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**DOCUMENT TITLE(s)**

1. Declaration of Covenants, Conditions, and Restrictions for Sixth Street Station II and III Homeowners Association
- 2.
- 3.
- 4.

**REFERENCE NUMBER(s) OF DOCUMENTS ASSIGNED OR RELEASED:**

Additional reference numbers on page z \_\_\_\_\_ of document

1. AF # 4284845
- 2.
- 3.

**GRANTOR(s): (last name, then first name and initials)**

1. Redinger Development Corporation
- 2.
- 3.

Additional names on page \_\_\_\_\_ of document

**GRANTEE(s): (last name, then first name and initials)**

1. To the Public
- 2.
- 3.

Additional names on page \_\_\_\_\_ of document

**TRUSTEE:**

- 1.

**LEGAL DESCRIPTION (abbreviated: ie Lot, Block, Plat or Section, Township, Range)**

Bk 311 Pg 476 Sixth Street Station Subdivision Planned Unit Development, Formerly know as Commerce Parkway II & III Subdivision

Additional legal description is on page \_\_\_\_\_ of document

**ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER(s):**

1. 091058-003
- 2.
- 3.

Additional legal description is on page \_\_\_\_\_ of document

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The Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR**

**Sixth Street Station II & III HOMEOWNERS ASSOCIATION**

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## TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Subject Matter</u>
"A"	Property Initially Submitted (Property Subject to Declaration)
"C"	By-Laws of <b>Sixth Street Station II &amp; III</b> Homeowners Association

**DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
HOMEOWNERS ASSOCIATION**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR **Sixth Street Station II & III HOMEOWNERS ASSOCIATION** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by Redinger Development, Inc., a Washington corporation, duly authorized to transact business in the state of Washington (the "Declarant").

Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by this reference.

Declarant intends by this Declaration to impose upon the Properties (as defined herein) mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within the Properties. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as are now or hereafter subjected to this Declaration.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property which is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and shall be appurtenant thereto, and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof. This Declaration does not and is not intended to create a condominium within the meaning of the Washington Horizontal Property Regime Act (condominiums), RCW § 64.32 and/or RCW 64.34, et seq.

All lots in the development are subject to the covenants.

Article I  
Definitions

Section 1. "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, which by the terms of this Declaration become the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Properties, or any public rights-of-way within or adjacent to the Properties, may be part of the Area of Common Responsibility.

Section 2. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of Sixth Street Station II & III Homeowners Association, as filed with the Secretary of State of the State of Washington.

Section 3. "Board of Directors" or "Board" shall mean and refer to the elected body having its normal meaning under Washington corporate law. The use of the term "association" or "associations" in lower case shall refer to any condominium association or other owners association having jurisdiction over any part of the Properties.

Section 4. "Class "B" Control Period" shall mean and refer to the period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors, as provided in Article III, Section 2, of the By-Laws.

Section 5. "Common Area" shall be an inclusive term referring to all General Common Area as defined herein.

Section 6. "Common Assessments" shall mean and refer to assessments levied against all Units in the Properties to fund Common Expenses.

Section 7. "Common Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the general benefit of all Unit Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association, but shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction or installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members representing a majority of the total Class "A" vote of the Association.

Section 8. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties as set forth in Article XI. Such standard may be more specifically determined by the Board of Directors and the New Construction Committee. In no event, however, shall such standard be reduced below that standard established by the Declarant as of the termination of the Class "B" Control Period.

Section 9. "Declarant" shall mean and refer to Redinger Development, Inc., a Washington Corporation, or its successors, successors-in-title or assigns who take title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

Section 10. "General Common Area" shall mean all real and personal property which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners.

Section 11. "Lighting Improvement District" or "LID" shall mean and refer to a local unit of special purpose government which has been created to provide street light systems and lighting services to the area in which the Properties are located.

Section 12. "Member" shall mean and refer to a Person entitled to membership in the Association, as provided herein and in the By-Laws.

Section 13. "Mortgage" shall mean and refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

Section 14. "Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

Section 15. "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

Section 16. "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Unit which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, then the purchaser (rather than the fee owner) will be considered the Owner. If a Unit is subject to a written lease with a term in excess of one (1) year and the lease specifically so provides, then upon filing a copy of the lease with the Board of Directors the lessee (rather than the fee owner) will be considered the Owner for the purpose of exercising all privileges of membership in the Association.

Section 17. "Person" means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

Section 18. "Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto, together with such additional property as is hereafter subjected to this Declaration by Supplemental Declaration.

Section 19. "Association" shall mean and refer to **Sixth Street Station II & III Homeowners Association**, a non profit organization, its successors or assigns.

Section 20. "By-Laws" shall mean and refer to the By-Laws of **Sixth Street Station II & III Homeowners Association**, attached hereto as Exhibit "C" and incorporated herein by reference, as they may be amended from time to time.

Section 21. "Special Assessment" shall mean and refer to assessments levied in accordance with Article X, Section 3 of this Declaration.

Section 22. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to the instrument recorded by

the Association pursuant to Article VIII, Section 2 of this Declaration to subject additional property to this Declaration.

Section 23. "Unit" shall mean a portion of the Properties, whether developed or undeveloped, intended for development, use, and occupancy as an attached or detached residence for a single family, and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or a part of the Properties. The term shall include all portions of the lot owned as well as any structure thereon. The term shall not include apartment buildings or complexes or other multi-family structures intended for development as rental projects.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the site plan approved by Declarant, until such time as a certificate of occupancy is issued on all or a portion thereof by the building department of the City of Battle Ground, Washington. After issuance of a certificate of occupancy on any portion thereof, the portion designated in the certificate of occupancy shall constitute a separate Unit or Units as determined above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

Article II.  
Property Rights

Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area appurtenant to the title of the lot, subject to:

(a) this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association;

(b) the right of the Association to limit the number of guests, and to adopt rules regulating the use and enjoyment of the Common Area;

(c) the right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation, of the Declaration, By-Laws, or rules of the Association after notice and a hearing pursuant to Article III, Section 23 of the By-Laws;

(d) the right of the Association, acting through the Board, to grant easements and to dedicate or transfer all or any part of the Common Area pursuant to Article XIII, Section 5 hereof;

(e) the right of the Association to impose reasonable membership requirements and charge reasonable admission or other fees for the use of any recreational facility situated upon the Common Area;

(f) the right of the Board to permit nonmember use of the Common Area upon payment of use fees established by the Board; and

(g) the right of the Association, acting through the Board, to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred subject to the approval requirements set forth in Article XIV, Sections 2 and 3 hereof.

Any Owner may delegate his or her right of use and enjoyment to the members of his or her family, lessees and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Unit shall be deemed to have delegated all such rights to the Unit's lessee.

The initial Common Area shall be conveyed to the Association prior to the conveyance of a Unit to any Unit purchaser other than a builder or developer holding title for the purpose of development and resale.

### Article III. Membership and Voting Rights

Section 1. Membership. The covenants assure lot owners of automatic membership and voting rights in the association. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per lot owned. In the event the Owner of a lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-Laws. The membership rights of a lot owned by a corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary, subject to the provisions of this Declaration and the By-Laws.

Section 2. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" Members shall be all Owners with the exception of the Class "B" Member, if any. Therefore, each Class "A" Member shall be an Owner.

Class "A" Members shall be entitled to one (1) equal vote for each Unit in which they hold the interest required for membership under Section 1 hereof; there shall be only one (1) vote per Unit.

In any situation where a Member is entitled personally to exercise the vote for his or her Unit and more than one (1) Person holds the interest in such Unit required for membership, the vote for such Unit shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it.

(b) Class "B". The Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in this Declaration and the By-Laws. The Class "B" Member shall be entitled to appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Article III, Section 2, of the By-Laws. The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of:

(i) When seventy-five percent (75%) or more of the Units are owned by Persons other than the Declarant and builders or developers holding title for the purpose of development and resale; or

(ii) December 31, 2016; or

(iii) When, in its discretion, the Declarant so determines.

#### Article IV. Maintenance

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but need not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements, including all private streets, and streetlights situated upon the Common Areas, all entry features within the Properties, and such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, or by a contract or agreement for maintenance thereof by the Association. In connection with the maintenance and operations of the Area of Common Responsibility, the Association shall comply with all applicable ordinances of the City of Battle Ground in effect as of the date of recording of the Declaration and those adopted thereafter, and all amendments thereof, including, without limitation, ordinances relating to the biofiltration swale, wetland area, and the private perforated system, manholes and cleanouts, if any, and if present in the Area of Common Responsibility.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Common Assessment, notwithstanding that the Association may be entitled to reimbursement from the owner(s) of certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owners(s) thereof.

The Association shall not reduce the dollar amount of the Common Assessment below that necessary to maintain any biofiltration swale as above provided in this Section 1 without the prior approval of the Clark County Board of Commissioners. The foregoing specific requirement shall not affect the Association's responsibility with respect to the other portions of the Area of Common Responsibility.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the LID or to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

**Section 2. Owner's Responsibility.** Each Owner shall maintain his or her Unit and all structures, parking areas and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. If any Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner thereof in accordance with Article X, Section 3 of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

**Section 3. Party Walls, Roofs, Fences and Structures.**

(a) **General Rules of Law to Apply.** Except as provided for in Article XVI, each wall, roof, fence, or other structure adjoining and/or used by more than one Unit (hereinafter "party structure") built as a part of the original construction on the Units, which shall serve and separate any two (2) adjoining Units and/or which is part of one continuous structure (and/or which is within six inches of a common boundary line), shall constitute a party structure and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party structures and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Those Units built as townhouses and/or duplexes with adjoining party walls and roofs shall not be considered to be Multi-Family Structures under Article XVI, unless so designated by the Declarant.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party structure shall be shared by the Owners who make use of the party structure in equal proportions.

(c) **Damage and Destruction.** If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the party structure may restore it. If the other Owner or Owners thereafter make use of the party structure, they shall contribute to the

cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Arbitration. If any dispute arises concerning a party structure, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

#### Article V.

#### Insurance and Casualty Losses

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Area of Common Responsibility, insuring the Association and its Members for all damage or injury caused by the negligence of the Association, any of its Members or agents or any other person who has a right to occupy a unit. The public liability policy shall have at least a One Million (\$1,000,000.00) Dollar single person limit as respects bodily injury and property damage, a Three Million (\$3,000,000.00) Dollar limit per occurrence, if reasonably available, and a Five Hundred Thousand (\$500,000.00) Dollar minimum property damage limit.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses of the Association and shall be included in the Common Assessment, as defined in Article I and as more particularly described in Article X, Section 1. The policies may contain a reasonable deductible, and, in the case of casualty insurance, the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefited parties, as further identified in subsection (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company authorized to do business in the State of Washington which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available.

(b) All policies on the Common Area shall be for the benefit of the Association and its Members and their Mortgagees, as their interests may appear.

(c) Exclusive authority to adjust losses under policies obtained by the Association on the Properties shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.

(e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Clark County, Washington area.

(f) The Association's Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) a statement that no policy may be canceled, invalidated, suspended, or subject to nonrenewal on account of any one or more individual Owners;

(iv) a statement that no policy may be canceled, invalidated, suspended, or subject to nonrenewal on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee;

(v) a statement that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) a statement that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or nonrenewal.

In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Association's funds, if reasonably available, and flood insurance, if required. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available, may not be less than one-sixth (1/6) of the annual Common Assessments on all Units, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or nonrenewal.

**Section 2. Individual Insurance.** By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Unit(s) and structures constructed thereon meeting the same requirements as set forth in Section 1 of this Article V for insurance on the Common Area, unless the Association carries such insurance (which it is not obligated to do hereunder). Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Unit in a neat and attractive condition consistent with the Community-Wide Standard.

**Section 3. Damage and Destruction.**

(a) Immediately after damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Members representing at least seventy-five (75%) percent of the total Class "A" vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area or common property of a Neighborhood shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to their natural state and maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

Section 4. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies held by the Association are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

Section 5. Repair and Reconstruction. If the damage or destruction to the Common Area for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Owners on the same basis as provided for Common Assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Article VI.  
No Partition

Except as is permitted in the Declaration or amendments thereto, there shall be no judicial partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

Article VII.  
Condemnation

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least sixty-seven (67%) percent of the total Class "A" vote in the Association) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant (during the Class B Control Period only) and Members representing at least seventy-five (75%) percent of the total Class "A" vote of the Association shall otherwise determine, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply.

If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

Article VIII.  
Annexation of Additional Property

Section 1. Annexation Without Approval of Class "A" Membership. Subject to Article XIV, Section 3, Declarant shall have the unilateral right, privilege, and option, from time to time at any time until all property described on Exhibit "B" attached hereto and incorporated herein by this reference, has been subjected to this Declaration or December 31, 2016, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described in Exhibit "B". Such annexation shall be accomplished by filing in the Auditor's Office of Clark County, Washington, a Supplemental Declaration annexing such property. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Subject to Article XIV, Section 3, Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such

transferee or assignee shall be the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Section 2. Annexation With Approval of Class "A" Membership. Subject to Article XIV, Section 3, and subject to the consent of the owner thereof, the Association may annex real property other than that described on Exhibit "B", and following the expiration of the right in Section 1, any property described on Exhibit "B", to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Members representing a majority of the Class "A" votes of the Association (other than those held by Declarant) present at a meeting duly called for such purpose and of the Declarant during the Class "B" Control Period.

Annexation shall be accomplished by filing of record in the Auditor's Office of Clark County, Washington, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 2 and to ascertain the presence of a quorum at such meeting.

Section 3. Acquisition of Additional Common Area. Subject to Article XIV, Section 3, Declarant may convey to the Association additional real estate, improved or unimproved, located within the properties described in Exhibits "A" or "B" which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 4. Withdrawal of Property. Subject to Article XIV, Section 3, Declarant reserves the right to amend this Declaration unilaterally at any time during the Class B Control Period, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Properties desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

Section 5. Amendment. This Article shall not be amended without the prior written consent of Declarant during the Class B Control Period. Any amendment is also subject to Article XIV, Section 3.

Article IX.  
Rights and Obligations of the Association

Section 1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

Section 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use any recreational facilities on the Common Area. Fines may, upon adoption of applicable rules by the Board, be graduated and/or increased on a per diem basis if such fines have not been paid within 45 days of the date due. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association. A fine schedule may be adopted by the Board, up to a maximum of \$50.00 per day per violation for any violation continuing for more than 45 days, which maximum limit the Board may increase by the consumer price index, in its discretion, once every five years.

The Association, through the Board, by contract or other agreement, shall have the right to enforce county ordinances and to permit Clark County to enforce ordinances on the Properties for the benefit of the Association and its Members.

Section 4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 5. Governmental Interests. During the Class B Control Period, the Declarant shall have the authority to designate sites within the Properties, which may include Common Area owned by the Association, for fire, police, water, and sewer facilities, public schools and parks, and other public facilities.

Article X.  
Assessments

Section 1. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors, to be commenced at the time and in the manner set forth in Section 5 of this Article. There shall be two (2) types of assessments: (a) Common Assessments to fund Common Expenses for the benefit of all Members of the Association; and (b) Special Assessments as described in Section 3 below. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest (at a rate not to exceed the highest rate allowed by Washington law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each assessment is made until paid. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Unit. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed Fifty (\$50.00) Dollars for the issuance of such certificate (such sum may be indexed by the consumer price index, once every five (5) years, by the Board in the exercise of its discretion).

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. Unless the Board otherwise provides, the Common Assessments may be paid in quarterly installments. Each Owner, by acceptance of a deed to his or her Unit, acknowledges that all Common Assessments levied hereunder are annual assessments due and payable in advance on the first day of the fiscal year; nevertheless, the Board may permit any assessment to be paid in installments. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may revoke the privilege of paying in installments and require annual assessments to be paid in full immediately.

No Owner may waive or otherwise exempt himself or herself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by nonuse of Common Areas or abandonment of the Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the

Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal and/or other applicable governmental authority.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials for the payment of some portion of the Common Expenses.

Section 2. Computation of Common Assessments. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include the establishment of a reserve fund set aside specifically for the replacement of common assets, and that takes into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

The Common Assessment to be levied against each Unit for the coming year shall be set at a level which is reasonably expected to produce total income to the Association equal to the total budgeted Common Expenses, including reserves. In determining the amount of the Common Assessment, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment under Section 5 hereof on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

So long as the Declarant has the right to annex additional property pursuant to Article VIII, Section 1 hereof, the Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 1 above); provided, any such subsidy shall be conspicuously disclosed as a line item in the income portion of the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years.

The Board shall cause a copy of the Common Expense budget and notice of the amount of the Common Assessment to be levied against each Unit for the following year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved at a meeting of the Members by Members representing at least a majority of the total Class "A" vote in the Association, and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Article II, Section 4, of the By-Laws, which petition must be presented to the Board within ten (10) days of delivery of the notice of assessments.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

### Section 3. Special Assessments.

(a) Entire Membership. The Association may levy Special Assessments from time to time provided such assessment receives the affirmative vote or written consent of Members representing a majority of the total Class "A" votes in the Association and the affirmative vote or written consent of the Class "B" Member, if such then exists. Special Assessments pursuant to this paragraph shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

(b) Less Than All Members. The Association may levy a Special Assessment against any Member individually and against such Member's Unit to reimburse the Association for costs incurred in bringing a Member and his Unit into compliance with the provisions of this Declaration, any amendments hereto, the Articles, the By-Laws, or the Association rules, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing.

Section 4. Lien for Assessments. Upon recording of a notice of lien on any Unit, there shall exist a perfected lien for unpaid assessments prior and superior to all other liens and to the homestead right or claim of any unit and/or Unit owner, excepting only (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Each and every owner, by accepting transfer of a Unit to such owner, waives any applicable homestead right or claim, to the extent of superiority of such right or claim over any Association lien.

Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments, fines, late charges, interest, costs, and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 5. Date of Commencement of Assessments. The obligation to pay the assessments provided for herein shall commence as to each Unit on the first day of the month following the conveyance of the Unit to a Person other than Declarant. However, any Person who purchases a Unit shall only be obligated to pay one-half (1/2) of the regular Common Assessment levied on such Unit until the first day of the month following the issuance of a certificate of occupancy on such Unit by the building department of the City of Battle Ground, Washington. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Section 6. Subordination of the Lien to First Mortgages. The lien of assessments, including interest, late charges (subject to the limitations of Washington law), and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Unit. The sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments thereafter becoming due. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Units, including such acquirer, its successors and assigns.

Section 7. Capitalization of Association. Upon acquisition of record title to a Unit by the first purchaser thereof other than the Declarant or an owner who purchases solely for the purpose of constructing a dwelling thereon for resale, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to \$250.00 (or such greater amount as subsequently determined by the Board if not greater than \$300.00). This amount shall be in addition to, not in lieu of, the annual Common Assessment levied on the Unit and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws.

Section 8. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Common Assessments and Special Assessments:

(a) all Common Area; and

(b) all property dedicated to and accepted by any governmental authority, public utility or the LID, including, without limitation, public schools, public streets, public lights, and public parks, if any.

Article XI.  
Architectural Standards

All dwellings constructed on any portion of the Properties shall be built in accordance with plans and specifications approved by the City of Battle Ground.

This Article shall not apply to the activities of the Declarant, nor to construction or improvements or modifications to the Common Area by or on behalf of the Association.

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committees established in Section 1 of this Article XI. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

Section 1. Modifications Committee. The Board of Directors may establish a Modifications Committee (MC) to consist of at least three (3) and no more than five (5) persons, all of whom shall be appointed by, and shall serve at the discretion of, the Board of Directors. Members of the MC may include architects or similar professionals who are not Members of the Association. The MC, if established, shall have exclusive jurisdiction over modifications, repairs, additions, or alterations made on or to existing Units or structures containing Units and the open space, if any, appurtenant thereto. All such modifications, repairs, additions, or alterations shall be completed promptly in a timely manner not to exceed 3 months unless the MC authorizes a variance.

The MC shall promulgate detailed standards and procedures governing its areas of responsibility and practice. In addition thereto, the following shall apply. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the MC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her Unit, or to paint the interior of his or her Unit any color desired; provided, modifications or alterations to the interior of his or her screened porches, patios and similar portions of a Unit visible from outside the Unit shall be subject to approval hereunder. In the event that the MC fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) days after submission, the plans shall be deemed approved.

Section 2. No Waiver of Future Approvals. The approval of either the MC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any

Section 3. Variance. The MC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 4. Compliance With Guidelines. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the MC may be excluded by the Board from the Properties without liability to any person, subject to the notice and hearing procedures contained in Article III, Section 23 of the By-Laws.

Section 5. No Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither committee shall bear any responsibility of ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, any committee, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

## Article XII. Use Restrictions

The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, business offices, model units, and/or sales and marketing offices for the Declarant) as may more particularly be set forth in this Declaration and amendments hereto. Any Supplemental Declaration or additional covenants imposed on the property within any Neighborhood may impose stricter standards than those contained in this Article. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards.

The Association, acting through its Board of Directors, shall have authority to make and to enforce standards and restrictions governing the use of the Properties, in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees and licensees, if any, until and unless overruled, canceled or modified in a regular or special meeting of the Association by the vote of Members representing a majority of the total Class "A" votes in the Association and by the Class "B" Member, so long as such membership shall exist.

Section 1. Signs. No sign of any kind shall be erected, maintained or displayed in the public view within the Properties or in or from any Unit without approval of the Declarant (in the sole exercise of Declarant's discretion), for a period of fifteen (15) months after recordation of the Declaration, provided that after such period, the following shall be excepted from this provision: a professional sign no larger than one square foot, a sign no larger than 18 inches x 24 inches advertising a Unit for sale or rent, and/or any signs installed by the Declarant. This restriction, however, shall not be construed to prohibit ornamental plates designating the name and/or address of the resident or the owners thereof. The Declarant shall have the right as the Declarant, in its discretion, deems appropriate to erect signs, flags, banners or similar items. Notwithstanding the above, no signs, flags, banners or similar items advertising or providing directional information with respect to activities being conducted outside the Properties shall be permitted within the Properties, provided that display of the flag of the United States consistent with RCW 64.38.033 and/or other applicable statute shall be permitted

Section 2. Parking and Prohibited Vehicles.

(a) Parking. Vehicles shall be parked only in the garages or in the driveways, if any, serving the Units or in appropriate spaces or designated areas in which parking may or may not be assigned and then subject to such reasonable rules and regulations as the Board of Directors may adopt. The Declarant (during the Class B Control Period) and/or the Association may designate certain on-street parking areas on the private streets within the Properties for visitors or guests subject to reasonable rules.

(b) Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages, areas shielded from public view by sight obscuring fencing (of a type and style as approved by the MC) and/or other sight obscuring structures, or other areas (if any) as may be designated by the Board, by rule. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Properties except within enclosed garages. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Properties during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Areas. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed in accordance with Article III, Section 23 of the By-Laws.

Section 3. Occupants Bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants, guests and invitees of any Unit. Every Owner shall cause all Occupants of his or her Unit to comply with this Declaration, the By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas

caused by such Occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of this Declaration, the By-Laws, and rules and regulations adopted pursuant thereto.

Section 4. Animals and Pets.

(a) No animals, livestock, or poultry of any kind (hereinafter also referenced as "household pets") shall be raised, bred, or kept on any portion of the Properties, except that dogs, cats, or other usual and common household pets not to exceed a total of four (4) household pets, not more than two (2) of which may be dogs, may be permitted in a Unit.

(i) Excluded from the foregoing restriction shall be birds, fish, small reptiles and small animals which are kept in cages or tanks which are permanently kept within the interior of a dwelling or residence situated on the Unit.

(ii) The Owner of a Unit may apply to the Board of Directors to increase the maximum number of household pets set forth above if the increased number and the type of household pet or pets would not be reasonably objectionable to the Owners of neighboring Units or other Units in the vicinity. The Board, in its sole discretion, may grant such applications subject to such terms, conditions and modifications as the Board may determine to be appropriate to accomplish the intent and purpose of this Section 4 and the other use restrictions of Article XII.

(b) Provided, however, and notwithstanding anything to the contrary set forth in paragraph (a) above, those pets which are permitted to roam free, or, in the sole discretion of the Board, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or the owner of any portion of the Properties shall be removed upon request of the Board; and if the Owner fails to honor such request, the pet may be removed by the Board.

(c) No pets shall be kept, bred, or maintained for any commercial purpose.

(d) Dogs shall at all times whenever they are outside a Unit be confined on a leash held by a responsible person.

Section 5. Quiet Enjoyment. No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Properties. There shall not be

maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. No outside burning of leaves, trash, garbage or household refuse shall be permitted within the Properties.

Section 6. Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent any unclean, unhealthy, unsightly, or unkempt condition on his or her Unit. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be undertaken on any part of the Properties.

Section 7. Antennas. No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission or receiving of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Unit, without the prior written consent of the Board or its designee except for local TV or radio station receiver antennas or satellite dishes or similar devices no larger than one meter in diameter (and/or then applicable Federal regulation or law) and, if reasonably possible, not located on front of home. The Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna or cable system for the benefit of all or a portion of the Properties, should any such master system or systems be utilized by the Association and require any such exterior apparatus.

Section 8. Basketball Equipment. No basketball hoops may be mounted on any wall of any structure, but may be placed in a driveway and/or back yard on a free-standing permanently affixed pole (subject to municipal and/or other applicable governmental regulations and/or such rules as the Board may promulgate). In addition, portable basketball hoops and backboards may used, if confined to the homeowner's driveway, backyard, or garage (also subject to such municipal and/or other applicable governmental regulations and/or such rules as the Board may promulgate). Quiet times between the hours of 10:00 p.m. and 7:00 a.m. must be observed.

Section 9. Clotheslines, Garbage Cans, Tanks, Etc. Clotheslines, garbage cans, above-ground storage tanks, mechanical equipment, and other similar items on Units shall be located or screened so as to be concealed from view of neighboring Units, streets, and property located adjacent to the Unit. All rubbish, trash, and garbage shall be stored in appropriate containers approved pursuant to Article XI hereof and shall regularly be removed from the Properties and shall not be allowed to accumulate thereon.

Section 10. Subdivision of Unit. No Unit shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association. Declarant, however, hereby expressly reserves the right to replat any Unit or Units owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

Section 11. Firearms. The discharge of firearms within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, paint ball guns, and/or other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Association shall not be obligated to take action to enforce this Section.

Section 12. Pools. Permanent or temporary above-ground swimming pools erected, constructed or installed on any lot must be approved pursuant to Article XI of this Declaration.

Section 13. Irrigation. All irrigation systems to be installed which are connected to a public or potable water supply must include the necessary back flow control devices.

Section 14. Sheds, Tents, Trailers and Temporary Structures. Except as may be permitted by the Declarant or the MC or the Board of Directors, no tent, utility shed, shack, trailer or other structure of a temporary nature ("detached building") shall be placed upon a Unit or any part of the Properties. All such detached buildings must be approved in advance by the Modifications Committee and must be permanent structures compatible in design and decoration with the main residence constructed on such lot and shall have a maximum length and width of 24 feet x 24 feet, maximum wall height of 10 feet, maximum garage door height of 9 feet, and maximum ridge height of 18 feet. Any such detached building must be built of the same materials as the main residence thereon, and meet all requirements of the municipal and/or other applicable governmental authority having jurisdiction.

Section 15. Drainage and Septic Systems. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. Septic tanks and drain fields are prohibited on the Properties.

Section 16. Tree Removal. No trees shall be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved in accordance with Article XI of this Declaration. In the event of an intentional or unintentional violation of this Section, the violator may be required, by the committee having jurisdiction, to replace the removed tree with one (1) or more comparable trees of such size and number, and in such locations, as such committees may determine necessary in its sole discretion to mitigate the damage.

Section 17. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit a clear line of vision across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 18. Air Conditioning Units. Except as may be permitted by the Board or its designee, no window air conditioning units may be installed in any Unit.

Section 19. Lighting. Except for seasonal decorative lights, which may be displayed between Thanksgiving and January 10 only, and except for landscape lighting, all exterior lights must be approved in accordance with Article XI of this Declaration.

Section 20. Landscaping Requirements. The front landscaping of each Lot must be completed within six (6) months from the date of completion of the Living Unit constructed thereon. In the event of undue hardship due to weather conditions or construction scheduling conflicts, this provision may be extended upon written request to the MC, as appropriate per Article XI of this Declaration. Each Owner shall maintain the landscaping and yard area in an attractive appearance and free from insects and diseases.

Section 21. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains, flags, and similar items must be approved in accordance with Article XI of this Declaration.

Section 22. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Unit unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the MC, as appropriate.

Section 23. Playground. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 24. Fences. No hedges, walls, dog runs, animal pens or fences of any kind shall be permitted on any Unit except as approved in accordance with Article XI of this Declaration. Fences and hedges shall not exceed six (6) feet above the grade on which it is situated, hedges situated forward of the minimum building set-back line shall not exceed three and one-half (3-1/2) feet above grade. No fence shall be situated forward of the minimum building set-back line as determined by the then current applicable municipal and/or other applicable governmental set-back regulations, provided that the Declarant and/or Board of Directors may adopt additional and/or more restrictive rules regarding fence placement, provided further that such rules are adopted within six (6) months of the recording of the Declaration. All fence construction and color shall be as per drawings as adopted by the Declarant and all fencing shall be concurrent. Dog runs and animal pens shall only be located in enclosed garages or areas shielded from public view by a sight obscuring fence or garage. No metal, cyclone, or chain link fencing shall be installed on any property line of a lot or in public view, except for any fences installed by Declarant.

Section 25. Business Use. No trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board. Garage sales, moving sales, rummage sales or similar activities may be allowed, if done on an occasional basis of not more than once in any six month period, provided that Board may in its discretion revoke the right to conduct such sales and/or by rule regulate the manner, timing, advertisement, and/or conduct of any such sales. Notwithstanding the foregoing, the operation of any for profit day care business or for profit adult foster care home business shall not be permitted (provided, that occasional and irregular "babysitting" of children from the same family or household shall not be barred by this provision).

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this section. This Section shall not apply to any activity conducted by the Declarant or a builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program.

Section 26. On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Properties except that up to five (5) gallons of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

Section 27. Leasing of Units.

(a) Definition. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to a fee, service, gratuity, or emolument.

(b) General. Units may be rented only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Units or assignment of leases unless prior written approval is obtained from the Board of Directors. No transient tenants may be accommodated in

a Unit. All leases shall be in writing and shall be for an initial term of no less than one (1) year, except with the prior written consent of the Board of Directors. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of this Declaration, the By-Laws, and the rules and regulations. The Board may adopt reasonable rules regulating leasing and subleasing.

(c) Lease Provisions. Any lease of a Unit in the Properties shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner covenants and agrees that if such language is not expressly contained therein, then such language shall be deemed incorporated into the lease by existence of this covenant and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(i) Compliance with Declaration, By-Laws, and Rules and Regulations. The lessee agrees to abide and comply with all provisions of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto. The Owner agrees to cause all occupants of his or her Unit to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto and is responsible for all violations thereof and resulting losses or damages caused by such occupants, notwithstanding the fact that such occupants of the Unit are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto. In the event that the lessee or a person living with the lessee violates the Declaration, By-Laws, or a rule and regulation for which a fine is imposed, such fine shall be assessed against the lessee; provided, however, if the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit. Any lessee charged with a violation of the Declaration, By-Laws, or rules and regulations adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

(ii) Use of Common Area. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Area, including, but not limited to, the use of any and all common facilities and amenities.

Section 28. Wetlands, Biofiltration Swales, and Water Retention Facilities. The Wetlands, biofiltration swales and water retention facilities located within the properties, if any, shall not be used for fishing, swimming, or playing. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of these areas. No docks, piers or other structures shall be constructed on or over any body of water within the properties, except such that may be constructed by the Declarant or the Association.

Section 29. Laws and Ordinances. Every Owner and occupant of any Unit, the their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state, municipal, and/or other applicable governmental authority applicable to the Properties and

any violation thereof may be considered a violation of this Declaration; provided, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

Section 30. Dwelling Size. The main floor area for a one-story dwelling structure shall contain a minimum floor area of 1,000 square feet exclusive of garage area, basements, and open or screened porches. Multi-level dwelling structures shall contain a minimum floor area of 1,300 square feet with all levels exclusive of garage area, basements, and open or screened porches.

Section 31. Exterior Wall Construction. Siding shall be full lap siding on all sides (shake, shingle, stone, and board and batten accents are allowed), siding material shall be James Hardie® Hardiplank® Lap Siding with Select Cedarmill® finish or comparable, and siding color shall be the original designer paint color or other color compatible and in harmony with neighboring Units and as approved by the Modifications Committee

Section 32. Roofing Material. Roofing color shall be Moire Black and roofing material shall be a minimum 30 year 3-tab , or comparable.

Section 33. Building Location. No building shall be located on any lot with respect to set-back from front, side and rear lot lines, except in conformity with the planning regulations and requirements of the municipal and/or other applicable governmental authority having jurisdiction within the area in which this Properties is located.

Section 34. Completion. Construction of any dwelling shall be completed including exterior decoration within 6 months from date of start of construction. In the event of undue hardship due to weather conditions or construction scheduling conflicts, this provision may be extended upon written request to the MC, as appropriate per Article XI of this Declaration. All lots shall, subsequent to purchase from the Declarant and prior to the construction of improvements thereon, be kept in a neat and orderly condition and free of brush, vines, weeds and the grass thereon cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

Section 35. Easements. Easements for the installation of utilities, drainage facilities and berms are reserved as shown on the official plat recorded herewith. The area included in said easements shall be maintained in as attractive and well-kept condition as required for the remainder of the lot.

Section 36. Existing Structures. No existing structure, residential or otherwise, shall be moved into the Properties, or shall any dwelling thereon be occupied prior to its completion.

Section 37. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted within the Properties, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted within

the Properties. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted within the Properties.

Section 38. Enforcement and non-waiver. The failure on the part of any party affected by these restrictions at any time to enforce any of the provisions hereof shall in no event be deemed a waiver thereof.

Section 39. Landscape. Each Unit shall have at least one (1) deciduous tree with diameter of not less than one and one-fourth (1- 1/4) inches and planted within six (6) feet of the sidewalk in the front yard.

Section 40. Sex Offenders. No lot, structure, and/or dwelling shall be owned or occupied by a sex offender, aged 18 or over, listed or registered by any State and/or by any agency of the Federal government.

### Article XIII. General Provisions

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, shall be appurtenant thereto, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

Section 2. Amendment. This Declaration may be amended only (a) by the Declarant during the Class "B" control period, and/or (b) by the affirmative vote or written consent, or any combination thereof, of Members representing sixty-seven percent (67%) of the total Class "A" votes in the Association, and the consent of the Class "B" Member, so long as such membership exists, and/or as otherwise reserved to the Declarant as set forth herein. In addition, the approval requirements set forth in Article XIV hereof shall be met if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the Auditor's Office of Clark County, Washington.

In addition to the foregoing restriction on amendment and the other restrictions on amendment in this Declaration, no provision of this Declaration relating to the obligations to maintain the Common Area and no provisions of this Declaration relating to Common

Assessments for the maintenance of the Common Area may be amended unless the applicable amendment has received the prior approval of the City of Battle Ground.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege during the Class B Control Period.

Section 3. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and such portion or portions of the Common Area as are adjacent thereto and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary between each Unit and the adjacent portion of the Common Area or as between said adjacent Units, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

Section 5. Easements for Utilities, Etc. There is hereby reserved unto Declarant, so long as the Declarant owns any property described on Exhibits "A" or "B", the Association, and the designees of each (which may include, without limitation, Clark County, Washington, the

LID, and any utility), blanket easements upon, across, over, and under all of the Properties for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, roads, walkways, bicycle pathways, drainage systems, street lights, signage, entry features, all other portions of the Area of Common Responsibility, and all utilities, including, but not limited to, water, sewers, cable, meter boxes, telephones, gas, and electricity; provided, the exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry into any Unit shall be made only after reasonable notice to the Owner or occupant thereof.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier easements across all Units and the Common Areas for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the Association's Board of Directors or as provided by Declarant.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement over the Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

The Board shall have, by a two-thirds (2/3) vote, the power to dedicate portions of the Common Area to the City of Battle Ground, Washington, the LID, or to any other local, state, or federal governmental entity, subject to such approval requirements as may be contained in Article XIV, Sections 2 and 3 of this Declaration.

The LID shall have the power to levy taxes upon any and all Owners of any of the Properties, including Unit Owners and the Association, for providing lighting and related services to the Properties.

**Section 6. Easement for Future Development.** The Declarant and its duly authorized agents, representatives, and employees as well as its successors, assigns, licensees and mortgagees, shall have and there is hereby reserved an easement over the Common Areas for the purposes of enjoyment, use, access and development of the property described in Exhibit "B" attached hereto and by this reference incorporated herein, whether or not such property is made subject to this Declaration. This easement includes but is not limited to a right of ingress and egress over the Common Areas for construction of roads and for tying in and installation of utilities on such property. Declarant agrees that it, its successors or assigns, shall be responsible for any damage caused to the Common Areas as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to the property described in Exhibit "B" and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors, or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property. Such agreement shall provide for sharing of costs based on the

ratio which the number of residential dwellings on that portion of property which is served by the easement and is not made subject to this Declaration bears to the total number of residential dwellings within the Properties and on such portion of the property described in Exhibit "B".

Section 7. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 8. Right of Entry. The Association shall have the right, but not the obligation, to enter into any Unit for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws, and the Association rules, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

Section 9. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 10. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five (75%) percent of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens and/or enforcement of fines), (b) the imposition and collection of assessments as provided in Article X hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it.

Section 11. Use of the Words "Sixth Sixth Street Station II & III Homeowners Association". No Person shall use the words " **Sixth Street Station II & III Homeowners Association**" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant. However, Owners may use the words " **Sixth Street Station II & III Homeowners Association**" in printed or promotional matter where such words are used solely to specify that particular property is located within **Sixth Street Station II & III Homeowners Association**, and the Association shall be entitled to use the words " **Sixth Street Station II & III** " or " **Sixth Street Station II & III Homeowners Association**" in its name.

Section 12. Compliance. Every Owner and occupant of any Unit shall comply with all lawful provisions of this Declaration, the By-Laws and rules and regulations of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages

or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Unit Owner or Owners.

Section 13. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, HOWEVER, AND NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY UNIT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, DECLARANT, OR ANY SUCCESSOR DECLARANT AND THE NEW CONSTRUCTION AND MODIFICATIONS COMMITTEES DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE NEW CONSTRUCTION OR MODIFICATIONS COMMITTEES MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY UNIT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY UNIT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

Section 14. Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to his or her Unit, such Owner shall give the Board of Directors at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may

reasonably require. Until such written notice is received by the Board of Directors, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Unit hereunder, including payment of assessments, notwithstanding the transfer of title to the Unit.

Section 15. Attorneys Fees. In the event a suit, action, arbitration, non-judicial foreclosure, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained to interpret or enforce any provision of this Declaration or with respect to any dispute relating to this Declaration, the prevailing party shall be entitled to recover from the losing party its attorneys', paralegal's, accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, including but not limited to discovery costs, deposition transcript and court reporter charges, etc. (hereinafter "charges"). The amount of charges shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts or costs recoverable as provided by law.

Section 16. Pre-Existing Structures. Pre-existing structures which were constructed on one or more lots prior to recordation of the Declaration may not be required to comply with the architectural control restrictions set forth herein as to any such pre-existing construction, if the Declarant so determines in the sole exercise of the Declarant's discretion, provided that any repair, alternation, or change to such structure lot shall so comply once such lot is no longer owned by the Declarant. Such lots, if any, are identified on Exhibit D.

#### Article XIV.

#### Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Unit of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

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

(d) any proposed action which would require the consent of a specified percentage of eligible holders.

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven (67%) percent of the first Mortgagees or Members representing at least sixty-seven (67%) percent of the total Association vote entitled to be cast thereon consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit (a decision, including contracts, by the Board shall not be subject to this provision where such decision is otherwise authorized by this Declaration);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. HUD/VA Provisions. Anything to the contrary in this Declaration notwithstanding, the following requirements of HUD and/or VA (collectively "HUD/VA") shall control: