

AFTER RECORDING, RETURN TO:

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CONDOMINIUM DECLARATION  
CONTAINING  
COVENANTS, CONDITIONS, RESTRICTIONS AND  
RESERVATIONS  
FOR  
37<sup>TH</sup> STREET CONDOMINIUM

TITLE OF DOCUMENT:

CONDOMINIUM DECLARATION FOR 37<sup>TH</sup>  
STREET CONDOMINIUM

DECLARANT/GRANTOR/GRANTEE:

37<sup>th</sup> Street Properties LLC

ABBREV. LEGAL DESCRIPTION:

The West 130 feet of the East 440 feet of that  
portion of the following described tract lying South  
of the South line of 37<sup>th</sup> Street as established in the  
City of Anacortes.

FULL LEGAL APPEARS:

Exhibit "A"

TAX PARCEL NO.:

P33118

## Table of Contents

ARTICLE I INITIAL MATTERS .....	5
1.1. Name and Type of the Community and its Association .....	5
1.2. Description and Dedication of Real Property Included in Condominium .....	5
1.3. Reference to Survey Map.....	5
1.4. Purpose of Declaration.....	5
1.5. Nature of Units.....	5
ARTICLE II DEFINITIONS .....	6
ARTICLE III DESCRIPTION OF LAND, PROJECT TYPE, BUILDINGS, DEVELOPMENT RIGHTS .....	10
3.1. Land and Street Address .....	10
3.2. Project Type .....	10
3.3. Development Rights.....	10
3.4. Special Declarant Rights.....	10
ARTICLE IV UNITS.....	11
4.1. Number, Location and Type of Units .....	11
4.2. Unit Boundaries .....	11
4.3. Additional Items Included in Units.....	11
4.4. Items Excluded from a Unit .....	12
4.5. Maintenance Units .....	12
4.6. Governmentally Required Maintenance, etc.....	13
4.7. Relocation of Unit Boundaries.....	13
4.8. Utilities.....	13
ARTICLE V COMMON ELEMENTS.....	14
5.1. Description of Common Elements .....	14
5.2. Partition, Conveyance, or Encumbrance.....	14
5.3. Allocated Interests in the Common Elements.....	16
5.4. Maintenance, Repair and Replacement – Association.....	16
ARTICLE VI LIMITED COMMON ELEMENTS .....	16
6.1. Description of Limited Common Elements .....	16
6.2. Reallocation between Units .....	16
6.3. Change in Character.....	17
ARTICLE VII UNIT OWNERS ASSOCIATION .....	17
7.1. Name and Form of Association .....	17
7.2. Powers & Duties of Association .....	17
7.3. Membership in Association .....	18
7.4. Voting .....	18
7.5. Bylaws of Association .....	19
ARTICLE VIII MANAGEMENT OF CONDOMINIUM ASSOCIATION.....	19
8.1. Management by Declarant – Period of Declarant Control.....	19
8.2. Professional Management.....	19

8.3. Authority of the Board ..... 19

8.4. Right of Entry - Allocation of Responsibility for Damage to Unit upon Entry ..... 20

8.5. Board as Attorney in Fact ..... 20

8.6. Board or Association as Trustee ..... 21

ARTICLE IX PERMITTED USES; ARCHITECTURAL CONSISTENCY ..... 21

9.1 Residential Use ..... 21

9.2 Rental of Units ..... 21

9.3 Timesharing ..... 21

9.4 Signs ..... 21

9.5 Utilities ..... 22

9.6 Antennas ..... 22

9.7 Garbage, Refuse and Storage ..... 22

9.8 Pets ..... 22

9.9 Nuisances ..... 22

9.10 Effect on Insurance ..... 23

9.11 Rules ..... 23

9.12 Quiet enjoyment ..... 23

ARTICLE X COMMON EXPENSES AND ASSESSMENTS ..... 23

10.1. Annual Budget for the Association ..... 23

10.2. Meeting of Association to Ratify Budget ..... 24

10.3. Reserves for Major Repairs, Replacements, & Insurance Deductibles ..... 24

10.4. Assessments Against Units ..... 25

10.5. Option of Declarant to Pay Some or All Expenses of Association ..... 25

10.6. Allocated Interests for Common Expense Liability ..... 25

10.7. Special Assessments ..... 26

10.8. Specially Allocated Assessments ..... 26

10.9. Accounts; Commingling Prohibited - Funds generally maintained in Washington ..... 27

10.10. Surplus Funds ..... 27

10.11. Liability of Unit Owners for Association Obligations ..... 27

10.12. Assessments to Pay Judgment Against Association ..... 28

10.13. Owners Personally Liable for Common Expenses ..... 28

10.14. Liability Following Conveyance of Unit ..... 29

10.15. Statement of Unpaid Assessments ..... 29

10.16. Lien for Assessments and Power of Sale ..... 30

10.17. Automatic Perfection of Lien ..... 30

10.18. Priority of Lien ..... 30

10.19. Enforcement of Association’s Lien ..... 33

10.20. Rent Subject to Lien for Assessments - Other Remedies for Nonpayment ..... 34

10.21. Remedies Cumulative ..... 34

ARTICLE XI INSURANCE, DESTRUCTION, RESTORATION AND DISTRIBUTION ..... 34

11.1. Authority, General Provisions, Name of Insured ..... 34

11.2. Board has no Obligation to Monitor Unit Owners’ Insurance ..... 35

11.3. Unavailability, Cancellation or Nonrenewal ..... 36

11.4. Adjustment and Payment of Loss Proceeds ..... 36

11.5. Reconstruction Following Casualty Loss ..... 36

11.6. Assessments of Insurance is Inadequate ..... 37

11.7. Miscellaneous ..... 38

ARTICLE XII CONDEMNATION.....	38
12.1. Condemnation Affecting Whole Unit.....	38
12.2. Condemnation of Part of Unit.....	38
12.3. Condemnation of Common Elements.....	38
12.4. Condemnation of Limited Common Elements.....	39
12.5. Association Necessary Party to Proceeding.....	39
12.6. Complete Taking.....	39
12.7. Reconstruction and Repair.....	39
12.8. Notice to Eligible Mortgagees.....	39
12.9. Payment of Award.....	39
ARTICLE XIII COMPLIANCE WITH LAW AND COVENANTS.....	40
13.1. Compliance by Owners and Occupants.....	40
13.2. Liability for Conduct Causing Common Expense.....	40
13.3. Enforcement by Association.....	40
13.4. Tenants and other Occupants Subject to Rights and Responsibilities of Owners.....	41
13.5. Board's Discretion regarding Enforcement.....	42
13.6. Remedies for Association, Owners and Occupants.....	42
ARTICLE XIV LIMITATION OF LIABILITY.....	42
14.1. Association Not a Guarantor - No Liability for Utility Failure, Etc.....	42
14.2. No Bailment.....	43
14.3. Liability of Directors and Directors - Indemnification.....	43
14.4. Justification for Limitations on Liability.....	43
ARTICLE XV MORTGAGEE PROTECTION.....	44
15.1. Rights of Secured Lenders.....	44
15.2. Rights of Secured Lenders – Specific Provisions.....	44
15.3. Notice of Actions.....	45
15.4. Consent and Notice Required.....	45
15.5. Development Rights.....	48
15.6. Inspection of Books.....	48
15.7. Financial Statements.....	48
15.8. Enforcement.....	48
15.9. Attendance at Meetings.....	48
15.10. Appointment of Trustee.....	48
15.11. Limitations on Mortgagees' Rights.....	49
ARTICLE XVI EASEMENTS.....	49
16.1. Easements for Units, Unit Owners and Association Functions.....	49
16.2. Easement for Emergency Access.....	49
16.3. Easements for Declarant.....	50
16.4. Other Easements.....	50
ARTICLE XVII AMENDMENT OF DECLARATION, SURVEY MAP & PLANS.....	51
17.1. Procedure for Amendment of Declaration.....	51
17.2. Recordation Required.....	52
17.3. Special Restrictions.....	52
17.4. Amendment of Survey Map.....	52
17.5. Consent of Mortgagees May be Required – Limitations on Such Rights.....	53

17.6. Amendments by Declarant..... 53  
17.7. Amendments by Board of Directors Requiring Notice to Unit Owners ..... 53  
17.8. Amendments Following Department of VA or FHA Project Approval ..... 54  
ARTICLE XVIII TERMINATION OF CONDOMINIUM ..... 54  
ARTICLE XIX NOTICE ..... 54  
19.1. Notice to be provided in Form of a Record..... 54  
19.2. Notice in a Tangible Medium ..... 54  
19.3. Notice to Association..... 53  
19.4. Notice by Electronic Transmission..... 55  
19.5. Alternative Methods of Giving Notice not Prescribed by Statute..... 56  
19.6. When Notice is Effective ..... 56  
19.7. Ineffectiveness of Notice does not Invalidate Action by Association ..... 56  
19.8. When Governing Law Requires Alternative Methods of Notice ..... 56  
ARTICLE XX MISCELLANEOUS..... 56  
20.1. Severability ..... 56  
20.2. No Right of First Refusal ..... 57  
20.3. No Discrimination..... 57  
20.4. Obligation of Good Faith ..... 57  
20.5. Effective Date ..... 57

ARTICLE I  
INITIAL MATTERS

1.1. Name and Type of the Community and its Association.

The name of the Community is 37<sup>th</sup> Street Condominium. The Community is a condominium, as defined in the Governing Law. The Community's Association, described with greater particularity in Section 7.1 hereof, is a Washington Nonprofit Miscellaneous and Mutual Corporation known as 37<sup>th</sup> Street Condominium Owners Association.

1.2. Description and Dedication of Real Property Included in Condominium.

The real estate included in the Condominium is legally described in the attached Exhibit "A". 37<sup>th</sup> Street Properties LLC hereinafter referred to as the "Declarant," hereby submits said land, together with all legally associated easements, rights, appurtenances and improvements, collectively referred to hereinafter as "the Property," to the provisions of the Washington Uniform Common Interest Ownership Act ("WUCIOA," or "Governing Law", i.e., Chapter 64.90 of the Revised Code of Washington).

1.3. Reference to Survey Map.

Contemporaneously with the recordation of this Declaration, the Declarant has recorded with the Auditor of Skagit County, Washington a record of survey showing the location and dimensions of the land described in Exhibit "A" and the location and dimensions of the improvements constructed or contemplated to be constructed thereon, together with other information required by the Governing Law; this instrument is hereinafter together referred to as the "Survey Map"; the Survey Map is recorded at Auditor's File No. 202406270224

1.4. Purpose of Declaration.

This Declaration states covenants, conditions, restrictions, and reservations intended by the Declarant to effect a common plan for the condominium development of the Property mutually beneficial to both of the described Units. The covenants, conditions, restrictions, reservations and plan, including without limitation the statutory lien for Assessments described at Subsection 10.16 hereof, that may be foreclosed by the Association nonjudicially under the power of sale granted herein, are binding upon the entire Property and upon each such Unit created therein as a parcel of realty, and upon its Owners and their heirs, personal representatives, family members, guests, invitees, tenants, licensees, successors and assigns, through all successive transfers of a Unit or of any other any part of the Property, irrespective of whether specifically referred to in deeds, contracts or security instruments, and regardless of any subsequent forfeitures, foreclosures, or sales of Units under security instruments, or of any forfeitures, foreclosures, or sales instituted for nonpayment of government tax, levy or assessment of any kind.

1.5. Nature of the Units.

The Condominium is of the kind commonly referred to as an "airspace condominium", meaning that the boundaries of each Unit are not defined by any portion of a particular building, but rather to references to planes in space established by the survey map.

ARTICLE II  
DEFINITIONS

- 2.1. "Allocated Interest" means the undivided interest in the Common Elements, the Common Expense liability, and votes in the Association allocated to each Unit by the provisions of Sections 5.3, 7.4.2 and 10.6 of this Declaration, pursuant to RCW 64.90.235.
- 2.2. "Assessment" means all sums chargeable by the Association against a Unit including, without limitation: (a) Regular and Special Assessments for Common Expenses, and Specially Allocated Assessments for other expenses, charges, or fines imposed and levied by the Association; (b) interest and late charges on any delinquent account; and (c) all costs of collection, including reasonable attorneys' fees, incurred by the Association in connection with the collection of a delinquent Owner's account.
- 2.3. "Association" means the 37<sup>th</sup> Street Condominium Owners Association that is described in Article VII of this Declaration.
- 2.4. "Board" means the body with primary authority to manage the affairs of the Association, as provided in RCW 64.90.410(1).
- 2.5. "Bylaws" means the bylaws of the Association, as amended from time to time.
- 2.6. "Common Elements" means all portions of a Condominium other than the Units.
- 2.7. "Common Expense" means any expense of the Association, including allocations to Reserves, allocated to all of the Unit Owners in accordance with common expense liability.
- 2.8. "Common Expense Liability" means the liability for Common Expenses allocated to each Unit pursuant to the Governing Law and Section 10.6 of this Declaration.
- 2.9. "Condominium" means 37<sup>th</sup> Street Condominium created by this Declaration and related Survey Map pursuant to the Governing Law.
- 2.10. "Declarant" means 37<sup>th</sup> Street Properties LLC, a limited liability company, and any successor Declarant or any person specifically defined in the Governing Law.

- 2.11. "Declarant Control" means the right of the Declarant or Persons designated by the Declarant to appoint and remove Officers and members of the Board of Directors or to veto or approve a proposed action of the Board or Association pursuant to Section 8.1 of this Declaration and RCW 64.90.415(1)(a).
- 2.12. "Declarant Control Period" means the period of time that the Declarant has Declarant Control which is specified in this Declaration.
- 2.13. "Declaration" means this document, which creates the Condominium by setting forth the information required by Governing Law, and any amendments to this document.
- 2.14. "Development Rights" means any right or combination of rights reserved by the Declarant in the Declaration: (a) to add real property or improvements to the Condominium; (b) to create Units, Common Elements, or Limited Common Elements within real property included in or added to the Condominium; (c) to subdivide or combine Units or convert Units into Common Elements; or (d) to reallocate Limited Common Elements with respect to Units that have not been conveyed by the Declarant. Development Rights are personal to the Declarant and may be exercised, or not exercised, at the sole discretion of the Declarant. In this Condominium, Development Rights are described in Subsection 3.3.1 hereof.
- 2.15. "Eligible Mortgagee" means the holder of a mortgage on a Unit that has filed with the Secretary of the Association a written request that it be given copies of notices of any action by the Association that requires the consent of mortgagees. The term "Eligible Mortgagee" also includes the "servicer" of a mortgage that has been acquired by a secondary mortgage market entity such as the Federal National Mortgage Association ("FNMA" or "Fannie Mae") or the Federal Home Loan Mortgage Corporation ("FHLMC" or "Freddie Mac") or the like.
- 2.16. "Foreclosure" means a statutory forfeiture or a judicial or nonjudicial foreclosure of a security interest or a deed or other conveyance in lieu of a security interest.
- 2.17. "Governing Documents" means the Declaration, the Survey Map, any Rules or resolutions adopted by the Board of Directors, and any amendments to any such instruments.
- 2.18. "Governing Law" means the Washington Uniform Common Interest Ownership Act (Chapter 64.90 RCW) or any successor statute, and any amendments thereto.
- 2.19. "Identifying Number" means a symbol or address that represents the designation of each Unit in the Condominium. A list of Identifying Numbers for all the Units in the Condominium in existence as of the effective date of this Declaration, along with other information required by the Governing Law, is attached as Exhibit "B" to this

Declaration, where such Identifying Numbers are listed in a column below the words "Unit No."

- 2.20. "Limited Common Element" means a portion of the Common Elements allocated by Article VI of the Declaration or by operation of RCW 64.90.210(1)(b) and/or (3) for the exclusive use of one or more but fewer than all of the Units.
- 2.21. "Manager" or "Managing Agent" shall mean a natural person or business entity regularly engaged in the business of managing common interest communities engaged on behalf of the Board to assist in administration of management of the Community.
- 2.22. "Mortgage" means a mortgage, deed of trust or real estate contract.
- 2.23. "Notice" means a notice provided under the provisions of RCW 64.90.515.
- 2.24. "Occupant" means a natural Person lawfully occupying any Unit; the term includes without limitation Unit Owners, and family members, and tenants of Unit Owners.
- 2.25. "Organizational Documents" means the instruments filed with the Secretary of State to create the Association and the instruments governing the internal affairs of the Association including, but not limited to, its Articles of Incorporation and Bylaws.
- 2.26. "Person" means an individual, corporation, business trust, estate, the trustee or beneficiary of a trust that is not a business trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal entity.
- 2.27. "Preventative Maintenance" means such Upkeep as shall be necessary from time to time to prevent premature failure of any component of a Unit or the Common Elements.
- 2.28. "Purchaser" means any Person, other than the Declarant or a dealer, who or which by means of a voluntary transfer acquires a legal or equitable interest in a Unit other than as security for an obligation.
- 2.29. "Qualified Financial Institution" means a bank, savings association, or credit union the deposits of which are insured by the federal government.
- 2.30. "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- 2.31. "Reserve" or "Reserves," when used as a noun, means money on deposit in a Reserve Fund or Reserve Account, which terms are synonymous, established pursuant to RCW 64.90.535.

- 2.32. "Reserve Study Professional" means an independent Person who is suitably qualified by knowledge, skill, experience, training, or education to prepare a Reserve Study in accordance with RCW 64.90.545 and 64.90.550. For the purposes of interpreting this definition, "independent" means a person who is not an employee, Officer, or Director, and has no pecuniary interest in the Declarant, Association, or any other party for whom the Reserve Study is prepared.
- 2.33. "Residential Purposes" means use for dwelling and human habitation, and for reasonable social, recreational or other uses normally incident to such purposes.
- 2.34. "Rule" means a policy, guideline, restriction, procedure, or regulation of the Association, however denominated, that is not set forth in the Declaration or Organizational Documents and that governs the conduct of Persons or the use or appearance of property.
- 2.35. "Security Interest" means an interest in real estate or personal property, created by contract or conveyance that secures payment or performance of an obligation. "Security Interest" includes a lien created by a mortgage, deed of trust, real estate contract, lease intended as security, assignment of lease or rents intended as security, and any other consensual lien or title retention contract intended as security for an obligation.
- 2.36. "Special Declarant Rights" means rights reserved for the benefit of the Declarant to: (a) Complete any improvements indicated on the Survey Map or described in the Declaration or the public offering statement pursuant to RCW 64.90.610(1)(h); (b) Exercise any Development Right; (c) Maintain sales offices, management offices, signs advertising the Condominium, and models; (d) Use easements through the Common Elements for the purpose of making improvements within the Condominium or within real estate that may be added to the Condominium; (e) Make the Condominium subject to a Master Association; (f) Merge or consolidate the Condominium with another condominium; (g) Appoint or remove any Officer or Board member of the Association or any Master Association or to veto or approve a proposed action of the Board or Association, pursuant to RCW 64.90.415(1); (h) Control any construction, design review, or aesthetic standards committee or process; (i) Attend Meetings of the Unit Owners and, except during an executive session, the Board; and (j) Have access to the records of the Association to the same extent as a Unit Owner. In this Condominium, Special Declarant Rights that have been reserved by the Declarant for this Condominium are described in Section 3.4 hereof.
- 2.37. "Specially Allocated Expense" means any expense of the Association, including allocations to Reserves, allocated to some or all of the Unit Owners and assessable against their respective Units pursuant to RCW 64.90.480 (4) through (8).
- 2.38. "Specially Allocated Assessment" means an Assessment made or deemed to be made by the Association against Units to which Specially Allocated Expenses are allocated under Section 10.8 of this Declaration.

- 2.39. "Survey Map" means the map for the Condominium prepared in accordance with the Governing Law and recorded simultaneously herewith as amended from time to time. Pursuant to RCW 64.90.245(1), the Survey Map is to be construed as comprising a part of this Declaration.
- 2.40. "Timeshare" shall have the same meaning specified in the Timeshare Act, RCW 64.36.010(11).
- 2.41. "Unit" means the physical portion of the Condominium designated for separate ownership, the boundaries of which are described in Section 4.2 hereof.
- 2.42. "Unit Owner" means the Declarant or any other Person who owns a Unit, but does not include a Person who has an interest in a Unit solely as security for an obligation. "Unit Owner" means the vendee and not the vendor of a Unit under a real estate contract.
- 2.43. "Upkeep" means any care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction that is necessary to maintain property in a decent, safe and sanitary condition, in keeping with standards established in the Governing Documents of the Condominium.

### ARTICLE III

#### DESCRIPTION OF LAND, PROJECT TYPE, BUILDINGS, DEVELOPMENT RIGHTS

##### 3.1. Land and Street Address.

The residences and other improvements of this Condominium are constructed on certain real property located at 817 and 819 37<sup>th</sup> Street, Anacortes, Skagit County, Washington, which is more particularly described in Exhibit "A" which is attached hereto and is by this reference incorporated herein.

##### 3.2. Project Type.

The Condominium is an airspace condominium in which buildings and other improvements lie within the boundaries of a Unit. There is one residence located within each of the two Units. Each Unit is intended to enclose all improvements for the homes and yards.

##### 3.3. Development Rights.

No Development Rights are reserved by the Declarant.

##### 3.4. Special Declarant Rights.

No Special Declarant Rights are reserved by the Declarant.

ARTICLE IV  
UNITS

4.1. Number, Location and Type of Units.

The Condominium contains two (2) Units, the location and dimensions of which are shown on the Survey Map. The Identifying Number of each Unit, along with the approximate square footage, the number of whole or partial bathrooms, number of rooms designated primarily as bedrooms, and level or levels on which a Unit is located is set forth in Exhibit "B". Any Unit Owner could make changes to the residence within a Unit in a way that would make the information on Exhibit "B" inaccurate or incomplete.

4.2. Unit Boundaries.

The Units are airspace Units and consist of an envelope of space, the perimeter boundaries of which on the surface of the land are as located and depicted on the Survey Map and which boundaries extend above and below the ground elevation for each Unit as shown on the Survey Map. A Unit shall include the residence and all of the other improvements and fixtures now or hereafter located within said space. The boundaries of each Unit are as follows:

4.2.1 Upper and Lower (horizontal) Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the vertical (perimetric) boundaries.

(a) Upper Boundary: A horizontal plane lying 50 feet above the existing grade as measured from the middle of the common Unit boundary; said upper boundary is described on the Survey Map with reference to a benchmark identified thereon.

(b) Lower Boundary: A horizontal plane lying 15 feet below the existing grade as measured from the middle of the common Unit boundary; said lower boundary is described on the Survey Map with reference to a benchmark identified thereon.

4.2.2 Vertical (perimetric) Boundaries. The vertical boundaries of the Unit shall consist of planes extending vertically from the location of those boundaries for the Unit depicted on the Survey map, to the intersections of those planes with the upper and lower boundaries of the Unit.

4.2.3 Boundaries Independent of Improvements. Neither the exterior nor interior walls of any residence or appurtenant structure constructed by an Owner shall constitute a boundary of the Unit. All such structures shall be maintained within the boundaries of the Unit.

4.3 Additional Items Included in Units.

Each Unit contains earth and airspace as described above. In addition, the Unit shall

include, as an appurtenance to such property, the residence and/or accessory structure placed or erected within the Unit, along with any driveway improvements, interior fixtures, appliances, mechanical, electrical and other systems and equipment, and any heating and/or air-conditioning units installed for the sole and exclusive use of the residence within the Unit.

#### 4.4 Items Excluded from a Unit.

A Unit shall be deemed not to include: pipes, wires, conduits and other public utility lines that are utilized for or serve more than one Unit or the Common Elements, and all other property and fixtures of any kind that are not removable without jeopardizing the soundness, safety or usefulness of the remainder of the Condominium.

#### 4.5 Maintenance Units.

##### 4.5.1 Unit Owners' Basic Responsibilities.

Except as may be otherwise provided below, each Unit Owner shall have, at his or her sole expense, the right and the duty to keep the exterior and interior portions of the residence and any lawfully constructed accessory structures within the Unit, along with their respective fixtures, equipment, decks, patios, driveways, parking areas and other appurtenances in good order, condition and repair and shall perform all upkeep and preventative maintenance, repair and replacements at any time necessary to maintain the good appearance and condition of such Unit. Each Unit Owner shall in addition perform any landscaping and grounds maintenance at any time necessary to maintain the good appearance and condition of such Unit, to the extent not provided by the Association. In the event that the Owner shall fail to perform any necessary maintenance or repairs, the Association shall have the authority, but not the obligation, to enter the Unit, cause needed work to be performed, and recover the costs so incurred through a Limited Common Assessment pursuant to Section 10.8 hereof.

##### 4.5.2 Association's Rights.

In the event that an Owner fails to properly maintain his or her Unit, which failure shall be deemed a nuisance and willful misconduct on the part of the Owner, the Association shall have the right, but not the obligation, to enter the Unit under the provisions of Section 8.4 hereof, and to perform any and all Upkeep to the Unit that is necessary under the circumstances. The costs so incurred by the Association shall constitute a Specially Allocated Assessment against the Unit under Subsection 10.8.2 hereof.

##### 4.5.3 Recapture of Costs Expended For Benefit of Fewer Than All Unit Owners.

Except as otherwise provided herein, Common Expenses incurred by the Association in providing Upkeep, utilities or other services to fewer than all Unit Owners shall be recovered through Specially Allocated Assessments against the Units(s) so benefitted pursuant to Section 10.8.

#### 4.6 Governmentally Required Maintenance, etc.

Any insurance, maintenance, repair, replacements, alteration or other work, or the monitoring of such work, which is required by any governmental entity (including without limitation, federal, state or local government, public or private utility provider, local improvement district, or other governmental or quasi-governmental entity or agency), regardless of whether such requirement is now or hereafter established, whether imposed in connection with a building permit, other governmental approval, requirement and whether involving land within public rights of way or subject to ownership or exclusive use of one owner shall be the sole and exclusive responsibility of the Association (not the Declarant) and any cost incurred in connection therewith shall be Common Expense. In furtherance of the generality of the foregoing, and not by way of limitation, such work shall include maintenance of any grass lined swales and proper disposal of clippings, maintenance of wetland plantings, replacement of wetland and landscape plantings that die during any required maintenance period, maintenance of public and private storm sewer and retention systems. Declarant shall have the right, but not the obligation, to perform any such work if the Association fails to do so. The Association shall promptly upon demand reimburse Declarant for any costs directly or indirectly incurred by Declarant as a result of Declarant performing, or the Association's failure to perform, such work including any work necessary to obtain a release, or avoid a forfeiture, of any cash deposit or other bond made by Declarant.

#### 4.7 Relocation of Unit Boundaries.

Subject to the provisions of any applicable Building, zoning or other applicable regulations and with consent of any eligible mortgagees, boundaries of Units may be relocated as provided in RCW 64.90.255 and subject to provisions of this Declaration.

#### 4.8 Utilities.

4.8.1 Generally. The electricity for the Units is provided by the solar panels located on Unit 1 as well as Puget Sound Energy. Any electrical charges owed shall be the responsibility of the Association and assessed to the Unit Owners as part of the Common Expense Assessments. The electrical charges shall be shared by the Units equally. In addition, the water, sewer and garbage are shared utilities that are the responsibility of the Association and assessed to the Unit Owners as part of the Common Expense Assessments. The water, sewer and garbage charges shall be shared by the Units equally. A specific remedy is provided below in the event a Unit Owner fails to pay Common Expense Assessments related too their share of these shared utilities.

4.8.2 Failure to Pay Shared Utilities. In the event there is there is a failure of the Association to pay shared utilities or insurance (likely due to the failure of a Unit Owner to pay their share) then the following remedies are available to each Unit Owner. Upon default on payment of any shared utilities, the non-defaulting Unit Owner may exercise the remedies provided for in this Subsection as well as any and all remedies provided in the Governing Documents or the Governing Law. If any Unit Owner fails to pay the required Common Expense Assessment at the time the same is due and payable and that failure to pay results in the Association

being unable to pay shared utilities or insurance, then such Unit Owner shall be a “Delinquent Unit Owner”. In the event that there is a Delinquent Unit Owner, the other Unit Owner (the “Lending Unit Owner”) may at its option advance the funds necessary to pay all delinquencies that the Association has. The sum advanced constitutes a loan from the Lending Unit Owner to the Delinquent Unit Owner for their proportionate share of the utilities, insurance and other costs to cure breach of the obligation to the providers. The principal balance and interest of any loan from a Lending Unit Owner to a Delinquent Unit Owner shall be due on the thirtieth day after written demand by the Lending Unit Owner to the Delinquent Unit Owner. All loans by a Lending Unit Owner to a Delinquent Unit Owner shall bear an interest rate of twelve percent (12%) per annum from the date the monies are advanced. In the event the Defaulting Unit Owner fails or refuses to repay the loan to the Lending Unit Owner, then the Lending Owner shall have a lien on the Defaulting Owner’s Unit in the Condominium. Such lien shall be the same as the lien provided to the Association in Article 10 below and may be foreclosed in the same manner as the Association lien.

ARTICLE V  
COMMON ELEMENTS

5.1. Description of Common Elements.

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

5.1.1. The real estate described above, except the portions thereof contained within a Unit.

5.1.2. Installations of services for common use such as main power lines and any utility lines providing service to both of the Units.

5.1.3. Solar panels located on the residence on Unit 1. Solar panels are described in further detail in Article XVI.

5.1.4. Any appurtenant easements benefitting the Condominium.

5.1.5: Those areas shown as Common Elements on the Survey Map.

5.2. Partition, Conveyance, or Encumbrance.

5.2.1. Except as permitted by this Declaration or the Governing Law, the Common Elements shall remain undivided and are not subject to partition; any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void. No Unit Owner or other Person may bring any action for partition or division of the Common Elements, except as provided in Section 6.4 hereof. Portions of the Common Elements that are not necessary for the habitability of a Unit may be conveyed or subjected to a security interest by the Association,

but only as provided below in this Section 5.2, if the Owners of both Units, along with that percentage of Eligible Mortgagees specified in Article XV of this Declaration, consent to this action; but all the Owners of Units to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a security interest.

5.2.2. The Association, on behalf of the Unit Owners, may contract to convey or dedicate an interest in the Condominium, but the contract is not enforceable against the Association until approved pursuant to Subsections 5.2.1 and 5.2.3 hereof. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

5.2.3. An agreement to convey Common Elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as required for deeds, by the requisite number of Unit Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the Condominium is situated and is effective only upon recording.

5.2.4. If the consent of Eligible Mortgagees holding security interests on at least eighty percent of the Units subject to security interests held by Eligible Mortgagees on the day the Unit Owners' agreement under Subsection 5.2.3 hereof is recorded, is obtained, then:

(a) A conveyance of Common Elements pursuant to this Section 5.2 terminates both the undivided interests in those Common Elements allocated to the Units and the security interests in those undivided interests held by all Persons holding security interests in the Units; and

(b) An encumbrance of Common Elements pursuant to this Section 5.2 has priority over all preexisting encumbrances on the undivided interests in those Common Elements held by all Persons holding security interests in the Units.

5.2.5. The consents of Eligible Mortgagees, or a certificate of the Secretary affirming that the requisite percentage of Eligible Mortgagees have consented, may be recorded at any time before the date on which the agreement under Subsection 5.2.3 becomes void. Such consents or certificates recorded are valid from the date they are recorded for purposes of calculating the percentage of consenting Eligible Mortgagees, regardless of later conveyance or encumbrances on those Units. If the required percentage of Eligible Mortgagees consent, a conveyance or encumbrance of Common Elements does not affect interests having priority over the Declaration or created by the Association after the Declaration was recorded.

5.2.6. Proceeds of the sale or a loan are an asset of the Association, but the proceeds of the sale of Limited Common Elements must be distributed equitably among the Unit Owners of Units to which the Limited Common Elements were allocated. This Section 5.2 does not apply to the incorporation of common elements into Units as a result of relocating Unit boundaries pursuant to Subsection 4.8.2 hereof, to subdividing or combining Units pursuant to Subsection 4.9.2 hereof., or to eminent domain proceedings, which are described in Article XII to this Declaration.

5.2.7. Any purported conveyance, encumbrance, or other voluntary transfer of Common Elements, unless made pursuant to this Section 5.2, is void. A conveyance or encumbrance of Common Elements pursuant to this Section 5.2 shall not deprive any Unit of its rights of access and support.

5.3. Allocated Interests in the Common Elements.

Pursuant to RCW 64.90.235, the Declarant has allocated to each Unit in the Condominium an undivided interest in the Common Elements of the Condominium, which is known as the Unit's Allocated Interest in the Common Elements. These undivided interests have been allocated among the Units equally among the two Units. This is due to the Limited Common Elements and that each Unit has one residence. Each Unit's Allocated Interest in the Common Elements is expressed as a percentage and is stated with particularity on the attached Exhibit "B."

5.4. Maintenance, Repair and Replacement – Association.

The Association is generally responsible for Upkeep and maintenance, repair and replacement of the Common Elements, as well as any other items for which the Association has control or has been delegated the responsibility.

ARTICLE VI  
LIMITED COMMON ELEMENTS

6.1. Description of Limited Common Elements.

Limited Common Elements are those portions of the Common Elements allocated to and reserved for the exclusive use of one or more, but fewer than all of the Units. They consist of the following:

6.1.1. Any utility lines providing service to one Unit but not both of the Units.

6.1.2. Any other Limited Common Elements as may be depicted and labeled on the Survey Map, as amended.

6.1.3. Each owner of a Unit to which any of the above described Limited Common Elements are appurtenant shall be responsible for maintenance, repair or replacement of the above-described Limited Common Elements.

6.2. Reallocation between Units.

It is not feasible to reallocate the Limited Common Elements of this Condominium.

### 6.3. Change in Character.

A Limited Common Element may be (a) created from and reallocated to one or more Units from the Common Elements, or (b) incorporated into an existing Unit or Units, only on the following conditions. Both Unit Owners, along with that percentage of Eligible Mortgagees specified in Article 15 of this Declaration, must agree to reallocate a Common Element as a Limited Common Element or to incorporate a Common Element or a Limited Common Element into an existing Unit. Such reallocation or incorporation shall be reflected in an amendment to the Declaration and Survey Map.

## ARTICLE VII UNIT OWNERS ASSOCIATION

### 7.1. Name and Form of Association.

The name of the Association shall be "37<sup>th</sup> Street Condominium Owners Association." The Association has been or will be incorporated by the Declarant prior to the first conveyance of a Unit in the Condominium as a non-profit corporation under the laws of the State of Washington. The rights and duties of the members and of said corporation shall be governed by the provisions of the Governing Law and of this Declaration. The Association shall remain organized as a nonprofit corporation. In case of any conflict between Chapter 24.06 RCW, the Nonprofit Miscellaneous and Mutual Corporations Act, and the Governing Law, the Governing Law shall control.

### 7.2. Powers & Duties of Association.

7.2.1. Duties and Responsibility of Association. The purposes for which the Association was formed are to maintain, repair, replace and manage the Common Elements of the Community, to provide necessary insurance coverage, and to enforce provisions of the Governing Documents, so as to protect the safety and well-being of Occupants of the Condominium and preserve the long-term value of the Condominium Property for the benefit of the Unit Owners. The Board shall consistently adopt Budgets for the Association for operations and Reserves that are reasonably calculated to assure that these essential purposes are realized each year of its existence, on into the indefinite future.

7.2.2. Statutory Powers Exercised by Board of Directors. Except for rights of Unit Owners explicitly reserved in the Governing Law or as elsewhere provided in the Governing Documents, the Board of Directors shall have the exclusive right and power to govern the Association and shall have all powers available to community associations under the Governing Law in order to do so. Such powers are set forth with particularity in the Bylaws of the Association and, except as otherwise expressly provided herein are not limited in this Declaration.

7.2.3. Power to Assign Future Income. Without limiting the foregoing, the Association also shall have the power to assign its right to future income (including the right to collect and

receive Common Expense Assessments), provided that any specific assignment is ratified in advance by the Owners under the following procedures authorized by the Governing Law:

(a) The Board must provide Notice of the intent to borrow to all Unit Owners. The Notice must include the purpose and maximum amount of the loan, the estimated amount and term of any Assessments required to repay the loan, a reasonably detailed projection of how the money will be expended, and the interest rate and term of the loan.

(b) In the Notice, the Board must set a date for a Meeting of the Unit Owners, which must not be less than fourteen and no more than sixty (60) days after providing the Notice, to consider ratification of the borrowing.

(c) Unless at that Meeting, whether or not a quorum is present, Unit Owners holding a majority of the votes in the Association reject the proposal to borrow funds, the Association may proceed to borrow the funds in substantial accordance with the terms contained in the Notice.

7.2.4. Rights of Association Lenders. A lender who has extended credit to the Association secured by an assignment of income or an encumbrance on the Common Elements may enforce its security agreement in accordance with its terms, subject to the requirements of the Governing Law and other law. A requirement that the Association must deposit its periodic common charges before default with the lender to which the Association's income has been assigned, or increase its common charges at the lender's direction by amounts reasonably necessary to amortize the loan in accordance with its terms, does not violate the prohibitions on lender approval contained in RCW 64.90.295(1), but lender requirements for deposits of Association income must be consistent with the provisions of RCW 64.90.530(3) and (4); see Subsection 10.9.1 hereof for details.

### 7.3. Membership in Association.

Membership in the Association is automatically associated with and appurtenant to the ownership of a Unit in the Condominium under the Governing Law. Except in the case of a termination of the Condominium, the membership of the Association at all times consists exclusively of all Unit Owners. Rights and privileges of membership are specified in the initial Bylaws of the Association.

### 7.4. Voting.

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

7.4.2. Allocated Interests for Voting. The Declarant has allocated to each Unit in the Condominium a vote in the Association which is known as the Unit's Allocated Interest for voting, or "vote." The allocation of voting power among Units is equal, with each Unit having one (1) vote. Each Unit's Allocated Interest for voting is a percentage stated with particularity on the attached Exhibit "B."

7.5. Bylaws of Association.

Bylaws for the administration of the Association and for other purposes not inconsistent with this Declaration have been or will be prepared by the Declarant. Such Bylaws are designed to be consistent with the terms and conditions of the Governing Law including, but not limited to, RCW 64.90.410 dealing with Board members, Officers, and Committees; the Bylaws are subject to the approval of the Board of Directors of the Association. The Bylaws include certain language addressing the fact that there are only two Units within the Condominium. Please see the Bylaws for more details.

ARTICLE VIII  
MANAGEMENT OF CONDOMINIUM ASSOCIATION

8.1. Management by Declarant – Period of Declarant Control.

8.1.1. The Declarant has not reserved a period of Declarant Control as defined in RCW 64.90.415. The Association has been formed and will be immediately transferred to the Unit Owners upon the sale of the first Unit to someone other than the Declarant.

8.2. Professional Management.

Standards for professional management of the Association are specified in Section 8.2 of the initial Bylaws.

8.3. Authority of the Board.

8.3.1. General Authority. The Board, for the benefit of the Condominium and the Owners, shall have the authority to manage the project and enforce the provisions of the Governing Documents and Bylaws. The Board has all powers and authority granted to the Association under the Governing Law and this Declaration that are not expressly subject to the approval of Unit Owners.

8.3.2. Common Expenses. The Board shall acquire and shall pay for, as Common Expenses, all goods and services requisite for the proper functioning of the Condominium, including.

8.3.3. Liens or Encumbrances. The Board may also pay any amount necessary to discharge any lien or encumbrance that is claimed to constitute a lien against Common Elements or any portion thereof in violation of RCW 64.90.490(1). Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally guilty of willful misconduct or gross negligence and thus liable for the cost of discharging it, and any costs and expenses incurred by the Board by reason of such lien or liens shall constitute Specially Allocated Assessments against the Units responsible, to the extent of their responsibility.

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

8.4. Right of Entry - Allocation of Responsibility for Damage to Unit upon Entry.

8.4.1. Right of Entry - Notice Generally Required. The Board and its agents or employees may enter any Unit or Limited Common Elements appurtenant thereto when necessary in connection with any maintenance, landscaping, or construction for which the Board is responsible, including without limitation Upkeep required to a Unit under Section 8.3.2(g) to this Declaration, and also including any necessary inspections by the Association under Subsection 4.6.3 hereof or elsewhere in this Declaration, or in the event of a *bona fide* emergency. Except in the case of an emergency, reasonable advance Notice shall be given to the Unit Owner and, if applicable, to any lawful tenant in the Unit. Such entry shall be made with as little inconvenience to the Owner and/or Occupant as practicable. The right of access also includes the right to access the Common Element solar panels for the purpose of maintenance repair and replacement.

8.4.2. Allocation of Responsibility for Damage to Unit upon Entry. Any damage caused by such entry shall be repaired by the Association out of the Common Expense fund if the entry was due to an emergency (unless the emergency was caused by the Owner or a lawful Occupant of the Unit entered, in which case the cost shall constitute a Specially Allocated Assessment against the Unit entered) or for the purpose of Upkeep to Common or Limited Common Elements where the repairs were undertaken by or under the direction or authority of the Board. If the Upkeep was necessitated by conditions within the Unit or performed at the request of its Owner or its lawful Occupants, the costs thereof shall constitute a Specially Allocated Assessment against such Unit.

8.4.3. Unit Owner to Afford Access to Association and Other Owner(s). Each Unit Owner and Occupant shall afford to the Association and, as needed, to other Unit Owner(s), and to their respective agents or employees, access through such Owner's Unit and any appurtenant Limited Common Elements reasonably necessary for the purposes stated in Subsection 8.4.1 hereof, including necessary inspections by the Association, and for repairs to other Units.

8.5. Board as Attorney in Fact.

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

#### 8.6. Board or Association as Trustee.

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

### ARTICLE IX PERMITTED USES; ARCHITECTURAL CONSISTENCY

#### 9.1 Residential Use.

Each Unit shall be used as a single-family residence only and such other uses as permitted by this Declaration and for no other purpose. The foregoing residential restrictions shall not, however, be construed in such a manner to prohibit a Unit Owner from maintaining their personal professional library therein, keeping their personal business and professional records therein, or handling their personal business or professional telephone calls or correspondence therefrom to the extent doing so complies with all applicable laws and ordinances.

#### 9.2 Rental of Units.

The Renting or Leasing of a Unit shall be governed by the following provisions:

9.2.1 Entire Unit. No Unit Owner may lease less than the entire Unit.

9.2.2 Written Leases. All rental agreements for Units shall be in writing and be subject to the Governing Documents, and it shall be a default in the rental agreement by the tenant if the tenant fails to comply with the Governing Documents. The Board shall be notified in advance of an Owner's intention to rent or lease a Unit. The Board shall also be notified as to the names and contact information of all Occupants of the Unit that is being rented or leased.

#### 9.3 Timesharing.

Timesharing as defined in the Washington Timeshare Act (RCW 64.36) is prohibited.

#### 9.4 Signs.

No signs of any kind, nor for any uses shall be erected, painted, or displayed within any Unit, except: public notices by a political division of the State or County or as required by law;

one professional sign per Unit of not more than two square feet; Declarant or the Declarants agent may erect and display signs of any size during the period the Declarant is selling Units in the Condominium; and any Unit Owner of the Unit Owner's agent wishing to sell or lease that Owner's Unit may place a sign not larger than five square feet within the Unit.

#### 9.5 Utilities.

With the exception of utilities as existing at the time of the recording of this Declaration, all utilities shall be installed underground and within that Owner's Unit.

#### 9.6 Antennas.

Subject to applicable law and the enforceable provisions of contract. No visible radio or television, satellite dish, clothesline or other similar type of exterior equipment shall be allowed on any Unit except a satellite dish antenna twenty-four (24) inches in diameter or else. The location of any such dish shall be subject to the Rules of the Board.

#### 9.7 Garbage, Refuse and Storage.

No garbage, refuse, rubbish, cuttings, debris, inoperable vehicles, equipment, or waste of any kind shall be deposited on or left upon or within any Unit. There shall be no storage of equipment, materials, or any other items outside of a Residence or building unless approved by the Board of Director. This means all storage must be in the buildings and in compliance with local ordinances. Garbage cans may only be placed in public view on the day of garbage pick-up. The proper removal and disposal of all such materials shall be the sole responsibility of the individual Unit Owner.

#### 9.8 Pets.

Domestic animals, birds, or reptiles (hereinafter referred to as "pets") may be kept in Units subject to Rules adopted by the Board, or bylaws adopted by the Association. The Board may at any time, after notice and an opportunity to be heard, require the removal of any pet which it finds, in its sole discretion, disturbing other Owners unreasonably, and may exercise this authority for specific pets, even though other pets are permitted to remain. The Board's decision to require removal of a pet under this section shall be final and not subject to judicial review. The Owner of any pet in the Condominium shall be responsible for any damage to any person or property caused by the pet and shall indemnify and hold the Association and Board harmless from any and all liability arising from or caused by the pet. The owner of any pet on the Condominium Property shall immediately clean up any mess made by the animal.

#### 9.9 Nuisances.

No noxious or offensive activities or undesirable thing, or noxious undesirable use shall be permitted or maintained upon any Unit or upon any other portion of the Property. If the Board

determines that a thing or use is undesirable or noxious, that determination shall be conclusive. Furthermore, no Unit shall be used in a fashion which unreasonably interferes with the other Unit Owners right to use and enjoyment of their respective properties. All Owners are responsible at all times for the conduct of their guests.

9.10 Effect on Insurance.

Nothing shall be done or kept in any Unit or in the Common or Limited Common Element, which will increase the rate of insurance on the Common Elements or Units without the prior written consent of the Board. No Owner shall permit anything to be done or kept in their Unit or in the Common or Limited Common Elements which will result in the cancellation of insurance on any Unit or any part of the Common or Limited Common Elements.

9.11 Rules.

All Unit Owners and their tenants, licensees and invitees shall comply with any Rules governing operation of the Condominium and the use of the Common Elements, as may be adopted, and amended from time to time by the Board.

9.12 Quiet enjoyment.

No Owner shall permit anything to be done or be kept in the Owners Unit which would interfere with the right of quiet enjoyment of the other residence of the Condominium. In particular, sound system loudspeakers shall not be rigidly attached to any party wall shared with another Unit or the ceiling, walls, shelves, or cabinets in a Unit in a manner that will induce vibrations into the Building.

ARTICLE X  
COMMON EXPENSES AND ASSESSMENTS

10.1. Annual Budget for the Association.

10.1.1. General Provisions for the Annual Budget. At such other time as may be deemed necessary or desirable by the Board of Directors or the Association's Manager or accountant, but more than thirty (30) days prior to the Meeting described in Section 10.2 hereof, the Board shall prepare an Annual Budget that shall estimate the Common Expenses and those Specially Allocated Expenses that are subject to inclusion in the Budget, to be paid during such year. Specially Allocated Expenses assessable under Section 10.8 should be budgeted in such fashion that they will be properly apportioned and assessed against only the affected Units. The Budget should make provision for creating, funding and maintaining Reserves required by Section 10.3 hereof, and shall take into account any expected income and any surplus determined to be available under the reconciliation required under RCW 64.90.475 from the prior year's operating fund. The Declarant or the initial Board may at any suitable time establish the first such estimate. If deemed necessary by the Board of Directors, any Annual Budget may be revised prior to the end of its budget year, subject to the provisions of Sections 10.7 and 10.2 hereof.

10.1.2. Specific Statutory Requirements for Annual Budget. The Board's proposed Budget must include:

- (a) The projected income to the Association by category;
- (b) The projected Common Expenses and those Specially Allocated Expenses that are subject to being budgeted, described below in Subsection 10.8.1, both by category;
- (c) The amount of the Assessments per Unit and the date the Assessments are due;
- (d) The current amount of regular Assessments budgeted for contribution to the reserve account;
- (e) A statement of whether the Association has a Reserve Study that meets the requirements of RCW 64.90.550 and, if so, the extent to which the Budget meets or deviates from the recommendations of that Reserve Study; and
- (f) The current deficiency or surplus in reserve funding expressed on a per Unit basis.

10.2. Meeting of Association to Ratify Budget.

If any member of the Board is not a Unit Owner, the following procedure shall be followed: Within thirty (30) days after adoption of any proposed Budget for the Condominium, the Board must provide a copy of the Budget to all the Unit Owners and set a date for a Meeting of the Unit Owners to consider ratification of the Budget not less than fourteen (14) nor more than fifty (50) days after providing the Budget. Unless at that Meeting the Unit Owners of Units to which a majority of the votes in the Association are allocated reject the Budget, the Budget and the Assessments against the Units included in the Budget are ratified, whether or not a quorum is present. In the event the proposed Budget is rejected, or the required Notice is not given, the periodic Budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent Budget proposed by the Board of Directors.

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

10.3.1. Establishment of Reserves – Status and Uses of Reserve Funds. The Board of Directors should establish and maintain reasonable Reserves for major repairs and replacements, in accordance with Section 5.5 hereof. Reserves should also be established for the deductible under insurance policies obtained pursuant to Article XI hereof, exclusive of earthquake, flood and/or similar coverages. The Annual Budget of the Association should always contain provisions for such Reserves. The Board may also establish and maintain Reserve Funds for operations, capital improvements and for such other purposes as may appear advisable. All Reserves shall be identified and segregated on the books of the Association. The portions of the Units' Assessments paid into such Reserves shall be conclusively deemed to be non-refundable contributions to the capital of the Association by the Unit Owners. Such Reserves may be expended only for the purposes for which they were established unless the Unit Owners, at a duly constituted Meeting

of the Association, otherwise decide, or if the procedure described in Subsection 10.3.3 below is followed. The Budget may include Reserves for any Special Limited Common Elements, assessable against only the Unit(s) benefitted thereby.

10.3.2. Reserve Study Required by Governing Law. Certain requirements regarding Reserve Studies are found in the Governing Law.

10.4. Assessments Against Units.

10.4.1. Liability of Units. Assessments for General Common Expenses and those Specially Allocated Expenses that are subject to inclusion in a Budget must be made at least annually based on a Budget adopted in the manner described in Sections 10.1 and 10.2 hereof.

10.4.2. Assessments in Proportion to Common Expense Liability. All General Common Expenses must be assessed against all the Units in accordance with their allocated Common Expense Liabilities, subject to the right of the Declarant to delay commencement of certain Common Expenses under Subsection 10.5 below.

10.4.3. Commencement of Assessments. Except as provided in Sections 10.5 below, Assessments for Common Expenses and Specially Allocated Expenses included within the Budget must commence on all Units that have been created upon the conveyance of the first Unit in the Condominium.

10.4.4. Payable in Installments. Unless otherwise determined by the Board of Directors, the annual Assessment against each Unit for its proportionate share of the Common Expenses shall be payable in twelve (12) equal, monthly installments, and each installment shall be payable in advance by the first day of the month.

10.5. Option of Declarant to Pay Some or All Expenses of Association.

Pursuant to RCW 64.90.480(1)(b), the Declarant may cause the Association to delay commencement of Assessments for some or all Common Expenses or Specially Allocated Expenses, in which event the Declarant must pay to the Association all of the Common Expenses or Specially Allocated Expenses that have been delayed. The right of the Declarant to cause the Association to delay Assessments for Common Expenses, and/or for how long such delay should persist, are legally unrelated to the Declarant's rights to control the Association in the manner described in Section 8.1 hereof.

10.6. Allocated Interests for Common Expense Liability.

Pursuant to RCW 64.90.235(1)(a), the Declarant has allocated to each Unit in the Condominium a liability for payment of the Common Expenses of the Association that is known as the Unit's Allocated Interest for Common Expense Liability. This liability has been allocated among the two (2) Units equally. Each Unit's Allocated Interest for Common Expense Liability is expressed as a percentage and is stated with particularity on the attached Exhibit "B."

#### 10.7. Special Assessments.

The Board at any time may propose a Special Assessment. If any member of the Board is not a Unit Owner, the Board shall follow the procedures for ratification of a Budget described in Sections 10.1 and 10.2 hereof and the Assessment is effective only if the Unit Owners do not reject the proposed Assessment. The Board may provide that the Special Assessment may be due and payable in installments over any period it determines and may provide a discount for early payment. All Unit Owners shall be obligated to pay the adjusted monthly amount or, if the Special Assessment is not payable in installments, the full amount of such Special Assessment, in proportion to their Allocated Interests for Common Expense Liability. See also Section 11.9 governing Special Assessments that may be required in conjunction with major damage repairs.

#### 10.8. Specially Allocated Assessments.

10.8.1. Expenses Subject to Inclusion in Budget. The items included below in this Subsection constitute Specially Allocated Expenses that are subject to inclusion in the Association's Annual Budget:

(a) Any expense associated with the operation, maintenance, repair, or replacement of a Limited Common Element shall constitute a Specially Allocated Assessment against the Unit to which such facility is allocated.

(b) If either of the Units or the Common Elements are not separately metered, the utility service shall be paid as a Common Expense, and the Board may either allocate, by reasonable formula, a portion of such expense to such Unit as a Specially Allocated Expense, or reimburse any Unit Owner who pays, in whole or in part for utilities serving the Common Elements or other Units, as appropriate. Provided, this provision does not apply to electricity service or water, sewer and garbage as these expenses are addressed in Section 4.4 above and they are the responsibility of the Association and shared by the Units equally.

10.8.2. Expenses Not Subject to Inclusion in Budget. The items included below in this Subsection constitute Specially Allocated Expenses that are not subject to inclusion in the Association's Annual Budget:

(a) Costs of services provided to or expenses incurred on behalf of one or more Unit Owners on a one-time or irregular basis, reasonable charges for the preparation and recordation of amendments to the Declaration benefitting particular Unit Owners, resale certificates, lender questionnaires, or statements of unpaid Assessments, "move-in" and/or "move-out" charges established by the Board, fines imposed by the Board, the costs and attorney's fees described in RCW 64.90.485(19), or that may be imposed pursuant to the Bylaws, and interest on any delinquent account.

(b) To the extent that any expense of the Association is caused by the negligence of any Unit Owner or that Unit Owner's tenant, guest, invitee, or Occupant, the Association may

assess that expense against the Unit Owner's Unit after Notice and an opportunity to be heard as provided in the Bylaws, to the extent of the Association's deductible and any expenses not covered under an insurance policy issued to the Association. See Section 13.2 hereof.

(c) To the extent that any expense of the Association is caused by willful misconduct or gross negligence of any Unit Owner or that Unit Owner's tenant, guest, invitee, or Occupant, the Association may assess that expense against the Unit Owner's Unit after Notice and an opportunity to be heard as provided in the Bylaws, even if the Association maintains insurance with respect to that damage or Common Expense. See Section 13.2 hereof.

(d) The costs of the insurance deductible shall be apportioned as provided in Subsection 11.3.2.

10.9. Accounts; Commingling Prohibited - Funds generally maintained in Washington.

10.9.1. General Principles Associated with Association Accounts. The Association must keep all funds of the Association in the name of the Association with a Qualified Financial Institution. The funds must not be commingled with the funds of any other association or with the funds of any Managing Agent of the Association or any other Person or be kept in any trust account or custodial account in the name of any trustee or custodian.

10.9.2. Obligations of Managing Agents. A Managing Agent who accepts or receives funds belonging to the association must promptly deposit all such funds into an account maintained by the association in compliance with Subsections 10.9.1 or 10.3.3 hereof, as appropriate. Accounts in the name of the Association over which a Managing Agent has any control must be maintained in a financial institution located in the State of Washington.

10.10. Surplus Funds.

Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of Reserves must either be paid annually to the Unit Owners in proportion to their Common Expense Liabilities or credited to them to reduce their future Common Expense Assessments, at the Board's discretion.

10.11. Liability of Unit Owners for Association Obligations.

10.11.1. General Liability Principles. A Unit Owner is not liable, solely by reason of being a Unit Owner, for an injury or damage arising out of the condition or use of the Common Elements. Neither the Association nor any Unit Owner except the Declarant is liable for that Declarant's torts in connection with any part of the Condominium which that Declarant must maintain. An action alleging a wrong done by the Association, including an action arising out of the condition or use of the Common Elements, may be maintained only against the Association and not against any Unit Owner.

10.11.2. Proportionate Liability for Liens. A judgment for money against the Association perfected under RCW 4.64.020 is not a lien on the Common Elements but is a lien in favor of the judgment lienholder against all of the other real estate of the Association and all of the Units in the Condominium at the time the judgment was entered. Other property of a Unit Owner is not subject to the claims of creditors of the Association. Whether perfected before or after the creation of the Condominium, if a lien, other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the Condominium, becomes effective against two or more Units, the Unit Owner of an affected Unit may pay to the lienholder the amount of the lien attributable to the Unit, and the lienholder, upon receipt of payment, must promptly deliver a release of the lien covering that Unit. The amount of the payment must be proportionate to the ratio that the Unit Owner's Common Expense Liability bears to the Common Expense Liabilities of all Unit Owners that are subject to the lien. After payment, the Association may not assess or have a lien against that Unit Owner's Unit for any portion of the Common Expenses incurred in connection with that lien.

10.12. Assessments to Pay Judgment Against Association.

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

10.13. Owners Personally Liable for Common Expenses.

10.13.1. Owners Jointly & Severally Liable for Assessments. 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.

10.13.2. Suit Against Unit Owner Authorized. Suit to recover a personal judgment for any delinquent Assessment is maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

10.13.3. Association's Failure to Adopt Budget Does not Release Owners. The failure or delay of the Board of Directors to adopt the Annual Budget for any year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his or her allocable share of the Common Expenses as herein provided, and in the absence of an Annual Budget or adjusted Annual Budget, each Unit Owner shall continue to pay (with or without Notice) a monthly Assessment at the rate established for the preceding fiscal year until an Assessment is made under a current Annual Budget or adjusted Annual Budget and Notice thereof has been sent to the Unit Owner.

10.13.4. Late Fees Authorized. The Association may from time to time establish reasonable late charges and a rate of interest to be charged, not to exceed the maximum rate calculated under RCW 19.52.020, on all subsequent delinquent Assessments or installments of Assessments. If the Association does not establish such a rate, delinquent Assessments bear

interest from the date of delinquency at the maximum rate calculated under RCW 19.52.020 on the date on which the Assessments became delinquent.

10.13.5. No Waiver or Exemption of Liability for Assessments. No Unit Owner may exempt himself or herself from liability with respect to any portion of the Common Expenses for any reason, including without limitation a waiver of the enjoyment of the right to use any of the Common Elements or by leasing, rental or abandonment of his or her Unit or otherwise.

10.14. Liability Following Conveyance of Unit.

10.14.1. Liability of Unit Owner Following Sale of Unit. In a voluntary conveyance other than by foreclosure, the grantee of a Unit is 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.

10.14.2. Liability of Mortgagee or Other Purchaser Following Foreclosure or Sale. Except as provided in Subsection 10.18.2 hereof, the holder of a mortgage or other Purchaser of a Unit who obtains the right of possession of the Unit through foreclosure is not liable for Assessments or installments of Assessments that became due prior to such right of possession. Such unpaid Assessments are deemed to be Common Expenses collectible from all the Unit Owners, including such mortgagee or other Purchaser of the Unit. Foreclosure of a mortgage does not relieve the prior Unit Owner of personal liability for Assessments accruing against the Unit prior to the date of such sale as provided in this Subsection.as provided above.

10.15. Statement of Unpaid Assessments.

10.15.1. Board Required to Deliver Statement of Unpaid Assessments. The Board, upon written request, shall furnish to a Unit Owner or a mortgagee a statement signed by an Officer or authorized agent of the Association setting forth the amount of unpaid Assessments against that Unit. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board of Directors, and every Unit Owner, unless and to the extent known by the recipient to be false.

10.15.2. Unit Owners Deemed to Consent to Notice to Lender. **Each Unit Owner, by virtue of taking title to a Unit in this Condominium, shall be deemed for all purposes to have consented in advance to the Association furnishing a statement of unpaid Assessments to a mortgagee holding a security interest in the Unit Owner's Unit – no additional consent or authorization from any Unit Owner shall be required in advance of the Association providing such a statement under circumstances that require such a delivery.**

10.16. Lien for Assessments and Power of Sale.

10.16.1. The Association has a statutory lien on each Unit for any unpaid Assessment against the Unit from the time such Assessment is due.

10.16.2. Each and every Unit Owner of any Unit in the Condominium, by virtue of his or her acquisition by any means of title to such Unit, shall take such title subject to the Association's lien for Assessments. Pursuant to RCW 64.90.485(13)(b), the Declarant as "Grantor" does hereby grant, bargain, sell and convey to Land Title & Escrow, as "Trustee" in trust WITH POWER OF SALE, the Units and all other real property in the Condominium described in Exhibit "A" to this Declaration, which property is not used principally for agricultural purposes, together with all tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any manner appertaining, and the rents, issues and profits thereof, to secure the obligations of the Unit Owners to the Association, as "Beneficiary," for the payment of any Assessments lawfully levied under this Declaration. Each and every Unit Owner shall be deemed for all purposes, as of the time of his or her acquisition of title to any Unit in the Condominium, to have joined as an additional "Grantor" in the conveyance in trust above described, and to have at that time granted, bargained, sold and conveyed his or her Unit, along with its undivided Allocated Interest in the Common Elements and any Limited Common Elements assigned thereto, to such Trustee, to secure all obligations imposed by this Declaration on such Unit Owner to pay Assessments to the Association. The Power of Sale provided and granted herein shall be operative in the case of a default in the obligation to pay Assessments; upon default by such Unit Owner in the payment of any indebtedness secured hereby, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In such event and upon written request of Beneficiary, the Trustee shall sell the Unit as trust property, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Any Person except Trustee may bid at Trustee's sale. The Trustee shall apply the proceeds of the sale as follows: (1) to the expenses of sale, including a reasonable trustee's fee and attorney's fee; (2) to the obligations secured by this Declaration; (3) the surplus, if any, shall be distributed to the Persons entitled thereto.

10.17. Automatic Perfection of Lien.

Recording of this Declaration constitutes record notice and perfection of the Association's statutory lien. Further notice or recordation of any claim of lien for Assessments is not required but is not prohibited. The Board may thus record a Notice of Claim of Lien for delinquent Assessments in the real property records of Whatcom County.

10.18. Priority of Lien.

10.18.1. General Lien Priority. The Association's statutory lien shall be prior to all other liens and encumbrances on a Unit except: (a) Liens and encumbrances recorded before the recordation of this Declaration; (b) Except as otherwise provided in Subsection 10.18.2 below, a security interest on the Unit recorded before the date on which the unpaid Assessment became due; and (c) liens for real property taxes and other governmental assessments or charges against the Unit.

10.18.2. Association's Super-priority Lien for Assessments. Except as provided in Subsection 10.18.3 hereof, The Association's statutory lien also has priority over the security

interests described in Subsection 10.18.1(b) above, to the extent of an amount equal to the following:

(a) The Common Expense Assessments, excluding any amounts for capital improvements, based on the periodic Budget adopted by the Association pursuant to Sections 10.1 and 10.2 hereof, along with any Specially Allocated Assessments that are properly assessable against the Unit under such periodic Budget, which would have become due in the absence of acceleration during the six (6) months immediately preceding the institution of proceedings to foreclose either the Association's lien or a security interest described in Subsection 10.18.1(b) hereof;

(b) The Association's actual costs and reasonable attorneys' fees incurred in foreclosing its lien but incurred after the giving of the Notice described in Subsection 10.18.2(c) hereof; provided, however, that the costs and reasonable attorneys' fees that will have priority under this Subsection 10.18.2 shall not exceed two thousand dollars or an amount equal to the amounts described in Subsection 10.18.2(a), whichever is less;

(c) The priority amounts described in Subsection 10.18.2 shall be prior only to the security interest of the holder of a security interest on the Unit recorded before the date on which the unpaid Assessment became due **and only if the Association has given that holder not less than sixty (60) days' prior written Notice that the Owner of the Unit is in default in payment of an Assessment. The Notice shall contain:**

(A) Name of the borrower;

(B) Recording date of the trust deed or mortgage;

(C) Recording information;

(D) Name of condominium, Unit Owner, and Unit designation stated in the Declaration or amendment thereto;

(E) Amount of unpaid Assessment; and

(F) A statement that failure to, within sixty (60) days of the written Notice, submit to the Association payment of six (6) months of Assessments as described in Subsection 10.18.2(a) hereof will result in the priority of the amounts described in Subsection 10.18.2(b); and

(d) Upon payment of the amounts described in Subsection 10.18.2(a) by the holder of a security interest, the Association's lien described in Subsection 10.18.2 shall be thereafter fully subordinated to the lien of such holder's security interest on the Unit.

(e) The Notice described in Subsection 10.18.2(c) hereof shall be mailed by ordinary mail to the holder of the security interest on the Unit at an address for Notice provided to

the Association by the holder, or if the Association mails the Notice to the holder by certified mail, return receipt requested, at that address. If the holder has not provided an address for Notice to the Association, either for the purpose of becoming an Eligible Mortgagee, or for the purposes of receiving the Notice required under Subsection 10.18.2(c) above or otherwise, then consistent with the provisions of RCW 64.90.285(9), the Association must provide Notice to the address appearing in the security interest of record which Notice shall be deemed for all purposes to satisfy the Notice requirements of RCW 64.90.485(3)(a)(iii).

**(f) Every Unit Owner, by virtue of taking title to a Unit in this Condominium, shall be deemed for all purpose to have consented in advance to the Association giving the Notice described in Subsection 10.18.2(c) hereof to a mortgagee under the circumstances that require such a delivery. No additional consent or authorization from any Unit Owner shall be required in advance of the Association providing such a Notice.**

10.18.3. Special Definitions Relating to Association's Lien Rights. For the purposes of this Section 10.18:

(a) "Institution of proceedings" means either:

(i) The date of recording of a notice of trustee's sale by a deed of trust beneficiary;

(ii) The date of commencement, pursuant to applicable court rules, of an action for judicial foreclosure either by the Association or by the holder of a recorded security interest; or

(iii) The date of recording of a notice of intention to forfeit in a real estate contract forfeiture proceeding by the vendor under a real estate contract.

(b) "Capital improvements" does not include making, in the ordinary course of management, repairs to Common Elements or replacements of the Common Elements with substantially similar items, subject to: (i) Availability of materials and products, (ii) prevailing law, or (iii) sound engineering and construction standards then prevailing.

10.18.4. Amendments to Budgets to Include Improper Amounts are Prohibited. The adoption of a periodic Budget that purports to allocate to a Unit any fines, late charges, interest, attorneys' fees and costs incurred for services unrelated to the foreclosure of the Association's lien, other collection charges, or Specially Allocated Assessments assessed under Subsection 10.8.2 hereof does not cause any such items to be included in the priority amount affecting such Unit.

10.18.5. Mechanic's Liens – Homesteads. This Section 10.18 does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other Assessments made by the Association. The Association's lien is not subject to the provisions of chapter 6.13 RCW relating to Homesteads.

10.19. Enforcement of Association's Lien.

10.19.1. Judicial Foreclosure Proceedings Authorized. The Association's lien may be enforced judicially by the Association or its authorized representative in the manner set forth in Chapter 61.12 RCW, subject to any rights of redemption under chapter 6.23 RCW.

10.19.2. Nonjudicial Foreclosure Proceedings Authorized. The Association's lien also may be enforced nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust. 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 (8) months. The Association may elect to take a deed in lieu of foreclosure in any such proceeding.

10.19.3. Limitations Associated with Nonjudicial Foreclosures. If the Association forecloses its lien nonjudicially pursuant to Chapter 61.24 RCW, the Association shall not be entitled to the lien priority provided for under Subsection 10.18.2 hereof and is subject to the limitations on deficiency judgments provided in chapter 61.24 RCW.

10.19.4. Additional Remedies for Nonpayment of Assessments. This Section 10.19 does not prohibit actions against Unit Owners to recover sums for which Section 10.16 hereof creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

10.19.5. Restrictions on Commencement of Foreclosure Proceedings. The Association may not commence an action to foreclose a lien on a Unit unless:

- (a) The Unit Owner, at the time the action is commenced, owes a sum equal to at least three (3) months of Common Expense Assessments; and
- (b) The Board approves commencement of a foreclosure action specifically against that Unit.

10.19.6. Six Year Statute of Limitation on All Enforcement Proceedings. The Association's lien for unpaid Assessments and the personal liability a Unit Owner for payment of those Assessments are extinguished unless proceedings to enforce the lien or collect the debt are instituted within six (6) years after the full amount of the Assessments sought to be recovered becomes due.

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

10.20.1. Rent Payable to Association Upon Default of Owner. (a) If a Unit is rented or leased by its Owner, and if the Owner becomes delinquent in the payment of Assessments for more than ninety (90) days, the Association may collect the delinquent amount from the tenant, who shall pay over to the Association so much of the rent for such Unit as is required to pay such delinquency, plus interest, attorneys' fees and other costs of collection. In order to avail itself of

the remedy contained in this Subsection, the Association shall first send a Notice jointly to the Owner and the Tenant by First Class U.S. Mail, advising both parties [i] of the Owner's delinquency in Assessments, [ii] of the tenant's obligations under this Subsection of the Declaration, and [iii] notifying both parties that if such delinquency is not cured within ten (10) days of mailing, the tenant must commence paying rent to the Association until the delinquency has been cured. The tenant shall not have the right to question payment to the Association, and such payment shall discharge both the tenant's duty to pay rent to the Unit Owner and the Unit Owner's obligation to pay Assessments, *pro tanto*. The Association shall not resort to this remedy where a receiver has been appointed and is collecting such rents, as provided immediately below in Subsection 10.20.2.; and (b) **Every Unit Owner, by virtue of taking title to a Unit in this Community and subsequently renting the Unit, shall be deemed for all purpose to have consented in advance to the Association giving the Notice described in this Subsection 10.20.1. to a tenant of the Owner under circumstances that authorize such a delivery. No additional consent or authorization from any Unit Owner shall be required in advance of the Association providing such a Notice.**

10.20.2. Association Entitled to Appointment of Receiver During Foreclosure. In an action by the Association to collect Assessments or to foreclose a lien on a Unit that is not occupied by the Owner thereof, the Court may appoint a receiver to collect all sums alleged to be due and owing to the Unit Owner before commencement or during pendency of the action. The receivership is governed under chapter 7.60 RCW. During pendency of the action, the Court may order the receiver to pay sums held by the receiver to the Association for any Assessments against the Unit. The exercise of rights under this Subsection by the Association does not affect the priority of preexisting liens on the Unit.

10.21. Remedies Cumulative.

The remedies provided herein are cumulative and the Board may pursue them concurrently, along with any other remedies that may be available under the law although not expressed herein. Suit to recover a personal judgment for any delinquent Assessment is maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

ARTICLE XI

INSURANCE, DESTRUCTION, RESTORATION AND DISTRIBUTION

11.1. Authority, General Provisions, Name of Insured.

11.1.1. General Provisions. Commencing not later than the time of the first conveyance of a Unit to a Person other than the Declarant, the Board of Directors shall obtain and maintain for the Association: casualty and general liability insurance and fidelity insurance, under such terms and for such amounts as shall be deemed necessary or desirable by the Board. Levels of coverage and deductibles from coverage shall be determined annually by the Board with assistance from the agent of the insurance company or companies affording such coverage.

11.1.2 Name of Insured – Certain Insuring Arrangements Prohibited. The name of the insured under each required policy shall be stated as follows: “37<sup>th</sup> Street Condominium Owners Association.” The Association must be the First Named Insured under each policy. Having the Association named as an “additional insured” or “additional named insured” in a pooled insurance program or agreement maintained by a Managing Agent or other third party, which provides coverage to unrelated projects, does NOT satisfy this requirement.

11.1.3. General Insuring Scheme – Association Coverage. The Association may acquire a “Master Policy” of property insurance that covers the residential dwellings within the Units, as may be requested pursuant to Section 11.1.5, and the Common Elements of the Condominium. The Association will also acquire commercial general liability insurance, including medical payments insurance, in amounts determined by the Board, covering all occurrences commonly insured against for bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.

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

11.1.5 Owners and Tenants Responsible for Acquiring their Own Insurance. Because of the limitations in coverage afforded under the Association’s Master Policy, Unit Owners and tenants must acquire their own insurance coverage in order to be fully protected. It is anticipated that most Unit Owners will opt to obtain separate coverage for the residence and other improvements constructed within their Units. The Association may, however, obtain a standard “condominium master insurance” coverage for those Unit Owners option to have the Association provide such coverage. The Association shall recover the costs of such coverage from the Unit Owners involved, pursuant to Section 10.8 herein.

11.2. Board has no Obligation to Monitor Unit Owners’ Insurance.

The Board of Directors is not obligated to monitor the existence or nonexistence of any insurance required of an Owner or tenant; such responsibility, and the risks to the Owner or tenant arising from a failure to have proper insurance are to be borne solely by the Unit Owner or tenant. A failure by the Owner or tenant to maintain such insurance or to make a claim under an existing policy, which failure results in an inability of the Owner or tenant to pay sums that may be owing to the Association, or that results in any other form of economic loss or harm or damage to the Association shall constitute willful misconduct or gross negligence on the Owner’s part.

11.3. Unavailability, Cancellation or Nonrenewal.

If the insurance described in Section 11.1 hereof is not reasonably available, or is modified, canceled or not renewed, the Board promptly shall cause Notice of that fact to be hand-delivered or sent prepaid by first class United States Mail to all Unit Owners, to each Eligible Mortgagee, and to each mortgagee to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

11.4. Adjustment and Payment of Loss Proceeds.

All policies shall provide that adjustment of loss shall be made by the Board of Directors, and that proceeds payable pursuant to the Policies shall be paid directly to the Board of Directors as Insurance Trustee, and not to any holder of a security interest. The Board shall hold such proceeds in trust for the Unit Owners and lienholders as their interests may appear.

(a) Proceeds are to be paid first for the repair or replacement of the damaged property, and neither the Association, the Unit Owners, nor lienholders are 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 replaced, or the Condominium is terminated.

(b) If, pursuant to the provisions of Section 11.5 hereof, not all of the damaged or destroyed portions of the Condominium are to be repaired or replaced, insurance proceeds shall be payable as provided in that Section.

11.5. Reconstruction Following Casualty Loss.

11.5.1. Duty to Reconstruct. Any portion of the Condominium for which insurance is required under this Section and for which the Board of Directors has the responsibility of repair that is damaged or destroyed shall be repaired or replaced promptly by the Association 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) eighty percent (80%) of the Unit Owners, including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, along with that percentage of Eligible Mortgagees whose approval must be sought under Schedule 15 hereof, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and Reserves shall be a Common Expense.

11.5.2. Decision Not To Reconstruct. In most instances, the Association will not hesitate to repair or replace damaged portions of the Condominium following casualty. In the event that the Owners at a Special Meeting of the Association convened to address such issues decide otherwise and adopt a resolution in accordance with the provisions of Section 11.8.1 hereof that some or all of the damaged or destroyed portions of the Condominium will not be 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 and Limited Common Elements that are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those

Limited Common Elements were allocated, or to lien-holders, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the Unit Owners or lien-holders, as their interest may appear, in proportion to the common Element interests of all the Units. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned under RCW 64.90.00030, and the Association promptly shall prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Notwithstanding the provisions of this Subsection, RCW 64.90.290 governs the distribution of insurance proceeds if the Condominium is terminated.

11.5.3. Manner of Reconstruction. If destroyed or damaged property is to be reconstructed or repaired, the reconstruction or repair thereof shall be accomplished as nearly as practicable to the character of the building or improvement existing immediately prior to such casualty. Any reconstruction or repair shall be done in accordance with then prevailing Building Code requirements and may be done with contemporary building materials, and achieved by utilizing updated construction systems and technology.

11.6. Assessments if Insurance is Inadequate.

Immediately after a casualty causing damage to property for which the Board of Directors has the responsibility of maintenance and repair, the board shall obtain reliable and detailed estimates of the cost to replace the damage property in as good a condition as it was before the casualty. Such costs may include professional fees and premiums for such performance bonds or other type of security that the Board desires or as may be required. The cost of repair or replacement not paid from insurance proceeds is a Common Expense. If the proceeds of insurance, coupled with any available Reserve Funds (including funds consisting of payments from Owners or their insurance carriers under Subsection 11.3.2 hereof), are not sufficient to defray such estimated costs, the Board shall present to the Owners a budget containing a Special Assessment to be made against all the Units as provided in Section 10.7 hereof, in sufficient amounts to provide funds to pay the shortfall; such Budget shall be ratified in the manner described in Section 10.2 hereof, but pursuant to RCW 64.90.470(8)(c), the vote necessary to reject the Budget shall be that of eighty percent (80%) of the Unit Owners. If at any time during reconstruction and repair, or upon completion of reconstruction or repair, the funds for payment of the costs thereof are insufficient, the Board shall present a further Budget to the Owners containing a Special Assessment, in sufficient amounts to provide funds for the payment of such costs.

11.7. Miscellaneous.

The provisions of this Article XI shall constitute the procedure by which a determination is made by the Unit Owners to repair, restore, reconstruct or rebuild the Condominium following casualty thereto. The purpose of this Article XI shall be to provide a fair and equitable method of allocating the costs of repair and restoration and making a determination for repair and restoration

if all or a portion of the improvements are damaged or destroyed. The provisions of this Article XI shall be liberally construed to accomplish such purpose.

## ARTICLE XII CONDEMNATION

### 12.1. Condemnation Affecting Whole Unit.

If a Unit is acquired by condemnation, or if part of a Unit is acquired by condemnation leaving the Unit Owner with a remnant of a Unit that may not practically or lawfully be used for any purpose permitted by this Declaration, the award must compensate the Unit Owner for the Owner's Unit and its appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, all that Unit's Allocated Interests are automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this Subsection is thereafter a Common Element.

### 12.2. Condemnation of Part of Unit.

Except as provided in Section 12.1 hereof, if part of a Unit is acquired by condemnation, the award must compensate the Unit Owner for the reduction in value of the Unit and its appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides: (a) that Unit's Allocated Interests are reduced in proportion to the reduction in the size of the Unit; and (b) the portion of the Allocated Interests divested from the partially acquired Unit are automatically reallocated to that Unit and the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests.

### 12.3. Condemnation of Common Elements.

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

### 12.4. Condemnation of Limited Common Elements.

Any portion of an award attributable to the acquisition of a Limited Common Element must be equally divided among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

12.5. Association Necessary Party to Proceeding.

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

12.6. Complete Taking.

In the event of a complete taking of the Condominium, or in the event that the taking by the condemning authority is so substantial as to render the remainder of the Condominium unsuitable or undesirable for use by the remaining Unit Owners, then the Condominium shall (in the case of complete taking) or may (as to a partial taking) be terminated in accordance with the terms and conditions of RCW 64.90.030(1), and Article XV hereof.

12.7. Reconstruction and Repair.

Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XI hereof, provided that the Board 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 XI.

12.8. Notice to Eligible Mortgagees.

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

12.9. Payment of Award.

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

ARTICLE XIII  
COMPLIANCE WITH LAW AND COVENANTS

13.1. Compliance by Owners and Occupants.

Each Owner, tenant or other Occupant of a Unit shall comply strictly with the provisions of the Governing Law and the Governing Documents or Bylaws. All remedies provided to the Association in this Article may be enforced against any tenant or other Occupant of a Unit.

13.2. Liability for Conduct Causing Common Expense.

13.2.1. Liability for Negligence. Any expense of the Association caused by the negligence of any Unit Owner or that Unit Owner's tenant, guest, invitee or Occupant may be assessed against the Unit Owner's Unit after notice and an opportunity to be heard, to the extent of the Association's deductible and any expenses not covered under an insurance policy issued to the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. See Section 10.8 hereof.

13.2.2. Liability for Gross Negligence or Willful Misconduct. To the extent that any expense of the Association is caused by willful misconduct or gross negligence of any Unit Owner or that Unit Owner's tenant, guest, invitee or Occupant may be assessed against the Unit Owner's Unit after notice and an opportunity to be heard, even if the Association maintains insurance with respect to that damage or Common Expense. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. See Section 10.8 hereof.

13.2.3. Maintenance of Minimum Temperature in Units. For the protection of the Units and Common Elements, and for the Association to retain the ability to acquire property insurance at reasonable rates, each Owner must continuously maintain both heat and power in his or her Unit, whether it is vacant or occupied. All Units, whether vacant or occupied, must be maintained at a minimum temperature of 55 degrees Fahrenheit at all times.

13.2.4. Owner's Liability for Damages Arising from Unoccupied Unit. Without limiting the provisions of other Subsections of this Section 13.2. hereof, an Owner may be held liable for all damages to the Owner's Unit, to the Common Elements or to any other Unit, that result from conditions that arise within the Owner's Unit during a period of time that the Owner has left the Unit unoccupied for a period of thirty days or more. Owners of Units which will be or have been vacant for more than thirty (30) days must notify the Board of such vacancy and turn off the water supply to the Unit at its main valve. The Association shall have the right to inspect Units for compliance and shall have the right to levy fines for noncompliance and otherwise enforce this Section in any manner provided in the Governing Documents or Bylaws.

13.3. Enforcement by Association.

13.3.1. General Enforcement Rights. The Board of Directors shall have primary responsibility for maintaining and enforcing compliance with the covenants, conditions and restrictions contained in the Governing Documents or Bylaws. Without limiting the authority and powers conferred upon the Board by the Governing Law, the Board shall have the rights, powers and duties described in Section 7 of the initial Bylaws.

13.3.2. Certain Claims against Declarant. Pursuant to RCW 64.90.685(2), the initial Bylaws for the Association contain provisions requiring a process of binding arbitration to resolve disputes between the Association, its members, and the Declarant. Unless the Declarant agrees in writing to modify such provisions, any disputes shall be resolved in the manner described in the initial Bylaws.

13.4. Tenants and other Occupants Subject to Rights and Responsibilities of Owners.

13.4.1. General Principles. Any Tenant or other Occupant of a Unit shall be deemed to be bound by all portions of the Governing Documents or Bylaws that are binding upon the Owner thereof, other than the direct obligation to pay Common Expense Assessments to the Association. All rights, remedies, and procedures available to the Association when dealing with Owners under the Governing Documents or Bylaws shall be available to the Association when dealing with any tenant or other Occupant of an Owner.

13.4.2. Remedies Against Tenants. If a tenant of a Unit Owner violates the Governing Documents, in addition to exercising any of its powers against the Unit Owner, the Association may:

(a) Exercise directly against the tenant the powers described in RCW 64.90.480(2)(l);

(b) After giving Notice to the tenant and the Unit Owner and an opportunity to be heard, levy reasonable fines against the tenant and the Unit Owner for the violation; and

(c) Enforce any other rights against the tenant for the violation that the Unit Owner as the landlord could lawfully have exercised under the lease or that the Association could lawfully have exercised directly against the Unit Owner, or both. The rights referred to in this Subsection may be exercised only if the tenant or Unit Owner fails to cure the violation within ten days after the Association notifies the tenant and Unit Owner of that violation.

13.4.3. Association's Rights Under Leases. The Association shall have the right (but not the obligation) to terminate the lease of a tenant who, following a hearing held under provisions of the Bylaws regarding the imposition of sanctions, has been found to have violated the Governing Documents; the Association shall be deemed a "real party in interest" in any legal proceeding brought to enforce this right. Unless a lease otherwise provides, the provisions of Subsection 13.4.2 above do not: (a) Affect rights that the Unit Owner has to enforce the lease or that the Association has under other law; or (b) Permit the Association to enforce a lease to which it is not a party in the absence of a violation of the Governing Documents.

13.5. Board's Discretion regarding Enforcement.

13.5.1. General Discretion. The Board may determine whether to take enforcement action by exercising the Association's power to impose sanctions or commencing an action for a violation

of the Governing Documents, including whether to compromise any claim for unpaid Assessments or other claim made by or against it.

13.5.2. No Absolute Duty to Enforce. The Board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented: (a) The Association's legal position does not justify taking any or further enforcement action; (b) The covenant, restriction, or Rule being enforced is, or is likely to be construed as, inconsistent with law; (c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the Association's resources; or (d) It is not in the Association's best interests to pursue an enforcement action.

13.5.3. Exercise of Discretion Establishes no Precedent. The Board's decision under Subsections 13.5.1 and 13.5.2 above to not pursue enforcement under one set of circumstances does not prevent the Board from taking enforcement action under another set of circumstances, but the Board may not be arbitrary or capricious in taking enforcement action.

13.6. Remedies for Association, Owners and Occupants.

While the Board has enforcement authority as provided above in this Article XIII, Unit Owners and other Occupants who are or may be harmed or aggrieved in some fashion also retain legal rights of enforcement on their own behalf and retain such remedies as are available under the law and may bring an action to enforce a right granted or obligation imposed under the Governing Law or the Governing Documents. The court may award reasonable attorneys' fees and costs to the prevailing party in any such proceeding.

ARTICLE XIV  
LIMITATION OF LIABILITY

14.1. Association Not a Guarantor - No Liability for Utility Failure, Etc.

The Association is not a guarantor of the health, safety or property of the Unit Owners and other Occupants of the Condominium. Except to the extent covered by insurance obtained by the Board pursuant to Article XI, neither the Association nor the Board or the Declarant shall be liable for any failure of any utility or other service obtained by the Board, or for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust or sand that may leak or flow from outside or from any parts of the Buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place, or damage from mold or rot, or for inconvenience or discomfort resulting from any action taken to make repairs to the Property, or to comply with any law, ordinance or order of a governmental authority. No diminution or abatement of liability for Common Expense Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

14.2. No Bailment.

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

14.3. Liability of Directors and Directors - Indemnification.

14.3.1. Liability of Directors and Officers. In the performance of their duties, Officers and Board members must exercise the degree of care and loyalty to the Association required of an officer or director of a corporation organized and are subject to the conflict-of-interest rules governing directors and officers, under chapter 24.06 RCW.

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

14.4. Justification for Limitations on Liability.

The Association is required to maintain property and liability insurance more particularly described in Article 11 of this Declaration. Such coverage exists for the benefit of the Association and its Unit Owner members. The limitations of liability contained above in this Article 14 are designed to insulate the Association from liability for types of harm not covered by such insurance, and/or to encourage people to run for and hold positions as Directors and Officers in the Association generally without fear of personal liability arising from such service. These provisions are intended to represent an equitable sharing of risks, losses and liabilities between the Association and its members. Unit Owners and tenants are expected to acquire their own insurance, described with greater particularity in Section 11.5 hereof, to protect themselves from the sorts of harm, damage, loss, inconvenience or discomfort that may be suffered as a result of the application of this Article 14.

ARTICLE XV  
MORTGAGEE PROTECTION

15.1. Rights of Secured Lenders.

15.1.1 General Authority Consistent with Governing Law. Pursuant to RCW 64.90.295, this Declaration provides that specified percentages of lenders who hold security interests encumbering Units in the Condominium, or lenders who have extended credit to the Association, have rights to approve specified actions of the Unit Owners or the Association as a condition to the effectiveness of those actions, but no requirement for such approval may operate to:

(a) Deny or delegate control over the general administrative affairs of the Association by the Unit Owners or the Board;

(b) Prevent the Association or the Board from commencing, intervening in, or settling any litigation or proceeding; or

(c) Prevent the Association's Board or any other insurance trustee from receiving and distributing any insurance proceeds except pursuant to RCW 64.90.470.

15.1.2 Rights Available only to Eligible Mortgagees. With respect to any action requiring the consent of a specified number or percentage of mortgagees, the consent of only Eligible Mortgagees holding a first lien security interest need be obtained and the percentage must be based upon the votes attributable to Units with respect to which Eligible Mortgagees have an interest.

15.2. Rights of Secured Lenders – Specific Provisions.

15.2.1. Consent of Eligible Mortgagees – Implied Approval in Absence of Response.

15.2.1.1. Consent of Eligible Mortgagees. Wherever in this Declaration the approval or consent of a specified percentage of Mortgagees is required, it shall mean, pursuant to RCW 64.90.295(2), the consent of only Eligible Mortgagees holding a first lien security interest need be obtained and the percentage must be based upon the votes attributable to Units with respect to which Eligible Mortgagees have an interest.

15.2.1.2. Implied Approval by Mortgagee. The failure of an Eligible Mortgagee to respond within sixty (60) days to a written request from the Association delivered by certified or registered mail to such Eligible Mortgagee, "return receipt requested," seeking approval of [i] an amendment to the Condominium Declaration or the Articles of Incorporation or Bylaws of the Association, or [ii] any other proposed action of the Association as to which the approval of Eligible Mortgagees is required, shall constitute an implied approval by such Eligible Mortgagee of such amendment or other action.

### 15.3. Notice of Actions.

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

(a) Any condemnation loss or any casualty loss that affects a material portion of the Condominium or any Unit in which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgagee;

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

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

(d) Any proposed action that would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 15.4. (in which case, Notice shall be provided by certified or registered mail, "return receipt requested"); and

(e) Any judgment rendered against the Association in excess of \$5,000.00 that is not covered by insurance.

### 15.4. Consent and Notice Required.

#### 15.4.1. Document Changes.

Notwithstanding any lower requirement permitted by this Declaration or the Governing Law, no amendment of any material provision of the Governing Documents by the Association or Unit Owners described in this Subsection, the effect of which would have a material adverse effect on lenders, may be effective without Notice to all Eligible Mortgagees, as required by Section 15.3.(d) above, and the approval by Owners of Units to which at least sixty-seven percent (67%) (or any greater Unit Owner vote required in Section 17.3 of this Declaration or the Governing Law) of the votes in the Association are allocated, and approval in writing by Eligible Mortgagees who represent at least sixty-seven percent (67%) (or any greater Eligible Mortgagee approval required by this Declaration) of the votes attributable to Units with respect to which Eligible Mortgagees have an interest; the following (other than those taken pursuant to rights reserved by the Declarant as Development Rights) are examples of actions that Fannie Mae historically viewed as holding the potential for a material adverse effect on lenders:

(a) Voting rights;

(b) Assessment liens or priority of Assessment liens;

(c) Reductions in requirements for Reserves for maintenance, repair and replacement of Common Elements,

- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the General Common Elements or Limited Common Elements, or rights to their use, except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only the Eligible Mortgagees holding mortgages in such Units need approve such action;
- (f) Redefinitions of boundaries of Units, except that when boundaries of only adjoining Units are involved, or when a Unit is being lawfully subdivided by its Owner pursuant to Section 4.8 or 4.9 hereof, then only those Unit Owners and the Eligible Mortgagees holding mortgages in such Unit or Units need must approve such action;
- (g) Convertibility of Units into Common Elements or Common Elements into Units;
- (h) Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- (i) Hazard or fidelity insurance requirements;
- (j) Imposition of any restrictions on the leasing of Units;
- (k) Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (l) Restoration or repair of the Condominium after damage or partial condemnation in a manner other than that specified in the Governing Documents; and
- (m) Any provision that expressly benefits mortgage holders, insurers, or guarantors, where the amendment would have a material adverse effect on any such party.

#### 15.4.2. Actions.

Notwithstanding any lower requirement permitted by this Declaration or the Governing Law, the Association may not take any action that would have a material adverse effect on lenders, without Notice to all Eligible Mortgagees as required by Section 15.2(d) above, approval by Owners of Units to which at least sixty-seven percent (67%) (or the indicated percentage, if different) of the votes in the Association are allocated, and approval in writing by Eligible Mortgagees who represent at least sixty-seven percent (67%) (or the percentage indicated below, if different,) of the votes attributable to Units with respect to which Eligible Mortgagees have an interest; the following (other than those taken pursuant to rights reserved by the Declarant as Development Rights) are examples of actions that Fannie Mae historically viewed as holding the potential for a material adverse effect on lenders:

(a) Any action to abandon or terminate the legal status of the Condominium after condemnation or substantial destruction.

(b) Any action to abandon or terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation, as to which a sixty-seven percent (67%) Eligible Mortgagee approval is required.

(c) Abandon, partition, subdivide, encumber, sell, transfer or convey the Common Elements or any portion thereof, as to which the approval of Owners to which at least eighty percent (80%) of the votes in the Association are allocated is required, and the procedures specified in Subpart 15.3. hereof must be followed. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Association will not be deemed a transfer within the meaning of this clause;

(d) Change any of the Allocated Interests allocated to any Unit other than as permitted in Section 4.8 or 4.9 hereof; in any other case the vote or agreement of the Owner of each Unit particularly affected and his or her Mortgagee and the Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated other than the Declarant must be obtained, pursuant to Section 17.3 hereof and to RCW 64.90.285(4).

(e) Increase the number of Units, change the boundaries of any Unit (other than as provided in Section 4.8 or 4.9 hereof) or change the uses to which any Unit is restricted, as to which the approval of Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated must be obtained, pursuant to Section 17.3 hereof and to RCW 64.90.285(4).

(f) The assignment of the future income of the Association, including its right to receive Common Expense Assessments.

(g) The restoration or repair of the Property after hazard damage, as to which the approval of Owners to which at least eighty percent (80%) of the votes in the Association are allocated is required, or after a partial condemnation, in a manner other than specified in the Governing Documents; and

(h) The merger of the Condominium with any other common interest community.

#### 15.4.3. Timing of Payment of Assessments.

The Association may not change the period for collection of regularly budgeted Common Expense Assessments to other than monthly without the consent of all Eligible Mortgagees.

#### 15.5. Development Rights.

No Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding mortgages in the Development Rights consent to the exercise, abandonment, or termination.

15.6. Inspection of Books.

The Association must maintain current copies of the Declaration, Bylaws, Articles of Incorporation, Rules, books and records, and financial statements. The Association shall permit any Eligible Mortgagee or other first mortgagee of a Unit, to inspect the books and records of the Association during normal business hours.

15.7. Financial Statements.

The Association shall provide any Mortgagee who submits a written request, a copy of an annual financial statement within one hundred twenty (120) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if any Eligible Mortgagee requests it, in which case, the Eligible Mortgagee shall bear the cost of the audit.

15.8. Enforcement.

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

15.9. Attendance at Meetings.

Any representative of an Eligible Mortgagee may attend and address any Meeting that a Unit Owner may attend.

15.10. Appointment of Trustee.

In the event of damage or destruction under Article XI or condemnation of all or a portion of the Condominium, any Eligible Mortgagee may require that such proceeds be payable to a Trustee established pursuant to Section 11.7 of this Declaration. Proceeds will thereafter be distributed pursuant to Article XI or pursuant to a condemnation award.

15.11. Limitations on Mortgagees' Rights.

No requirement for approval contained in this Article may operate to (1) deny or delegate control over the general administrative affairs of the Association by the Unit Owners or the Board of Directors, or (2) prevent the Association or the Board of Directors from commencing, intervening in, or settling any litigation or proceeding, or (3) prevent any insurance trustee or the association from receiving and distributing any insurance proceeds except pursuant to RCW 64.90.470.

ARTICLE XVI  
EASEMENTS

16.1. Easements for Units, Unit Owners and Association Functions.

16.1.1. Easements for Units. Each Unit has an unrestricted, perpetual easement in and through each other Unit and the Common and Limited Common Elements for support and for utilities and, subject to the provisions of RCW 64.90.405(2)(f) and 64.90.465, each Unit Owner has an unrestricted perpetual right of ingress to and egress from his or her Unit over the Common Elements.

16.1.2. Units Subject to Easement Rights. The Units in the Condominium are subject to rights of access in favor of the Association and other Unit Owners. See Subsections 5.6.2 and 8.4.3 hereof for further details.

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

16.1.4. Utility and Access for Repair Easements. Each Unit shall have a non-exclusive easement over the other Unit to the extent necessary for all existing utility lines that serve the Owner's Unit and for a right of access to the utility line serving the Owner's Unit for the purpose of repair and replacement, provided the Owner promptly restores the other Unit to its prior condition.

16.2. Easement for Emergency Access.

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

16.3. Easements for Declarant.

The Declarant, pursuant to the Governing Law, hereby reserves easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or for exercising Special Declarant Rights, whether arising under the Governing Law or reserved in this Declaration.

16.4. Other Easements.

16.4.1. General Provisions. Easements shown on the Survey Map filed concurrently with this Declaration are hereby declared and established. Reference should be made to the Survey Map.

16.4.2. Solar Panel Easement. There are thirty (30) solar panels located on the roof of the residence within Unit 1. As described in Article V the solar panels are a Common Element serving both Units. To the extent necessary, a non-exclusive perpetual easement is hereby granted in favor of the Association on, over and across the area of the roof as shown on the Survey Map as the location of the solar panels.

16.4.2.1 Solar Panel Details. The installation of the solar panels is located on the roof of the residence located within Unit 1 as more particularly shown on the Survey Map. The Association shall be responsible for all Upkeep of the solar panels and related facilities as well as for all electrical utility approvals, and interconnection and metering arrangements and costs, including, without limitation any upgrades that may be required. The Association will be responsible for any testing as may be required by local electrical utility and any legal regulatory requirements and perform all of the work as may be required in order for the solar panels to work properly. All work performed by or on behalf of the Association, including all maintenance, repairs, replacements, upgrading, modifying, and removing shall be subject to the following:

- (a) the proper functioning of the systems;
- (b) the work shall be of a nonstructural nature and the structural integrity of the residence shall not be affected;
- (c) the Association shall cause those contractors engaged to perform work to deliver to the Association Certificates of Insurance evidencing policies of commercial general liability insurance and workers' compensation insurance.
- (d) the work shall be performed in compliance with all applicable governmental approvals;
- (e) the work shall be performed continuously and diligently without interfering the use and operations conducted at the residence to the extent possible and in a good, workman like manner; and
- (f) the work shall be paid for in full by the Association free and clear of all construction mechanics and any and all other liens and encumbrances.

If at any time, a roof leak or other roof issue is discovered and the Owner of Unit 1 reasonably determines that some portion or all of the solar panels must be temporarily removed in order to locate or repair the leak or otherwise fix the roof issue, the Owner of Unit 1 shall notify the Association immediately. The parties agree to work together to ensure that the solar panels

may be removed such that the roof may be fixed and the solar panels can be fully reinstalled upon completion of the work.

The Association shall pay any taxes and assessments that may be imposed on the solar panel improvements. The Association shall also pay any personal property taxes that arise out of or are attributable to the solar panels improvements. To the extent that any of the taxes and assessments payable by Association are assessed with Unit 1's real estate taxes, the parties shall cooperate in good faith in a good faith effort to cause such taxes assessments to be separately assessed. The Association shall pay all such tax assessments directly to the taxing authority as the same become due and payable.

ARTICLE XVII  
AMENDMENT OF DECLARATION, SURVEY MAP & PLANS

17.1. Procedure for Amendment of Declaration.

17.1.1. General Provisions for Amendments. Amendments to the Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" that sets forth the entire amendment. For purposes hereof, "amendment" means any change to the Declaration, including adding, removing, or modifying restrictions contained in a Declaration. Except as otherwise specifically provided for in this Declaration or in the Governing Law, any proposed amendment must be approved by the Board of Directors prior to its adoption by the Owners. Except in cases of amendments that may be adopted by the Declarant unilaterally pursuant to Section 17.6 hereof, by the Association under Sections 6.4 or 17.7 hereof or under statutory authority in the case of condemnation or a termination of the condominium, or by certain Unit Owners under Sections 4.8 and 4.9 or 6.3 hereof, the Declaration may be amended only by vote or agreement of both Unit Owners.

17.1.2. Additional Provisions – Advance Notice to Owners. Amendments to the Declaration required to be executed by the Association must be executed by any authorized Officer of the Association who must certify in the amendment that it was properly adopted. Owners shall be entitled to Notice of a proposed amendment not less than thirty (30) days prior to the Meeting of the Association at which the amendment is to be considered. In the absence of fraud, an action to challenge the validity of an amendment adopted by the Association may not be brought more than one year after the amendment is recorded.

17.2. Recordation Required.

Every amendment to the Declaration must be recorded with the County Auditor and is effective only upon recording. An amendment shall be indexed in the name of the Condominium and shall contain a cross-reference by recording number to the Declaration and each previously recorded amendment thereto. An amendment other than an amendment pursuant to RCW

64.90.260(1) must be indexed in the grantee's index in the name of the Condominium and the Association and in the grantor's index in the name of the parties executing the amendment.

17.3. Special Restrictions.

17.3.1. General Restrictions. Except to the extent expressly permitted or required by other provisions of this Declaration, or of the Governing Law, no amendment may create or increase Special Declarant Rights, increase the number of Units, change the boundaries of any Unit, or change the Allocated Interests of a Unit, without the consent of Unit Owners to which at least ninety percent of the votes in the Association are allocated, including the consent of any Unit Owner of a Unit, the boundaries of which or Allocated Interest of which is changed by the amendment, and that percentage of Eligible Mortgagees specified in Article XV hereof.

17.3.2. Restrictions Affecting Special Declarant Rights. A provision in the Declaration creating Special Declarant Rights that have not expired may not be amended without the consent of the Declarant and any mortgagee of record with a security interest in the Special Declarant Right or in any real property subject thereto. The time limits specified on the exercise of Special Declarant Rights may be extended, and additional development rights may be created, if Persons entitled to cast at least eighty percent of the votes in the Association, including eighty percent of the votes allocated to Units not owned by the Declarant, agree to that action. The agreement is effective thirty days after an amendment to the Declaration reflecting the terms of the agreement is recorded unless all the Persons holding the affected Special Declarant Rights, or security interests in those rights, record a written objection within the thirty (30) day period, in which case the amendment is void, or consent in writing at the time the amendment is recorded, in which case the amendment is effective when recorded.

17.3.3. Restrictions Protecting Certain Persons. To the extent that Declaration may require the affirmative vote or approval of any particular Unit Owner or class of Unit Owners as a condition of its effectiveness, the amendment is not valid without that vote or approval. See also RCW 64.90.285(1)(b).

17.4. Amendment of Survey Map.

The Survey Map may be amended by revised versions referred to and described as to effect in an amendment to the Declaration adopted as required above, subject to the provisions of RCW 64.90.245(4). Copies of any such proposed amendment to the Survey Map shall be made available for examination by every Owner. Such amendment to the Survey Map shall also be effective, once properly adopted, upon recordation in the appropriate County offices, along with the amendment to the Declaration that accompanies it.

17.5. Consent of Mortgagees May be Required – Limitations on Such Rights.

The consent of specified percentages of Eligible Mortgagees may be required, pursuant to Article XV of this Declaration, prior to recordation of certain amendments to the Governing Documents. Such consent is deemed granted if a refusal to consent in a Record is not received by

the Association within sixty (60) days after the Association delivers Notice of the proposed amendment to the holder at an address for Notice provided to the Association by the holder, or if the Association mails the Notice to the holder by certified mail, return receipt requested, at that address. If the holder has not provided an address for Notice to the Association, the Association must provide Notice to the address appearing in the security interest of record.

17.6. Amendments by Declarant.

17.6.1. Unilateral Amendments. Subject to the provisions of Section 17.8 hereof, if applicable, the Declarant may unilaterally adopt and file amendments to the Governing Documents for so long as the Declarant is the Owner of any Unit in the Condominium, in order to: (a) conform them to the actual location of any constructed improvements and to establish, vacate and relocate utility easements, access road easements and parking areas; or (b) exercise any Development Right reserved by the Declarant under Subsection 3.3.1 of this Declaration.

17.6.2. Amendments Requiring Notice to Unit Owners. Upon thirty (30) days' advance Notice to Unit Owners, the Declarant may, without a vote of the Unit Owners or approval by the Board, unilaterally adopt, execute, and record a corrective amendment or supplement to the Governing Documents to correct a mathematical mistake, an inconsistency, or a scrivener's error, or clarify an ambiguity in the Governing Documents with respect to an objectively verifiable fact including, without limitation, recalculating the undivided interest in the Common Elements, the liability for Common Expenses, or the number of votes in the Unit Owners' Association appertaining to a Unit, within five (5) years after the recordation or adoption of the Governing Document containing or creating the mistake, inconsistency, error, or ambiguity. No such amendment or supplement may materially reduce what the obligations of the Declarant would have been if the mistake, inconsistency, error, or ambiguity had not occurred.

17.7. Amendments by Board of Directors Requiring Notice to Unit Owners.

Upon thirty (30) days' advance Notice to the Unit Owners, the Association may, upon a vote of two-thirds of the members of the Board, without a vote of the Unit Owners, adopt, execute, and record:

17.7.1. Statutory Rights. An amendment to the Declaration designed to correct or supplement the Governing Documents in cases described in Subsection 17.6.2 above, or as authorized by RCW 64.90.285(11)(c) or (d).

17.7.2. Amendment to Adopt Amendments to Governing Law. An amendment to the Declaration designed to conform the Declaration to provisions of a corrective amendment to the Governing Law adopted by the Washington State Legislature.

17.8. Amendments Following Department of VA or FHA Project Approval.

During the Declarant Control Period described in Section 8.1 hereof, if the Department of Veterans Affairs, or the Secretary of the Department of Housing And Urban Development has

given Project Approval status to this Condominium for the purpose of guaranteeing or insuring purchase money loans for Units in the Condominium, any amendment to this Declaration, the Bylaws of the Association, or the Survey Map other than those necessary to exercise a Development Right, must be approved in advance by such entity.

ARTICLE XVIII  
TERMINATION OF CONDOMINIUM

The Unit Owners may elect to terminate the Condominium status of the property only in accordance with the provisions of RCW 64.90.290 and / or RCW 64.90.226, with the requisite approval of such Mortgagees and other lienholders as may be required by law, or by Article XV hereof.

ARTICLE XIX  
NOTICE

19.1. Notice to be provided in Form of a Record.

Notice to the Association, Board, or any Owner or Occupant of a Unit under the Governing Law must be provided in the form of a Record.

19.2. Notice in a Tangible Medium.

Notice provided in a tangible medium may be transmitted by mail, private carrier, or personal delivery; telegraph or teletype; or telephone, wire, or wireless equipment that transmits a facsimile of the Notice.

19.3. Notice to Association.

Notice in a tangible medium to the Association may be addressed to the Association's Registered Agent at its Registered Office, to the Association at its principal office shown in its most recent Corporate Annual Report or provided by Notice to the Unit Owners, or to the President or Secretary of the Association at the address shown in the Association's most recent Corporate Annual Report or provided by Notice to the Unit Owners.

19.3.1. Notice to Unit Owner or Occupant. Notice in a tangible medium to a Unit Owner or Occupant must be addressed to the Unit address unless the Unit Owner or Occupant, in a Record delivered to the Association, has requested that Notices be sent to an alternate address or by other method allowed by this Section 19 and the Governing Documents. New Unit Owners must supply their names, addresses, telephone numbers and, if desirable to receive official Notice from the Association by electronic transmission, an e-mail address or other information consistent with Subsection 19.3.1 below.

19.4. Notice by Electronic Transmission.

Notice may be provided in an electronic transmission as follows:

19.4.1. Notice to Unit Owners or Board Members by Consent. Notice to Unit Owners or Board members by electronic transmission is effective only upon Unit Owners and Board members who have consented, in the form of a Record, to receive electronically transmitted Notices under the Governing Law and have designated in the consent the address, location, or system to which such Notices may be electronically transmitted, provided that such Notice otherwise complies with any other requirements of the Governing Law and other applicable law.

19.4.2. Notice Deemed to Include Associated Materials. Notice to Unit Owners or Board members under this Subsection includes material that the Governing Law or the Governing Documents require or permit to accompany the Notice.

19.4.3. Consent to Notice by Electronic Transmission may be Revoked. A Unit Owner or Board member who has consented to receipt of electronically transmitted Notices may revoke this consent by delivering a revocation to the Association in the form of a Record.

19.4.4. Consent may be Automatically Revoked. The consent of any Unit Owner or Board member is revoked if: The Association is unable to electronically transmit two consecutive Notices given by the Association in accordance with the consent, and this inability becomes known to the Secretary of the Association or any other Person responsible for giving the Notice. The inadvertent failure by the Association to treat this inability as a revocation does not invalidate any Meeting or other action.

19.4.5. Alternative Methods of Notice by Electronic Transmission. Notice to Unit Owners or Board members who have consented to receipt of electronically transmitted Notices may be provided by posting the Notice on an electronic network and delivering to the Unit Owner or Board member a separate Record of the posting, together with comprehensible instructions regarding how to obtain access to the posting on the electronic network.

19.4.6. When Electronic Notice to Association is Effective. Notice to the Association in an electronic transmission is effective only after the Association has designated in a Record an address, location, or system to which the Notices may be electronically transmitted.

19.5. Alternative Methods of Giving Notice not Prescribed by Statute.

Notice may be given by any other method reasonably calculated to provide notice to the recipient.

19.6. When Notice is Effective.

Notice is effective as follows:

19.6.1. Effectiveness of Notice Provided in Tangible Medium. Notice provided in a tangible medium is effective as of the date of hand delivery, deposit with the carrier, or when sent by fax.

19.6.2. Effectiveness of Notice Provided in Electronic Transmission. Notice provided in an electronic transmission is effective as of the date it:

(a) Is electronically transmitted to an address, location, or system designated by the recipient for that purpose; or

(b) Has been posted on an electronic network and a separate record of the posting has been sent to the recipient containing instructions regarding how to obtain access to the posting on the electronic network.

19.7. Ineffectiveness of Notice does not Invalidate Action by Association.

The ineffectiveness of a good-faith effort to deliver Notice by an authorized means does not invalidate action taken at or without a Meeting.

19.8. When Governing Law Requires Alternative Methods of Notice.

If the Governing Law prescribes different or additional notice requirements for particular circumstances, those requirements govern.

ARTICLE XX  
MISCELLANEOUS

20.1. Severability.

All provisions of the Governing Documents and Organizational Documents are severable. If any provision of a governing document, or its application to any Person or circumstances, is held invalid, the remainder of the governing document, Organizational Document or application to other Persons or circumstances is not affected.

20.2. No Right of First Refusal.

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

20.3. No Discrimination.

The Association shall not discriminate on the basis of race, color, religion, national origin, familial status, handicap or other protected class. The Association shall make reasonable

accommodations in its policies and procedures and permit reasonable modifications of premises where necessary or appropriate to comply with law.

20.4. Obligation of Good Faith.

Every duty governed under this Declaration or the Governing Law imposes an obligation of good faith in its performance or enforcement.

20.5. Effective Date.

This Declaration shall take effect upon recording.

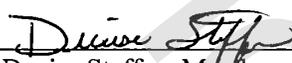
*[Signature on Following Page]*

DATED this 14 day of June, 2024.

DECLARANT:

37<sup>TH</sup> STREET PROPERTIES LLC

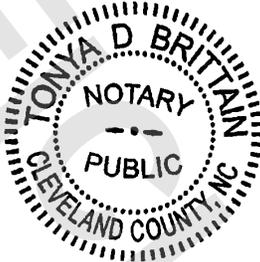
By   
Philip Steffen, Member

By   
Denise Steffen, Member

STATE OF North Carolina )  
 ) ss.  
COUNTY OF Cleveland )

I hereby certify that I know or have satisfactory evidence that Philip Steffen 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 Member of the Declarant, 37<sup>th</sup> Street Properties, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 6-14-2024 .

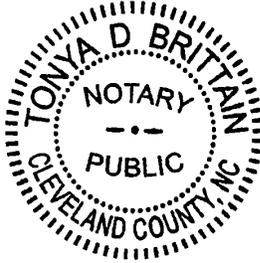


Tonya D Brittain  
PRINTED NAME: Tonya D Brittain  
NOTARY PUBLIC for the State of North Carolina  
residing in Cleveland County  
My Commission expires 02-23-2027

STATE OF North Carolina )  
 ) ss.  
COUNTY OF Cleveland )

I hereby certify that I know or have satisfactory evidence that Denise Steffen is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Member of the Declarant, 37<sup>th</sup> Street Properties, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 6-14-2024 .



Tonya D Brittain  
PRINTED NAME: Tonya D Brittain  
NOTARY PUBLIC for the State of North Carolina  
residing in Cleveland County  
My Commission expires 02-23-2027

**EXHIBIT "A"**  
**TO DECLARATION FOR**  
**37<sup>TH</sup> STREET CONDOMINIUM**

LEGAL DESCRIPTION OF THE ENTIRE CONDOMINIUM:

The land in the County of Skagit, State of Washington, described as follows:

The West 130 feet of the East 440 feet of that portion of the following described tract lying South of the South line of 37th

Street as established in the City of Anacortes.

Beginning at the Southwest corner of Government Lot 2 of Section 30, Township 35 North, Range 2 East, W.M.;  
thence East 520.5 feet;  
thence North 166.5 feet to the true point of beginning;  
thence North 250.6 feet;  
thence East 520.5 feet;  
thence South 250.6 feet;  
thence West 520.5 feet to the true point of beginning.  
Situating in Skagit County, Washington.

**EXHIBIT "B"**  
**TO DECLARATION FOR 37<sup>TH</sup> STREET CONDOMINIUM**  
**UNIT DESCRIPTION**

Unit No.	Square Footage†	Number of Bedrooms	Number of Bathrooms	Level(s) in Building	Allocated Interests – Common El. & Assessments*	Allocated Interest Votes
1	6655	4	4.25	2	50%	1
2	5248	2	1	1	50%	1
Totals	11903				100%	2

\* Allocated Interests are the percentages of undivided interests in the Common Elements, fractional liability for the Common Expenses of the Association, and portions of the votes in the Association, allocated by the Declarant to each Unit, described in Sections 5.3, 7.4.2 and 10.6 of this Declaration.

† Square footage is the surface area at grade of the entire Unit and not the interior square footage of any residence or improvement located within the Unit