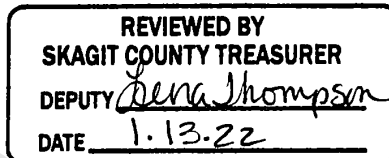




**202201130024**

01/13/2022 09:51 AM Pages: 1 of 49 Fees: \$455.00  
Skagit County Auditor

Schwabe, Williamson & Wyatt, P.C.  
1420 Fifth Avenue  
U.S. Bank Centre ~ Suite 3400  
Seattle, Washington 98101  
Attn: David Hailey



**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, RESERVATIONS & EASEMENTS  
FOR  
ELEVATION 31, A CONDOMINIUM**

**Grantor/Declarant:**

ANADUPE 7 LLC  
a Washington limited liability company

**Grantee:**

ELEVATION 31, A CONDOMINIUM

**Legal Description:**

Abbreviated form:

LOTS 14-19, BLK 2, STEWART'S FIRST ADD, VOL 2 OF  
PLATS, PG 14, and LOT 28, NELSON'S ADD, VOL 2 OF  
PLATS, PG 102, BOTH ANACORTES, SKAGIT, WA

Full legal description on:

Schedule A attached hereto

**Assessor's Tax Parcel ID#:**

P60414 and P58106

**Reference Nos. of Related  
Documents (Map):**

202201130025

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**SCHEDULES:**

Schedule A – Description and Depiction of Real Property in Condominium  
Schedule B – Unit Data; Allocated Interests

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
RESERVATIONS & EASEMENTS  
FOR  
ELEVATION 31, A CONDOMINIUM**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS & EASEMENTS FOR ELEVATION 31, A CONDOMINIUM (this "Declaration") is made and executed this \_\_\_\_ day of December, 2021 by ANADUPE 7 LLC, a Washington limited liability company (the "Declarant"), pursuant to the provisions of the Washington Uniform Common Interest Ownership Act, Chapter 64.90 of the Revised Code of Washington (as amended) (the "Act").

**RECITALS**

A. Declarant is the current owner of certain real property located in Skagit County, Washington and more particularly described on attached Exhibit A (the "Property").

B. The purpose of this Declaration is to submit the Property, and any additional real property that may in the future be submitted to this Declaration in subsequent phases, to the common interest ownership community as a condominium pursuant to the Act and to establish for Declarant's benefit and for the mutual benefit of all future owners or occupants of the Property, or any part thereof, certain rights and easements in, over and upon the Property and certain mutually beneficial restrictions and obligations with respect to the use, occupancy and maintenance thereof.

NOW, THEREFORE, the following *Declaration of Covenants, Conditions, Restrictions, Reservations & Easements For Elevation 31, A Condominium*, has been executed by the Declarant for the purpose of creating the Condominium. Declarant declares that the Property shall be held, sold, hypothecated, and conveyed subject to the covenants, conditions and restrictions declared below, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each unit and other portions of the Property in order to maintain the Property with high standards. Such covenants shall be binding on all parties having any right, title or interest therein or any part thereof, including (but not limited to) owners, tenants and occupants of the Property and their respective officers, employees, agents, contractors, tenants, subtenants, invitees, licensees, heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE 1  
NAME OF CONDOMINIUM.**

The name of the common interest community created by this Declaration and the Map is Elevation 31, a condominium.

**ARTICLE 2  
DESCRIPTION OF LAND.**

The real property included in this condominium and submitted to the Act is described and depicted in Schedule A and as may be amended for subsequent phases.

### **ARTICLE 3 INTERPRETATION.**

#### **3.1 Liberal Construction.**

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of this Condominium under the provisions of Washington law. Insofar as it affects this Declaration and the Condominium, the provisions of the Act under which this Declaration is operative, shall be liberally construed to effectuate the intent of this Declaration.

#### **3.2 Interpretation to Conform to Condominium Objectives.**

The provisions of this Declaration shall be interpreted in a manner that facilitates the administration of a common interest community, enhances the unique characteristics and appearance of the Condominium so as to retain its attraction to Unit Owners, ensures equitable treatment within the Condominium, and maintains the property values of the Units and the investments by the Owners. In any dispute concerning the meaning and effect of this Declaration, the foregoing intent and purposes shall be given primary consideration.

#### **3.3 Terms Consistent with the Act.**

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

#### **3.4 Rule against Perpetuities.**

The rule against perpetuities may not be applied to defeat any provision of this Declaration.

#### **3.5 Captions and Exhibits.**

Captions given to the various Articles, Sections, and subsections herein are for convenience only and are not intended to modify or affect the meaning of any of substantive provisions of this Declaration. The various schedules and exhibits referred to herein and attached hereto shall be deemed incorporated herein by reference.

### **ARTICLE 4 CONSTRUCTION AND VALIDITY OF DECLARATION.**

This Declaration and the Act provide the framework by which the Community is created and operated. In the event of a conflict between the provisions of this Declaration and the Act, the Act shall prevail. In the event of a conflict between the provisions of this Declaration and the Bylaws, this Declaration shall prevail except to the extent this Declaration is inconsistent with the Act. The creation of the Community shall not be impaired and title to a Unit and its interest in the Common Elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of this Declaration, the Map, or any amendment thereto to comply with the Act. This Declaration shall operate

as a set of covenants running with the land, or equitable servitudes, binding on Declarant, its successors and assigns, all subsequent Owners of the Property, together with their grantees, successors, heirs, executors, administrators, devisees or assigns, including without limitation Unit Owners, supplementing and interpreting the Act, and operating independently of the Act should the Act be, in any respect, inapplicable.

## **ARTICLE 5 DEFINITIONS.**

### **5.1 Words Defined.**

For the purposes of this Declaration and any amendments hereto, the following definitions shall apply:

5.1.1 Act means the Washington Uniform Common Interest Ownership Act, codified at Chapter 64.90 RCW, as it may be from time to time amended.

5.1.2 Affiliate means any Person who controls, is controlled by, or is under common control with the referenced Person.

5.1.3 Allocated Interests means the Common Ownership Interest allocation of Common Expense Liability, Voting Interests for each of the Units in the Condominium determined in accordance with the formula set forth in Article 7 and as specified in Schedule B.

5.1.4 Articles means the articles of incorporation for the Association as they may be amended from time to time.

5.1.5 Assessments means all sums chargeable by the Association against a Unit.

5.1.6 Association means the Unit owners association identified in Article 12.

5.1.7 Board means the board of directors of the Association.

5.1.8 Building means any structure in which a Unit is now or hereafter located, and all related facilities.

5.1.9 Bylaws means the bylaws of the Association as they may from time to time be amended.

5.1.10 Common Elements means all portions of the Condominium that are outside the boundaries of a Unit.

5.1.11 Common Expenses means expenditures made by or financial liabilities of the Association related to Common Elements and the operation of the Association. Common Expenses are allocated to all Units in accordance with Common Expense Liability pursuant to this Declaration.

5.1.12 Common Expense Liability means the liability for Common Expenses allocated to each Unit, as set forth in Schedule B.



5.1.13 Common Ownership Interest means the undivided ownership interest in the Common Elements allocated to each Unit as described in Article 7 and set forth in Schedule B.

5.1.14 Condominium means Elevation 31, a condominium, which is the condominium created under this Declaration and the Map.

5.1.15 Conveyance means any transfer of the ownership of a Unit, including a transfer by deed or by real estate contract.

5.1.16 Declarant means ANADUPE 7 LLC, a Washington limited liability company, and its successors and assigns.

5.1.17 Declaration means this *Declaration of Covenants, Conditions, Restrictions, Reservations & Easements for Elevation 31, a condominium*, as it may from time to time be amended.

5.1.18 Declared Value means the value of each Unit as stated in Schedule B, which does not necessarily reflect market value and will not be affected by sales price.

5.1.19 Development Rights means any right or combination of rights reserved by Declarant in this Declaration pursuant to Article 19.

5.1.20 Director means a member of the Board.

5.1.21 Governing Documents means this Declaration, the Map, the Bylaws, the Articles, and the Rules and Regulations.

5.1.22 Limited Common Elements means that portion of the Common Elements allocated by the Declaration or by operation of RCW 64.34.210(1)(a) or (3) for the exclusive use of one or more but fewer than all the Units in accordance with RCW 64.34.240. The Limited Common Elements are described in Article 9.

5.1.23 Manager means a person or entity engaged by the Board on behalf of the Association to assist in administration or management of the Condominium.

5.1.24 Map means the map of the Condominium, which was prepared in accordance with the requirements of RCW 64.90.245 and was recorded in the real property records of Skagit County, Washington, under Auditor's File No. 202201130025 as it may from time to time be amended.

5.1.25 Mortgage means a mortgage or deed of trust encumbering any fee, leasehold or other interest in a Unit, or a real estate contract for the purchase and sale of a Unit.

5.1.26 Mortgagee means any mortgagee, beneficiary, or holder of a Mortgage on a Unit, including a vendor under a real estate contract for the purchase and sale of a Unit.

5.1.27 Officer means a president, vice president, secretary, treasurer, or other officer of the Association.

5.1.28 Owner or Unit Owner means the Declarant or other Person who holds fee title or a vendee's interest under a real estate contract to a Unit, but does not include any Person who has an interest in a Unit solely as security for an obligation.

5.1.29 Person means a natural person, corporation, partnership, limited partnership, limited liability company, trust, governmental subdivision or agency, or other legal entity.

5.1.30 Property means the land in the Condominium and all improvements thereon.

5.1.31 Rules and Regulations means the rules and regulations of the Association, if any, as adopted and amended from time to time by the Board pursuant to this Declaration or the Bylaws.

5.1.32 Special Allocation means those Common Expenses which the Association specially allocates to certain Units as provided under Section 13.3.3.

5.1.33 Special Declarant Rights mean rights reserved for the benefit of the Declarant to: (a) complete any improvements indicated on the Map or as described in this Declaration; (b) exercise any development rights; (c) maintain sales offices, management offices, signs advertising the common interest community, and models; (d) use easements through the common elements for the purpose of making improvements within the common interest community or within real estate that may be added to the common interest community; (e) appoint or remove any officer or board member of the association or to veto or approve a proposed action of the board or association; (g) control any construction, design review, or aesthetic standards committee or process; and (h) exercise such rights as further described in Article 19.

5.1.34 Transition Date means the date Declarant control terminates pursuant to Section 19.2.

5.1.35 Unit means a physical portion of the Condominium designated for separate ownership, the boundaries of which are described in Section 6.1 and shown on the Map.

5.1.36 Voting Interest means the votes in the Association that are allocated to a Unit.

## **5.2 Form of Words.**

The singular form of words shall include the plural and the plural shall include the singular. Masculine, feminine, and gender-neutral pronouns shall be used interchangeably.

## **ARTICLE 6 DESCRIPTION OF UNITS; ALLOCATED INTERESTS.**

### **6.1 Identification of Units.**

6.1.1 Number of Units. The Building and Unit designations are as follows:

- (1) Building A: Unit A1, Unit A2, Unit A3 and Unit A4.
- (2) Building B: Unit B1, Unit B2, Unit B3, and Unit B4.
- (3) Building C: Unit C1, Unit C2, Unit C3, Unit C4, Unit C5 and Unit C6

6.1.2 Unit Boundaries. The location and configuration of each Unit is shown on the Map. The boundaries of each Unit are detailed on the Map. The Units are defined as airspace Units, including that portion of the Building within the airspace as depicted on the Map. The boundary between Units within a common Building is the center of the demising wall. The upper limits and lower limits of the Units are as shown on the Map. Subject to the provisions of Article 8 and Article 9, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit. All shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, decks, patios, and all exterior doors, and windows or other fixtures are located within the Unit's boundaries, and are part of the corresponding Unit.

6.1.3 Unit Data. Schedule B sets forth the following data for each Unit:

- (1) The Allocated Interests;
- (2) The Unit designation;
- (3) The approximate square footage of livable areas of each Unit;
- (4) The number of bathrooms, whole and partial, within each Unit;
- (5) The number of rooms designated primarily as bedrooms for each Unit;
- (6) The number of votes in the Association for each Unit.

## **6.2 Subdivisions and Combinations of Units.**

6.2.1 Subdivision and Combination. Except for the Declarant's exercise of Development Rights as provided under Article 19, no Unit may be subdivided or combined.

## **ARTICLE 7 ALLOCATED INTERESTS.**

### **7.1 Applicability.**

The Allocated Interests are the Common Ownership Interest, a Common Expense Liability, and a Voting Interest, as more particularly set forth in Schedule B for each of the Units in the Condominium. The Allocated Interests can only be changed as provided in this Declaration. The Allocated Interests may not be separated from or conveyed separately from title to a Unit, whether voluntarily or involuntarily, except for as allowed by this Declaration. The Allocated Interests shall be deemed to be

conveyed with the Units to which they are allocated even though the description instrument of conveyance may refer only to the title to the Unit.

## **7.2 Formula.**

The Allocated Interests of the Units are set forth in Schedule B attached hereto and, unless otherwise stated in this Declaration, are based upon the following formulas:

7.2.1 Common Ownership Interests. The Common Ownership Interests are allocated equally among all of the Units.

7.2.2 Common Expense Liabilities. The Common Expense Liabilities for Units are allocated equally among all of the Units.

7.2.3 Voting Interests. The voting interests of the Units are allocated equally among the Units in the Condominium, with one vote per Unit as set forth in Schedule B.

The Allocated Interests of the Units set forth on Schedule B may be subject to minor rounding adjustments needed to achieve a total of one hundred percent (100%) or to avoid minor distinctions between Units. If Declarant exercises a Development Right to create additional units, the Allocated Interests of the Units will be reallocated using the same formulas.

## **7.1 Revisions to Common Expense Liability.**

Declarant shall have the right to unilaterally recalculate the Common Expense Liability and amend the Declaration and the Map if the Common Expense Liability is incorrect for any reason, including without limitation differences between the estimated and "as-built" Unit areas, changes in the data used to calculate the Allocated Interest, changes in the Unit configurations or boundaries, or due to a combination or subdivision of Units.

# **ARTICLE 8 COMMON ELEMENTS.**

## **8.1 Identification of Common Elements.**

The Common Elements are all portions of the Condominium other than the Units, including all portions of the Property that are not a part of or within the Unit boundaries provided in Section 6.1, and any walkways, pavement, storm water vault, detention system, landscaping, conduits, and any chute, flue, duct, wire, conduit, bearing wall, bearing column, bearing floor, bearing element, or any other fixture that lies or any other fixture that lies partially within and partially outside the designated boundaries of a Unit and that serves more than one Unit or any portion of a Common Element. The Common Elements of the Condominium are depicted on the Map and consist of the following:

8.1.1 Property. The Property on which the Buildings are situated.

8.1.2 Landscaped Areas. The yards, gardens, and landscaped areas which surround the Buildings, and any planters built into or adjacent to the Buildings.

8.1.3 Sidewalks, Driveway and Uncovered Parking Areas. All pedestrian and vehicular circulation areas and uncovered parking areas.

**8.2 Use.**

Each Owner of a Unit shall have the right to use the Common Elements in common with all other Owners and a right of access from the Owner's Unit across the Common Elements to the public sidewalks and streets as more specifically provided in Article 11 below. The right to use the Common Elements extends not only to each Owner, but also to their agents, employees, tenants, guests, invitees, and licensees. The right to use the Common Elements, shall be governed by the provisions of the Act, this Declaration, the Bylaws, and the Rules and Regulations of the Association.

**8.3 Conveyance or Encumbrance of Common Elements.**

Portions of the Common Elements may be conveyed or subjected to a security interest by the Declarant as provided in Article 19.

**8.4 Other Common Element Conveyances without Unit Void.**

An Owner's interest in the Common Elements may be conveyed, encumbered, sold, or transferred, voluntarily or involuntarily, solely as a part of a conveyance, encumbrance, sale, or transfer of the Unit to which it is appurtenant and any attempt to do so without such a Unit transfer shall be void.

**8.5 Declarant's Right to Inspect.**

The Declarant shall have the right, but not the obligation, to conduct inspections and tests from time to time of all or any parts of the Condominium in order to ascertain the physical condition of the improvements in the Condominium and to determine whether maintenance, repairs, or replacements of any such improvements are warranted. The Declarant shall pay all costs of such inspections and tests made pursuant to this Section, shall have the right to make such repairs as it deems appropriate, shall restore the affected portion of the Property to its condition immediately prior thereto, and shall indemnify the Association and Owners of any affected Units from any damage resulting therefrom. The Declarant shall have such rights of entry on, over, under, across and through the Property as may be reasonably necessary to exercise the rights described in this Section. The Declarant shall provide reasonable advance notice to the Association of the inspections and repairs, shall permit a representative of the Association to be present during the inspections and repairs and shall provide the Association copies of the inspection reports.

## **ARTICLE 9 LIMITED COMMON ELEMENTS.**

### **9.1 Description and Allocation of Limited Common Elements.**

The Limited Common Element, which are reserved for the use of a designated Unit to the exclusion of the other Units, consist of the following:

9.1.1 All Units. The exterior envelope of the Building, to include the siding, is a Limited Common Element allocated to the Unit(s) of that Building.

9.1.2 Structural Elements. The foundations, studding, joists, beams, supports, walls (excluding only non-bearing interior partitions of the Units), and all other structural parts of the Buildings to the Units' perimeter walls, floors, ceilings (except as otherwise designed within the boundaries of the Units in Section 6.1.2) shall be a Limited Common Element allocated to all of the Units within that corresponding Building.

9.1.3 Central Services. Common utility services, such as power, light, gas, water, and sewer, whether they are located in partitions or otherwise, excluding the hot water tanks, baseboard heaters, air conditioners, and other such appliances located within individual Units.

9.1.4 Roofs. The entire roof system of each Building, including composite roofing materials, underlayments, vents, flashing, gutters, down spouts, rafters, trusses, sheathing and all other structural parts of the roof shall be a Limited Common Element allocated to all of the Units within that corresponding Building.

### **9.2 Limited Common Elements Serving more than One Unit.**

If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

### **9.3 Reallocation or Incorporation.**

A Limited Common Element may be reallocated between Units only with the approval of the Board and by an amendment to the Declaration executed by all Owners of the Units to which the Limited Common Element was and will be allocated. The Board shall approve the request of the Owner or Owners under this Section within 30 days, or within such other period provided by the Declaration, unless the proposed reallocation does not comply with the Act or the Declaration. The failure of the Board to act upon a request within such period shall be deemed approval thereof. The amendment shall be recorded in the names of the parties and of the Condominium. A Common Element may be reallocated as a Limited Common Element, or a Limited Common Element may be incorporated into an existing Unit, with the approval of Owners holding 67% of the votes in the Association (including every Owner of a Unit to which the Limited Common Element was allocated or to which it will be reallocated or incorporated) and of 51% of Mortgagees (including every Mortgagee holding a first

Mortgage on a Unit to which the Limited Common Element was allocated or to which it will be reallocated or incorporated). Such reallocation or incorporation shall be reflected in an amendment to the Declaration and the Map. This Section shall not apply with respect to any such reallocation or incorporation made as a result of the exercise of any Special Declarant Right reserved by Declarant.

#### **9.4 Use.**

Each Owner of a Unit to which any Limited Common Element is allocated shall have the right to use the Limited Common Element in common with all other Owners to which that Limited Common Element is allocated. Except as otherwise provided in this Declaration, the right to use the Limited Common Element shall extend not only to each Owner, but also to his or her agents, servants, tenants, family members, invitees and licensees. The right to use the Limited Common Elements shall be governed by the provisions of the Act, this Declaration, the Bylaws, and the rules and regulations of the Association.

### **ARTICLE 10 MAINTENANCE**

#### **10.1 Units.**

10.1.1 General Maintenance Obligations. The general maintenance obligations of the Unit Owners and Association may be further described into the Rules and Regulations. Each Owner is responsible for the maintenance, repair and replacement of the components as set forth in this Article 10 and in accordance with the Rules and Regulations.

10.1.2 Units. Each Unit Owner shall, at its sole expense, keep its Unit in good order, condition and repair and in a clean and sanitary condition, and shall perform all maintenance which may at any time be necessary to maintain the good appearance and condition of its Unit. Each Unit Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, hoses, drains, toilets, showers, tubs, faucets, water heaters, fans, heating, cooling, grease interceptors or other equipment, lighting fixtures, or other fixtures or appliances that are located within or are part of the Unit. Each Unit Owner must keep the patios, porches, windows, doors, balconies, and other Limited Common Elements allocated to such Owner's Unit in a neat and clean condition, and must also keep the drains on patios and balconies allocated to its Unit free of leaves, debris or objects that might cover, block, clog or impair the function of the drains.

#### **10.2 Limited Common Elements.**

10.2.1 Roof Maintenance and Replacement. The Association shall care for and maintain the roof of each Building. In the event a Building's roof requires repair or replacement, the Association shall use materials that are similar in type, quality and color of the original roof.

10.2.2 Siding Maintenance. The Association shall care for and maintain the siding of each Building. In the event a Building's siding requires repair or replacement, the Association shall use materials that are similar in style, quality and color of the original siding and consistent with other Buildings within the Condominium.

10.2.3 Decisions by Board. Decisions with respect to the standard of appearance and condition of Limited Common Elements, and with respect to the necessity for, and manner of, caring for, maintaining, repairing, repainting or redecorating Limited Common Elements shall be made by the Board acting on behalf of the Association.

10.2.4 Responsibilities for Maintenance. Except as otherwise provided in this Declaration, the Association shall maintain and repair the Limited Common Elements. Notwithstanding the preceding sentence, the Association, at the Board's direction, may require or authorize the Owners of the Units to which some or all of the Limited Common Elements are allocated to perform the specified maintenance and repair obligations.

### **10.3 Common Elements.**

10.3.1 Ordinary Maintenance. Owners acknowledge the need to maintain the Common Elements of the Condominium to a high level of appearance so as to retain the character and quality of this Condominium. With this condition in mind, the Association shall maintain, repair and replace the Common Elements, in a good, clean, sanitary and operating condition.

10.3.2 Common Element Operation and Maintenance. The Association shall keep the Common Elements in a clean, safe, and sanitary condition, in good order and repair and properly landscaped and adequately lighted at all times. Such maintenance shall be in accordance with any property maintenance schedule, information or recommendations provided to the Association by the Declarant or Manager. Except as provided in Article 7, the cost thereof shall be a Common Expense allocated to all Unit Owners in accordance with their Allocated Interests. Without limiting the generality of the foregoing, the Board shall cause the following standards to be observed:

- (1) Removing all debris, filth, refuse, surface waters, snow, and ice from the Common Elements and wash or thoroughly sweep paved areas as required;
- (2) Maintaining and repairing lights in the Common Elements as shall be reasonably required;
- (3) Cleaning Common Element lighting fixtures and re-lamping and re-ballasting them as needed;
- (4) Maintaining, repairing, and replacing landscaping as necessary to keep the same in good condition; and
- (5) Cleaning, repairing, replacing, and maintaining all storm drains, sanitary sewer, domestic water, natural gas, electrical power, fire protection, water, telephone, and internet utility facilities within the Common Elements to the extent the same are not cleaned, repaired, replaced, and maintained by public utilities.



## **ARTICLE 11 EASEMENTS.**

### **11.1 General.**

In addition to any rights under the Act, each Unit has an easement in and through the Common Elements for ingress and egress from the public sidewalks and streets. Each Unit has an easement in and through the Common Elements for utilities, and for reasonable access thereto, as required to effectuate and continue the proper operation of the Condominium. The foregoing easements are perpetual and run with the land, and shall be binding on each Owner, its successors and heirs.

### **11.2 Utility and Municipal Easements Granted by Declarant.**

Pursuant to its Development Rights, Declarant shall have the right to grant and record easements to any company or municipality providing utility services to the Condominium or Owners of Units (i) for the installation, construction, maintenance, repair and reconstruction of all utilities serving the Condominium or the Owners, including, without limitation, such utility services as water, sanitary sewer, storm sewer, electricity, cable television, internet access and telecommunications; and (ii) for access through the Common Elements to the utility installations.

### **11.3 Right of Entry for Maintenance, Repairs, Emergencies or Improvements.**

The Association shall have the right to access each Unit from time to time as may reasonably be necessary for maintenance, repair or replacement or improvement of any of the Common Elements (including Limited Common Elements) accessible therefrom, or for making repairs necessary to prevent damage to the Common Elements (including Limited Common Elements) or for any emergency situations, but any access shall be done in a commercially reasonable manner, with prior written notices except in emergencies, and in a manner designed to minimize in disturbance to any Owners, tenants and occupants.

### **11.4 General Easement for Support and Other Purposes.**

In addition to rights under the Act, each Unit has an easement in and through each other Unit and the Common Elements for lateral and subjacent support, for all support elements and utility facilities, including wiring, heating, air conditioning, and other utility service facilities, and for an unrestricted right of ingress and egress thereto, as required to effectuate and continue proper operation of this Condominium plan. Without limiting the generality of the foregoing, each Unit and all Common Elements are specifically subject to easements as required for the electrical wiring and plumbing, and for the air conditioning lines and equipment, if any, for each Unit. The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for Common Elements reserved by law. All such easements shall be located as such features are located in the improvements as built, or as they may become located due or repair or reconstruction. All easements shall be perpetual and nonexclusive unless otherwise noted.

### **11.5 Easement for Encroachments.**

To the extent not provided by the definition of "Unit" in the Declaration and in the Act, each Unit and all Common Elements have an easement over all adjoining Units and Common Elements for the purpose of accommodating any present or future encroachment caused by the construction, reconstruction or repair of the improvements, or the settlement, shifting, or movement of the improvements or land. Such easements shall exist so long as the encroachments shall exist or the Unit Owner has the right to cause them to be replaced, provided however, that no valid easement shall exist if the encroachment was caused willfully by the Owner. The encroachments described in this Section shall not be construed to be encumbrances affecting the marketability of title to any Unit nor shall they alter the rights and obligations of the Owners.

## **ARTICLE 12 OWNERS ASSOCIATION; BOARD.**

### **12.1 Form of Association.**

An Owners association shall be organized pursuant to RCW 64.90.400 on or before the date the first Unit in the Condominium is conveyed to a person other than the Declarant. Once organized, the Owners of Units shall constitute the owners association to be known as Elevation 31 Owners Association. The Association shall be incorporated as a Washington nonprofit corporation and governed by the Board.

### **12.2 Bylaws.**

12.2.1 Adoption of Bylaws. The Board will adopt Bylaws to supplement this Declaration and to provide for the administration of the Association and the Property and for other purposes not inconsistent with the Act or this Declaration.

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

### **12.3 Powers and Obligations of the Association.**

The Association, acting by and through the Board, or a Manager appointed by the Board, for the benefit of the Condominium and the Owners, shall enforce the provisions of this Declaration and of the Association's Bylaws and shall have all powers and authority permitted to the Association under and subject to the Act and this Declaration. The Association shall have (a) all powers authorized under the Act and the Washington Nonprofit Corporation Act, Chapter 24.03 RCW; (b) all powers necessary for the operation of the Condominium or governance of the Association; (c) any other powers authorized by this Declaration; and (d) all powers that may be exercised by any corporation of the same type as the Association.

### **12.4 Management By Board.**

Except as otherwise provided in this Declaration, the relevant Bylaws, and the Act, the Board shall act on behalf of the Association. The Board members and officer(s) of the Association shall, if elected by the Owners, exercise ordinary and reasonable care in the performance of its duties and, if appointed by

the Declarant pursuant to its right to control the Association, exercise the degree of care required of a fiduciary of the Owners, in each case subject to the requirements of the Washington Nonprofit Corporation Act, Chapter 24.03 RCW.

#### **12.5 Qualification and Transfer.**

Each Owner of a Unit (including the Declarant) shall be a member of the Association and shall be entitled to one membership for each Unit owned, which membership shall be considered appurtenant to that member's Unit. Ownership of a Unit shall be the sole qualification for membership in the Association. A membership shall not be transferred in any way except upon the transfer of title to the Unit and then only to the transferee of title to the Unit; provided, that if a Unit has been sold on contract, the contract purchaser shall exercise the rights of the Owner for purposes of the Association and governing documents, except as hereinafter limited, and shall be the voting representative unless otherwise specified. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Unit shall operate automatically to transfer the membership in the Association to the new Owner.

#### **12.6 Voting.**

12.6.1 Number and Classes of Votes. The allocation of Voting Interests in the Association is set forth in Section 7.2.3 and as indicated in Schedule B.

12.6.2 Majority Vote. Except as otherwise provided in this Declaration or as required by law, passage of any matter submitted to a vote shall require the affirmative vote of a majority of the voting power in person or by proxy.

12.6.3 Percentage of Owners or Mortgagees. For purposes of determining the percentage of voting power for approving a proposed decision or course of action in cases where an Owner owns, or a Mortgagee holds Mortgages on, more than one Unit, such Owner shall be deemed a separate Owner for each such Unit so owned and such Mortgagee shall be deemed a separate Mortgagee with respect to each Mortgage so held.

12.6.4 Association May Not Vote. No votes allocated to a Unit owned by the Association may be cast, and in determining the percentage of votes required to act on any matter, the votes allocated to Units owned by the Association shall be disregarded.

#### **12.7 Financial Statements and Records.**

The Association shall keep financial records in sufficient detail to enable the Association to comply with the resale certificate requirements set forth in RCW 64.90.640. All financial and other records shall be made reasonably available for examination by any Owner and the Owner's authorized agents. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association. The annual financial statement shall be audited at least annually pursuant to RCW 64.90.530(2) by a certified public accountant who is not a member of the Board or an Owner. The financial statement shall be completed in time for the Association's annual meeting and in any event within 120 following the end of the fiscal year. Any Mortgagee will, upon request, be entitled to receive the annual financial statement within 120 days following the end of the fiscal year. An Owner

or Mortgagee, at the Owner's or Mortgagee's expense, may at any reasonable time conduct an audit of the books of the Board and Association. Upon written request of any Mortgagee, the Association shall provide to such Mortgagee within ten business days after receipt of the request, for inspection, copying, and audit by such Mortgagee, the financial and other records of the Association.

## **12.8 Meetings, Notices and Quorums.**

Meetings of the Association will be conducted in accordance with the Bylaws with notice and quorums as provided therein.

## **12.9 Board of Directors.**

**12.9.1 Selection of the Board.** Prior to the Transition Date, election or appointment of members of the Board shall be governed by Section 19.1. After the Transition Date, the Board shall be elected by the Unit Owners and shall consist of three members. The rights and duties of the Board and of the Association shall be governed by the provisions of the Act, the Washington Nonprofit Corporation Act (Chapter 24.03 RCW), this Declaration and the Bylaws. Board members may be removed by the requisite affirmative vote of the Unit Owners entitled to elect them, and any replacements of Board members whose terms expire or who resign or are removed shall be made by the same Unit Owners that were entitled to elect the departing member. Notwithstanding the foregoing, until the Transition Date the Owners may not remove any Board member appointed by Declarant pursuant to the Declarant's right to appoint officers and Board members of the Association.

**12.9.2 Board Meetings.** Meetings by the Board will be conducted in accordance with the Bylaws and the notice and quorums as provided therein.

**12.9.3 Limitations of Board's Liability.** Except to the extent of intentional misconduct, no members of the Board shall be liable for any service to be obtained and paid for by the Board or for injury or damage to person or property caused by the elements or by another Unit Owner or person in the Condominium or resulting from the flow of electricity, water or gas from outside or from any parts of the Condominium or from any of their pipes, drains, conduits, appliances or equipment or from any other place. No diminution or abatement of Assessments shall be claimed or allowed for inconveniences or discomfort arising from making of repairs or improvements to the Common Elements or from any action taken to comply with any law, ordinance or orders of governmental authorities. No member of the Board shall be responsible to Unit Owners for loss or damage by theft or otherwise of articles which may be used or stored by Unit Owners on the Property.

**12.9.4 Indemnification of Board and Officers.** Each member of the Board and the Officers shall be entitled to indemnity, reimbursement of expenses and advances of expenses as set forth in this Declaration and in the Association's governing documents.

**12.9.5 Right to Notice and Opportunity to Be Heard.** Whenever this Declaration requires that an action of the Board be taken after "Notice and Opportunity to be Heard," the following procedure shall be observed: The Board shall give written notice of the proposed action to all Owners, tenants or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the

hearing, which shall be not less than five days from the date notice is delivered by the Board. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the Board to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the Board. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

### **ARTICLE 13 BUDGET AND ASSESSMENTS.**

#### **13.1 Budget.**

13.1.1 Fiscal Year. The Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year.

13.1.2 Preparation of Budget. Not less than 30 days before the end of the fiscal year the Board shall prepare a budget for the Association for the coming year. In preparing its budget the Board shall estimate the Common Expenses of the Association to be paid during the year, may make suitable provision for accumulation of reserves, including amounts reasonably anticipated to be required for the operation, maintenance, repair, and replacement of the portions of Common Elements for which the Association is responsible, and shall take into account any surplus or deficit carried over from the preceding year and any expected income to the Association.

13.1.3 Supplemental Budget. If during the year the budget proves to be inadequate for any reason, the Board may prepare a supplemental budget for the remainder of the year.

#### **13.2 Reserve Funds.**

In establishing its regular budget of Common Expenses and Assessments, after the Transition Date the Board shall make provision for creating, funding and maintaining reasonable reserves for contingencies and operations and for the maintenance, repair, replacement and acquisition of the Common Elements for which it is principally responsible and shall take into account any expected income and any surplus available from the prior year's operating fund. The Board need not adopt a "fully funded" plan or contribution and may adopt such plan and contribution rate as it deems appropriate in its reasonable discretion. The Board may at any suitable time require the commencement of contributions to such reserve accounts. If the sum estimated and budgeted at any time proves inadequate for any reason, the Board may at any time levy a further Assessment. Similarly, if the sum estimated and budgeted, and being collected and/or already collected, at any time proves excessive, the Board may reduce the amount being assessed and/or apply existing funds (in excess of current needs and required reserves) against future Assessments and/or refund such excess funds. Any reserve funds of the Association shall be kept in a segregated account.

#### **13.3 Assessments.**

13.3.1 Commencement of Assessment. At the closing of the sale of each Unit, the first purchaser thereof shall pay to the Association, as a nonrefundable contribution to an initial

working capital and reserve fund, an amount equal to two times the initial monthly Assessment against the Unit, which amount shall not be considered as an advance payment of regular assessments. Until Assessments are commenced in accordance with the approved budget, Declarant shall not use any of the working capital fund to pay any operating expenses of the Association. At no time shall Declarant use the working capital contributions to defray any of Declarant's construction costs or to make up any budget deficits.

13.3.2 Assessments for Common Expenses. The sums required by the Association for Common Expenses, as reflected by the annual budget and any supplemental budgets, shall be divided into monthly installments to be paid over the period of time covered by the budget or supplemental budget. The Common Expense Assessment for each Unit is determined by first making any Special Allocations of Common Expenses as provided in Section 13.3.3 below, and then taking the remaining Common Expenses and multiplying them by the Common Expense Liability for that Unit. Assessments may be rounded to the nearest dollar. Assessments begin accruing for all Units upon the conveyance by the Declarant of the first Unit. To the extent that any damage to a Common Element is caused by the misconduct or negligence of an Owner (or an Owner's agents, employees, tenants, invitees and licensees), the Association may assess the repair costs against that Unit.

13.3.3 Special Allocations. Special Allocations are those Common Expenses which the Association specially allocates to select Unit as permitted under this Section. The Association shall, to the extent reasonably practicable, in a reasonable and non-discriminatory manner, specially allocate any Common Expenses benefiting fewer than all of the Units to the Unit benefited in proportion to the benefit received. In determining whether a Special Allocation is practicable, the Association shall consider the extent to which certain Units benefit more than other Units with regard to the Common Expenses involved in each particular case, whether it is possible to separately contract for the applicable service, and the amount of the liability or expense involved. The Board shall have discretion to not make any Special Allocations and, instead, treat the particular expense as a Common Expense, if the Board determines that the administrative burden is disproportionate to the differential achieved by the Special Allocation. The Association may impose deposit requirements, late charges, billing procedures, and other similar measures with regard to Special Allocations as the Association may determine is appropriate in its reasonable discretion.

13.3.4 Notice of Assessments. The Board shall notify each Owner in writing of the amount of the general and special Assessments to be paid for the Owner's Unit and shall furnish copies of all budgets and the Common Expense Liability allocations which apply to the Unit, on which the general and special Assessments are based. The Board shall furnish the same information to an Owner's Mortgagee if so requested.

13.3.5 Payment of Assessments. Payment of Assessments shall be due on or before the first day of each month. Each Owner shall pay or cause to be paid all Assessments against the Unit to the treasurer or designated agent of the Association. Any Assessments not paid by the fifteenth day of the calendar month in which it is due shall be delinquent and subject to late charges, interest charges, and collection procedures as provided in Section 13.4 below.

13.3.6 Proceeds Belong to Association. All Assessments and other receipts received by the Association on behalf of the Condominium shall belong to the Association. All funds of the

Association shall not be commingled with the funds of any other entity, nor with the funds of any Manager or any other person responsible for the custody of such funds.

13.3.7 Failure To Assess. Any failure by the Board or the Association to make the budgets and Assessments hereunder before the expiration of any year for the ensuing year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owners from the obligation to pay Assessments during that or any subsequent year. The Assessment amounts established for the preceding year shall continue until new Assessments amounts are established.

13.3.8 Certificate of Unpaid Assessments. Upon the request of any Owner or Mortgagee of a Unit, the Board will furnish a certificate stating the amount, if any, of unpaid Assessments charged to the Unit. The certificate shall be conclusive upon the Board and the Association as to the amount of such indebtedness on the date of the certificate in favor of all purchasers and Mortgagees of the Unit who rely on the certificate in good faith. The Board may establish a reasonable fee to be charged to reimburse it for the cost of preparing the certificate.

13.3.9 Recalculation of Assessments. If the Common Expense Liabilities for the Units are reallocated, then all general and special Assessments not yet due shall be recalculated in accordance with the reallocated Common Expense Liabilities.

#### **13.4 Liens and Collection of Assessments.**

13.4.1 Assessments Are a Lien; Priority. The Association has a lien on a Unit for any unpaid Assessment levied against a Unit from the time the Assessment is due. A lien under this Article shall be prior to all other liens and encumbrances on a Unit except (a) liens and encumbrances recorded before the recording of this Declaration; (b) a mortgage on the Unit recorded before the date on which the Assessment sought to be enforced became delinquent, EXCEPT to the extent of Assessments for Common Expenses, excluding any amounts for capital improvements, based on the periodic budgets adopted by the Association which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the Association or a Mortgagee, the date of trustee's sale in a non-judicial foreclosure of a mortgage, or the date of recording of this Declaration of forfeiture in a proceeding by the vendor under a real estate contract, provided that the priority of the Association's lien against Units encumbered by a mortgage held 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 such lien priority includes any delinquencies which relate to a period after such Mortgagee has given such notice and before the Association gives such Mortgagee a written notice of the delinquency; and (c) liens for real property taxes and other governmental assessments or charges against the Unit. Recording of this Declaration constitutes record notice and perfection of the lien for Assessments; however, the Association may record a notice of claim of lien for Assessments in the real property records of the county in which the Unit is located. Such recording shall not constitute the written notice of delinquency to a Mortgagee referred to above.

13.4.2 Lien May Be Foreclosed; Judicial Foreclosure. The lien arising under this Article may be enforced judicially by the Association or its authorized representative in the manner set

forth in Chapter 61.12 RCW. The Association or its authorized representative shall have the power to purchase the Unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Except for the limited Assessment priority stated in subsection (b) of Section 13.4.1 above, a Mortgagee or other purchaser of a Unit who obtains the right of possession of a Unit through foreclosure shall not be liable for any 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 Unit. Foreclosure of a Mortgage does not relieve the prior Owner of personal liability for Assessments accruing against the Unit prior to the date of such sale.

13.4.3 Extinguishment of Lien and Personal Liability. A lien for unpaid Assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the Assessments sought to be recovered becomes due.

13.4.4 Joint and Several Liability. In addition to constituting a lien on the Unit, each Assessment shall be the joint and several obligation of the Owner or Owners of the Unit to which the same are assessed as of the time the Assessment is due. In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor 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 judgment for any delinquent Assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waving the lien securing such sums.

13.4.5 Late Charges and Interest on Delinquent Assessments. 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.

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

13.4.7 Acceleration of Assessments. If an Owner is delinquent in the payment of any assessment for more than sixty (60) days, and the Owner fails to cure the delinquency within fifteen (15) days after written notice from the Association stating the consequences of failing to cure the delinquency, then the Association may accelerate and demand immediate payment of all assessments coming due during the twelve- (12-) month period following the Association's notice. The Association may reasonably estimate any special allocations or special assessments in calculating the accelerated balance.



13.4.8 Remedies Cumulative. The remedies provided herein are cumulative and the Board may pursue them, and any other remedies which may be available under law although not expressed herein, either concurrently or in any order.

**ARTICLE 14**  
**ENFORCEMENT OF DECLARATION, BYLAWS,**  
**AND RULES AND REGULATIONS.**

**14.1 Rights of Action.**

Each Owner, the Board, and the Association shall comply strictly with this Declaration, the Bylaws, and the Rules and Regulations, if any, adopted pursuant thereto, as they may be lawfully amended from time to time, and the decisions of the Board. Failure to comply with any of the foregoing shall be grounds for an action to recover sums due, damages, and for injunctive relief, or any or all of them, maintainable by the Board on behalf of the Association or by an Owner.

**14.2 Non-Waiver.**

The failure of the Board in any instance to insist upon the strict compliance with this Declaration or the Bylaws or Rules and Regulations of the Association, or to exercise any right contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of any term, covenant, condition, or restriction. The receipt by the Board of payment of an Assessment from an Owner, with knowledge of a breach by the Owner, shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless expressed in writing and signed by the Board. This Article also extends to the Declarant.

**ARTICLE 15**  
**INDEMNIFICATION.**

Without limiting those rights to indemnity, reimbursement of expenses and advances of expenses set forth in the Association's governing documents or available under the Nonprofit Corporation Act, each Board member, Association officer and the Declarant shall be indemnified by the Association against all expenses and liabilities, including attorney fees, reasonably incurred in connection with any proceeding to which such person may be a party, or in which such person may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not such person holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by any type of insurance and except in such cases wherein such person is adjudged liable for intentional misconduct in the performance of such person's duties, 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 interests of the Association.

**ARTICLE 16**  
**INSURANCE; DAMAGE AND REPAIR OR DAMAGE TO PROPERTY.**

**16.1 General Requirements.**

Commencing not later than the time of the first conveyance of a Unit to a person other than the Declarant, the Association shall maintain, to the extent reasonably available, a policy or policies and bonds necessary to provide (a) property insurance, (b) commercial general liability insurance and excess and/or umbrella liability insurance, in amounts sufficient to cover the liability exposure related to the Common Elements at the Property, (c) fidelity insurance, (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 the adequacy of the Association's insurance coverage at least annually. All insurance shall be obtained from insurance carriers that are generally acceptable for similar projects and authorized to do business in the State of Washington. All such insurance policies shall provide that coverage may not be canceled or substantially reduced without at least 45 days' prior written notice (ten days for cancellation for nonpayment of premium) to all insureds named therein, including Owners, Mortgagees, and designated servicers of Mortgagees. All such policies shall be rated "A-" or better by S&P (or equivalent by other rating agency) and "A X" by A.M. Best, and shall have market-standard deductibles or retentions approved by the Association and acceptable to Mortgagees.

#### **16.2 Property Insurance; Deductible; Owner Responsibility.**

Except as provided below, the property insurance shall, at the minimum and subject to such reasonable deductible as the Board may determine, provide all risk or special cause of loss coverage in an amount equal to the full replacement cost of (i) the Common Elements (including the Limited Common Elements), (ii) the Units including all interior spaces, floors, walls, and partitions, and (iii) personal property of the Association with an "Agreed Amount Endorsement" or equivalent endorsement and such other endorsements as any Mortgagee shall deem necessary and are available; provided the additional cost, if any, of any such other endorsements requested by a Mortgagee shall be paid by an Owner of the mortgaged Unit. Unless an Owner agrees to pay the increased cost as a Special Allocation, the finished surfaces, appliances, equipment, fixtures, betterments and improvements in or serving only a Unit, whether installed by the Declarant, the Unit Owner, tenants or others, shall not be covered by the Association's policy but shall be covered by an insurance policy or policies obtained by or for the benefit of the Owner of the Unit. The Association shall be the first named insured under the Association's policy. The policy shall provide a separate loss payable endorsement in favor of the Mortgagee of each Unit. The policy shall cover loss due to earthquake, windstorm, and earth movement and the following endorsements: "Demolition Cost Endorsement", "Increased Cost of Construction Endorsement" and "Contingent Liability from Operation of Building Laws Endorsement", unless the Board and Mortgagees agree that such coverages or endorsements are not available at commercially reasonable rates. The Association or insurance trustee, if any, shall hold insurance proceeds in trust for the Owners and their Mortgagees, as their interests may appear. Each Owner and the Owner's Mortgagee, if any, shall be beneficiaries of the policy in accordance with the interest in the Common Elements appurtenant to the Owner's Unit. Certificates of insurance shall be issued to each Owner and Mortgagee upon request. Up to the amount of the deductible under the Association's policy, each Owner of a Unit shall be responsible for (a) damage or loss within the Owner's Unit or to equipment for which the Owner is responsible under Section 16.8; (b) damage to another Unit or to the Common Elements resulting from the negligence or misconduct of the Unit Owner; or (c) damage resulting from faulty or leaking plumbing fixtures or pipes, hot water tanks, sinks, bathtubs, toilets, dishwashers, washers, including any connecting hoses or drains in or serving only the Owner's Unit. If the damage involves more than one Unit or a Unit or Units and a Common

Element, then the liability for the deductible or otherwise uninsured amounts will be pro-rated between the responsible Owners and the Association (if a Common Element is involved) in proportion to the relative amounts of damage for which the Owner or Association is responsible.

#### **16.3 Insurance Trustee; Power of Attorney.**

The named insured under the policies referred to in Section 16.2 shall be the Association, as trustee for each of the Owners in accordance with their respective interests in the Common Elements; except as provided in Article 17. 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. Subject to the provisions of Section 16.8, the proceeds must be disbursed first for the repair or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored or the Condominium is terminated. Each Owner appoints the Association, any insurance trustee, or successor trustee designated by the Association, as attorney-in-fact 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 releases of liability, the execution of all documents, and the performance of all other acts necessary to accomplish such purposes.

#### **16.4 Additional Policy Provisions.**

The insurance obtained pursuant to Section 16.2 shall contain the following provisions and limitations:

16.4.1 Each Unit Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association.

16.4.2 Such policies shall not provide for contribution by or assessment against Mortgagees or become a lien on the Property superior to the lien of a first Mortgage.

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

16.4.4 Coverage shall not be prejudiced by (a) any act, omission, or neglect of the Owners of Units when such act or neglect is not within the scope of the Owner's authority on behalf of the Association; or (b) failure of the Association to comply with any warranty or condition with regard to any portion of the premises over which the Association has no control.

16.4.5 A waiver of subrogation by the insurer as to any and all claims against the Association, the Owner of any Unit, Mortgagees or the owner of any sub-unit, and/or their respective agents, members of the Owner's household, employees, or lessees, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

16.4.6 A standard mortgagee clause that shall:

(1) Provide that any reference to a mortgagee in the policy shall mean and include all Mortgagees of any Unit or Unit lease or sublease in their respective order of preference, whether or not named therein;

(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;

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

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

#### **16.5 Liability Insurance**

The commercial general liability and excess and/or umbrella liability insurance maintained by the Association pursuant to this Article shall contain the following provisions and limitations:

16.5.1 Each Owner and Mortgagee shall be an insured or additional insured on each such policy, as its interest may appear.

16.5.2 A waiver of subrogation by the insurer as to any and all claims against the Association, the Owner of any Unit, Mortgagees and/or their respective agents, employees, or lessees.

#### **16.6 Fidelity Insurance.**

The required fidelity insurance shall afford coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all other persons who handle or are responsible for handling funds of or administered by, the Association, including the Manager, and any of its officers, employees, and agents who handle or who are responsible for handling such funds. All such fidelity insurance shall name the Association as an obligee and shall be not less than the estimated maximum of funds, including reserve funds, in custody of the Association at any time during the term of each policy, but, in no event, shall the aggregate amount of insurance be less than three months' aggregate Assessments. The policy shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

#### **16.7 Owners' Individual Insurance.**

Each Owner of a Unit is responsible for obtaining property or casualty insurance for all appliances, equipment, fixtures, betterments and improvements in or only serving a Unit and the Unit's personal property. The Association shall have the right but not the obligation to monitor the maintenance of the insurance required under this Article 16 and shall have the right, but not the obligation, to obtain such insurance if the party fails to obtain or maintain it and specially assess the cost thereof to the Unit Owner. Each purchaser of a Unit shall deliver to the Association at closing a certificate of insurance or

other proof that such insurance has been obtained.

#### **16.8 Use of Insurance Proceeds.**

Any portion of the Condominium for which insurance is required under this Article that is damaged or destroyed shall be repaired or replaced promptly by the Association pursuant to Article 17 unless: (a) the Condominium is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) Owners of the Units and all Mortgagees vote not to rebuild. The Owner of a Unit shall be responsible for the amount of the deductible applicable to damage or loss within the Owner's Unit. If all of the damaged or destroyed portions of the Condominium are not repaired or replaced: (i) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium; (ii) the insurance proceeds attributable to Units which are not rebuilt shall be distributed to the Owners of those Units, or to lienholders, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the Unit Owners or lienholders, as their interests may appear, in proportion to the interest in Common Elements of each Unit. If the Unit Owners vote not to rebuild any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote, and the Association promptly shall prepare, execute, and record an amendment to this Declaration reflecting the reallocations. Notwithstanding the provisions of this Section, Article 22 governs the distribution of insurance proceeds if the Condominium is terminated.

### **ARTICLE 17 DAMAGE AND REPAIR OR DAMAGE TO PROPERTY**

#### **17.1 Initial Board Determination.**

In the event of damage to any Common Element, the Board shall promptly make the following determinations with respect thereto, employing such advice as the Board deems advisable:

17.1.1 The nature and extent of the damage, together with an inventory of the improvements and property directly affected thereby.

17.1.2 A reasonably reliable estimate of the cost to repair the damage.

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

17.1.4 The amount of the deductible to be paid by a Unit Owner with respect to damage or loss within the Owner's Unit or damage for which the Owner is responsible under Section 16.2.

17.1.5 The amount of available reserves or other Association funds, although the Board is not required to use any reserves or other Association funds; and

17.1.6 The amount, if any, by which the estimated cost of repair exceeds the portion of the deductible to be paid by a Unit Owner, expected insurance proceeds and available reserves or

other Association funds, and the amount of the Assessments that would have to be made against each Unit if the excess costs were to be paid as a Common Expense and assessed against all of the Units in proportion to their Common Expense Liabilities.

#### **17.2 Notice of Damage.**

The Board shall promptly, and in all events within 30 days after the date of damage, file a proof of loss statement with the insurance company if the loss is covered by insurance and abide by all terms and conditions of its insurance policies, unless the Board determines it would not be in the best interest of the Association to file a proof of loss. The Board shall then provide each Owner and each holder of a Mortgage on a Unit with a written notice describing the damage and summarizing the initial Board determinations made under Section 17.1. If the Board fails to do so within the 30-day period, any Owner or Mortgagee may make the determinations required under Section 17.1 and give the notice required under this Section.

#### **17.3 Definitions.**

As used in this Article:

17.3.1 Damage means all kinds of damage, whether of slight degree or total destruction.

17.3.2 Repair means restoring the improvements to substantially the condition they were in before they were damaged, with each Unit and the Common Elements having substantially the same boundaries as before. Modifications to conform to applicable governmental rules and regulations or available means of construction may be made.

17.3.3 Emergency Work means work that the Board deems reasonably necessary to avoid further damage or substantial diminution in value to the improvements and to protect the Owners from liability from the condition of the site.

#### **17.4 Execution of Repairs.**

17.4.1 Funds for Repair. The Board shall promptly repair the damage and use the available insurance proceeds therefor as provided in Section 16.8. If the cost of repair exceeds the amount of the deductible to be paid by a Unit Owner, expected insurance proceeds and available reserves or other Association funds, the Board shall impose an Assessment against all Units in proportion to their Common Expense Liabilities in an amount sufficient to pay the excess costs.

17.4.2 Contracting. The Board shall have the authority to employ architects and engineers, advertise for bids, hire contractors and others, and take such other action as is reasonably necessary to make the repairs. Contracts for the repair work shall be awarded when the Board, by means of insurance proceeds and sufficient Assessments, has provided for paying the cost. The Board may authorize the insurance carrier to make the repairs if the Board is satisfied that the work will be done satisfactorily, and if such authorization does not contravene any insurance trust agreement or requirement of law.

17.4.3 Trustee. The Board may enter into a written agreement with a reputable financial institution, trust, or escrow company that shall act as an insurance trustee to adjust and settle any claim for casualty loss in excess of fifty thousand dollars (\$50,000), or shall collect the insurance proceeds and carry out the provisions of this Article.

17.4.4 Special Meeting. The Board shall promptly, and in all events within 30 days after the date of damage, call a special Owners' meeting to consider repairing the damage. If the Board fails to do so within 30 days, then notwithstanding the provisions of Section 12.8 and the Bylaws, any Owner or first Mortgagee of a Unit may call and conduct the meeting. Except for emergency work, no repairs shall be commenced until the conclusion of the special Owners' meeting. At the special meeting, the following consent requirements will apply:

(1) The Owners shall be deemed to have elected to repair the damage substantially to the condition existing immediately prior to the damage unless all Unit Owners and all Mortgagees agree otherwise.

(2) Failure to conduct the special meeting provided for under Section 17.4.4 within 90 days after the date of damage shall be deemed a unanimous decision to repair the damage substantially to the condition existing immediately prior to the damage.

#### **17.5 Effect of Decision Not to Repair.**

In the event of a decision under Section 17.4.4 not to repair the damage, the Board may nevertheless expend so much of the insurance proceeds and common funds as the Board deems reasonably necessary for emergency work (which emergency work may include but is not necessarily limited to removal of the damaged improvements and clearing, filling, and grading the land), and the remaining funds, if any, and the Property shall thereafter be held and distributed as provided in Section 16.8.

### **ARTICLE 18 MORTGAGEE PROTECTION**

#### **18.1 Priority of Mortgages.**

Notwithstanding all other provisions hereof and as provided in the Act, the liens created under this Declaration upon any Unit for Assessments shall be subject and subordinate to tax liens on such Unit in favor of any assessing authority or special use district and shall be subject and subordinate to any Mortgage on such Unit that was made in good faith and for value. Where such Mortgagee or other assignee or purchaser of a Unit or an interest therein obtains possession of a Unit, such possessor and its successors and assigns shall not be liable, except as otherwise provided in this Declaration, for the share of the Common Expenses or Assessments by the Association chargeable to such Unit that became due prior to such possession, but will be liable for the Common Expenses and Assessments that become due after such possession. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from the Owners.

#### **18.2 Material Amendments to Declaration, Map, Articles, and Bylaws.**

The Association shall not make any material amendments to the Declaration, Map, Articles, Bylaws, or other governing documents of the Condominium without the prior written approval of the Mortgagees. Material amendments include:

- 18.2.1 Changing the voting rights of any Owner;
- 18.2.2 Reallocating the undivided interest in the Common Elements;
- 18.2.3 Expanding, contracting, dissolving or terminating the Condominium;
- 18.2.4 Changing the permitted uses of the Units; and
- 18.2.5 Restricting the leasing of the Units.

### **18.3 Implied Approval of Mortgagee.**

A Mortgagee shall be deemed to have approved of any matter for which this Declaration or the Act requires its approval when such Mortgagee fails to submit a response to any written request for approval within sixty (60) days after the Mortgagee receives proper notice of the request, provided the notice was delivered by certified or registered mail, with a "Return Receipt" requested, to the address given to the Association for such Mortgagee.

### **18.4 Effect of Inconsistent Provisions.**

Any provision of this Declaration conferring rights upon Mortgagees that is inconsistent with any other provision of this Declaration or the Bylaws shall control over such other inconsistent provision.

### **18.5 Right to Written Notices.**

With respect to any Mortgagee of a Unit that has filed a written request for notice with the Board of Directors, the Board of Directors shall:

18.5.1 Notice of Cancellation and Material Change. Provide written notice of any lapse, cancellation, failure to renew, reduction in coverage or limits, or other material modification of any insurance policy required by this Declaration, within ten (10) days after the Association receives notice of such event.

18.5.2 Notice of Taking. Provide written notice of any condemnation, threat of condemnation, or casualty loss affecting a material portion of the Condominium or the Unit securing such Mortgage, within ten (10) days after the Association receives notice of such event.

18.5.3 Notice of Owner's Default and Opportunity to Cure. Provide written notice that an Owner of a Unit has for more than sixty (60) days failed to meet any obligation under the Declaration, within ten (10) days after such event. Any Mortgagee shall have the opportunity but not the obligation to cure all defaults of the Owner of the Unit that is subject to such Mortgagee's Mortgage for a period of thirty (30) days after delivery of the notice required by this Section in the case



of any monetary default and such longer period of time as is reasonably required to cure any nonmonetary default by the exercise of commercially reasonable efforts.

18.5.4 Notice of Proposed Actions. Provide not less than ten (10) days prior written notice of any proposed action that requires the consent of any number of Mortgagees, including without limitation any Major Decision or material amendment to the Declaration, Map, Articles, Bylaws, or other governing document of the Condominium.

#### **18.6 Insurance Policy Terms.**

The property insurance policy required under this Declaration shall contain a standard Mortgagee clause that shall, if reasonably obtainable:

18.6.1 Reference to All Holders of Mortgages. Provide that any reference to a Mortgagee in such policy shall mean and include all holders of Mortgages secured by any Unit, in their respective order and preference, whether or not named therein;

18.6.2 Mortgagee's Interest Not to Be Invalidated. 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;

18.6.3 Waiver of Certain Provisions. 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.

#### **18.7 Inspection of Books and Records.**

The Association shall make available for examination and copying by Owners, Mortgagees, and their authorized representatives, all books and other records the Association is required to maintain pursuant to RCW 64.90.495, including current copies of this Declaration, the Map, Articles, Bylaws, rules and regulations of the Association, and other books, records, and financial statements of the Association. "Available" shall mean available for examination and copying during reasonable business hours or at a mutually convenient time and location at the offices of the Association or its Manager. The Association may require the requesting party to pay a reasonable charge to cover the cost of making the copies and for supervising the inspection.

### **ARTICLE 19 DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS**

#### **19.1 Declarant's Right to Control the Association.**

Until the Transition Date, the Declarant shall have the right to appoint and remove all officers and members of the Board. Notwithstanding the foregoing: not later than 60 days after conveyance of the fourth Unit to Owners other than the Declarant, one of the Board members must be elected by the Unit Owners other than the Declarant. The Declarant may, prior to the Transition Date, voluntarily

terminate its right to appoint and remove officers and members of the Board by recording an amendment to the Declaration surrendering the right to appoint and remove officers and directors of the Board. If Declarant does so, it may, for the duration of the period ending on the Transition Date, exercise the right to approve certain actions of the Association or Board before they become effective. To exercise this right, the Declarant must execute and record an instrument that specifies the actions that must be approved by the Declarant before they become effective.

#### **19.2 Transition Date.**

Declarant control of the Association shall terminate on the Transition Date. The Transition Date is the date that is the earlier of (a) 60 days after conveyance of 75% of the Units that may be created to Unit Owners other than the Declarant, (b) two years after the last conveyance of a Unit except to a dealer as defined in the Act, (c) two years after any right to add new Units was last exercised, or (d) the day the Declarant, after giving notice in a record to Unit Owners, records an amendment to this Declaration, voluntarily surrendering all rights to appoint and remove officers and Board members. If the Declarant voluntarily surrenders control pursuant to (d) above, the Declarant may require that for the duration of the period of Declarant control, specified actions of the Association or the Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

#### **19.3 Reserved Rights.**

All of the Property currently included in the Condominium, which is described in Schedule A, is subject to Development Rights and Special Declarant Rights reserved to Declarant in this Declaration. The Declarant, its agents, employees and contractors shall have the right to complete improvements and otherwise perform work: authorized by this Declaration; indicated on the Map; authorized by building permits; provided for under any purchase and sale agreement, lease or other contract between the Declarant or its designee and a Unit purchaser or tenant; necessary to satisfy any express or implied warranty under which the Declarant is obligated; or otherwise authorized or required by law.

#### **19.4 Transfer.**

The rights described in this Article shall not be transferred except by instrument evidencing the transfer executed by the Declarant or the Declarant's successor and the transferee, and recorded in Skagit County. The rights and liabilities of the parties involved in such a transfer, and of all persons who succeed to any Development Right or Special Declarant Right, are set out in RCW 64.90.425.

#### **19.5 Improvement or Alterations of Units.**

Each Unit Owner may make such improvements or alterations to the Owner's Unit as the Owner deems appropriate, subject to the restrictions and limitations set forth in the Governing Documents.

## 19.6 Declarant's Development Rights.

19.6.1 Reserved Rights. All of the Property currently included in the Condominium, which is described in Schedule A, is subject to Development Rights and Special Declarant Rights reserved to Declarant in this Declaration, including Declarant's right to do the following:

(1) Create up to four additional Units with one additional Building, and up to seven parking stalls as Common Elements, together with drive aisles and other Common Elements. The Declarant will be the Owner of any Unit so created. Declarant reserves the right to create Common Elements or allocate Limited Common Elements.

(2) Incorporate a portion of the Common Elements into existing or newly-created Units; provided, however Declarant may not take away those Common Elements necessary for any Owner to substantially enjoy the benefits of such Owner's Unit without first obtaining the approval of that Owner.

(3) Subdivide or combine Units owned by Declarant or an affiliate of Declarant.

(4) Add additional real property to the Condominium.

(5) Convert all or a portion of a Unit into a Common Element.

(6) Complete, maintain, repair and replace any improvements for the Condominium shown on the Map, as the same change from time to time, construct additional improvements in connection with the sale of any Unit, and perform inspections and complete work in connection with any warranty obligation of Declarant.

(7) Establish, maintain or conduct within any Unit owned by Declarant and on the Common Elements: any sales offices, management offices, model Units, interior and exterior signs, and such other facilities as Declarant desires, and sales events and other activities relating to the marketing of Units advertising in connection with the construction, sale or rental of the Units.

(8) Exercise all development rights reserved to Declarant under this Declaration.

19.6.2 Exercise of Development Rights. To exercise any Development Right or Special Declarant Right (as those terms are defined in the Act), Declarant shall prepare, execute and record an amendment to this Declaration and either new certifications of the Map or an amendment to the Survey Map and Plans if necessary to show the matters required by RCW 64.90.425. The Declaration amendment shall require only Declarant's signature. Except as otherwise provided in this Declaration, all Development Rights and Special Declarant Rights shall expire on the Transition Date. Any Development Right (i) may be exercised with respect to different portions of the Property at different times, (ii) no assurances are made regarding the boundaries of 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

19.6.3 Easements. The Declarant reserves and may grant nonexclusive easements upon, over, under and across all of the Property for ingress and egress and the right to extend, expand and tie into all driveways, parking areas and sidewalks, and water, sewer, storm sewer, electrical, gas, telephone or other utility lines, and recreational facilities. Such reservations are for the purpose of completing and operating subsequent phases to the Condominium or developing and operating portions of the Property or any subsequent phase for other purposes if not completed as a phase of the Condominium.

**ARTICLE 20**  
**AMENDMENT OF DECLARATION, MAP,**  
**ARTICLES OR BYLAWS.**

**20.1 General.**

Except in cases of amendments that may be executed solely by the Declarant under Section 20.9 of this Declaration, or under RCW 64.90.240(2), RCW 64.90.245(12), RCW 64.90.250, RCW 64.90.285(10), or RCW 64.90.415(2)(d); the Association under RCW 64.90.030, RCW 64.90.230(5), RCW 64.90.240(3), RCW 64.90.260(1), RCW 64.90.265, or RCW 64.90.285(11); or certain Unit Owners under RCW 64.90.240(2), RCW 64.90.260(1), RCW 64.90.265(2), RCW 64.90.285(4), (6), (7), (8), and (12), or RCW 64.90.290(2), and except as limited by RCW 64.90.285, this Declaration and the Map may be amended only by vote or agreement of Unit Owners to which at least 67% of the votes in the Association are allocated as provided in Schedule B, subject to the rights of Mortgagees under Article 18 of this Declaration; provided, however, any action requiring a greater number of votes under this Declaration may be amended only upon the affirmative vote by the holders of such greater number, not to exceed ninety percent for all amendments or for specific subjects of amendment.

**20.2 Execution.**

Amendments to this Declaration required by the Act to be recorded by the Association shall be prepared, executed, recorded, and certified on behalf of the Association by the President of the Association.

**20.3 Recording.**

Every amendment to this Declaration must be recorded in the real property records of Skagit County, Washington, and is effective only upon recording. An amendment shall be indexed in the name of the Condominium and shall contain a cross-reference by recording number to this Declaration and each previously recorded amendment thereto. All amendments adding, subdividing or combining Units shall contain a cross-reference by recording number to the Map relating to the affected Units and set forth all information required by the Act.

**20.4 Voting Rights.**

No amendment to this Declaration may affect the voting rights, the voting percentages allocated to any Unit, the circumstances on which class voting is to be employed or how such votes are to be cast or counted, without the approval of at least 90% of the Unit Owners with respect to any amendment which would affect, dilute or condition any voting rights under this Declaration.

#### **20.5 General Limitations.**

Except to the extent expressly permitted or required by other provisions of this Declaration or the Act, no amendment may create or increase any Special Declarant Rights, increase the number of Units, change the boundaries of any Unit, the Allocated Interests of a Unit, or the uses to which any Unit is restricted, in the absence of unanimous approval by the Unit Owners.

#### **20.6 Special Declarant, Development and Related Rights.**

Declarant may amend this Declaration unilaterally to the extent it is required to do so to exercise any Development Right. No amendment may restrict, eliminate, or otherwise modify any Special Declarant or Development Right without the consent of the Declarant and any Mortgagee of record with a security interest in the special declarant or development right or in any real property subject thereto, excluding Mortgagees of Units owned by persons other than the Declarant. No amendment may restrict, eliminate or otherwise modify any right of Declarant under Article 18 without the consent of Declarant.

#### **20.7 Challenge to Validity.**

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

#### **20.8 Map Amendment.**

Except as otherwise provided herein, the Map may be amended by revised versions or revised portions thereof referred to and described as to effect in an amendment to this Declaration adopted as provided for herein. Copies of any such proposed amendment to the Map shall be made available for the examination of every Owner. Such amendment to the Map shall also be effective, once properly adopted, upon recordation in the Skagit County, Washington, recorder's office in conjunction with a Declaration amendment.

#### **20.9 Amendment by Declarant.**

The Declarant may at any time amend the Declaration, Map, Articles or Bylaws without the consent of the Association, any Owner or any Mortgagee to (a) correct a mathematical mistake, an inconsistency, or a scrivener's error, (b) clarify an ambiguity in the documents with respect to an objectively verifiable fact, (c) clarify or correct the actual location, dimensions or characteristics of the constructed improvements, (d) clarify or correct the as-built boundaries or areas of the Units, (e) establish, vacate or relocate any utility or access easements, (f) reflect changes in the Allocated Interests arising from any of the foregoing, (g) comply with the requirements, as they may change from time to time, of Fannie Mae, Freddie Mac, HUD, VA, lenders, or title insurers, and (h) during any period of

Declarant's control of the Board or Association, change the person who is to receive service of process for the Declarant. Declarant may execute and record any such amendment itself and need not otherwise comply with the requirements of this Article 20.

## **ARTICLE 21 PERMITTED USES AND RESTRICTIONS.**

### **21.1 Residential Use.**

The Condominium is intended for and restricted to use as single family residential dwellings only, on an ownership, rental or lease basis, and for social, recreational or other reasonable activities normally incident to such use, including use as a home office not involving regular visits by customers or clients. Provided, however, that no Unit may be offered for short term rental, for two months or less, including but not limited to services like AirBNB, VRBO, and the like. In addition, once all phases are complete, only four Units may be rented at one time. Except as provided in this Section 21.1, no trade, craft, business, profession, commercial or similar activities of any kind shall be conducted in any Unit or in any other portion of the Condominium without the written consent of the Board pursuant to the Rules and Regulations. Nothing in this section shall be construed so as to prevent or prohibit: (a) activities relating to the rental, lease or sale of Units in accordance with Section 13.11; (b) an Owner from maintaining his or her professional personal library, keeping his or her personal business or professional records or accounts, handling his or her personal business or professional telephone calls, or conferring with business or professional associates, clients, or customers, in such Owner's Unit; or (c) use of a Unit as a "home office." Timesharing of Units, as defined in Chapter 64.36 RCW, is prohibited. The Board shall have the power by its reasonable Rules and Regulations to clarify and specify the use restrictions contained in this Declaration, which shall be binding upon the Owners and their lessees, guests and invitees immediately upon adoption thereof and notification of the Owners.

### **21.2 Parking.**

Exterior parking areas are restricted to use for parking of operative automobiles. Other items and equipment parked or kept therein only subject to the Rules and Regulations. The Board of Directors may require the removal any inoperative or unsightly vehicle, and any other equipment or items not stored in exterior parking areas in accordance with this provision. If the same is not removed, the Board of Directors may cause removal at the risk and expense of the Owner thereof. The use of all parking areas is also subject to Rules and Regulations.

### **21.3 Roadways.**

Roadways and other portions of the Common Elements used for access shall be used exclusively for normal ingress and egress, and no obstructions shall be placed therein unless permitted by the Board of Directors or the Rules and Regulations.

### **21.4 Modification of Units and Limited Common Elements.**

21.4.1 Right to Modify Unit. Without limiting the generality of the foregoing, each Unit Owner may, at his sole cost and expense, maintain, repair, paint, or finish, refinish or change

surfacing of the interior surfaces of the ceilings, floors, window frames, doors, trim and the perimeter walls of his Unit. Each Unit Owner may alter, substitute, add or remove any fixtures attached to said ceilings, floors or walls. This section shall not be construed to permit interference with or damage to the structural integrity of the Building or interference with the use and enjoyment of the Common Elements and facilities, or of the other Units, or to authorize, without Board of Directors' approval and compliance with the requirements of this Declaration, intrusion into the Common Elements or Limited Common Elements, or any waste.

21.4.2 Appearance of Limited Common Elements. Notwithstanding the provisions of Section 13.4.1, Unit owners may not modify, paint or otherwise decorate, or in any way alter their respective Limited Common Elements without prior approval of the Board of Directors and in all events must act pursuant to the Rules and Regulations. The Board of Directors may in whole or in part assume the maintenance for Limited Common Elements.

## **21.5 Exterior Appearance.**

In order to preserve the uniform appearance of the Building, and the Common Elements and Limited Common Elements, particularly those visible to the public, the Board of Directors may require and provide for the painting and finishing of the Building or other Common Elements or Limited Common Elements and facilities, and prescribe the type and color of the surfaces and finishes. It may prohibit, require or regulate any modification or decoration of the Building or other Common Elements or Limited Common Elements, including any such items as screens, doors, awnings, rails or other portions of each Unit and the Building visible from the exterior. The Board of Directors may regulate and control the items stored in or used on the Limited Common Elements in order to preserve the good appearance and condition of the entire Condominium. In addition, this regulatory power extends to the control of the color of draperies and underdrapes of drapery linings of each Unit.

## **21.6 Uses Affecting Insurance.**

The Unit owners shall not permit anything to be done or kept in the Units or in the Common Elements or Limited Common Elements which will increase the insurance premiums for the Condominium or result in the cancellation of insurance on any part of the Condominium Unit without the consent of the Board of Directors.

## **21.7 Signs.**

No signs of any kind shall be displayed to the public view on or from any Unit or from the Common Elements or Limited Common Elements without the consent of the Board of Directors or pursuant to the Association's rules and regulations.

## **21.8 Animals.**

Owners are permitted to have domestic cats, dogs and similar household pets. The Board of Directors may at any time adopt rules pertaining to animals permitted within the Condominium and may require the removal of any animal that it, in its sole discretion, determines is dangerous, unreasonably disturbing other Owners, repeatedly soiling or causing damage to the Common Elements, or not being

kept in accordance with rules and regulations adopted by the Board. The Board may exercise this authority with respect to specific pets on a case by case basis. Each Owner shall be responsible for any damage to the Common Elements caused by a pet kept in his or her Unit to the extent not covered by property insurance maintained by the Association.

#### **21.9 Offensive Activity.**

No noxious or offensive activity shall be carried on in any Unit or Common Elements, nor shall anything be done which may or become an annoyance or nuisance to other Owners or which would be in violation of any laws. Without limiting the generality of the foregoing, the Owner of a Unit shall not allow or permit any offensive or obnoxious and continuing vibration, noise or odor to emanate from the Unit into any other Unit or the Common Elements, nor shall the Owner of a Unit allow or permit any machine or other installation therein to constitute a nuisance or otherwise to unreasonably interfere with the safety or comfort of any of the Owners of other Units. Each Owner shall be responsible for any violation of this section caused by his or her guests, tenants or lessees (including sublessees).

#### **21.10 Construction Work - Common Elements and Limited Common Elements.**

The Common Elements and Limited Common Elements shall not be reconstructed, rebuilt, altered, removed or replaced except by the Declarant or the Association acting through the Board of Directors in accordance with the Act, this Declaration, and the Bylaws.

#### **21.11 Rentals.**

Rental of a Unit by the Owner shall not be allowed to include vacation rentals, monthly rentals, or nightly rentals. An Owner shall be responsible to pay for any damage to the Common Elements caused by his or her guests, tenants or lessees (including sublessees) and for any fines imposed by the Board for any violations of this Declaration, the Bylaws or the Rules and Regulations.

#### **21.12 Rules and Regulations.**

The Association may create Rules and Regulations pursuant to this Declaration for the purpose of refining and implementing the restrictions governing the Association.

### **ARTICLE 22 CONDEMNATION.**

#### **22.1 Consequences of Condemnation.**

If at any time or times during the continuance of the Condominium ownership pursuant to this Declaration, all or any part of the Property shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the Association shall represent the Owners in all negotiations and proceedings with the condemning authority with regard to the Common Elements, and the Owners may represent themselves with regard to their Units,

#### **22.2 Unit Improvements and Assigned Limited Common Elements.**



If any Unit or portion thereof or the Common Elements or Limited Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Board of Directors shall provide the Owners and their Mortgagees written notice of any such proceeding or proposed acquisition.

### **22.3 Proceeds.**

All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Board of Directors on behalf of the Association. The Board shall apportion the Condominium Award as required by this Article 22.

### **22.4 Partial versus Complete Taking.**

If the entire Property is taken or condemned or sold or otherwise disposed of in lieu of or in avoidance thereof, then the Condominium ownership thereof shall terminate. If less than the entire Property is taken or condemned or sold or otherwise disposed of in lieu of or in avoidance thereof, then the Condominium ownership hereunder shall not terminate.

### **22.5 Allocation of Condemnation Award.**

Each Owner and Mortgagee shall be entitled to a share of the Condemnation Award from a partial or complete taking, which shall be determined in the following manner:

22.5.1 Allocation of Award. As soon as practicable, the Board of Directors shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds.

22.5.2 Apportionment Among Owners. Except as provided otherwise herein below, that portion of the Condemnation Award that is attributable to those Common Elements that are not Limited Common Elements shall be apportioned to the Units in accordance with the Allocated Interests.

22.5.3 Severance Damages. The total amount allocated to severance damages shall be apportioned to those Units that were not taken or condemned.

22.5.4 Damage to a Unit, Unit Improvements, or Limited Common Elements. The respective amounts allocated to the taking of or injury to a particular Unit, its Unit Improvements and assigned Limited Common Elements, shall be apportioned to the particular Unit involved.

22.5.5 Consequential Damages. The amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Board determines in a commercially reasonable and equitable manner under the circumstances.

22.5.6 Agreed Allocation. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Board shall employ such allocation to the extent it is relevant and applicable.

22.5.7 Distribution of Proceeds. The Board of Directors shall, as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled and shall then distribute the same to each Owner and its Mortgagees and lienholders in accordance with their respective rights and interests therein.

## **22.6 Reductions of Condominium Upon Partial Taking.**

In the event the condemning authority takes a portion of a Unit or Common Element which does not result in a termination of the Condominium, then the provisions of this Section shall take effect immediately upon such acquisition by the condemning authority.

22.6.1 Reduction of Declaration. The Property (Units and Common Elements) subject to this Declaration shall be reduced to the Property not taken or condemned (or not sold or otherwise disposed of in lieu of or in avoidance thereof).

22.6.2 Recalculation of Allocated Interests. If a Unit is partially taken, the Allocated Interests other than voting rights shall be reallocated in proportion to the reduction in the floor area of the Unit Improvements resulting from such partial taking. The voting rights shall not be reallocated upon any partial taking that does not result in the termination of the Condominium.

22.6.3 Interest of Owner of Condemned Unit. Except with respect to the share of proceeds apportioned pursuant to Section 22.5, no Owner or Mortgagee of a Unit so taken or condemned (except for a Unit only partially condemned that may still be practically and lawfully used) shall have, nor shall there be appurtenant to any Unit so taken or condemned, any right, title, interest, privilege, duty or obligation in, to, or with respect to the Association and any Unit or Common Elements that remain subject to this Declaration and which are not so taken or condemned.

22.6.4 Interest of Owners of Remaining Units. Except as otherwise expressly provided in Section 22.5.1, the rights, title, interests, privileges, duties and obligations of an Owner and Mortgagee in, to, or with respect to a Unit not so taken or condemned (and in, to or with respect to the Association and the Common Elements appurtenant to said Unit) shall continue in full force and effect as provided in this Declaration.

22.6.5 This Article Binding. The provisions of this Article 22 shall be binding upon and inure to the benefit of all Owners and Mortgagees of (and other persons having or claiming to have any interest in) all Units which are, as well as all Units that are not, so taken or condemned. All such Owners, Mortgagees, and other persons covenant to execute and deliver any documents, agreements, or instruments (including, but not limited to, appropriate amendments to the Declaration and Map) as are reasonably necessary to effectuate the provisions of Article 22.

## **22.7 Reconstruction and Repair.**

Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article 17 above, provided that the Board of Directors may retain and apply such portion of each Owner's share of the Condemnation Award as is necessary to discharge said Owner's liability for any special Assessment arising from the operation of said Article 17.

**ARTICLE 23****ARTICLE 24  
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 remaining provision or provisions comply with the Act.

**ARTICLE 25  
EFFECTIVE DATE.**

This Declaration shall take effect upon recording.

**ARTICLE 26  
REFERENCE TO MAP.**

The Map was filed with the Recorder of Skagit County, Washington, simultaneously with the recording of this Declaration under Auditor's File No. 202201130025, in Volume    of Condominiums, pages    through   .

**ARTICLE 27  
ASSIGNMENT BY DECLARANT.**

The Declarant reserves the right to assign, transfer, sell, lease, or rent all or a portion of the Property then owned by it and reserves the right to assign all or any of its rights, duties, and obligations created under this Declaration.

<u>Schedule A</u>	Description and Depiction of Real Property in Condominium
<u>Schedule B</u>	Unit Data; Allocated Interests

*{ signatures on following pages }*

## SIGNATURE PAGES

CONDOMINIUM DECLARATION  
FOR  
ELEVATION 31, A CONDOMINIUMDATED: Jan. 12, 2022

## DECLARANT:

ANADUPE 7 LLC,  
a Washington limited liability companyBy: IRWIN DEVELOPMENT GROUP, LLC,  
a Washington limited liability company, its ManagerBy: [Signature]  
David Irwin, its Manager

[Acknowledgement on following page]

## ACKNOWLEDGEMENT OF DECLARANT

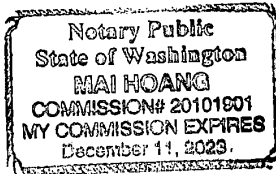
STATE OF Washington )  
COUNTY OF King ) ss.

I certify that I know or have satisfactory evidence that David Irwin is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the Manager of IRWIN DEVELOPMENT GROUP, LLC, a Washington limited liability company, the Manager of ANADUPE 7 LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 12<sup>th</sup> day of January, 2022

MAI HOANG  
(Signature of Notary)

MAI HOANG  
(Legibly Print or Stamp Name of Notary)



Notary public in and for the State of Washington  
Residing at: Bellevue WA  
My appointment expires: Dec 11 2023

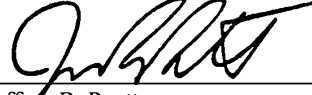
## LENDER CONSENT

BRMK Lending, LLC, a Delaware limited liability company, is the holder and beneficiary of a Deed of Trust, Security Agreement and Fixture Filing With Assignment of Leases and Rents (the "Lien Instrument") affecting the Property, said Lien Instrument having been executed by the Declarant, as Grantor, and is dated April 29, 2021, and was recorded on April 30, 2021, in the official records of the Auditor of Skagit County, Washington as Recording Number 202104300132. Lender hereby consents to the creation of the Condominium pursuant to the foregoing Declaration, provided that Lender does not hereby consent to any transfer of any portion of the Property.

LENDER:

BRMK LENDING, LLC,  
a Delaware limited liability company

By: Broadmark Realty Capital Inc., a Maryland  
corporation, its Sole Member

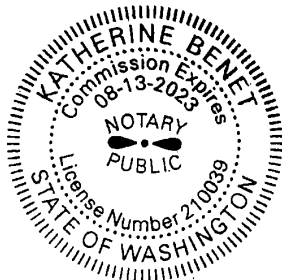
By   
Name: Jeffrey B. Pyatt  
Title: President and Chief Executive Officer


## ACKNOWLEDGEMENT OF LENDER

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that JEFFREY B. PYATT is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President and Chief Executive Officer of BROADMARK REALTY CAPITAL INC., the Sole Member of BRMK LENDING, LLC, to be the free and voluntary act and deed of such limited liability company, for the uses and purposes mentioned in the instrument.

WITNESS my hand and official seal hereto affixed this 12 day of JANUARY, 2022.



  
(Signature of Notary) KATHERINE BENET  
(Print or stamp name of Notary)  
NOTARY PUBLIC in and for the State of  
Washington  
My Appointment Expires: 8-13-2023

## SCHEDULE A

**ELEVATION 31,  
A CONDOMINIUM**Description and Depiction of Real Property in the Community

Lots 14 through 19, inclusive, Block 2, "STEWART'S FIRST ADDITION TO THE CITY OF ANACORTES, WASH.," as per plat recorded in Volume 2 of Plats, page 14, records of Skagit County, Washington.

TOGETHER WITH Lot 28, "NELSON'S ADDITION TO ANACORTES, WASH.," as per plat recorded in Volume 2 of Plats, page 102, records of Skagit County, Washington.

Situate in the City of Anacortes, County of Skagit, State of Washington.

Schedule A

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**SCHEDULE B  
ELEVATION 31,  
A CONDOMINIUM**  
Unit Data: Allocated Interests

Schedule B

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Unit Number	Allocated Interest (%)	Common Expense Allocation (%)	Levels	Approximate Livable Area (Sq. Ft.)	Number of Bathrooms	Number of Bedrooms	Number of Votes
A-1	7.143%	7.143%	1,2,3	1,614	2.5	2	1
A-2	7.143%	7.143%	1,2,3	1,672	2.5	2	1
A-3	7.143%	7.143%	1,2,3	1,672	2.5	2	1
A-4	7.143%	7.143%	1,2,3	1,614	2.5	2	1
B-1	7.143%	7.143%	1,2,3	1,614	2.5	2	1
B-2	7.143%	7.143%	1,2,3	1,672	2.5	2	1
B-3	7.143%	7.143%	1,2,3	1,672	2.5	2	1
B-4	7.143%	7.143%	1,2,3	1,614	2.5	2	1
C-9	7.143%	7.143%	1,2,3	1,614	2.5	2	1
C-10	7.143%	7.143%	1,2,3	1,665	2.5	2	1
C-11	7.143%	7.143%	1,2,3	1,614	2.5	2	1
C-12	7.143%	7.143%	1,2,3	1,614	2.5	2	1
C-13	7.143%	7.143%	1,2,3	1,665	2.5	2	1
C-14	7.143%	7.143%	1,2,3	1,614	2.5	2	1
<b>Totals</b>	<b>100%</b>	<b>100%</b>	<b>-</b>	<b>-</b>	<b>35</b>	<b>28</b>	<b>14</b>

Schedule B

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