, the Association may enter upon the Lot to perform the required obligation. Owner expressly consents to such entry by the Association and/or its agents. All costs related to the performance of such obligation shall be specially assessed to such Owner, plus an administrative fee equal to 20% of such cost.

10.3 Common Wall Lots. In addition to the responsibility requirements of Owners contained in Section 10.1, all Common Wall Lot Owners shall have the following responsibilities:

- i. The cost of maintaining each Party Wall shall be borne equally by the Owners of the Dwelling Units on either side of such Party Wall.
- ii. In the event of damage or destruction to any Party Wall, shared monolithic slab or shared roof if the roofline is jointed ("Common Structure" herein) from any cause, other than the negligence of either Owner, the Owners of the Dwelling Units on either side of said Common Structure shall repair or rebuild said Common Structure. The cost of such repair or rebuilding shall be borne equally by the Owners whose Dwelling Units adjoin said Common Structure. Each such Owner shall have the right to the full use of said Common Structure so repaired or rebuilt. If either owner's negligence shall cause damage to or destruction of said Common Structure, such negligent Owner shall bear the entire cost of repair or reconstruction. If either Owner shall neglect or refuse to pay his share, or all of such costs in case of negligence, the other Owner may have such Common Structure repaired or restored and shall be entitled to have a mechanic's lien on the Dwelling Unit of the Owner so failing to pay, for the amount of such defaulting Owner's share of the repair or replacement costs together with interest at the maximum rate allowable. The Owner having such Common Structure repaired shall, in addition to the mechanic's lien, be entitled to recover attorney's fees and shall be entitled to all other remedies provided herein or by law.
- iii. Neither Owner shall alter or change a Common Structure in any manner, non-structural interior decoration excepted, and such Common Structures shall remain in the same location as when originally erected. Each adjoining Owner to said Common Structure shall have a perpetual easement in that part of the premises of the other on which said Common Structure is located, for the purposes of such Common Structure and any other additional area necessary to repair, replace and maintain the same.
- iv. Each Owner shall keep all exterior walls of his or her Dwelling Unit in good condition and repair at their sole cost and expense. No Owner shall do or permit to be done any act or thing that would tend to depreciate the value of the building (i.e., variance in design, colors, roofing, etc.). Changes to the exterior (e.g., windows, paint color, etc.) shall require ACC approval in order to ensure consistency in appearance.
- v. Each Owner shall maintain the roof over their Dwelling Unit in good condition and in such manner so as not to damage other portions of the building. Each Owner

shall share equally in the costs to repair or maintain the roof over the Party Wall due to normal wear or physical damage. If a roofline is joined and the entire roof must be replaced, replacement will be coordinated between the Owners, with the cost equitably apportioned to each Owner by the contractor performing the work.

- vi. Any Owner who, by their negligence, disinterest or willful act causes a Party Wall or roof to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements and shall pay all damages resulting from such exposure.
- vii. If any monolithic slab repairs are required, the entire monolithic foundation must be involved in the repair process. Owners of all Dwelling Units affected must cooperate regarding repairs to the slab. Each Owner shall share equally in any necessary repair.

Article 11 LAND USE RESTRICTIONS

11.1 Land Use Restrictions. Notwithstanding the following, each person who occupies a Lot within the Subdivision as an Owner, guest, or Occupant, shall comply strictly with all Governing Documents and all applicable laws and regulations of all government agencies ("Governing Laws").

11.2 Permitted Uses – Age Restricted Community.

11.2.1 Residential Use. All Lots within the Property shall be used solely for private single-family residential purposes; provided, however, that home businesses are allowed if the use receives prior written approval of the Board; there is no outdoor storage of any materials associated with the business; no customers, business invitees, or guests of the business come to the residence in which the use is located; the only on-site employees of the business reside on the Lot; applicable state and local permits and licenses are obtained and maintained by the Owner; no sign advertising the business is located on the Lot; the use is permitted under Governing Laws; and no noise, odor or adverse environmental impact of the business is allowed outside the confines of the residence on the Lot. The Board reserves the right to revoke approval for any home business which violates the terms and conditions of this Subsection or otherwise is deemed by the Board to constitute a nuisance. Private single-family residences shall consist of no less than one Lot. A garage may be converted into a living area only if at least one enclosed parking stall remains usable on the Lot. No single Residence shall be altered to provide a residence for more than one family.

11.2.2 Housing for Older Persons Requirements. This Community has been generally designed as housing for older persons. The Community shall be operated generally for occupancy by persons fifty-five (55) years of age or older, in accordance with the provisions of Title 42 U.S.C. Section 3607(b)(2)(B), and with regulations later promulgated by the Secretary of HUD thereunder. The Association shall maintain a list of all Occupants and their respective birth dates to assure compliance with this Section and shall take the steps identified in subpart (iii) hereof to continually verify the ages of residents. Owners and Occupants shall be subject to the following requirements:

- (i) Except as provided below, the Lots in this Community are intended for the use and occupancy by older persons. At least 80 percent of the Lots in the housing shall be

occupied by at least one person who is at least fifty-five (55) years of age or older. No person under the age of 21 years of age is permitted to be an Occupant of a Lot. Visitors under the age of 21 years (hereinafter, "Young Visitors") shall be allowed to visit Owners or Occupants of Lots, but only for periods of time not to exceed thirty (30) nights out of any six (6)-month period as to each visitor. The Board may adopt additional rules regarding such visitations and may require that any visitor found to be unreasonably disturbing other Owners leave the premises, and may exercise its authority for specific visitors even though other visitors are permitted to remain.

- (ii) No Lot shall be sold, rented or leased to any person or persons unless the standards established in this paragraph are complied with. Without limiting the generality of the Board described in the Bylaws, the Association shall have the specific legal right to seek injunctive relief from the Superior Court of the State of Washington for Skagit County with respect to any Owner or Occupancy found not to be in compliance with Section 11.1.2. Noncomplying Occupants may be evicted. The prevailing party in such an action shall be entitled to reasonable attorneys' fees and costs of suit.
- (iii) The Association shall maintain permanent records substantiating its continuing compliance with the policies and limitations herein described and shall regularly update such records, through surveys or other means. Such updates must take place at least once every two years. A survey may include information regarding whether any Lots are occupied by persons who are (a) employees of the Association who perform substantial management or maintenance functions for the Community, (b) persons who are necessary to provide a reasonable accommodation to disabled residents, or (c) family members residing in Lots with their older relatives. Any of the following documents are considered reliable documentation of the age of the Occupants of the Community: Driver's License; Birth Certificate; Passport; Immigration Card; Military Identification; Any other state, local, national, or international official documents containing a birth date of comparable reliability; A certification in a lease, application, affidavit or other document signed by any member of the household age 21 or older asserting that at least one person in the Lot is 55 years of age or older, or forms or applications previously submitted by or on behalf of such Occupant.
- (iv) A summary of occupancy surveys undertaken under subpart (iii) shall be available for inspection upon reasonable notice and request by any person.
- (v) The Association shall post in the Common Areas of the Community notices describing the Community as housing for persons 55 years of age or older. Phrases such as "adult living," "adult community" or similar statements are not consistent with an intent that this Community intends to operate as housing for persons 55 years of age or older.

11.2.3 Lease Restrictions. To ensure that legally required percentages of occupancy by older persons, as established in Section 11.2, are continually met in this Community, tenants will be required to provide birth certificates, drivers' licenses, marriage certificates or other forms of evidence of their age to permit the Association to meet its obligations under Section 11.2.2 (iii). All leases shall be in writing. A lease, as defined herein, shall include month-to-month rentals, but leasing, subleasing or transient occupancy for periods of less than 30 days is prohibited. 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 tenant 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 11 of this Declaration.

11.2.4 Additional Property Use Restrictions. No Lot shall be used in a fashion which unreasonably interferes with any Owner's right to use and enjoy their respective Lots or Common Elements. The Board, the Architectural Reviewer, or any Committee designated by the Board, or the Declarant during the Development Period, shall determine whether any given use of the Site unreasonably interferes with those rights. Such determinations shall be conclusive.

11.2.5 Prohibition of Nuisances and Untidy Conditions. No noxious or offensive activity shall be conducted on any Lot or Common Element, nor shall anything be done or maintained on the Property which may be or become an activity or condition which unreasonably interferes with the right of other Owners to use and enjoy any part of the Property. No activity or condition shall be conducted or maintained on any part of the Property which detracts from the value of the Property as a residential community.

11.2.6 Fences, Walls & Shrubs. Fences, walls or shrubs are permitted to delineate the lot lines of each Lot, subject to the approval of the Board or Architectural Reviewer and determination whether such fences, walls or shrubs would interfere with utility easements reflected on the face of the Plat and other easements. All fences constructed in the Plat must be the same as the fences constructed by the Declarant, unless otherwise authorized by the Declarant or Architectural Reviewer.

11.2.7 Temporary Structures. No structure of a temporary character or trailer, recreational vehicle or other outbuildings shall be used on any Lot at any time, either temporarily or permanently for residential purposes, except for such structure or trailer used by Declarant or a contractor working for the Declarant during the construction or sale of Residences. All such structures shall be removed at the expense of the Owner or the Lot on which the structure is located.

11.2.8 Signs. No signs, billboards, or other advertising structures or device shall be displayed to the public view on any Lot or Common Element, except one sign not to exceed five square feet in area, which may be placed on a Lot to offer the property for sale or rent. Signs also may be used by a builder to advertise the Property during the construction and sale period. All such signs shall be of a quality equivalent to those used by Declarant. One sign will be allowed at the entry to the Plat, unless otherwise authorized and approved by Declarant. Political yard signs of a temporary nature, and not more than five square feet in size, will be allowed on Lots during campaign periods. Within five days of the occurrence of the election, such signs must be removed from Lots. The Board may cause any sign placed on Property in violation of this provision to be removed or destroyed. Notwithstanding the foregoing, the Declarant shall have the right to maintain such signage on the Property as it deems necessary in its sole discretion incident to the sales process.

11.2.9 Animals. No animals, (including pigs), other than dogs, cats, caged birds, and tanked fish, may be kept on any Lot. Notwithstanding the foregoing, no fighting dogs shall be allowed as pets, no commercial animals (other than medical service animals such as guide dogs) may be kept, and no animals shall be bred on any Lot. No more than four pets

(other than from fish for which there is no limit) may be kept on any Lot. Dogs shall not be allowed to run at large. Leashed animals are permitted within roadways and Tracts. Owners and Occupants are responsible for ensuring that animal waste deposited on lawns and rights-of-way is picked up promptly. All pens and enclosures must be approved by the Architectural Reviewer prior to construction and shall be kept clean and odor free at all times. If the investigation of the Board indicated that animals are kept in violation of this Section, the Board will give the Owner ten days' written Notice of the violation. Such violations must be remedied by the Owner within ten days following Notice. Failure to comply with the written Notice will result in a daily fine as established in the Rules and Regulations which may be enforced in accordance with this Declaration. The Association shall be entitled to reimbursement of all attorneys' fees and associated costs for any action taken to collect such fines. If an Owner or Occupant violates provisions of this Section regarding pens and enclosures on more than two occasions, the Board may require the Lot Owner to remove such structure. Persistent disturbances caused by an Owner's or Occupant's barking dog may be considered an unreasonable interference with the right of other Owners to use and enjoy their property, and the Board may require the Owner or Occupant to keep the barking dog indoors.

11.2.10 Protection of Trees. Owners and Occupants shall not cut down trees located on Lots within the Plat unless such trees are dead. It shall be necessary for homeowners to obtain the permission of the Board before cutting or pruning such trees. This provision only applies to trees in the Plat as developed by Declarant and trees planted prior to Declarant's development and shall not apply to trees which owners' plant on their Lots. Any removal of trees shall comply strictly with all Governing Laws.

11.2.11 Trash Containers and Debris. All Owners and Occupants shall place their trash in the trash containers, their yard waste in the yard waste containers and their recycled materials in the recycling containers. Waste and recycling containers may not be left on the street except on pickup days.

11.2.12 Noise and Offensive Activity. Owners and Occupants shall refrain from making loud noises or playing musical instruments, radios, televisions, electronic music or using amplifiers at noise levels that may disturb other Occupants of the Property or disturb surrounding property owners in the neighborhood. Any disputes regarding such matters may at the request of any Owner be resolved by the Board in the same manner as provided in **Section 11.2.13** for resolution of disputes concerning Lot maintenance.

11.2.13 Owner Disputes Regarding Maintenance. Any dispute over whether maintenance or repair is necessary or prudent, the costs of such work, or any other issue related to the application of this Section, shall be submitted to the Architectural Reviewer for review and a decision. After Notice and opportunity to be heard, the Architectural Reviewer's decision shall be final and binding on all parties. The Architectural Reviewer may authorize the work to be done and levy a special Assessment against the Owner for that Owner's share of the cost.

11.2.14 Vehicle Parking Restrictions.

11.2.14.1 Parking on all streets must comply with all applicable governmental laws, rules and regulations, the provisions of this Declaration and the Association's rules and regulations. Parking shall be prohibited in fire lanes.

11.2.14.2 Off-street parking spaces (including garages and driveways) within a Lot shall be maintained in perpetuity for and used only by residents, or guests or invitees of residents, for parking of operable and licensed motor vehicles. Occupants shall first use garages and then driveways for parking, and shall not use such parking spaces in any manner that precludes use for off-street parking at any time of operable motor vehicles regularly used by occupants of dwellings. No garage shall be used for a storage, work, or shop area if such use impairs the ability of an occupant to park a motor vehicle therein. Garages may not be converted to living space without the approval of the Board.

11.2.14.3 No vehicle shall be parked on any driveway that extends into the streets or sidewalks of the Subdivision or otherwise inhibits vehicular or pedestrian traffic thereon, or blocks mailboxes. Commercial-type vehicles, campers, trailers, motor homes, or boats are prohibited from parking on any driveway or common parking space (they must be parked in enclosed garages).

11.2.14.4 No vehicle repairs or maintenance shall be done in any driveway, common parking spaces or street.

11.2.14.5 Off-street parking spaces shall be constructed of concrete, asphalt, or approved concrete pavers only. No off-street parking shall occur on any grassed, landscaped, or graveled area.

11.2.14.6 The Association may direct that any vehicle or other thing improperly parked or kept in a garage, driveway, common parking space, or on private roads or sidewalks be removed at the risk and cost of the Owner thereof.

ARTICLE 12 ARCHITECTURAL REVIEW

12.1 Architectural Review. Other than the initial construction of Residences by the Declarant, no Lot, Common Limited Element, dwelling, Residence, outbuilding, fence, wall, building, pool, deck, substantial landscaping, change in exterior paint color or other Structure or other Improvement shall be erected, altered, placed or maintained on any Lot without prior review and approval by an architectural reviewer ("Architectural Reviewer") who shall be: (i) during the Development Period, the Declarant or its designee; and (ii) after the Development Period, the Board or a committee formed by the Board for such purpose.

12.1.1 Standards.

12.1.1.1 The Board shall have the authority to adopt Association Rules and Regulations governing aesthetic considerations of harmony of construction and color of Structures which it determines to be in the best interest of providing for attractive development of the Subdivision, which authority shall include, but not be limited to, determining the height, configuration, design and appearance of the home, fences, walls, outbuildings, pools, and other Structures and Improvements appurtenant to the use of the Lot. The Board may adopt Association rules governing the installation, maintenance, and watering of landscaping, including lawns, as the Board determines are reasonably necessary to maintain the general appearance and value of the Properties within the Subdivision.

12.1.1.2 The Architectural Reviewer shall have the sole, exclusive, and final authority, in its sole discretion, to interpret, apply, and enforce the Association Rules and

Regulations and the requirements herein. Such determinations shall be binding on all persons having any interest in the Lot. Owner shall be responsible for informing contractors, agents and others working on the Lot of the standards and conditions of all approvals issued by the Architectural Reviewer and shall be responsible for compliance with and correction of any and all violations of those standards and conditions.

12.1.1.3 No exterior aerials, antennas, microwave receivers or satellite dishes for television or other purposes shall be permitted on any Lot except as follows:

12.1.1.3.1 The Architectural Reviewer will not require prior approval as to placement and screening from Owners who wish to install satellite dishes which are exempt from regulation by homeowners' associations based on current FCC rulings. The Architectural Reviewer recognizes the need to locate these dishes in a place that will allow the best reception possible, however, Owners are encouraged to consider aesthetics as well. Owner wishing to install satellite dishes which are not exempt from regulation by homeowners' associations based on current FCC rulings are required to obtain approval from the Architectural Reviewer prior to installation.

12.1.2 Approval or Disapproval Process.

12.1.2.1 Submission of Proposal. Prior to placing any such Structure or making such Improvement on the Lot, the proposed plans and specifications for the Structure or Improvement and a request for approval shall be submitted to the Architectural Reviewer for approval.

12.1.2.2 The submission shall be in writing, shall contain a written request for approval and the name and address of the person submitting the same and the Lot involved, and shall set forth the following with respect to a proposed Structure or Improvement: The location of the Structure or Improvement upon the Lot, the elevation of the Structure or Improvement with reference to the existing and finished lot grade, the general design, the interior layout, the exterior finish materials and color including roof materials, the landscape plan, and such other information as may be required to determine whether such Structure or Improvement conforms with the restrictions established by the Governing Documents and any Association Rules and Regulations adopted by the Association. The Architectural Reviewer may require applicants to notify adjacent Lot Owners of request for approval.

12.1.2.3 A reasonable fee may be required for review and approval of submissions by the Architectural Reviewer other than applications by the original Declarant. The fee amount shall be determined by the Board from time to time and may include costs of retaining outside advisors (architects, engineers, etc.) who may, in the Architectural Reviewer's discretion, be necessary to provide expert advice to the Architectural Reviewer.

12.1.3 Evaluation. The Architectural Reviewer shall approve or reject the plans submitted to it within thirty (30) days from the date of the submission of the plans to the Architectural Reviewer, unless the person submitting the plans consents to an extension of the time for a decision. If the Architectural Reviewer does not issue a decision within thirty (30) days from the date of the submission of the plans for the proposal, or applicable extension, then the plans shall be deemed to be approved.

12.1.4 Criteria. The Architectural Reviewer shall review the proposal based upon:

12.1.4.1 The harmony of the external design, color, and appearance of the proposal in relation to the Properties;

12.1.4.2 The other effects of the proposal on adjacent Lots and Common Areas, including but not limited to potential view blockage;

12.1.4.3 The compliance of the proposal with this Declaration and Association Rules and Regulations; and

12.1.4.4 The compliance of the proposal with the spirit, intent and provisions of applicable laws, rules, and regulations.

12.1.5 Decision. The Architectural Reviewer's decision shall be in writing and if a proposal is not approved, the decision shall include a brief statement of the reasons for the Architectural Reviewer's action. The Architectural Reviewer shall have the right to approve a proposal subject to compliance with any conditions as may be established by the Architectural Reviewer.

12.1.6 Variation. The Architectural Reviewer shall have the authority to approve proposals that do not conform to these restrictions in order to overcome practical difficulties or prevent undue hardship from being imposed on an Owner as a result of applying these restrictions. However, such variations may only be approved in the event that the variation will not make a detrimental impact on the overall appearance of the Plat, impair the attractive development of the Plat, or adversely affect the character of nearby Lots or Common Areas. Granting such a variation shall not constitute a waiver of the restrictions articulated in this Declaration. Variations shall only be granted if the Architectural Reviewer determines that the variation would further the purposes and intent of these restrictions. Variations shall only be granted in extraordinary circumstances.

12.1.7 Completion. Once started, the work of construction, altering, repairing, or reconstructing any Structure or Improvement on a Lot shall be diligently prosecuted until completion thereof and in any event the exterior of the Structure shall be completed and finished within six months after the work first commences. In the case of landscaping improvements or modifications, the work shall be completed within two months after the work first commences. When constructed or placed on the Lot, the structure or improvement shall substantially conform to the plans and specifications approved by the Architectural Reviewer and shall be generally consistent with the size, quality and value of the existing homes in the Subdivision.

12.1.8 Advisors. The Architectural Reviewer may appoint advisors or advisory Architectural Reviewers from time to time to advise on matters pertaining to the Subdivision.

12.1.9 Compliance with Governing Laws. In all cases, ultimate responsibility for compliance with all Governing Laws rests with the Owner and any agents employed by the Owner. The Architectural Reviewer and its advisors have no responsibility for ensuring that any Development it reviews complies with any Governing Laws. The Architectural Reviewer and its advisors shall not be responsible for any defect in any proposals which are approved by the Architectural Reviewer nor shall any member of the Architectural Reviewer nor any advisors be responsible for any defect in a Structure which was built pursuant to plans and specifications

approved by the Architectural Reviewer. The Architectural Reviewer, its advisors, and the Association shall not be liable, and Owner shall indemnify, defend and hold the Architectural Reviewer, its advisors, and the Association harmless from all liability arising from any defects or Owner's or its agents' failure to comply with Governing Laws.

Article 13 GENERAL PROVISIONS

13.1 Headings. The captions in this Declaration are for convenience only and do not in any manner affect, limit, or amplify the provisions hereof.

13.2 Right of Quiet Enjoyment. No Owner shall permit anything to be done or kept in the Owner's Unit, Limited Common Elements, Common Elements or the Real Property which would interfere with the Right of Quiet Enjoyment of the other residents of Brickyard Park.

Article 14 COMPLIANCE WITH GOVERNING DOCUMENTS

14.1 Strict Compliance. Each person who occupies a Lot within the Development as an Owner, guest or Occupant, shall comply strictly with the provisions of the Governing Documents and with all Association Rules and Regulations and decisions of the Board, including a decision made after a hearing required under this Declaration. The acceptance of a deed, conveyance, or lease, or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Governing Documents, are accepted and ratified by that Owner and its Occupants and all provisions of the Governing Documents shall be deemed and taken to be covenants running with the land and shall bind any Person having at any time any interest or estate in the Lot, as though the provisions were recited and stipulated at length in each and every deed, conveyance or lease of the Lot.

14.2 Failure to Insist on Strict Performance Not a Waiver. The Board shall exercise its business judgment in determining what actions to take in the enforcement of the Governing Documents. The failure of the Board to insist upon the strict performance of any of the terms, covenants, conditions or restrictions of the Governing Documents, or to exercise any right or option contained in the Governing Documents, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of that term, covenant, condition or restriction, but the term, covenant, condition or restriction shall remain in full force and effect. The receipt by the board of any Assessment from an Owner with knowledge of any breach shall not be deemed a waiver of a breach, and no waiver by the Board of any provision of the Governing Documents shall be deemed to have been made unless expressed in writing and signed by the appropriate Officers on behalf of the Board.

14.3 Enforcement Procedures. In the event of any violation by an Owner or Occupant, the Association and any aggrieved Owner shall have all of the rights and remedies which may be provided for in the Governing Documents, or which may be available at law or equity.

14.4 Internal Enforcement Procedures.

14.4.1 Complaint Review Panel. Except as hereinafter provided, the Board or committee appointed by the Board shall serve as the Complaint Review Panel ("Panel") and shall investigate, hear and determine all complaints concerning violations by any Owner or

Occupant pursuant to procedures set forth in reasonable policies adopted by the Board from time to time. The Panel is authorized to order compliance with the applicable provision of the Governing Documents. Any member of the Panel who is incapable of impartial, disinterested and objective consideration of the case shall disclose this to the Panel and shall remove himself or herself from participation in the proceedings and have it so recorded in the minutes of the Panel.

14.4.2 Informal Dispute Resolution Procedure. The Association and Owners intend that an informal process be followed prior to the initiation of a formal hearing process against any party subject to the Governing Documents. To that end, any Owner, employee or agent of the Association has the authority to request that an Owner or Occupant cease or correct any act or perform any omission which appears to be in violation of the Governing Documents. The informal request must be made, either verbally or in writing, prior to initiation of the formal hearing process.

14.5 Judicial Enforcement. Failure to comply with a provision of the Governing Documents, or a decision of the Board or Panel shall be grounds for an action to recover sums due for damages, fines and any costs incurred by the Association in connection with the proceedings before the Panel, including reasonable attorney's fees incurred by the Association. Such action shall be maintainable by the association (acting through the Board) on behalf of the Owners. Such Violation shall further be sufficient grounds for the granting of injunctive relief in an action and a showing of irreparable harm shall not be a prerequisite to issuance of such injunctive relief. Nothing contained in this Declaration shall be deemed or construed as a waiver of the Association's right to bring a judicial action without first exhausting the Association's internal enforcement procedures in cases where the Board deems immediate judicial action to be necessary or appropriate. In the event that the Board fails or refuses, after demand by an aggrieved Owner, to take appropriate action to enforce compliance with any provision of the Governing Documents or any Board or Panel Decision, an aggrieved Owner on his or her own may maintain an action for damages or injunctive relief against the party failing to comply. In any judicial action to enforce compliance with the Governing Documents, or a decision of the Board, or Panel, the prevailing party, including the Association, shall be entitled to recover from the non-prevailing party, whether or not the action proceeds to judgment, its costs and a reasonable sum for attorneys' fees incurred in connection with the action, in addition to actual cost.

14.6 Imposition of Fines.

14.6.1 Authority to Impose Fines. The Association shall have the right to impose monetary penalties against the Owner and/or Occupant who violates the Governing Documents or other rules and restrictions adopted by the Association. The Board shall, from time to time, adopt a schedule for such monetary penalties. The schedule may provide for penalties that are assessed a single flat rate and may provide for penalties which are incurred on a periodic (daily, weekly, etc.) basis and which accrue until violations are corrected.

14.6.2 Procedure for Imposition of Fines. If the Association determines that a violation of the Governing Documents or other rules and restrictions adopted by the Association has occurred, the Association shall send a written notice of violation ("Notice of Violation") to the Owner and Occupant of the Lot determined to be responsible for the violation. The Notice of Violation shall identify: (1) the location where the violation has occurred; (2) the name of the person responsible for the violation; (3) the nature of the violation; (4) the action or actions required in order to cure the violation and a deadline for compliance; and (5) the rate or amount

of the fine that will be assessed if the violation is not cured by the compliance deadline. In addition, the Notice of Violation shall indicate that the Owner or Occupant deemed responsible for the violation shall be entitled to request a hearing before the Panel, provided a written request for such a hearing is submitted to the Panel within fourteen calendar days after the issuance of the Notice of Violation.

14.6.3 Hearing by Complaint Review Panel. If a request for a hearing is submitted, the Panel shall conduct a factual hearing and allow interested parties to present evidence relevant to the issues of whether or not a violation has occurred and what action is required to cure the violation. The Panel shall issue a written decision after the conclusion of the factual hearing. All Notices of Violation become final either fourteen days after they are issued if no request for a hearing is submitted or on the date that the Panel issues its decision following a hearing.

14.6.4 Collection of Fines, Lien on Title. Unpaid fines assessed pursuant to this Section shall constitute liens against the Lot, and shall be subject to the terms and conditions of this Declaration regarding liens for Assessments and attorney's fees.

14.7 Enforcement Against Occupants. The occupation of a Lot by a tenant, and every lease, shall be subject to the Governing Documents. By entering into occupancy of a Lot, an Occupant agrees to be bound by the Governing Documents. A breach of the Governing Documents by an Occupant shall be deemed to be a breach of his or her lease. In the event of a violation by an Occupant, the Board shall notify the Owner and Occupant of the violation and demand that the violation be remedied through the Owner's efforts within twenty days after the Notice of Violation. The Owner shall, within five days of such notice, serve upon the Occupant in the manner provided by law, a notice to comply or quit the premises. If the violation is not remedied within the twenty-day period, then the Owner shall immediately thereafter, at his or her own cost and expense, institute and diligently prosecute an unlawful detainer action. The unlawful detainer action shall not be compromised or settled without the prior written approval of the Board. If the Owner fails to fulfill the foregoing obligation, then the Board shall have the right, but not the duty, to institute and prosecute an unlawful detainer action as attorney-in-fact for the Owner and at the Owner's sole cost and expense, including all legal fees incurred. The costs and expenses of the action shall be deemed to constitute Assessments secured by a lien on the Lot involved as well as the personal obligation of the Owner, and collection thereof may be enforced by the Board in the same manner as any other Assessment. Each and every Owner does hereby automatically and irrevocably name, constitute, appoint, and confirm the Association as his or her attorney-in-fact for the purposes described in this Section.

Article 15 LIMITATION OF LIABILITY

15.1 Liability for Utility Failure, Etc. Except to the extent covered by insurance obtained by the Board, the Association, Board members (including the Declarant if a Board member), Officers, and Committee members shall not be liable for: (i) any failure of any utility or other service to be obtained and paid for by the Board; (ii) for injury or damage to Person or Property caused by the elements, or resulting from electricity, noise, smoke, water, rain (or other liquid), dust or sand which may leak or flow from outside of from any parts of the Buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other places; or (iii) for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance or orders of a governmental authority. No diminution or abatement of

Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

15.2 No Personal Liability. So long as the Association, Board members (including the Declarant if a Board member), Officers, and Committee members have acted in good faith, without willful or intentional misconduct, upon the basis of such information as may be possessed by such Person and such Person's evaluation of such information, no such Person shall be personally liable to any Owner, or other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence, including any discretionary decision, or failure to make a discretionary decision, by such Person in such Person's official capacity. Without limiting the generality of the foregoing, the term "discretionary decisions" shall include evaluating and deciding whether or not to act in response to reports, investigations or recommendation received by such Person, and shall include deciding whether or not to commence, defend, continue, or settle lawsuits or arbitration/mediation or other legal proceedings involving the Association or Subdivision (or any part thereof). Provided, that this Section shall not apply where the consequences of such act, omission, error, or negligence are covered by insurance obtained by the Board pursuant to **Article 15.**

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

15.4 Legal Proceedings. The rights, powers, benefits, duties and obligations granted to and imposed upon parties subject to this Declaration (including without limitation the Declarant Owners, Association, Board and Officers) shall not be restricted, diminished, or otherwise modified by threatened or pending legal proceedings (including without limitation litigation, administrative, mediation, or arbitration), which proceedings involve one or more of such parties.

Article 16 INSURANCE

16.1 General Requirements. Commencing not later than the time of the first conveyance of a Lot to a Person other than the Declarant, the Association shall maintain, in its name, to the extent reasonably available, a policy or policies and bonds necessary to provide: (a) commercial general liability insurance; (b) property insurance; (c) fidelity bonds; (d) workers' compensation insurance to the extent required by applicable laws; (e) directors and officers liability insurance; and (f) such other insurance as the Board deems advisable. The Board shall review at least annually the adequacy of the Association's insurance coverage. All insurance shall be obtained from insurance carriers with a minimum A VIII Best's financial rating and authorized to do business in the state of Washington, and, if required, meet the specific

requirements of any Federal Mortgage Agency regarding the qualifications of insurance carriers. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect liability insurance and fidelity bonds that meet any applicable requirement established by any Federal Mortgage Agency so long as any of them is a holder of a Mortgage or Owner of a Lot, except to the extent such coverage is not available or has been waived in writing by them. All such insurance policies and fidelity bonds shall provide that coverage may not be canceled or substantially modified without at least thirty days' (ten days' cancellation for nonpayment of premium) prior written notice to any and all insureds named therein, including Owners, Mortgages, and designed servicers of Mortgages.

16.2 Property Insurance. The policy for property insurance shall insure the Common Elements, insuring against risks of direct physical loss commonly insured against, which insurance, after application of any deductibles, must be not less than 80% of the actual cash value of the insured Property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

16.3 Liability Insurance. The liability insurance, including medical payments insurance, shall insure the Board, the Association, the Owners, and any managing agent, and cover all of the Common Elements in the Subdivision with a "Severability of Interest" Endorsement: or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or of another Owner, and shall cover liability of the insureds for property damage and bodily injury and death of persons arising out of the operation, maintenance, and use of the Common Elements, liability in connection with employment contract of the Association, hos liquor liability, employers' liability (stop gap) insurance, non-owned and hired automobile liability insurance, and such other risks as are customarily covered with respect to projects of similar construction, location and use. The limits of liability shall be in amounts generally required by mortgagees for projects of similar construction, location and use but shall be at least One Million Dollars (\$1,000,000) bodily injury and property damage per occurrence and Two Million Dollars (\$2,000,000) general aggregate.

16.4 Insurance Trustee; Power of Attorney. The named insured under the policies referred to above shall be the Association, as trustee for each of the Owners. The insurance proceeds may be made payable to any trustee with which the Association enters into an insurance trust agreement, or any successor trustee, who shall have exclusive authority to negotiate losses under the policies. Each Owner appoints the Association, or any insurance trustee or successor trustee designated by the Association, as attorney-in-face for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of release of liability, the execution of all documents and the performance of all other acts necessary to accomplish such purposes.

16.5 Additional Policy Provisions. The insurance obtained shall contain the following provisions and limitations:

16.5.1 Each Lot Owner is an insured Person under the policy with respect to liability arising out of the Owner's interest in the Plat or membership in the Association.

16.5.2 Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board or Owners or any Persons under any of them;

16.5.3 Waive any provision invalidating such mortgagee clause by reason of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the Mortgagee pay any premium thereon, and any contribution clause; and

16.5.4 Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to the Association or the insurance trustee.

16.6 Fidelity Bond/Directors and Officers Insurances. The required fidelity bonds shall afford coverage to protect against dishonest acts on the part of Officers, Board members, trustees, and employees of the Association and all other Persons who handle or are responsible for handling funds of, or funds administered by the Association. All managers hired by the Association shall maintain fidelity bonds for its officers, employees, and agents who handle or who are responsible for handling funds of, or funds administered by the Association. All such fidelity bonds shall name the Association as an obligee and shall be not less than three months' aggregate Assessments. The bonds shall contain waivers of any defense based upon the exclusion of Persons who serve without compensation from any definition of "employee" or similar expression. The Association shall obtain directors and officers liability insurance which shall at a minimum insure each Board member and Officer of the Association against any loss arising from any claim for any alleged wrongful act made by such person while acting in his/her capacity as Board member or Officer of the Association.

16.7 Owner's Insurance. Each Owner shall be responsible for maintaining property insurance in reasonable amounts on all Improvements located on its Lot.

Article 17

DAMAGE OR DESTRUCTION; CONDEMNATION

17.1 Common Elements. If all or any portion of any Common Element is damaged, the Association shall rebuild, repair and replace the same, unless: (a) rebuild, repair or replacement would be illegal; (b) 80% of the Owners vote not to rebuild, repair and replace; or (c) the Association is terminated. Any uninsured portion of the cost of rebuild, repair and replacement shall be a Common Expense.

17.2 Residence. If any Residence is damaged or destroyed by fire or other casualty, the Owner thereof shall repair or reconstruct the Residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty and in compliance with the Architectural Review provisions of the Governing Documents, acting with all reasonable diligence and as soon as reasonably possible.

17.3 Condemnation. In the event any part of the Common Elements is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by any condemning authority, the Association shall give prompt notice of any such proceeding or proposed acquisition to the Owners and to the holders of all First Mortgages who have requested from the Association notification of any such proceeding or proposed acquisition. All compensation, damages, or other proceeds therefrom shall be payable to the Association.

17.4 Common Element Condemnation. If part of the Common Elements is acquired by condemnation, the portion of the award attributable to the Common Elements taken must be

paid to the Association. A court may award damages to a Lot owner or owners for particular damage to the Owner's Lots arising from condemnation.

17.5 Association to Represent Owners. The Association shall represent the Owners in any proceedings, negotiations, settlements or agreements regarding a condemnation of any part of the Subdivision, and any condemnation proceeds shall be payable to the Association for the benefit of the Owners of affected Lots and their Mortgages. Should the Association not act, based on a right reserved to the Association in the Declaration, on the Owners' behalf in a condemnation process, the affected Owners may individually or jointly act on their own behalf.

Article 18 AMENDMENTS TO GOVERNING DOCUMENTS

The Declaration and other Governing Documents may be amended as follows:

18.1 By Declarant. Without approval of the Owners or the Board, the Declarant may amend this Declaration and other Governing Documents upon the exercise of any Development Right or Special Declarant Right reserved herein; or

18.2 By Owners. The Association may amend the Declaration upon the vote or agreement of no less than 51% of the Owners, subject to the following:

18.2.1 Any amendment that would reallocate a common element to become a limited common element or to incorporate a common element or a limited common element into an existing Lot must include the affirmative vote of Owner of the Lot to which the common element or limited common element will be assigned or incorporated;

18.2.2 Any amendment to create or increase Special Declarant Rights, increase the number of Lots or change the allocated interests of a Lot must be approved by vote or agreement of no less than ninety percent (90%) of the Owners, which vote must include the affirmative vote of the Owner of any Lot whose allocated interest is changed by the amendment; and

18.2.3 Any amendment that to Special Declarant Rights that have not terminated may not be amended without the consent of the Declarant.

Once an amendment has been adopted by the Association, the amendment will become effective when a certificate of the amendment, executed the President of the Board, has been recorded in the county where the Property is located.

Article 19 MORTGAGEE PROTECTION

19.1 Notices. The Association shall provide to any First Mortgagee which has requested the same, written notice of: (i) casualty or condemnation; (ii) the fact an Owner has for more than thirty days failed to meet any obligation under the Governing Documents; or (iii) lapse of insurance. Any First Mortgagee shall, upon request, be entitled to receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

19.2 Effect of Declaration Amendments. No amendment to this Declaration shall be effective to modify, change, limit or alter the rights expressly conferred upon First Mortgagees in this instrument with respect to any unsatisfied mortgage duly recorded unless the amendment shall be consented to in writing by such First Mortgagee. Any provisions of this Declaration conferring rights upon First Mortgagees which are inconsistent with any other provisions of this Declaration shall control over such inconsistent provisions.

19.3 Inspection of Books. First Mortgagees shall be entitled to inspect, during normal work hours on weekdays, all of the books and records of the Association, and, upon request, to receive the annual financial statement of the Association within ninety days following the end of the fiscal year of the Association.

19.4 Priority. A breach of any of the provisions, covenants, restrictions, or limitations hereof or the recordation of any Association Lien or the pursuit of any remedy hereunder shall not defeat or render invalid the lien of any Mortgage of Record. Each First Mortgagee which obtains title to a Lot by judicial or non-judicial foreclosure or by deed in lieu of foreclosure, shall take title to such Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such First Mortgagee acquires title to such Lot.

Article 20 MISCELLANEOUS

20.1 Notices for All Purposes.

20.1.1 Delivery of Notice. Any notice ("Notice") permitted or required to be delivered under the provisions of Governing Documents may be delivered by mail, private carrier, or personal delivery; telegraph or teletype; telephone, wire, or wireless equipment that transmits a facsimile of the notice; or by email if the recipient has consented in writing to receipt of Notice by email and provided a valid email address. Notice to the Association shall be addressed to the Association, or the Association's registered agent, president, or secretary, at the Association's registered office or principal office shown in its most recent annual report or provided by notice to Owners. Notice to Owners or Board Members shall be addressed to such person's Lot address unless such person has requested in writing that notices be sent to an alternate address. Notice to be given to the Board shall be given to Declarant until the Board has been constituted and thereafter shall be given to the president or secretary of the Board. Mailing addresses may be changed from time to time by notice in writing to the Board. Notice shall be deemed to have been delivered as of the date it was sent.

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

20.2 Severability. The provisions of this Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision, if the remainder affects the common plan. This Declaration shall be effective upon recording.

20.3 Assignment by Declarant. Declarant reserves the right to assign or delegate all of any of its rights, duties, and obligations created under this Declaration.

Dated this 20 day of April, 2021.

By: 
Paul Woodmansee, Brickyard Park LLC

By: 
Tim Woodmansee, Brickyard Park LLC

By: 
Joseph Woodmansee, Brickyard Park LLC

By: 
David Lindsey, Brickyard Park LLC

[Notaries to follow]

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **PAUL WOODMANSEE**, to me known to be the member of **BRICKYARD PARK LLC** and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument on behalf of the corporation.

GIVEN under my hand and official seal this 20th day of April, 2021.



Marcie O'Brien
Print Name: Marcie O'Brien
NOTARY PUBLIC in and for the State of Washington,
residing at Sedro Woolley
My commission expires: 01-01-25

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **TIM WOODMANSEE**, to me known to be the member of **BRICKYARD PARK LLC** and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument on behalf of the corporation.

GIVEN under my hand and official seal this 20th day of April, 2021.



Marcie O'Brien
Print Name: Marcie O'Brien
NOTARY PUBLIC in and for the State of Washington,
residing at Sedro Woolley
My commission expires: 01-01-25

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **JOSEPH WOODMANSEE**, to me known to be the member of **BRICKYARD PARK LLC** and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument on behalf of the corporation.

GIVEN under my hand and official seal this 20th day of April, 2021.



Marcie O'Brien
Print Name: Marcie O'Brien
NOTARY PUBLIC in and for the State of Washington,
residing at Sedro Woolley
My commission expires: 01-01-23

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)



On this day before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **DAVID LINDSEY**, to me known to be the member of **BRICKYARD PARK LLC** and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument on behalf of the corporation.

GIVEN under my hand and official seal this 23 day of APRIL, 2021.

Martin E Lehr
Print Name: Martin E LEHR
NOTARY PUBLIC in and for the State of Washington,
residing at La Conner
My commission expires: 2-9-23

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

That portion of the East half of the Southwest quarter of Section 18, Township 35 North, Range 5 East of Willamette Meridian, lying Easterly of the plat of "Knowlton's First Addition", according to the recorded plat thereof in the office of the Auditor of said Skagit County, and Southerly of railway, now county road;

Except that portion of the East half of the Southwest quarter of Section 18, Township 35 North, Range 5 East, W.M. described as follows:

Beginning at the Southeast corner of said subdivision;
thence North 88 degrees 35'14" West along the South line of said subdivision a distance of 656.57 feet to the southwest corner of the plat of Knowlton's First Addition per Plat recorded under A.F. No. 535315, records of Skagit County, Washington;
thence North 1 degree 27'05" East along the East line of said plat, a distance of 336.01 feet;
thence South 88 degrees 35'14" East a distance of 639.81 feet to the East line of said subdivision;
thence South 1 degree 24'18" East a distance of 336.42 feet to the point of beginning.

Except Roads;

Situate in Skagit County, Washington.

EXHIBIT A-1
LEGAL DESCRIPTION OF THE PROPERTY IN PHASE I OF THE COMMUNITY

PHASE 1 LEGAL

A PORTION OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 35 NORTH, RANGE 5 EAST, W.M. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT 900, LOTS 1-19 AND LOTS 48-70 OF BRICKYARD PARK, A PLANNED RESIDENTIAL DEVELOPMENT, APPROVED ON April 14th, 2021 AND RECORDED ON April 27th, 2021 UNDER AUDITOR FILE NUMBER 202104270116 SKAGIT COUNTY RECORDS.

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON.

**EXHIBIT A-2
LEGAL DESCRIPTION OF THE PROPERTY SUBJECT TO DEVELOPMENT
RIGHTS - PHASE II**

PHASE 2 LEGAL

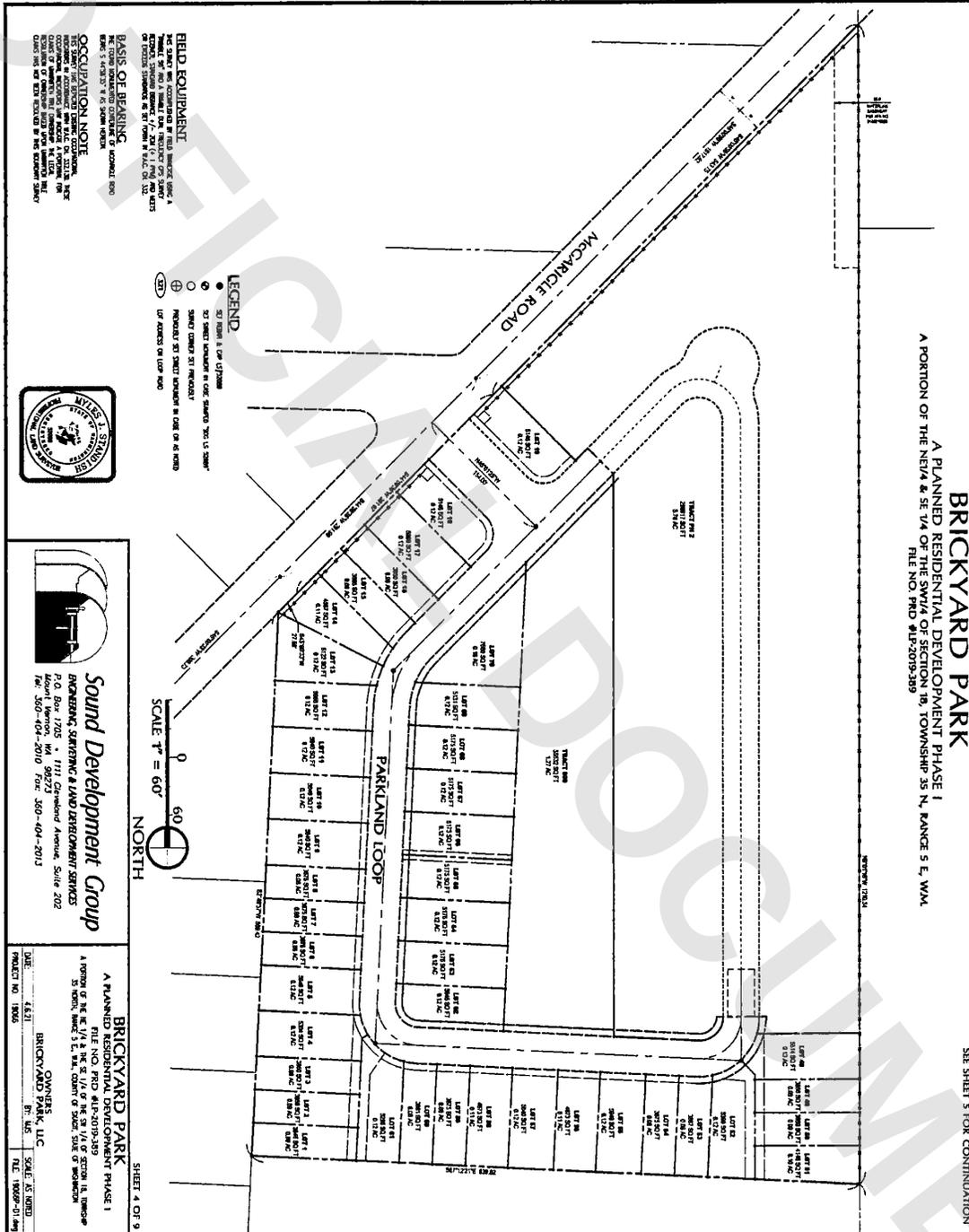
A PORTION OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 35 NORTH, RANGE 5 EAST, W.M. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PHASE 2 OF BRICKYARD PARK, A PLANNED RESIDENTIAL DEVELOPMENT, APPROVED ON April 14th, 2021 AND RECORDED ON April 27th, 2021 UNDER AUDITOR FILE NUMBER 202104270116 SKAGIT COUNTY RECORDS.

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON.

**EXHIBIT B
 PLAT MAP**

Phase 1 Plat Map recorded under Auditor File 202104270116



DECLARATION OF COVENANTS, CONDITIONS,
 RESERVATIONS AND RESTRICTIONS - 56

**EXHIBIT C
OPERATIONS AND MAINTENANCE MANUAL**

Maintenance Responsibilities and Reporting

All on-site permanent stormwater facilities owned and maintained by the association, (shown on page 4 of this Exhibit C) shall be maintained in perpetuity in a manner that allows them to function as originally designed. The owner of the property, association or its designated representative, is solely responsible for the inspection, maintenance, repair and replacement of all permanent stormwater facilities located on site and any and all costs associated therewith. The City of Sedro-Woolley is under no obligation to maintain or repair permanent stormwater facilities located on this site.

The owner, association or its designated representative shall submit an annual operation and maintenance report for the permanent stormwater facilities to the City of Sedro-Woolley Public Works Department on or before March 31st of each year for the previous year's inspection and maintenance activities. The report shall include any remedial actions taken, how the actions were completed, who performed them, any problems encountered, and any required follow-up actions such as maintenance, repair or replacement. Annual report and other maintenance records shall be maintained on-site and available to the City upon request.

The City shall have the right to enter onto the property for inspection and compliance purposes. Should inspection reports (either by the property owner, association or by the City) indicate the permanent stormwater facilities are not being properly maintained or show signs of failure and the property owner has not remedied any maintenance standards exceedances, the City of Sedro-Woolley reserves the right but not the obligation to perform work that is necessary to maintain the permanent stormwater facilities that has not been performed by the property owner, and recover any and all costs so incurred by the City from the property owner. Failure to properly maintain the permanent stormwater facilities may also result in City levied fines in accordance with Sedro-Woolley Municipal Code Title 13, Chapter 13.40.

EXHIBIT C OPERATIONS AND MAINTENANCE MANUAL

Maintenance

Bioretention areas require annual plant, soil, and mulch layer maintenance to ensure optimum infiltration, storage, and pollutant removal capabilities. In general, bioretention maintenance requirements are typical landscape care procedures and include:

- **Watering:** Plants should be selected to be drought tolerant and not require watering after establishment (2 to 3 years). Watering may be required during prolonged dry periods after plants are established.
- **Erosion control:** Inspect flow entrances, ponding area, and surface overflow areas periodically, and replace soil, plant material, and/or mulch layer in areas if erosion has occurred. Properly designed facilities with appropriate flow velocities should not have erosion problems except perhaps in extreme events. If erosion problems occur the following should be reassessed: (1) flow volumes from contributing areas and bioretention cell sizing; (2) flow velocities and gradients within the cell; and (3) flow dissipation and erosion protection strategies in the pretreatment area and flow entrance. If sediment is deposited in the bioretention area, immediately determine the source within the contributing area, stabilize, and remove excess surface deposits.
- **Sediment removal:** Follow the maintenance plan schedule for visual inspection and remove sediment if the volume of the ponding area has been compromised.
- **Plant material:** Depending on aesthetic requirements, occasional pruning and removing dead plant material may be necessary. Replace all dead plants and if specific plants have a high mortality rate, assess the cause and replace with appropriate species. Periodic weeding is necessary until plants are established.
- **Weeding:** Invasive or nuisance plants should be removed regularly and not allowed to accumulate and exclude planted species. At a minimum, schedule weeding with inspections to coincide with important horticultural cycles (e.g., prior to major weed varieties dispersing seeds). Weeding should be done manually and without herbicide applications. The weeding schedule should become less frequent if the appropriate plant species and planting density are used and the selected plants grow to capture the site and exclude undesirable weeds.

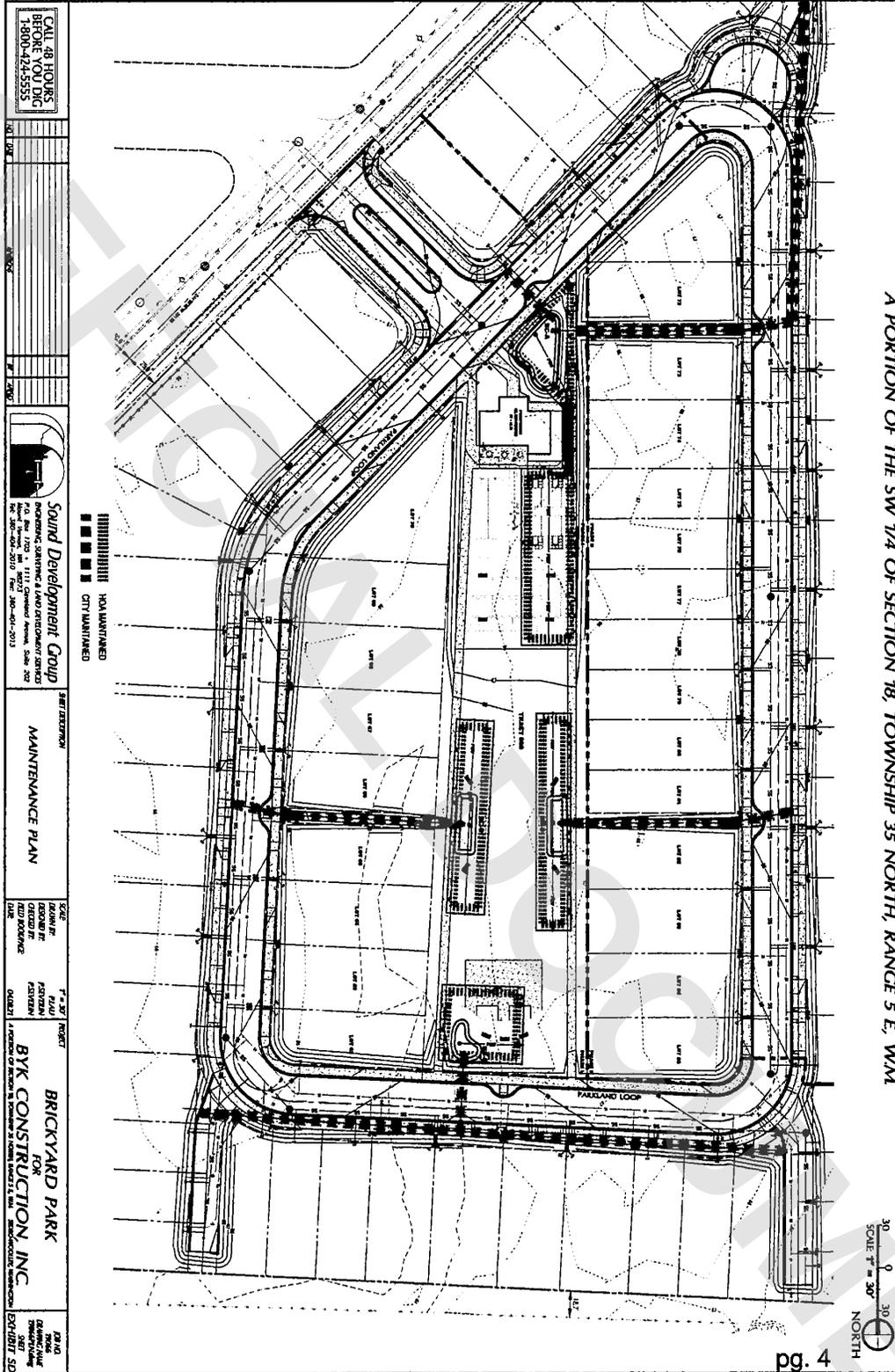
- **Nutrient and pesticides:** The soil mix and plants are selected for optimum fertility, plant establishment, and growth. Nutrient and pesticide inputs should not be required and may degrade the pollutant processing capability of the bioretention area, as well as contribute pollutant loads to receiving waters. By design, bioretention facilities are located in areas where phosphorous and nitrogen levels may be elevated and these should not be limiting nutrients. If in question, have soil analyzed for fertility.
- **Mulch:** Replace mulch annually in bioretention facilities where heavy metal deposition is high (e.g., contributing areas that include gas stations, ports and roads with high traffic loads). In residential settings or other areas where metals or other pollutant loads are not anticipated to be high, replace or add mulch as needed (likely 3 to 5 years) to maintain a 2 to 3 inch depth.

Soil: Soil mixes for bioretention facilities are designed to maintain long-term fertility and pollutant processing capability. Estimates from metal attenuation research suggest that metal accumulation should not present an environmental concern for at least 20 years in bioretention systems, but this will vary according to pollutant load. Replacing mulch media in bioretention facilities where heavy metal deposition is likely provides an additional level of protection for prolonged performance. If in question, have soil analyzed for fertility and pollutant levels.

Maintenance of Bioretention		Date Inspected:		
Frequency	Maintenance Component	Defect	Condition When Maintenance is needed	Results Expected When Maintenance is Performed
M S A	General	Trash and Debris	Trash and debris accumulated in the bio-swale.	Trash and debris cleared from swale.
		Sediment Accumulation on Grass	Sediment Depth exceeds 2 inches	Remove sediment deposits on grass treatment area of the bio-swale. When finished, swale should be level from side to side and drain freely toward outlet. There should be no areas of standing water once inflow has ceased.
		Standing Water	When water stands in swale between storms and does not drain freely.	Any of the following may apply: remove sediment or trash blockages; improve grade from head to foot of swale, remove clogged check dams, add underdrains or convert to a wet biofiltration swale.
		Flow Spreader	Flow spreader uneven or clogged so that flows are not uniformly distributed through entire swale depth.	Level the spreader and clean so that flows are spread evenly over entire swale width.
		Constant Baseflow	When small quantities of water continually flow through the swale, even when it has been dry for weeks, and an eroded, muddy channel has formed in the swale bottom.	Add a low flow pea gravel drain the length of the swale or bypass the baseflow around the swale.
		Poor Vegetation Cover	When grass is sparse or bare or eroded patches occur in more than 10% of the swale bottom.	Determine why grass growth is poor and correct that condition. Re-plant with plugs of grass from the upper slope; plant in the swale bottom at 8' intervals, or reseed into loosened fertile soil.
		Vegetation	When the grass becomes excessively tall (greater than 10"), when nuisance weeds and other vegetation starts to take over.	Mow vegetation or remove nuisance vegetation so that flow not impeded. Grass should be mowed to a height of 3 to 4 inches. Remove grass clippings.
		Excessive Shading	Grass growth is poor because sunlight does not reach swale.	If possible, trim back over hanging limbs and remove bushy vegetation on adjacent slopes.
		Inlet/Outlet	Inlet/Outlet clogged with sediment and/or debris	Remove material so that there is no clogging or blockage in the inlet and outlet area.
		Trash & Debris / Sediment in downstream catch basins	Sediment (in the basin) that exceeds 50 percent of the sump depth as measured from the bottom of basin to invert of the lowest pipe into or out of the basin, but in no case less than a minimum of 6 inches clearance from the sediment surface to the invert of the lowest pipe.	No sediment in the catch basins.
Erosion / Scouring	Eroded or scoured swale bottom due to flow channelization, or higher flows	For ruts or bare areas less than 12" wide, repair the damaged area by filling with crushed gravel. If bare areas are large, generally greater than 12" wide, the swale should be regraded and reseeded. For smaller bare areas, overseed when bare spots are evident, or take plugs of grass from the upper slope and plant in the swale bottom at 8' intervals.		

A – Annually – preferably in September
 M – Monthly – from November through April
 S – After any major storm (1 inch in a 24 hour period)

A PORTION OF THE SW 1/4 OF SECTION 18, TOWNSHIP 35 NORTH, RANGE 5 E, W1M



pg. 4

CALL 48 HOURS BEFORE YOU DIG 1-800-424-5555

Sound Development Group
 PROVIDING SURVEYING & LAND DEVELOPMENT SERVICES
 P.O. Box 1702 • 1111 Cleveland Avenue, Suite 202
 NE • 5800-001-2010 Fax: 580-001-2013

MAINTENANCE PLAN

SCALE: AS SHOWN ON DRAWING
 DATE: 04/27/21

PROJECT: BRICKYARD PARK FOR BYK CONSTRUCTION, INC.
 A PORTION OF SECTION 18, TOWNSHIP 35 NORTH, RANGE 5 E, W1M, SHERBOURNE, MINNESOTA

DATE: 04/27/21

EXHIBIT: SD

**EXHIBIT D
COMMON WALL LOTS**

Phase 1

Common Wall Lots	Address	Type of Structure
1, 2, and 3	730,732 & 734 Parkland Loop	Triplex
6, 7, and 8	740,742 & 744 Parkland Loop	Triplex
13 and 14	754 & 756 Parkland Loop	Duplex
15 and 16	758 & 760 Parkland Loop	Duplex
49, 50, and 51	705, 703 & 701 Parkland Loop	Triplex
53, and 54	712 & 714 Parkland Loop	Duplex
59 and 60	724 & 726 Parkland Loop	Duplex

Phase 2

Common Wall Lots	Address	Type of Structure
22 and 23	772 & 774 Parkland Loop	Duplex
35, 36, 37, and 38	820,822,824 & 826 Parkland Loop	Fourplex
42, 43, and 44	834,836 & 838 Parkland Loop	Triplex
75, 76, and 77	823,825 & 827 Parkland Loop	Triplex
78, 79, 80, and 81	829,831,833 & 835 Parkland Loop	Fourplex