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Skagit County Auditor

**AMENDED AND RESTATED DECLARATION
AND
COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS
FOR
THE COVE AT FIDALGO BAY CONDOMINIUM**

DOCUMENT TITLE: AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVATIONS FOR
COVE AT FIDALGO BAY CONDOMINIUM

GRANTOR: THE COVE AT FIDALGO BAY OWNERS ASSOCIATION

GRANTEE: THE PUBLIC

ABBREVIATED LEGAL: GARAGE AND STORAGE AREA, THE COVE ON FIDALGO
BAY, A CONDOMINIUM, PHASE I

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SKAGIT COUNTY
AUDITORS
FILE NOS.

DECLARATION 20026912DD77
SURVEY MAP 20026912DD78

NOTICE TO RECORDER

THIS PROJECT IS A COMMON INTEREST COMMUNITY
SUBJECT TO
THE PROVISIONS OF RCW 64.90.

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**AMENDED AND RESTATED DECLARATION
AND
COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS
FOR
COVE AT FIDALGO BAY CONDOMINIUM**

By acceptance of a conveyance, contract for sale, lease, rental agreement, or any form of security agreement or instrument, or any privileges of use or enjoyment, respecting the Property or any Unit in the Condominium created by this Declaration, it is agreed that this Declaration, together with the Survey Map and Plans referred to herein, states covenants, conditions, restrictions, and reservations effecting a common plan for the Condominium mutually beneficial to all of the described Units, and that the covenants, conditions, restrictions, reservations and plan are binding upon the entire Condominium and upon each such Unit as a parcel of realty, and upon its owners or possessors, and their heirs, personal representatives, successors and assigns, through all successive transfers of all or part of the Condominium or any security interests therein, without requirement of further specific reference or inclusion in deeds, contracts or security instruments and regardless of any subsequent forfeitures, foreclosures, or sales of Units under security instruments.

The name of this Condominium is Cove at Fidalgo Bay Condominium.

RECITALS

0.1. Identification of Original Declaration.

The Declaration of Covenants, Conditions, Restrictions and Reservations for the Cove at Fidalgo Bay Condominium ("the Original Declaration") which established the Cove at Fidalgo Bay Condominium (the "Condominium") was recorded at Auditor's File No. 200209120077 among the land records of Skagit County, Washington, along with a Survey Map which was recorded at Auditor's File No. 200209120078.

0.2. Purpose of Amendment.

The Association's Board of Directors determined that it is desirable to amend the Original Declaration and for the Association to be governed by RCW 64.90, subject to the approval of the Unit Owners as provided below; and

0.3. Description of Process.

Pursuant to Section 21.1 of the Original Declaration, the Original Declaration may be amended by the vote of the owners of at least sixty-seven percent (67%) of the votes in the Association; approval by said Unit Owners having been previously obtained as required,

0.4. Statement of Compliance.

The Association, having obtained the required vote or agreement of Unit Owners as described in Section 0.3 hereof, now adopts this Amended and Restated Declaration for the Condominium

Article 1 INTERPRETATION

1.1. **Liberal Construction.** The provisions of this Amended and Restated Declaration ("Declaration") shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of this Condominium under the provisions of Washington law. It is intended and covenanted that the provisions of the Washington Common Interest Ownership Act, RCW 64.90 et seq (the "Act"), under which this Declaration is operative, shall be liberally construed to effectuate the intent of this Declaration.

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

1.3. **Covenant Running with Land.** It is intended that this Declaration shall be operative as a set of covenants running with the land, or equitable servitudes, binding on Declarant, its successors and assigns, all subsequent Owners of the Property, together with their grantees, successors, heirs, executors, administrators, devisees or assigns, supplementing and interpreting the Act, and operating independently of the Act should the Act be, in any respect, inapplicable.

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

1.5. **Captions and Exhibits.** Captions given to the various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein and attached hereto shall be deemed incorporated herein by reference as though fully set forth where such reference is made.

1.6. **Inflationary Increase in Dollar Limits.** Any dollar amounts specified in this Declaration in connection with any proposed action or decision of the Board or Association may, in the discretion of the Board, be increased proportionately by the increase in the consumer price index for the city of Seattle, Washington for All Urban Consumers, prepared by the United States Department of Labor for the base period, January 1 of the calendar year following the year in which the Declaration was recorded, to adjust for any deflation in the value of the dollar.

1.7. Definitions.

1.7.1. "The Act" means the Washington Common Interest Ownership Act, (RCW Chapter 64.90) as amended.

1.7.2. "Allocated Interests" means those undivided interests in the Common Elements, the Common Expense Liability, and votes in the Association allocated to each Unit more particularly provided for in Article 8 and as shown in **Exhibit A**.

1.7.3. "Assessment" means all sums chargeable by the Association against a unit including, without limitation:

- (a) regular and special Assessments for Common Expenses, charges, and fines imposed by the Association;
- (b) interest and late charges on any delinquent account; and
- (c) costs of collection, including reasonable attorneys' fees, incurred by the Association in connection with the collection of a delinquent Owner's account.

1.7.4. "Association" means the Unit Owner's Association organized in accordance with the Articles of Incorporation, the Act, the Bylaws and this Declaration as it is duly recorded and as they may be lawfully amended, which Association is more particularly provided for in Article 9.

1.7.5. "Board" means the board of directors of the Association provided for in Section 10.2.

1.7.6. "Building" means the building or buildings containing the Units and comprising a part of the Property.

1.7.7. "Bylaws" shall mean the Revised and Restated Bylaws of the Association provided for in Article 9, as they may be amended from time to time.

1.7.8. "Common Elements" means all portions of the Condominium other than the Units.

1.7.9. "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

1.7.10. "Common Expense Liability" means the liability for Common Expenses allocated to each Unit pursuant to Article 8 and the Act.

1.7.11. "Condominium" means the condominium created by this Declaration and related Survey Map and Plans pursuant to the Act.

1.7.12. "Conveyance" means any transfer of the ownership of a Unit, including a transfer by deed or by real estate contract and with respect to a Unit in a leasehold condominium, a transfer by lease or assignment thereof, but shall not include a transfer solely for security.

1.7.13. "Declarant" means any person or group of persons acting in concert who executed as Declarant the original Declaration.

1.7.14. "Declaration" means this Amended and Restated Declaration and any amendments thereto.

1.7.15. "Dispose" or "Disposition" means a voluntary transfer or conveyance to a purchaser or lessee of any legal or equitable interest in a Unit, but does not include the transfer or release of a security interest.

1.7.16. "Eligible Mortgagee" means the holder of a Mortgage on a Unit that has filed with the Secretary of the Association a written request that it be given copies of Notices of any action by the Association that requires consent of Mortgagees. For the purposes of this Declaration the term "Eligible Mortgagee" includes insurers and guarantors of Mortgages. With respect to any action requiring the consent of a specified number or percentage of Mortgages, the consent of

only Eligible Mortgagees holding a first lien Mortgage need be obtained and the percentage shall be based upon the votes attributable to the Units with respect to which eligible Mortgages have an interest.

1.7.17. "Empowered Committee" means a Committee which is established by the Board or the Governing Documents and which is authorized to act for the Board as provided in RCW 64.90.445.

1.7.18. "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a Mortgage or a deed in lieu thereof.

1.7.19. "Identifying Number" means the designation of each Unit in the Condominium.

1.7.20. "Interior Surfaces" (where that phrase is used in defining the boundaries of Units or Limited Common Elements) shall not include paint, wallpaper, paneling, carpeting, tiles, finished flooring, and other such decorative or finished surface coverings. Said decorative and finished coverings, along with fixtures and other tangible personal property (including furniture, planters; mirrors, and the like) located in and used in connection with said Unit or Limited Common Element, shall be deemed a part of said Unit or Limited Common Element.

1.7.21. "Limited Common Element" means a portion of the Common Elements allocated by this Declaration or by operation of the Act for the exclusive use of one or more but fewer than all of the Units as provided in Article 7.

1.7.22. "Manager" means the person retained by the Board to perform such management and administrative functions and duties with respect to the Condominium as are delegated to such person and as are provided in a written agreement between such person and the Association.

1.7.23. "Mortgage" means a Mortgage or deed of trust that creates a lien against a Unit and also means a real estate contract for the sale of a Unit.

1.7.24. "Mortgagee" means the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a Unit created by Mortgage or deed of trust and shall also mean the vendor, or the designee of a vendor, of a real estate contract for the sale of a Unit. A Mortgagee of the Condominium and a Mortgagee of a Unit are included within the definition of Mortgagee.

1.7.25. "Mortgagee a Unit" means the holder of a Mortgage on a Unit, which Mortgage was recorded simultaneous with or after the recordation of this Declaration. Unless the context requires otherwise, the term "Mortgagee of a Unit" shall also be deemed to include the Mortgagee of the Condominium.

1.7.26. "Mortgagee of the Condominium" means the holder of a Mortgage on the Property which this Declaration affects, which Mortgage was either: recorded prior to the recordation of this Declaration; or was recorded against all Units after the recordation of this Declaration but prior to the recorded conveyance of any Unit. The term "Mortgagee of the Condominium" does not include Mortgagees of the individual Units.

1.7.27. "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entities.

1.7.28. "Property" or "Real Property" means any fee, leasehold or other estate or interest in, over, or under the land described in **Exhibit A** and **Exhibit B**, including Buildings, structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water, and all personality intended for use in connection therewith.

1.7.29. "Purchaser" means any person who by means of a Disposition acquires a legal or equitable interest in a Unit other than (a) a leasehold interest, including renewal options, of less than twenty (20) years at the time of creation of the Unit, or (b) as security for an obligation.

1.7.30. "Renting or Leasing" a Unit means the granting of a right to use or occupy a Unit, for a specified term or indefinite term (with rent reserved on a periodic basis), in exchange for the payment of rent (that is, money, property or other goods or services of value); but shall not mean and include joint ownership of a Unit by means of joint tenancy, tenancy-in-common or other forms of co-ownership.

1.7.31. "Residential Purposes" means use for dwelling or recreational purposes, or both.

1.7.32. "Survey Map and Plans" means the survey map and the plans recorded under Skagit County Auditor File No. 200209120078 and any amendments, corrections, and addenda thereto subsequently recorded.

1.7.33. "Unit" means a physical portion of the Condominium designated for separate ownership, the boundaries of which are described pursuant to Article 4. "Separate ownership" includes leasing a Unit in a leasehold condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the Unit from the Condominium.

1.7.34. "Unit Owner" means a person who owns a Unit, but does not include a person who has an interest in a Unit solely as security for an obligation; or is merely "renting" or "leasing" a Unit as defined in Section 1.7.30. "Unit Owner" means the vendee, not the vendor, of a Unit under a real estate contract. This definition shall not include persons who, on a month-to-month or other basis, rent or lease their Unit from a Unit Owner.

1.8. Construction and Validity.

1.8.1. All provisions of the Declaration and Bylaws are severable.

1.8.2. The rule against perpetuities may not be applied to defeat any provision of the Declaration, Bylaws, rules, or regulations adopted pursuant to RCW 64.34.304(l)(a).

1.8.3. In the event of a conflict between the provisions of the Declaration and the Bylaws, the Declaration prevails except to the extent the Declaration is inconsistent with the Act.

1.8.4. The existence of this Condominium shall not be impaired and title to the Unit and Common Elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of the Declaration or Survey Map and Plans or any amendment thereto to comply with the Act.

1.8.5. If the Declaration or Bylaws now or hereafter provide that any officers or directors of the Association must be Unit Owners, then notwithstanding the definition of Unit Owners above, the term "Unit Owner" in such context shall, unless the Declaration or Bylaws otherwise provide, be deemed to include any director, officer, partner in, or trustee of any Person, who is, either alone or in conjunction with another Person or Persons, a Unit Owner. Any officer or director of the Association who would not be eligible to serve as such if he or she were not a director, officer, partner in, or trustee of such a person shall be disqualified from continuing in office if he or she ceases to have any such affiliation with that Person, or if that Person would have been disqualified from continuing in such office as a natural person.

Article 2 DESCRIPTION OF REAL PROPERTY

The Real Property included in the Condominium is described in *Exhibit A* and *Exhibit B* attached hereto.

Article 3 DESCRIPTION OF UNITS

3.1. **Number of Units.** The Condominium has twelve (12) Units. *Exhibit B*, attached hereto, sets forth the following:

3.2. **Unit Number.** The Identifying Number of Each Unit created by the Declaration.

3.3. **Unit Description.** With respect to each existing Unit:

3.3.1. The approximate square footage.

3.3.2. The level or levels on which each Unit is located.

3.4. **Access to Common Ways and Public Streets.** Each Unit has direct access to Common Area stairways, lobbies, walls, parking areas and/or driveways, and all such Common Areas have direct access to public streets.

Article 4 BOUNDARIES

4.1. **Unit Boundaries.**

4.1.1. Interior Surfaces. The Interior Surfaces of perimeter walls, floors, and ceilings are the boundaries of a Unit. Decorative and finished surface coverings (including paint, wallpaper, paneling, carpeting, tiles, and finish flooring) are a part of the Unit, and all other portions of the walls, floors, or ceilings are a part of the Common Elements.

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

4.1.3. Partitions, Etc. Subject to the provisions of Section 4.1.2, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

4.1.4. Doors, Windows, Etc. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, railings and all doors and windows located along the Unit perimeter boundary or other fixtures designed to serve a single Unit, but which are located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

4.2. **Monuments as Boundaries.** The physical boundaries of a Unit constructed in substantial accordance with the original Survey Map and Plans thereof become its boundaries rather than the metes and bounds expressed in the Survey Map and Plans, regardless of settling or lateral movements of the Building or minor variances between boundaries shown on the Survey Map and Plans and those of the Building. This Section does not relieve Declarant or any other person of liability for failure to adhere to the Survey Map and Plans.

4.3. **Relocation of Boundaries; Adjoining Units.**

4.3.1. In General. Subject to the provisions of the Declaration and other provisions of law, the boundaries between adjoining Units may only be relocated by an amendment to the Declaration upon application to the Association by the Owners of those Units. If the Owners of the adjoining Units have specified a reallocation between their Units of their Allocated Interests, the application must state the proposed reallocations. Unless the Board determines within thirty (30) days that the reallocations are unreasonable, the Association shall prepare an amendment that identifies the Units involved, states the reallocations, is executed by those Unit owners, contains words or conveyance between them, and is recorded in the name of the grantor and the grantee.

4.3.2. Survey Map and Plans. The Declarant recorded Survey Maps or Plans under Skagit County Auditor File No. 200209120078 necessary to show the boundaries between adjoining Units and their dimensions and Identifying Numbers.

**Article 5
DESCRIPTION OF OTHER IMPROVEMENTS**

Exhibit A and *Exhibit B*, attached hereto, set forth the following:

- 5.1. **Other Facilities.** A description of the other facilities included within the Condominium.
- 5.2. **Parking.** The number of enclosed parking spaces.

**Article 6
COMMON ELEMENTS**

6.1. **Description.** Except as otherwise specifically allocated as a Limited Common Element by the provisions of Article 7 or other provisions of this Declaration or amendments hereto, the Common Elements consist of all portions of the Condominium except Units and include the following:

- 6.1.1. The Real Property described in *Exhibit A* and *Exhibit B*.

6.1.2. The windows and doors (which are on the perimeter boundary of the Unit), roofs, foundations, columns, girders, studding, joists, beams, supports, walls (excluding non-bearing interior partitions of Units), chimneys, and all other structural parts of the Buildings, to the boundaries of the Units as the boundaries are defined in Section 4.1, and any replacements thereto.

6.1.3. Installation of central services such as: power, light, gas, hot and cold water, heating, refrigeration, air conditioning, garbage chutes and incinerating; pipes, conduits, and wires; elevator shafts, tanks, pumps, motors, fans, compressors, ducts; and in general all apparatus and installations existing for common use; but excluding plumbing, electrical and similar fixtures, which fixtures are located within a Unit for the exclusive use of that Unit.

6.1.4. Parking areas, driving areas. The covered parking stalls in the garage are common elements to be assigned for use pursuant to policies adopted by the Board.

6.1.5. Storage Area. Up to two (2) storage lockers per Unit will be assigned by the Board. Said storage lockers are located on the ground level as shown on the Survey Map and Plans.

6.1.5. The yards, gardens, landscaped areas and walkways (not assigned as Limited Common Elements by this Declaration or amendments thereto) which surround and provide access to the Buildings or are used for recreational purposes.

6.1.6. The lobbies, halls and corridors not within individual Units, storage areas not allocated to Units, stairways and stairs, entrances and exits of the Building or Buildings, and (unless otherwise expressly provided in **Exhibit B**) the recreational facilities, if any, described in said **Exhibit B**.

6.1.7. Premises for the lodging or use of persons in charge of, or maintaining, the Property, if any.

6.1.8. All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use.

6.2. **Use.** Each Owner shall have the right to use the Common Elements (except Limited Common Elements reserved for other Units) in common with all other Owners. The right to use the Common Elements shall extend not only to each Owner, but also to his or her agents, servants, tenants, family members, invitees, and licensees. The right to use the Common Elements, including the Limited Common Elements, shall be governed by and subject to the provisions of the Act, this Declaration, the Bylaws and the Rules and Regulations of the Association.

6.3. **Construction Work—Common Elements.** The Common Elements shall not be reconstructed, rebuilt, altered, removed or replaced except by the Association acting through the Board, or as and in the manner the Association acting by the Board may authorize, and such action and authorization must also be in accordance with the Act, this Declaration, and the Bylaws.

6.4. **Governmentally Required Maintenance, Etc.** Any insurance, maintenance, repair, replacement, alteration or other work, or the monitoring of such work, which is required by any governmental entity (including without limitation, federal, state or local government, public or

private utility provider, local improvement district, or other governmental or quasi-governmental entity or agency), and regardless of whether such requirement is now or hereafter established, and whether imposed in connection with a building permit or other governmental approval or requirement, and whether involving land within public rights of way or subject to ownership or exclusive use of one Owner, shall be the sole and exclusive responsibility of the Association and any cost incurred in connection therewith shall be a Common Expense.

Article 7

DESCRIPTION OF LIMITED COMMON ELEMENTS

7.1. Limited Common Elements. The Limited Common Elements are allocated for the exclusive use of the Owner or Owners of the Unit or Units to which they are allocated and, in addition, to any Limited Common Elements provided by law or other provisions of the Declaration or amendments thereto, consist of:

7.1.1. Patio, Etc. The patio/yard area, deck or lanai, if any, which is adjacent to each Unit as more particularly shown on the Survey Map and Plans, or as constructed or expanded by the Declarant or Association in accordance with this Declaration.

7.1.2. Miscellaneous. Such other Limited Common Elements, if any, as may be described in **Exhibit A** attached hereto or depicted and labeled on the Survey Map and Plans.

7.2. Boundary. The boundaries of Limited Common Elements (including without limitation, patio, yard, deck, balcony, and lanai) shall be defined by the Interior Surfaces of the improvements enclosing the Element (including without limitation, walls, floor, ceiling, doors, windows, ground, railings, fence or striping); but if there are no such Interior Surfaces, then the boundaries as delineated on the Survey Map and Plans; but if no such boundaries are so delineated, then the perimeter edge of such Element as actually constructed or expanded by the Declarant or Association in accordance with this Declaration.

7.3. Transfer of Limited Common Elements.

7.3.1. Renting. A Unit Owner may rent or lease the parking space and/or storage areas allocated to that Unit to any other Unit Owner; provided, that the rental or lease term shall automatically expire on the date the lessor/Unit Owner disposes of its interest in the Unit (whether such disposition is by deed, contract, foreclosure or otherwise); and provided further, that the Board shall be notified in writing of the existence of any such rental or lease arrangement.

7.3.2. Reallocation Between Units. A Limited Common Element may only be reallocated between Units with the approval of the Board and by an amendment to the Declaration executed by the Owners of, and approved in writing by the Mortgagees holding Mortgages against, the Units to which the Limited Common Element was and will be allocated. The Board shall approve the request of the Owner or Owners under this section within thirty (30) days unless the proposed reallocation does not comply with the Act or the Declaration. The failure of the Board to act upon a request within such period shall be deemed approval thereof.

7.3.2.1. If the reallocation is approved, the Owners must provide the proposed amendment to the Board for review and approval before execution. The Board may require revisions to ensure correctness, clarity, and compliance with the Act and the Declaration. Unless otherwise agreed by the Owners and Association, all costs of preparing,

revising, executing, and recording the amendment shall be borne by the affected Owners. The Owners executing the amendment shall provide a copy of the amendment to the Association, and the Association shall record the amendment in compliance with RCW 64.90.240(4).

7.3.3. Common to Limited Common Element. A Common Element not previously allocated as a limited common element may be so allocated only by an amendment to the Declaration. An Owner may request the Board to amend the Declaration to allocate all or part of a common element as a Limited Common Element for the exclusive use of the Owner's unit. The Board may prescribe in the amendment a condition or obligation, including an obligation to maintain the new Limited Common Element or pay a fee or charge to the Association.

7.3.3.1. If the Board approves the amendment, the Board shall give notice to all Owners of its action and include a statement that Owners may object in a record to the amendment not later than thirty (30) days after delivery of the notice. The amendment becomes effective if the Board does not receive a timely objection. If the Board receives a timely objection, the amendment becomes effective only if the Owners of units to which at least sixty-seven percent (67%) of the votes are allocated vote to approve the amendment. If the amendment becomes effective, the Association and the Owner of the benefited unit shall execute the amendment, and the Association shall record the amendment in compliance with RCW 64.90.240(4).

7.4. Fireplaces. If fireplaces are now or hereafter installed in individual Units, then notwithstanding anything in the Declaration to the contrary, the following provisions shall apply:

- (a) If a fireplace to be used by a particular Unit is shown on the Survey Map and Plans as being inside the perimeter wall constituting boundaries of the Unit, then the fireplace shall be a part of the Unit and not Limited Common Elements. If such fireplace is shown on the Survey Map and Plans as being outside of such boundaries, then the fireplace shall be a Limited Common Element of such Unit.
- (b) Flues, pipes, chimneys and other equipment and apparatus associated with the use of a fireplace are also Limited Common Elements for the Unit in which the fireplace is located; provided, if the flues, pipes, chimneys and other equipment and apparatus are utilized in common by two (2) or more Units, then those flues, pipes, chimneys and other equipment and apparatus are Limited Common Elements for the Units for which they are being utilized.
- (c) Maintenance, repair and replacement of fireplaces, flues, pipes, chimneys and other equipment and apparatus associated with the use of a fireplace shall be governed by the provisions of Sections 11.6 of the Declaration.
- (d) All use of the fireplaces will be in accordance with the rules which the Board may from time to time adopt.

Article 8 ALLOCATED INTEREST

The Allocated Interests of each Unit (that is, the undivided interest in the Common Elements, the Common Expense Liability and the votes in the Association allocated to each Unit) are set forth in **Exhibit A** attached hereto. Any values used to establish the percentages required by the Act do not reflect, necessarily, the amount for which a Unit will be sold, from time to time. The

Allocated Interest appertaining to each Unit cannot be changed except as provided in this Declaration. The Allocated Interest and the title to the respective Unit shall not be separated or separately conveyed and each undivided interest shall be deemed to be conveyed with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the title to the Unit. Except where permitted by the Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an Allocated Interest made without the Unit to which that Interest is allocated is void.

Article 9 OWNERS ASSOCIATION

9.1. Form of Association. The Association shall be organized as a non-profit corporation under the laws of the State of Washington and shall be known as Cove at Fidalgo Bay Condominium Owners Association (hereinafter referred to as the "Association").

9.2. Membership.

9.2.1. Qualification. Each Owner shall be a member of the Association and shall be entitled to one (1) membership for each Unit so owned; provided, that if a Unit has been sold on contract, the contract purchaser shall exercise the rights of the Unit Owner for purposes of the Association, this Declaration, and the Bylaws, except as hereinafter limited, and shall be the voting representative unless otherwise specified. Ownership of a Unit shall be the sole qualification for membership in the Association.

9.2.2. Transfer of Membership. The Association membership of each Owner shall be appurtenant to the Unit giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to said Unit and then only to the transferee of title to such Unit. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Unit shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

9.3. Voting.

9.3.1. Number of Votes. The total voting power of all Owners shall equal one (1) vote and the fraction voting power allocated to each Unit is set forth in **Exhibit A** hereof.

9.3.2. Association Owned Units. No votes allocated to a Unit owned by the Association may be cast, and in determining the percentage of votes required to act on any matter, the votes allocated to Units owned by the Association shall be disregarded.

9.4. Meetings, Notice and Quorums.

9.4.1. Meetings. A meeting of the Association must be held at least once each year. Special meetings of the Association may be called as provided in the Bylaws.

9.4.2. Quorums. A quorum is present at any meeting of the Association or Board as provided in the Bylaws.

9.5. Bylaws of the Association.

9.5.1. Adoption of Bylaws. Bylaws (and amendments thereto) for the administration of the Association and the Condominium, and for other purposes not inconsistent with the Act or with the intent of this Declaration shall be adopted by the Association upon concurrence of those voting Owners holding a majority of the total voting power in the Association. Amendments to the Bylaws may be adopted at any regular or special meeting.

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

Article 10 MANAGEMENT OF CONDOMINIUM

10.1. **Administration of the Condominium.** The Unit Owners covenant and agree that the administration of the Condominium shall be in accordance with the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association which are incorporated herein by reference and made a part hereof.

10.2. **Election and Removal of Board and Officers.** Election and removal of Board members and Officers shall be as provided for in the Bylaws.

10.3. **Management by Board.**

10.3.1. On Behalf of Association. Except as otherwise provided in the Declaration, the Board shall act in all instances on behalf of the Association. In the performance of their duties, the officers and members of the Board are required to exercise the duties and care set forth herein and in the Bylaws.

10.3.2. Prohibited Actions. The Board shall not act on behalf of the Association to take any of the following actions:

- (a) Amend the Declaration, except as provided in RCW 64.90.285;
- (b) Amend the Organizational Documents of the Association;
- (c) Terminate the common interest community;
- (d) Elect members of the Board, except to fill vacancies in the Board (not resulting from removal) for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of Board members; or
- (e) Determine the qualifications, powers, duties, or terms of office of Board members.

10.4. **Authority of the Association.**

10.4.1. The Association acting by and through the Board, or a Manager appointed by the Board, for the benefit of the Condominium and the Owners, shall enforce the provisions of this Declaration and of the Bylaws and shall have all powers and authority permitted to the Association under the Act and this Declaration, including without limitation:

- (a) Adopt and amend organizational documents, and adopt and amend rules;
- (b) Adopt budgets as provided in RCW 64.90.525;

- (c) Impose assessments for common expenses on the Unit Owners as provided in RCW 64.90.480(1) and 64.90.525;
- (d) Prepare financial statements as provided in RCW 64.90.530;
- (e) Deposit and maintain the funds of the Association in accounts as provided in RCW 64.90.530;
- (f) Hire and discharge managing agents and other employees, agents, and independent contractors;
- (g) Institute, defend, or intervene in litigation or in arbitration, mediation, or administrative proceedings or any other legal proceeding in its own name on behalf of itself or two (2) or more unit owners on matters affecting the Association;
- (h) Make contracts and incur liabilities;
- (i) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (j) Cause additional improvements to be made as a part of the common elements;
- (k) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property; provided, that common elements may be conveyed or subjected to a security interest pursuant to RCW 64.90.465 only;
- (l) Grant easements, leases, and licenses through or over the common elements, but a grant to a unit owner that benefits the Owner's unit is allowed only by reallocation of the common elements to a limited common element as provided herein;
- (m) Impose and collect any reasonable payments, fees, or charges for:
 - (i) The use, rental, or operation of the common elements, other than limited common elements;
 - (ii) Services provided by the Association to Owners; and
 - (iii) Moving in, moving out, or transferring title to units;
- (n) Collect assessments and impose and collect reasonable charges for late payment of assessments;
- (o) Enforce the Governing Documents and, after notice and opportunity to be heard, impose and collect reasonable fines for violations of the governing documents in accordance with a schedule of fines adopted by the Board and furnished to the Owners pursuant to the requirements for notice in RCW 64.90.505;
- (p) Impose and collect reasonable charges for the preparation and recordation of amendments to the Declaration, resale certificates required under RCW 64.90.640, lender questionnaires, or statements of unpaid assessments;
- (q) Provide for the indemnification of its officers and board members, to the extent provided in RCW 23B.17.030;
- (r) Maintain directors' and officers' liability insurance;

- (s) Subject Owner ratification as provided herein, assign its right to future income, including the right to receive assessments;
- (t) Establish and administer a reserve account as described in RCW 64.90.535;
- (u) Prepare a reserve study as described in RCW 64.90.545;
- (v) Exercise any other powers conferred by the Declaration or organizational documents;
- (w) Exercise all other powers that may be exercised in this state by the same type of entity as the Association;
- (x) Exercise any other powers necessary and proper for the governance and operation of the Association;
- (y) Require that disputes between the Association and Unit Owners or between two (2) or more Unit Owners regarding the Association, other than those governed by Chapter 64.50 RCW, be submitted to nonbinding alternative dispute resolution as described herein as a prerequisite to commencement of a judicial proceeding; and
- (z) Suspend any right or privilege of an Owner who fails to pay an assessment which suspension may be imposed for a reasonable amount of time not to exceed one (1) business day after the Association receives full payment of the delinquent assessment and the Board has received confirmation of payment and cleared funds, except for the following prohibited actions:
 - (i) Denying an Owner or other occupant access to the Owner's Unit, or any limited common elements allocated only to that Unit, or any Common Elements necessary to access the Unit;
 - (ii) Suspending an Owner's right to vote; or
 - (iii) Withholding services provided by the Association to a Unit or Owner if the effect of withholding the service would be to endanger the health, safety, or property of any person.

10.4.2. Nothing herein contained shall be construed to give the Association authority to conduct an active business for profit on behalf of all of the Owners or any of them.

10.4.3. The Board and its agents or employees, may enter any Unit or Limited Common Element when necessary in connection with any maintenance, landscaping or construction for which the Board is responsible or in the event of emergencies. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Board paid for as a Common Expense if the entry was due to an emergency, or for the purpose of maintenance or repairs to Common or Limited Common Elements where the repairs were undertaken by or under the direction or authority of the Board; provided, if the repairs or maintenance were necessitated by or for the Unit entered or its Owners, or requested by its Owners, the costs thereof shall be specially charged to such Unit. In furtherance of the foregoing, the Board (or its designated agent) shall have the right at all times to possess such keys and/or lock combinations as are necessary to gain immediate access to Units and limited Common Elements.

10.5. Borrowing by Association. In the discharge of its duties and the exercise of its powers as set forth in Section 10.3.1, but subject to the limitations set forth in this Declaration, the Board may borrow funds on behalf of the Association and to secure the repayment of such funds, assess each Unit (and the Owner thereof) for said Unit's pro rata share of said borrowed funds and the obligation to pay said pro rata share shall be a lien against said Unit and the undivided interest in the Common Elements appurtenant to said Unit. Provided, that the Owner of a Unit may remove said Unit and the Allocated Interest in the Common Elements appurtenant to such Unit from the lien of such assessment by payment of the Allocated Interest in Common Expense liability attributable to such Unit. Subsequent to any such payment, discharge, or satisfaction, the Unit and the Allocated Interest in the Common Elements appurtenant thereto shall thereafter be free and clear of the liens so paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge shall not prevent the lien holder from proceeding to enforce his rights against any Unit and the Allocated Interest in the Common Elements appurtenant thereto not so paid, satisfied, or discharged.

10.5.1. If borrowing by the Association will be secured by an assignment of the Association's right to receive future income requires ratification by the unit owners as provided below:

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

10.5.1.2. In the notice, the Board must set a date for a meeting of the Owners, which must not be less than fourteen (14) and no more than fifty (50) days after mailing of the notice, to consider ratification of the borrowing.

10.5.1.3. Unless at that meeting, whether or not a quorum is present, Owners holding a majority of the votes in the Association reject the proposal to borrow funds, the association may proceed to borrow the funds in substantial accordance with the terms contained in the notice.

10.6. Association Records. The Association shall maintain the records required by the Act, including but not limited to, RCW 64.90.495.

10.7. Association Funds.

10.7.1. Fund Commingling. The funds of the Association shall be kept in accounts in the name of the Association and shall not be commingled with the funds of any other Association, nor with the funds of any Manager of the Association or any other person responsible for the custody of such funds. Any reserve funds of the Association shall be kept in a segregated account and any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two (2) persons who are officers or directors of the Association.

10.8. Common Elements, Conveyance, Encumbrance.

10.8.1. In General. Portions of the Common Elements which are not necessary for the habitability of a Unit may be conveyed or subjected to a security interest by the Association if the Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated agree to that action; but all the Owners of Units to which any Limited Common

Element is allocated must agree in order to convey that Limited Common Element or subject it to a security interest. Proceeds of the sale or financing are an asset of the Association, but the proceeds of the sale of Limited Common Elements must be distributed equitably among the Unit Owners of Units to which the Limited Common Elements were allocated.

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

10.8.3. Conditions Precedent. The Association, on behalf of the Unit Owners, may contract to convey Common Elements or subject them to a security interest, but the contract is not enforceable against the Association until approved pursuant to Sections 10.8.1 and 10.8.2. Thereafter, the Association has all powers necessary and appropriate to affect the conveyance or encumbrance, including the power to execute deeds or other instruments.

10.8.4. Void Transactions. Any purported conveyance, encumbrance, or other voluntary transfer of Common Elements, unless made pursuant to this Section, is void.

10.8.5. Support Right. A conveyance or encumbrance of Common Elements pursuant to this section shall not deprive any Unit of its rights of access and support.

10.8.6. Prior Encumbrances. A conveyance or encumbrance of Common Elements pursuant to this Section shall not affect the priority or validity of preexisting encumbrances either on Units (and their Allocated Interest in Common Elements) or on Common Elements.

10.9. Association Litigation. The Board must, in accordance with RCW 64.90.405(3) promptly provide notice to the Owners of any legal proceeding in which the Association is a party other than proceedings involving enforcement of rules or to recover unpaid assessments or other sums due the association.

10.10. Reserve Account; Withdrawals.

10.10.1. The Association must establish one or more accounts for the deposit of funds for the replacement costs of reserve components. Any reserve account must be an income-earning account. The Board is responsible for administering the reserve account.

10.10.2. The Board may withdraw funds from the Association's reserve account to pay for unforeseen or unbudgeted costs that are unrelated to replacement costs of the reserve components. Any such withdrawal must be recorded in the minute books of the Association. The Board must give notice of any such withdrawal to each Unit Owner and adopt a repayment schedule not to exceed twenty-four (24) months unless the Board determines that repayment within twenty-four (24) months would impose an unreasonable burden on the Unit Owners. The Board must provide to Unit Owners along with the annual budget summary (a) notice of any such withdrawal, (b) a statement of the current deficiency in reserve funding expressed on a per-Unit basis, and (c) the repayment plan.

10.10.3. The Board may withdraw funds from the reserve account without satisfying the notification of repayment requirements under this section to pay for replacement costs of reserve components whether or not included in the reserve study.

10.11. Reserve Study Preparation.

10.11.1. The Association must prepare and update a reserve study in accordance with RCW 64.90.530. An updated reserve study must be prepared annually. An updated reserve study must be prepared at least every third (3rd) year by a reserve study professional based upon a visual site inspection conducted by the reserve study professional.

10.11.2. A Unit Owner's duty to pay Assessments is not excused because of the Association's failure to obtain a reserve study. A budget ratified by the Unit Owners pursuant to the Declaration is not invalidated because of the Association's failure to obtain a reserve study. Owners may enforce the Association's obligation to obtain a reserve study as provided in RCW 64.90.555.

10.11.3. Except for an award for attorneys' fees and costs, monetary damages or other liability may not be awarded against or imposed upon the Association or its Officers or Board Members, or upon any person who may have provided advice or assistance to the Association or its Officers or Board Members, for failure to establish or replenish a reserve account, have a current reserve study prepared or updated, or make reserve disclosures in accordance with the budget ratification process or other law.

10.11.4. CPA Audit. At least annually, the financial statements of the Association shall be audited by a Certified Public Accountant. This requirement may be waived annually by the Owners to which a majority of the votes in the Association are allocated. The Board at any time, or by written request of Owners having at least twenty-five percent (25%) of the total votes, may require that an audit of the Association and management books be performed and presented at any special meeting. A Unit Owner, at their own expense, may at any reasonable time make an audit of the books of the Board and Association.

10.12. Statement of Amounts Owed. The Association, upon written request, must furnish to a Unit Owner or a mortgagee a statement signed by an Officer or authorized agent of the Association setting forth the amount of unpaid assessments or the priority amount against that Unit, or both. The statement must be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board, and every Unit Owner unless, and to the extent, known by the recipient to be false. The Association may charge a reasonable fee for the preparation of such statement.

Article 11

USE; REGULATION OF USES; ARCHITECTURAL UNIFORMITY; MAINTENANCE

11.1. Residential Units. The Units shall be used:

11.1.1. For Residential Purposes only, including sleeping, eating, food preparation for on-site consumption by occupants and guests, entertaining by occupants of personal guests and similar activities commonly conducted within a residential dwelling, without regard to whether the Unit Owner or occupant resides in the Unit as a primary or secondary personal residence, on an ownership, rental, lease or invitee basis;

11.1.2. For such other reasonable ancillary purposes commonly associated with residential dwellings and otherwise in compliance with the Declaration and applicable law in residential dwellings (including without limitation a home/professional business office). The owners shall use their respective properties in such a manner so as not to offend or detract from other owners' enjoyment of their own respective properties. All owners shall use their property solely and exclusively for private single-family residences. Conduct of a private business shall be permitted on the condition that: (1) the equivalent of not more than one (1) full-time nonresident is employed at the business location; (2) business visits to the home do not average more than ten (10) per day; and (3) the owner complies with all applicable governmental regulations and codes applicable to such use. The providing of on-site health and mental care services to a Unit resident shall not constitute a private business so long as otherwise in compliance with the Declaration and applicable law; and

11.1.3. For the common social, recreational or other reasonable uses normally incident to such purposes.

11.2. Vehicle Parking Restrictions. Common Element parking spaces are restricted to use for parking of operable passenger motor vehicles (such as automobiles, light trucks and passenger vans). Boats, motor homes, trailers, campers or other recreational vehicles may only be stored in covered or enclosed Limited Common Element parking space with approval of the Board of the Cove at Fidalgo Bay Condominium Owners Association. Parking of vehicles, or storage of personal property, in all parking areas shall be subject to the provisions of this Section, Article 7 of the Declaration, and the rules and regulations of the Board. Except as permitted by rules or regulation of the Board, personal property (other than an operable motor vehicle) may not be stored in a parking space (regardless of whether such space is a Limited-Common Element or part of a Unit), or such parking space be used for a purpose other than parking, to an extent that would prevent the parking therein of any motor vehicle regularly used by a person occupying a Unit for more than seven (7) days in any calendar month. The use of any wall-mounted, ceiling mounted or other storage facility or area within a Limited Common Element parking space shall not interfere with the parking of a motor vehicle (or the opening of vehicle doors) in an adjacent parking space to an extent greater than caused by parking a vehicle in such Limited Common Element space. The Board may require removal of any vehicle (and any other personal property) improperly stored in parking spaces; if the same is not removed, the Board shall cause removal at the risk and expense of the Owner thereof.

11.3. Common Drive and Walks. Common drives, walks, corridors, stairways and other general Common Elements shall be used exclusively for normal transit and no obstructions and/or decorations or other items shall be placed thereon or therein except by express written consent of the Board.

11.4. Interior Unit Maintenance.

11.4.1. Owner Responsibility. Neither this Section nor Section 11.5 shall be construed as permitting any violation of any other provision of this Declaration or any interference with or damage to the structural integrity of the building or interference with the use and enjoyment of the Common Elements or of the other Units or any of them, nor shall it be construed to limit the powers or obligations of the Association or Board hereunder. Furthermore, a Unit Owner shall not permit nor commit waste of his Unit or the Common Elements.

11.4.2. Standard of Condition. Each Unit Owner shall, at his sole expense, have the right and the duty to keep the interior of his Unit and its equipment, appliances, and appurtenances in good order, condition and repair. Each Owner shall be responsible for the construction, alteration, maintenance, repair or replacement of any plumbing fixtures, water heaters, fans, heating or other equipment, electrical fixtures or appliances which are used solely in connection with his Unit.

11.5. **Alterations of Units.** Without limiting the generality of Section 11.4, each Owner shall have the right, at his sole cost and expense, to:

11.5.1. Non-Structural. Subject to the provisions of Section 11.9.3, make any improvements or alterations to the Owner's Unit that do not affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the Condominium, including the right to construct, alter, maintain, repair, paint, paper, panel, plaster, tile, and finish: the windows; window frames; doors; door frames and trim; interior non-load bearing partitions; and the interior surfaces of the ceilings, floors, and the perimeter walls of the Unit and the surfaces of the bearing and non-bearing walls located within his or her Unit; provided that the Owner or his or her assigns, contractors, or other agents or representatives shall not paint or in any manner cover the original sprinkler heads installed anywhere in a Unit.

11.5.2. Finished Surfaces. Substitute new finished surfaces for the finished surfaces then existing on said ceilings, floors and walls; provided that, hard surface flooring shall only be installed in Units in accordance with the following: (a) as part of original construction of the Unit; or (b) by the Owner of the Unit only after securing prior written consent of the Unit Owner below, if any (but such consent will not be required to merely replace existing hard surface flooring with substantially identical flooring). In the event that an Owner is given permission to install hard surface flooring, including but not limited to hardwood, marble, granite, slate or other like surface, the design, construction and installation of such hard surface flooring shall meet the impact sound transmission and insulation Class II C standards as measured according to ASTM designation E492-77, Standard Method of Laboratory Measurement of Impact Sound Transmission through floor/ceiling assemblies using a "tapping machine" or other equivalent standard and measurement device as of the date of the proposed installation.

11.5.3. Area Carpets. Where hard surface flooring is installed in a Unit, area carpets shall be used to convey normal foot traffic in areas of the Unit located immediately above another Unit, except area carpets are not required where such hard surface flooring is installed in the front entryway, kitchen or kitchen nook, or bathroom(s) by the Declarant, at any time, or as part of original construction.

11.6. **Common Element.** Subject to the provisions of Section 11.9, the Association will be responsible for maintenance, repair, and replacement of the Common Elements, except that (a) each owner will be responsible for keeping the limited Common Elements allocated to the Owner's Unit in a clean and sanitary condition, and (b) fireplaces, flues, pipes, chimneys and other equipment and apparatus associated with the use of a fireplace, will be maintained, repaired and replaced by the Owner of the Unit in which the fireplace is located, or, if any flues, pipes, chimneys and other equipment and apparatus associated with fireplaces are utilized in common by two (2) or more Units, then they will be maintained, repaired, and replaced by the Owners of the Units for which they are being utilized in common. Without limiting or expanding upon the foregoing provision, Owners may not in any manner alter or change the appearance of the Common Elements or the exterior appearance of a Unit with express prior approval of the

Association in accordance with the other terms of this Declaration, the Bylaws, and Association Rules & Regulations.

11.7. Adjoining Unit. After acquiring an adjoining Unit or an adjoining part of an adjoining Unit an Owner may, with approval of the Board, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not adversely affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this Section is not a relocation of boundaries.

11.8. Board Decisions. With respect to any alteration or other action requiring the Board's approval, the Board shall be allowed thirty (30) days (after receiving all information reasonably requested by the Board) for decisions. The failure of the Board to act upon a request within such period shall be deemed approval thereof. Unless the proposed alteration does not comply with the Act or the Declaration (including, without limitation, the providing and standards set forth elsewhere in this Article 11) or impairs the structural integrity or mechanical or electrical systems in the Condominium, the Board shall approve a Unit Owner's request. All requests for additions and alterations shall be made in writing, and the Board shall respond in written form; provided that the Board may require any Owner to submit plans and specifications as needed to facilitate its decision. Except as otherwise provided herein, no work of any kind shall be conducted without the express written approval of the Board.

11.9. Limited Common Element Maintenance.

11.9.1. Decisions by Board. Decisions with respect to the standard of appearance and condition of Limited Common Elements, and with respect to the necessity for, and manner of, caring for, maintaining, repairing, repainting, redecorating or replacing Limited Common Elements ("Maintenance Work" herein), shall be made by the Board.

11.9.2. Performance of Work. Performance of such maintenance work shall be carried out by the Board on behalf of the Owner or Owners of Units to which the Limited Common Element in question is assigned or reserved; provided, that by written notice, the Board may require such Owner or Owners to perform such maintenance work themselves.

11.9.3. Board Approval. Owners may not, however, modify, paint, or otherwise decorate, or in any way alter their respective Limited Common Elements without prior written approval of the Board.

11.9.4. Owner Pays Cost. The Association will initially be responsible for the cost of such Maintenance Work for the Limited Common Elements reserved for or assigned to a Unit; provided, that the Unit Owner shall be solely responsible for such cost to the extent resulting from the Owner's violation of the Declaration or Association Rules and Regulations or such Owner's gross negligence or willful misconduct.

11.9.5. Multiple Owners. With respect to a Limited Common Element reserved for or assigned to more than one (1) Unit for the mutual and joint use thereof, the cost of such Maintenance Work for such Limited Common Element shall be divided among the Units which would be liable under Section 11.9.4 and for which such Limited Common Element is reserved.

11.9.6. Cost as Special Charge. With respect to any such maintenance work performed by the Board under Sections 11.9.4 or 11.9.5, the cost thereof (or the appropriate share thereof

if the Limited Common Element in question has been assigned or reserved jointly to more than one [1] Unit) shall be levied as a special charge against the Unit or Units (and the Owner or Owners thereof).

11.10. Exterior Appearance. In order to preserve a uniform exterior appearance to the Building, and the Common and Limited Common Elements visible to the public, the Board shall require and provide for the painting and other decorative finish of the Building, lanais or patio/yard areas, or other Common or Limited Common Elements, and prescribe the type and color of such decorative finishes, and may prohibit, require or regulate any modification or decoration of the Building, lanais, patio/yard areas or other Common or Limited Common Elements undertaken or proposed by any Owner. This power of the Board extends to screens, doors, awnings, rails or other visible portions of each Unit and Building. The Board may also require use of a uniform color and kind of Unit window covering (including draperies, blinds, shades, etc.) visible from the exterior or from Common Elements.

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

11.12. Signs. Subject to the provisions of any Master Declaration, no sign of any kind (except political signs as allowed by RCW 64.90) shall be displayed to the public view on or from any Unit or Common or Limited Common Element without the prior consent of the Board; provided, that the Board shall, by and subject to appropriate rule, permit temporary placement of a sign, at a space designated by the Board, indicating that a Unit is for sale or lease.

11.13. Pets. The keeping of pets is addressed by House Rules as the Board may from time to time adopt.

11.14. Offensive Activity. Subject to the provisions of any Master Declaration, no noxious or offensive activity shall be carried on in any Unit or Common or Limited Common Element, nor shall anything be done therein which may be or become an annoyance or nuisance to other Owners.

No Owner shall decorate or landscape any entrance, hallways, elevator, planting area or lanai appurtenant to his Unit except in accordance with standards therefor established by the Board of Directors or specific plans approved in writing by the Board of Directors.

Although sound transmission reduction methods may have been employed in construction of the condominium, all Owners must understand that sound transmission is inherently greater in wood frame buildings than in concrete buildings; and that some sound transmission will occur between Units and from exterior sources, including open windows and doors.

All occupants shall avoid making noises, and using musical instruments, radios, and amplifiers in such manner as may disturb other occupants. Owner shall also control their pets so that they do not disturb other occupants.

No garments, rugs or other objects shall be hung from the windows or facades, lanais of the project or otherwise displayed in public view. No rugs or other objects shall be dusted or shaken

from the windows, lanais or doors of any Unit or cleaned by beating or sweeping on any walkways, patios, entries or other exterior part of the Building.

No refuse, garbage or trash of any kind shall be thrown, placed or kept on any Common Element of the project outside of the disposal facilities provided for such purposes.

Every Unit Owner and occupant shall at all times keep his or her Unit in a strictly clean and sanitary condition, free of rodents and pests, and observe and perform all laws, ordinances, rules and regulations, including kennel laws and animal control laws.

11.15. Common Element Alterations. Nothing shall be altered or constructed in, or (except for an Owner's personal property) removed from, the Common Elements except upon the written consent of the Board and after procedures required herein or by law.

11.16. Rules and Regulations. The Board or the Association membership is empowered to pass, amend and revoke detailed, reasonable administrative rules and regulations necessary or convenient from time to time to ensure compliance with the general guidelines of this Article. Such Rules and Regulations shall be binding on all Unit Owners, lessees, guests and invitees upon adoption by the Board or Association.

11.17. Rental Units. The leasing or renting of a Unit by its Owner shall be governed by the provisions of this Section 11.17:

11.17.1. No Transient Purposes. With the exception of a lender in possession of a Unit following a default in a Mortgage, a Foreclosure proceeding or any deed or other arrangement in lieu of a Foreclosure, no Unit Owner shall be permitted to lease his Unit for hotel or transient purposes which shall be defined as Renting for any period less than thirty (30) days. The Association may by resolution of the Board prohibit the leasing of any Unit for a period of less than six (6) months.

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

11.17.3. Written Leases. All leasing or rental agreements shall be in writing and be subject to this Declaration, Bylaws and Association Rules and Regulations (with default by the tenant in complying with this Declaration and/or Bylaws constituting a default under the lease or rental agreement). The Board shall be notified in advance of an Owner's intentions to rent or lease a Unit. The Board shall also be notified of the names of all occupants of the Unit being rented or leased

11.17.4. Rent to Association. If a Unit is rented by its Owner, the Board may collect, and the tenant or lessee shall pay over to the Board, so much of the rent for such Unit as is required to pay any amounts due to the Association hereunder, plus interest and costs if the same are in default over thirty (30) days. The renter or lessee shall not have the right to question payment over to the Board, and such payment will discharge the lessee's or renter's duty of payment to the Owner for rent, to the extent such rent is paid to the Association, but will not discharge the liability of the Owner and the Unit under this Declaration for assessments and charges, or operate as an approval of the lease. The Board shall not exercise this power where a receiver has been appointed with respect to the Unit or its Owner; nor in derogation of any rights which a Mortgagee of such Unit may have with respect to such rent.

11.17.5. Other Restrictions. Other than as stated in this Section 11.17, there is no restriction on the right of any Unit Owner to Lease or otherwise rent his or her Unit. Neither the Association nor the Board shall have the right by any means (including without limitation amendments to the Declaration, Articles, Bylaws or Rules and Regulations) to impose any further restriction on the right of any Unit Owner to Lease or otherwise rent his Unit without such Owner's prior written consent.

11.18. **Maintenance of View.** Trees and vegetation planted in the Common Elements shall be pruned by the Association in a manner to preserve as much view as possible from each of the Units.

11.19. **Timesharing.** Timesharing, as defined in the Washington Timeshare Act, is prohibited.

11.20. **Television, Cable, Etc.** Subject to applicable law and the enforceable provisions of contracts, no television cables, no aerial, satellite dish or antennae shall be placed or erected up any Unit, Common or Limited Common Element or affixed in any manner to the exterior of any building or structure on the property unless expressly authorized by the Board.

Article 12

COMMON EXPENSES AND ASSESSMENTS; LIENS; COLLECTIONS

12.1. Common Expense Assessments.

12.1.1. Annual Budget. Assessments for Common Expenses and those specially allocated expenses that are subject to inclusion in a budget shall be made at least annually based on a budget adopted by the Association in the manner provided in Section 12.2 herein.

12.1.2. Allocation of Common Expenses. Except as provided otherwise in this Article, all Common Expenses must be assessed against all the Units in accordance with their Common Expense liabilities.

12.1.3 Common Expenses shall include:

- (a) Expenses of administration.
- (b) Expenses of maintenance, repair or replacement of Common Elements and facilities.
- (c) Costs of insurance and bonds required by this Declaration and/or the Bylaws.
- (d) A general operating reserve.
- (e) Reserve for replacements and deferred maintenance.
- (f) Any deficit in Common Expenses for any prior period.
- (g) Any other items properly chargeable as expenses of the Association.

12.2. **Budget Approval; Special Assessments.** Within thirty (30) days after adoption of any proposed budget for the Association, the Board must provide a copy of the budget to all Owners and set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than fifty (50) days after providing the budget. Unless at that meeting the Owners of units to which a majority of the votes in the Association are allocated reject the budget, the budget and the assessments against the Units included in the budget are ratified, whether or not a quorum is present.

12.2.1. If the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the Unit owners continues until the Unit Owners ratify a subsequent budget proposed by the Board.

12.2.2. The budget shall include the following information:

- (a) The projected income to the association by category;
- (b) The projected common expenses by category;
- (c) The amount of the Assessments per Unit and the date the assessments are due;
- (d) The current amount of regular Assessments budgeted for contribution to the reserve account;
- (e) A statement of whether the Association has a reserve study that meets the requirements of RCW 64.90.550 and, if so, the extent to which the budget meets or deviates from the recommendations of that reserve study; and
- (f) The current deficiency or surplus in reserve funding expressed on a per-Unit basis.

12.2.3. Special Assessments. The Board, at any time, may propose a Special Assessment. The Assessment is effective only if the Board follows the procedures for ratification of a budget described above and the Owners do not reject the proposed Assessment. The Board may provide that the Special Assessment may be due and payable in installments over any period it determines and may provide a discount for early payment.

12.3. **Payment by Owners.** Each Owner shall be obligated to pay its share of Common Expenses and special charges made pursuant to this Article to the treasurer for the Association in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Board shall designate. No Owner may exempt himself from liability for payment of Assessments for any reason, including waiver of use or enjoyment of any of the Common Elements or abandonment of the Owner's Unit.

12.4. **Allocated Liability.** Except for Assessments under Sections 12.5, 12.6, 12.7, and 12.8, all Common Expenses must be assessed against all the Units in accordance with the Allocated Interests set forth in *Exhibit A*. Any past due Common Expense assessment or installment thereof bears interest at the rate established by the Association pursuant to Section 12.11.12.

12.5. **Limited Common Element.** Any Common Expense associated with the operation, maintenance, repair, or replacement of a Limited Common Element shall be paid by the Owner of or assessed against the Units to which that Limited Common Element is assigned, equally.

12.6. **Only Some Units Benefited.** The Board may elect that any Common Expense or portion thereof benefiting fewer than all of the Units must be assessed exclusively against the Units benefited.

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

12.8. Utility Costs. The Board may elect that the costs of utilities must be assessed in proportion to usage.

12.9. Owner Misconduct. To the extent that any Common Expense is caused by the negligence, gross negligence or willful misconduct of any Unit Owner, tenant, guest, invitee or occupant, then after notice and opportunity to be heard, the Association shall assess that expense against the Owner's Unit.

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

12.11. Lien For Assessments.

12.11.1. Lien. The Association has a lien on a Unit for any unpaid Assessments (plus interest, and attorneys' fees and costs) assessed against a Unit from the time the Assessment is due.

12.11.2. Priority. A lien for unpaid Assessments shall be prior to all other liens and encumbrances on a Unit except: (a) liens and encumbrances recorded before the recording of the Declaration; (b) a Mortgage on the Unit recorded before the date on which the Assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental Assessments or charges against the Unit ("Superior Security Interests").

12.11.3. Super Priority over Security Interests. A lien for unpaid Assessments has priority over Superior Security Interests to the extent of an amount equal to the following:

(i) The common expense assessments (excluding any amounts for capital improvements) based on the periodic budget adopted by the Association which would have become due in the absence of acceleration during the six (6) months immediately preceding the Institution of Proceedings to foreclose either the Association's lien or Superior Security Interest (the "Assessment Priority Amount");

(ii) The Association's actual costs and reasonable attorneys' fees incurred in foreclosing its lien which are incurred after the giving of the Superior Lien Notice described below, but only to the extent of the lesser of Two Thousand Dollars (\$2,000.00) or an amount equal to the Assessment Priority Amount (the "Collection Cost Priority Amount"). Provided, however, this amount is prior only to the holder of a Senior Security Interest only if the Association has given such holder not less than sixty (60) days' prior written notice that the Owner of the Unit is in default in payment of an assessment. The notice shall contain the following information:

- (a) Name of the borrower;
- (b) Recording date of the trust deed or mortgage;
- (c) Recording information;
- (d) Name of the Association, Unit Owner, and Unit designation stated in the declaration or applicable supplemental Declaration;
- (e) Amount of unpaid assessment; and
- (f) A statement that failure to, within sixty (60) days of the written notice, submit the Association payment of six (6) months of assessments as

described in (i) of this subsection will result in the priority of the amounts described in (ii) of this subsection.

12.11.3.1. Upon payment of Assessment Priority Amount and Collection Cost Priority Amount by the holder of a Superior Security Interest, the Association's lien shall thereafter be fully subordinated to the lien of such Superior Security Interest on the Unit.

12.11.3.2. As used in Section 12.11, the following definitions apply.

(i) "Institution of proceedings" means either:

- (a) The date a deed of trust beneficiary records a notice of trustee's sale;
- (b) The date of commencement, pursuant to applicable court rules, of an action for judicial foreclosure either by the Association or the holder of a Superior Security Interest; or
- (c) The date a vendor under a real estate contract records a notice of intention to forfeit in a real estate contract forfeiture proceeding.

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

12.11.4. Recording as Notice. Recording of the Declaration constitutes record notice and perfection of the lien for Assessments. While no further recording of any claim of lien for Assessment under this Section shall be required to perfect the Association's lien, the Association may record a Notice of Claim of Lien for Assessments under this Section in the real property records of any county in which the Condominium is located. Such recording shall not constitute the written notice of delinquency to a Mortgagee referred to in Section 12.11.3.

12.11.6. Limitation Action. A lien for unpaid Assessments and the personal liability for payment of Assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within six (6) years after the amount of the Assessments sought to be recovered becomes due.

12.11.7. Foreclosure. The lien arising under Section 12.11 may be enforced judicially by the Association or its authorized representative in the manner set forth in chapter 61.12 RCW. The Association or its authorized representative shall have the power to purchase the Unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight (8) months. Nothing in this Section shall prohibit an Association from taking a deed in lieu of foreclosure.

12.11.8. Receiver. From the time of commencement of an action by the Association to foreclose a lien for nonpayment of delinquent Assessments against a Unit that is not occupied by the Owner thereof, the Association shall be entitled to the appointment of a

receiver to collect from the lessee thereof the rent for the Unit as and when due. If the rental is not paid, the receiver may obtain possession of the Unit, refurbish it for rental up to a reasonable standard for rental units in this type of Condominium, rent the Unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the Unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent Assessments. Only a receiver may take possession and collect rents under this Section, and a receiver shall not be appointed less than ninety (90) days after the delinquency. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Unit.

12.11.9. Mortgagee Liability. Except as provided in Section 12.11.3, the holder of a Mortgage or other purchaser of a Unit who obtains the right of possession of the Unit through foreclosure shall not be liable for Assessments or installments thereof that became due prior to such right of possession. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Unit Owners, including such Mortgagee or other purchaser of the Unit. Foreclosure of a Mortgage does not relieve the prior Owner of personal liability for Assessments accruing against the Unit prior to the date of such sale as provided in this Section.

12.11.10. Lien Survives Sale. A lien for unpaid Assessments shall not be affected by the sale or transfer of the subject Unit except in the event of sale through foreclosure.

12.11.11. Owner Liability. In addition to constituting a lien on the Unit, each Assessment shall be the joint and several obligations of the Owner or Owners of the Unit to which the same are assessed as of the time the Assessment is due. In a voluntary conveyance the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the latter up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. Suit to recover a personal judgment for any delinquent Assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

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

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

12.11.14. Assessment Certificate. The Association, upon written request, shall furnish to a Unit Owner or a Mortgagee a statement signed by an officer or authorized agent of the Association setting forth the amount of unpaid Assessments against that Unit. The statement shall be furnished within fifteen (15) days after receipt of the request and is binding on the Association, the Board, and every Unit Owner, unless and to the extent known by the recipient to be false.

12.12. **Acceleration of Assessments.** In the event any monthly Assessment or special charge attributable to a particular Unit remains delinquent for more than sixty (60) days, the

Board may, upon fifteen (15) days' written notice to the Owner of such Unit, accelerate and demand immediate payment of all, or such portion as the Board determines, of the monthly Assessments and special charges which the Board reasonably determines will become due during the next succeeding twelve (12) months with respect to such Unit.

12.13. Delinquent Assessment; Deposit, Working Capital.

12.13.1. Delinquent Assessment Deposit.

- (a) A Unit Owner may be required by the Board or by the Manager, from time to time, to make, and maintain a deposit of not less than one (1) month's estimated monthly Assessment nor in excess of three (3) month's estimated monthly Assessment and charges, which may be collected as are other Assessments and charges. Such deposit shall be held in a separate fund, be credited to the Unit owned by such Owner, and be for the purpose of establishing a reserve for delinquent Assessments.
- (b) Resort may be had thereto at any time when such Owner is ten (10) days or more delinquent in paying his monthly or other Assessments and charges. Said deposits shall not be considered as advance payments of regular Assessments. In the event the Board should draw upon said deposit as a result of Unit Owner's delinquency in payment of any Assessments, said Owner shall continue to be responsible for the immediate and full payment of said delinquent Assessment (and all penalties and costs thereon) and thus the full restoration of said deposit, and the Board shall continue to have all of the rights and remedies for enforcing such Assessment payment and deposit restoration as provided by this Declaration and by law.
- (c) Upon the sale of a Unit, the seller/Owner thereof shall not be entitled to a refund from the Association of any deposit or reserve account made or maintained with respect to such Unit pursuant to this or any other Section of this Declaration; rather, any such deposit or reserve account shall continue to be held by the Association for the credit of such Unit, and the Unit Purchaser shall succeed to the benefit thereof, and the Unit seller shall be responsible for obtaining from the Purchaser appropriate compensation therefor.

**Article 13
INSURANCE**

13.1. In General. The Association shall maintain, to the extent reasonably available, insurance that complies with the requirements of the Federal National Mortgage Association ("FNMA") and the secondary mortgage market, including:

13.1.1. Property insurance on the Condominium, which may, but need not, include equipment, improvements, and betterments in a Unit, insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the actual replacement cost of

the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

13.1.2. Liability insurance, including medical payments insurance, in an amount determined by the Board in consultation with the Association's insurance broker covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.

13.1.3. Workmen's compensation insurance to the extent required by applicable laws.

13.1.4. Fidelity bonds naming the members of the Board, the Manager and its employees and such other persons as may be designated by the Board as principals and the Association as obligee, in at least an amount equal to three (3) months aggregate Assessments for all Units plus reserves, in the custody of the Association or Manager at any given time during the term of each bond. Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definitions of "employee" or similar expression.

13.1.5. Insurance against loss of personal property of the Association by fire, theft and other losses with deductible provisions as the Board deems advisable.

13.1.6. Such other insurance (including directors and officers liability) as the Board deems advisable; provided, that notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium projects established by Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Veteran's Administration, or other governmental or quasi-governmental agencies involved in the secondary mortgage market, so long as any such agency is a Mortgagee or Owner of a Unit within the project, except to the extent such coverage is not available or has been waived in writing by such agency.

13.2. Coverage Not Available. If the insurance described in Section 13.1 is not reasonable available, or is modified, canceled, or not renewed, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by first class United States mail to all Unit Owners, to each Eligible Mortgagee, and to each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. The Association in any event may carry any other insurance it deems appropriate to protect the Association or the Unit Owners.

13.3. Required Provisions. Insurance policies carried pursuant to this Article shall:

13.3.1. Provide that each Unit Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association;

13.3.2. Provide that the insurer waives its right to subrogation under the policy as to any and all claims against the Association, the Owner of any Unit and/or their respective agents, employees or tenants; and members of their household, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured;

13.3.3. Provide that no act or omission by any Unit Owner, unless acting within the scope of the Owner's authority on behalf of the Association, nor any failure of the Association to comply with any Warranty or condition regarding any portion of the premises over which the Association has no direct control, will void the policy or be a condition to recovery under the policy;

13.3.4. Provide that if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance, and that the liability of the insurer thereunder shall not be affected by, and the insurer shall not claim any right of set-off, counterclaims, apportionment, probation, contribution or assessment by reason of, any other insurance obtained by or for any Unit Owner or any Mortgagee;

13.3.5. Provide that, despite any provision giving the insurer the right to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association, or when in conflict with the provisions of any insurance trust agreement to which the Association is a party, or any requirement of law;

13.3.6. Contain no provision (other than insurance conditions) which will prevent Mortgagees from collecting insurance proceeds; and

13.3.7. Contain, if available, an agreed amount and inflation Guard Endorsement.

13.4. Claims Adjustment. Any loss covered by the property insurance under this Article must be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a Mortgage. The insurance trustee or the Association shall hold any insurance proceeds in trust for Unit Owners and Lien holders as their interests may appear. Subject to the provisions of Article 14, the proceeds must be disbursed first for the repair or restoration of the damaged property, and Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Condominium is terminated.

13.5. Owners Additional Insurance. An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for the Owner's own benefit. Owners are encouraged to obtain and maintain an individual insurance policy which provides coverage for the Owner's Unit (in an amount at least equal to the Association's deductible) and personal belongings therein.

13.6. Certificate. An insurer that has issued an insurance policy under this Article shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Unit Owner or holder of a Mortgage. The insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of Chapter 48.18 RCW pertaining to the cancellation or nonrenewal of contracts of insurance. The insurer shall not modify the amount or the extent of the coverage of the policy, or cancel or refuse to renew the policy, without complying with the requirements of the Act.

13.7. Notification on Sale of Unit. Promptly upon the conveyance of a Unit, the new Unit Owner shall notify the Association of the date of the conveyance and the Unit Owner's name and address. The Association shall notify each insurance company that has issued an

insurance policy to the Association for the benefit of the Owners under Article 13 of the name and address of the new Owner and request that the new Owner be made a named insured under such policy.

13.8. Allocation of Repair Costs for Property Damage. In accordance with the provisions of this Declaration, including but not limited to the subparagraphs of this Section, the costs for repair or damage events are apportioned as follows:

13.8.1. Damage Covered by Association Insurance. For damage events that are covered by the Association's insurance, repair costs over the Association's standard insurance deductible are paid for by Association insurance, or by the Association if the Board decides not to file a claim. Repair costs within the Association's standard insurance deductible are the responsibility of the Unit Owner and are allocated as follows:

- (a) All costs within the Association Deductible may be allocated to a responsible Owner after Notice and Opportunity to be Heard, if the damage resulted from negligence of that Owner, the Owner's Tenants, guest, invitee, or occupant.
- (b) Where there is gross negligence or willful misconduct by an Owner, Owner's Tenant, guest, invitee or occupant occurs, all costs within the Association Deductible may be allocated to the responsible Owner, after notice and opportunity to be heard.
- (c) If neither (a) nor (b) apply, then to an Owner whose Unit or Limited Common Elements were damaged or benefited by the repairs.
- (d) If the damage is to more than one Unit and/or the Common or Limited Common Elements, and neither (a) nor (b) apply, the deductible is prorated between the Unit(s) and/or Common or Limited Common Elements based on the total benefit to each, as follows: (i) repairs to Units and Limited Common Elements that benefit only one Unit will be assessed solely to the individual Unit Owners; (ii) repairs to Limited Common Elements that benefit more than one Unit will be assessed to the Unit Owners benefitted; and (iii) repairs to Common Elements will be assessed as Common Expenses, divided among Owners in accordance with the formula specified for other Common Expenses.

13.8.2. Damage Not Covered by Association Insurance. For damage events that are not covered by the Association's insurance, repair costs shall be assessed as follows:

- (a) All costs within the Association Deductible may be allocated to a responsible Owner after Notice and Opportunity to be Heard, if the damage resulted from negligence of that Owner, the Owner's Tenants, guest, invitee, or occupant.
- (b) Where there is gross negligence or willful misconduct by an Owner, Owner's Tenant, guest, invitee or occupant occurs, all costs within the Association Deductible may be allocated to the responsible Owner, after Notice and an Opportunity to be Heard.
- (c) If neither (a) nor (b) apply, then to an Owner whose Units or Limited Common Elements were damaged or benefited by the repairs.

- (d) To the extent that the damage to the Property is not insured, and not the responsibility of an individual as noted above, then the Association shall restore all Common Elements and Limited Common Elements as a Common Expense, and Owners shall restore their Units at their own expense.

13.8.3. Maximum Damage Assessment. Except to the extent covered by an Owner's or Tenant's insurance policy, the maximum one Unit can be assessed for any one damage event is the deductible under the Association's standard Property policy. Amounts within deductibles for earthquake or flood damage in excess of the standard Property deductible, combined with contributions required of Owners as provided for in this Declaration, shall be a Common Expense. This maximum shall not apply to Owners who cause damage through gross negligence or willful misconduct.

Article 14 DAMAGE OR DESTRUCTION; RECONSTRUCTION

14.1. Definitions; Significant Damage; Repair; Emergency Work.

14.1.1. As used in this Article, the term "Significant Damage" means damage or destruction, whether or not caused by casualty, to any part of the Property which the Board is responsible to maintain or repair: (a) for which funds are not available in the maintenance and repair or contingency budget of the Association to make timely repairs; and (b) which has a significant adverse impact on the habitability of any Unit or the ability of an Owner or Owners to use the Property or any significant portion of the Property for its intended purpose.

14.1.2. As used in this Article, the term "Repair" means to repair, reconstruct, rebuild or restore the Building or improvements which suffered Significant Damage to substantially the same condition in which they existed prior to the damage or destruction, with each Unit and the Common and limited Common Elements having substantially the same vertical and horizontal boundaries as before. Modifications to conform to then applicable governmental rules and regulations or available means of construction may be made.

14.1.3. As used in this Article, the term "Emergency Work" shall mean that work which the Board deems reasonably necessary to avoid further damage, destruction or substantial diminution in value to the improvements and to reasonably protect the Owners from liability arising out of the condition of the Property.

14.2. Initial Board Determinations. In the event of Significant Damage to any part of the Condominium, the Board shall promptly, and in all events within thirty (30) days after the date of Significant Damage, or, if the Significant Damage did not occur at a particular identifiable time, after the date of its discovery, make the following determinations with respect thereto employing such advice as the Board deems advisable:

14.2.1. The nature and extent of the Significant Damage, together with an inventory of the improvements and property directly affected thereby.

14.2.2. A reasonably reliable estimate of the cost to Repair the Significant Damage, which estimate shall, if reasonably practicable, be based upon a firm bid obtained from a responsible contractor.

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

14.2.4. The amount, if any, that the estimated cost of Repair exceeds the anticipated insurance proceeds therefor and the amount of Assessment to each Unit if such excess was paid as a Common Expense and specially assessed against all the Units in proportion to their Allocated Interest in the Common Elements.

14.2.5. The Board's recommendation as to whether such Significant Damage should be Repaired.

14.3. Notice of Damage or Destruction. The Board shall promptly, and in all events within thirty (30) days after the date of Significant Damage, provide each Owner, and each first Mortgagee with a written notice summarizing the initial Board determination made under Section 14.2. If the Board fails to do so within said thirty (30) days, then any Owner or Mortgagee may make the determination required under Section 14.2 and give the notice required under this Section.

14.4. General Provisions.

14.4.1. Duty to Restore. Any portion of the Condominium for which insurance is required under this Article which is Significantly Damaged shall be Repaired promptly by the Association unless: (a) the Condominium is terminated; (b) repair would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent (80%) of the Unit Owners, including every Owner of a Unit or assigned limited Common Element which will not be Repaired, vote not to Repair. Even if the Significant Damage is not to be Repaired, the Board shall still have authority to perform Emergency Work. The cost of Repair in excess of insurance proceeds and reserves is a Common Expense.

14.4.2. Damage not Restored. If all or any portion of the damaged portions of the Condominium are not Repaired (regardless of whether such damage is Significant): (a) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium; (b) the insurance proceeds attributable to Units and Limited Common Elements which are not Repaired shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lien holders, as their interests may appear; and (c) the remainder of the proceeds shall be distributed to all the Unit Owners or lien holders, as their interests may appear, in proportion to the Common Element interests of all the Units.

14.4.3. Reallocation. If the Unit Owners vote not to Repair any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote as if the Unit had been condemned under Article 15, and the Association promptly shall prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

14.5. Restoration by Board. If the damage (regardless of whether such damage is Significant) is to be Repaired pursuant to Section 14.4, then:

14.5.1. Contract and Contractors. The Board shall have the authority to employ architects and attorneys, advertise for bids, let contracts to contractors and others, and to take such other action as is reasonably necessary to effectuate the Repair and Restoration. Contracts for such repair and restoration shall be awarded when the Board, by means of

insurance proceeds and sufficient Assessments, has provision for the cost thereof. The Board may further authorize the insurance carrier to proceed with Repair upon satisfaction of the Board that such work will be appropriately carried out.

14.5.2. Insurance Trustee. The Board may enter into a written agreement in recordable form with any reputable financial institution or trust or escrow company that such firm or institution shall act as an insurance trustee to adjust and settle any claim for a loss in excess of Fifty Thousand Dollars (\$50,000.00), or for such firm or institution to collect the insurance proceeds and carry out the provisions of this Article.

14.6. Decision to Terminate. In the event of a decision to terminate the Condominium and not to Repair and Restore damage and destruction, the Board may nevertheless expend such of the insurance proceeds and funds of the Association as the Board deems reasonably necessary for Emergency Work (which Emergency Work may include but is not necessarily limited to removal of the damaged or destroyed buildings and clearing, filling and grading the real property), and the remaining funds, if any, and Property shall thereafter be held and distributed as provided in RCW 6.4.34.268.

Article 15 CONDEMNATION

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

15.2. Partial Unit Condemnation. Except as provided in Section 15.1, if part of a Unit is acquired by condemnation, the award must compensate the Unit Owner for the reduction in value of the Unit and its Allocated Interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides: (a) that Unit's Allocated Interests are reduced in proportion to the reduction in the size of the Unit, and (b) the portion of the Allocated Interests divested from the partially acquired Unit are automatically reallocated to that Unit and the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated interests.

15.3. Common Element Condemnation. If part of the Common Elements is acquired by condemnation the portion of the award attributable to the Common Elements taken shall be paid to the Owners based on their respective interests in the Common Elements. Any portion of the award attributable to the acquisition of a Limited Common Element must be equally divided among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

15.4. Recording of Judgment. The court judgment shall be recorded in every county in which any portion of the Condominium is located.

15.5. Association to Represent Owners. The Association shall represent the Unit Owners in any proceedings, negotiations, settlements or agreements regarding a condemnation of any part of the Condominium, and any condemnation proceeds shall be payable to the Association for the benefit of the Owners of affected Units and their Mortgagees. Should the Association not act on the Owners' behalf in a condemnation process, the affected Owners may individually or jointly act on their own behalf.

Article 16 COMPLIANCE WITH DECLARATION

16.1. Enforcement. Each Owner shall comply strictly with the provisions of this Declaration, the Bylaws and administrative rules and regulations passed hereunder, as the same may be lawfully amended from time to time, and with all decisions adopted pursuant to this Declaration, the Bylaws and administrative rules and regulations. Failure to comply shall be grounds for an action to recover sums due for damages, or injunctive relief, or both, maintainable by the Board (acting through its officers on behalf of the Owners), or by the aggrieved Owner on his or her own against the party (including an Owner or the Association) failing to comply.

16.2. No Waiver of Strict Performance. The failure of the Board in any one or more instances to insist upon the strict performance of this Declaration, of the Bylaws, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Board of any assessment from an Owner, with knowledge of any such breach shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

Article 17 LIMITATION OF LIABILITY

17.1. Liability for Utility Failure, Etc. Except to the extent covered by insurance obtained by the Board pursuant to Article 13, neither the Association nor the Board nor the Manager shall be liable for: any failure of any utility or other service to be obtained and paid for by the Board; or for injury or damage to person or property caused by the elements, or resulting from electricity, noise, smoke, water, rain (or other liquid), dust or sand which may leak or flow from outside or from any parts of the Units, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other places; or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance or orders of a governmental authority. No diminution or abatement of Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

17.2. No Personal Liability. So long as a Board member, Association committee member, or Association officer has acted in good faith, without willful or intentional misconduct, upon the basis of such information as may be possessed by such person and such person's evaluation of such information, no such person (and no Association manager acting pursuant to the directions of the Board) shall be personally liable to any Owner, or other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence, including any discretionary decision, or failure to make a discretionary decision, by such person in such person's official capacity. Without limiting the generality of the foregoing, the term "discretionary decisions" shall include evaluating and deciding whether or not to act in

response to reports, investigations or recommendations received by such person, and shall include deciding whether or not to commence, defend, continue, or settle lawsuits or arbitration/mediation or other legal proceedings involving the Association or Condominium (or any part thereof). Provided, that this Section shall not apply where the consequences of such act, omission, error or negligence are covered by insurance obtained by the Board pursuant to Article 13.

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

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

Article 18 MORTGAGEE PROTECTION

18.1. Change in Manager. In the event that professional management is employed by the Association, at least thirty (30) days' notice of any contemplated change in the professional manager shall be given to any Eligible Mortgagee. The Association shall not elect to terminate professional management and assume self-management without the prior written approval of sixty-seven percent (67%) of the Owners and fifty-one percent (51%) of all Eligible Mortgagees; provided that such prior consent shall not be required to change from one professional manager to another professional manager.

18.2. Abandonment of Condominium Status. Except when acting pursuant to the provisions of the Act involving damage, destruction, or condemnation, the Association shall not without prior written approval of sixty-seven percent (67%) of all Eligible Mortgagees and sixty-seven percent (67%) of the Owners of record of the Units, seek by act or omission to: abandon or terminate the condominium status of the project; or abandon, encumber, sell or transfer any of the Common Elements.

18.3. Partitions and Subdivision. The Association shall not combine nor subdivide any Unit or the appurtenant Limited Common Elements, nor abandon, partition, subdivide, encumber or sell any Common Elements, or accept any proposal so to do, without the prior written approval of fifty-one percent (51%) of all Eligible Mortgagees and sixty-seven percent (67%) of Owners of record of the Units, and without unanimous approval of the Eligible Mortgagee(s) and Owner(s) of the Unit(s), so affected.

18.4. Change in Percentages. The Association shall not make any Material Amendment (as defined in Section 21.6) to this Declaration or Bylaws (including changes in the percentages of interest in the Common Elements) without the prior written approval of fifty one percent (51%) of all Eligible Mortgagees and sixty-seven percent (67%) of all Owners of record of the Units, and without unanimous approval of the Eligible Mortgagee(s) and Owner(s) of the Unit(s) for which the percentage(s) would be changed.

18.5. Copies of Notices. A Mortgagee of a Unit (and any insurer or guarantor of such Mortgage) shall be entitled to receive timely written notice: (a) that the Owner/Mortgagor of the Unit has for more than sixty (60) days failed to meet any obligation under the Condominium documents; (b) of all meetings of the Association and be permitted to designate a representative to attend all such meetings; (c) of any condemnation loss or casualty loss affecting a material portion of the Property or the Unit on which it holds a Mortgage; (d) of any lapse, cancellation or material modification of insurance policies or fidelity bonds maintained by the Association; and (e) of any proposed action that requires the consent of a specified percentage of Mortgages. To be entitled to receive notices under this Section 18.5 the Mortgagee (or Mortgage insurer or guarantor) must send a written request to the Association stating both its name and address and the Unit number or address of the Unit on which it has (or insures or guaranties) the Mortgage.

18.6. Effect of Declaration Amendments. No amendment of this Declaration shall be effective to modify change, limit or alter the rights expressly conferred upon Mortgagees in this instrument with respect to any unsatisfied Mortgage duly recorded unless the amendment shall be consented to in writing by the holder of such Mortgage. Any provision of this Declaration conferring rights upon Mortgagees which is inconsistent with any other provision of said Declaration or the Bylaws shall control over such other inconsistent provisions.

18.7. Insurance.

18.7.1. Board Duties. With respect to a first Mortgagee of a Unit, the Board shall:

- (a) Cause any insurance carrier to include in the insurance policy a standard mortgage clause, naming any Mortgagee who makes written request to the Board to be so named;
- (b) Furnish any such Mortgagee with a copy of any insurance policy or evidence thereof which covers the Unit on which such Mortgagee has a lien;
- (c) Require any insurance carrier to give the Board and any and all insured (including such Mortgagees) at least thirty (30) days' written notice before canceling, reducing the coverage or limits, or otherwise substantially modifying any insurance with respect to the Property on which the Mortgagee has a lien (including cancellation for a premium non-payment);
- (d) Not make any settlement of any insurance claims for loss or damage to any such Unit, Common or Limited Common Element exceeding Five Thousand Dollars (\$5,000.00) without the approval of such Mortgagee; provided, that the withholding of such approval shall not be unreasonable or in conflict with the provisions of Article 14;

- (e) Give such Mortgagee written notice of any loss or taking affecting Common Elements, if such loss or taking exceeds Ten Thousand Dollars (\$10,000.00);
- (a) Give such Mortgagee written notice of any loss, damage or taking affecting any Unit or Limited Common Elements in which it has an interest, if such loss, damage or taking exceeds One Thousand Dollars (\$1,000.00);

18.7.2. Additional Policy Provisions. In addition, the insurance policy acquired shall:

- (a) Provide that any reference to a Mortgagee in such policy shall mean and include any holders of Mortgages of any Unit or Unit lease, in their respective order and preference, whether or not named therein;
- (b) Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or Unit Owners or any persons claiming under any of them;
- (c) Waive any provision invalidating such Mortgage clause by reason of: the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy; any requirement that the Mortgagee pay any premium thereon; and any contribution clause.

18.8. **Inspection of Books.** Owners, Mortgagees, insurers and guarantors of any Mortgage on any Unit shall be entitled: to inspect and copy at all reasonable hours of weekdays (or under other reasonable circumstances) all of the records of the Association which are subject to Owner review as set forth in RCW 64.90.495 within a reasonable time following request; and, upon written request of any holder, insurer or guarantor of a first Mortgage at no cost to the party so requesting (or if this project contains fewer than fifty [50] Units, upon the written request of the holders of fifty-one percent [51%] or more of first Mortgages at their expense if an audited statement is not otherwise available), to receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.

Article 19 EASEMENTS

19.1. **General.** It is intended that in addition to rights under the Act, each Unit has an easement in and through each other Unit and the Common and Limited Common Elements for all support elements and utility, wiring, heat and service elements, and for reasonable access thereto, as required to effectuate and continue proper operation of this Condominium plan. Without limiting the generality of the foregoing, each Unit and all Common and Limited Common Element is specifically subject to an easement for the benefit of each of the other Units in the Condominium for all duct work for the several Units, and for heating, ventilation, air conditioning and fireplaces and associated flues or chimneys. In addition, each Unit and all the Common and Limited Common Elements are specifically subject to easements as required for the intercom, security and electrical entry system, if any, for the electrical wiring and plumbing, for the air conditioning lines and equipment, if any, for each Unit, for the vacuum system roughed-in each Unit, if any, and for the master antenna cable system, if any. Finally, each Unit as it is constructed is granted an easement to which each other Unit and all Common and Limited Common Element is subject to the location and maintenance of all the original equipment and facilities and utilities for such Unit. The specific mention or reservation of any easement in this

Declaration does not limit or negate the general easement for Common Elements reserved by law.

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

19.3. Association Functions. There is hereby reserved to the Association, or its duly authorized agents and representatives, such easements and rights of access over, across, under or into the Condominium (and any part thereof) as are necessary, for repairs, maintenance or replacement and/or to perform the rights, duties and obligations of the Association as are set forth, provided for or authorized in this Declaration, or in the Articles, Bylaws or Association Rules.

19.4. Encroachments. Each Unit and each Common and Limited Common Element is hereby declared to have an easement over all adjoining Units and Common and Limited Common Element, for the purpose of accommodating any encroachment due to engineering errors, or errors in original construction, reconstruction, repair of any portion of the Building, or any other similar cause, and any encroachment due to building overhang projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful act or acts with full knowledge of said Owner or Owners. In the event a Unit or Common or Limited Common Element is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Units and Common and Limited Common Elements shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any Unit. The provisions of this Section 19.4 are intended to supplement Section 4.2 and RCW 64.32.252 and, in the event of any conflict, the provisions of Section 4.2 and RCW 64.34.252 shall control.

Article 20

PROCEDURES FOR SUBDIVIDING OR COMBINING

20.1. Procedure. Subdivision and/or combining of any Unit or Units, are authorized as follows:

20.1.1. Owner Proposal. Any Owner of any Unit or Units may propose any subdividing or combining of any Unit or Units, and appurtenant Common Elements or Limited Common Elements in writing, together with complete plans and specifications for accomplishing the same and a proposed amendment to this Declaration, the Survey Map and Plans covering such subdividing or combining, to the Board, which shall then notify all other Unit Owners of the requested subdivision or combination.

20.1.2. Owner/Mortgagee Approval. Upon written approval of such proposal by sixty-seven percent (67%) of the Owners and fifty-one percent (51%) of the Eligible Mortgagees, and of all Eligible Mortgagee(s) and Owner(s) of the Unit(s) to be combined or subdivided, the Owner(s) making the proposal may proceed according to such plans and specifications; provided that the Board may in its discretion (but it is not mandatory that the Board exercise this

authority) require that the Board administer the work or that provisions for the protection of other Units or Common Elements or reasonable deadlines for completion of the work be inserted in the contracts for the work.

20.1.3. Survey Map and Plans. The changes in the Survey Map, if any, and the changes in the Plans and Declaration shall be placed of record as amendments to the Survey Map, Plans, and Declaration of Condominium in accordance with the provisions of Article 21.

20.1.4. Allocated Interests. The Allocated Interests formerly allocated to the subdivided Unit shall be reallocated to the new Units in any reasonable and equitable manner prescribed by that Owner of the subdivided Unit. The Allocated Interests of the new Unit resulting from a combination of Units shall be the aggregate of the Allocated Interests formerly allocated to the Units being combined.

Article 21

AMENDMENT OF DECLARATION, SURVEY MAP, PLANS

21.1. In General. Except as otherwise provided herein, the Declaration, including the Survey Maps and Plans, may be amended only by vote or agreement of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

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

21.3. Recording. Every amendment to the Declaration must be recorded in every county in which any portion of the Condominium is located, and is effective only upon recording. An amendment shall be indexed in the name of the Condominium and shall contain a cross-reference by recording number to the Declaration and each previously recorded amendment thereto. All amendments adding Units shall contain a cross-reference by recording number to the Survey Map and Plans relating to the added Units and set forth all information required by RCW 64.34.216(1).

21.4. General Limitations. Except to the extent expressly permitted or required by other provisions of the Act, no amendment may increase the number of Units, change the boundaries of any Unit, the Allocated Interests of a Unit, or the uses to which any Unit is restricted, in the absence of the vote or agreement of the Owner of each Unit particularly affected and the Owners of Units to which at least ninety percent of the votes in the Association are allocated.

21.5. Execution. Amendments to the Declaration required by the Act to be recorded by the Association shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

21.6. Material Amendments. Any amendment to a provision of this Declaration establishing, providing for, governing or regulating the following (all of which shall be deemed "Material Amendments") shall require the consent of fifty-one percent (51%) of the Eligible Mortgagees: voting rights; Assessments, Assessment liens, or the priority of Assessment liens; reserves for maintenance, repair, and replacement of Common Elements; responsibility for maintenance and repairs; reallocation of interests in the Common or Limited Common Elements, or rights to their use; redefinition of any Unit boundaries; convertibility of Units into Common Elements or vice

versa; expansion or contraction of the Condominium, or the addition, annexation, or withdrawal of property to or from the Condominium; insurance or fidelity bond; leasing of Units; imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit; a decision by the Association to establish self-management when professional management had been required previously by the Condominium's documents or by an Eligible Mortgage holder; restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration; any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or any provisions that expressly benefit Mortgage holders, insurers, or guarantors. A Mortgagee who fails to respond within thirty (30) days of a written request to approve an amendment shall be deemed to have approved the request if such request was delivered by certified or registered mail with a return receipt requested.

21.7. Map and Plans Amendment. Except as otherwise provided herein, the Survey Map and Plans may be amended by revised versions or revised portions thereof referred to and described as to effect in amendment to this Declaration adopted as provided for herein. Copies of any such proposed amendment to the Survey Map and Plans shall be made available for the examination of every Owner. Such amendment to the Survey Map and Plans shall also be effective, once properly adopted, upon recordation in the appropriate county office in conjunction with the Declaration amendment.

Article 22 MISCELLANEOUS

22.1. Notices for All Purposes.

22.1.1. Delivery of Notice. Any notice permitted or required to be delivered under the provisions of this Declaration or the Bylaws may be delivered either personally or by mail. If delivery is made by mail, any such notice shall be deemed to have been delivered twenty-four (24) hours after a copy has been deposited in the United States mail, postage prepaid, for first class mail, addressed to the person entitled to such notice at the most recent address given by such person to the Board, in writing, for the purpose of service of such notice, or to the most recent address known to the Board. Notice to the Owner or Owners of any Unit shall be sufficient if mailed to the Unit of such person or persons if no other mailing address has been given to the Board by any of the persons so entitled. Mailing addresses may be changed from time to time by notice in writing to the Board. Notice to be given to the Board may be given to the President or Secretary of the Board.

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

22.2. Severability. The provisions hereof shall be deemed independent and severable, and the validity or partial invalidity or enforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof if the remainder complies with the Act or as covenants affect the common plan.

22.3. Conveyances; Notice Required. The right of a Unit Owner to sell, transfer, or otherwise convey the Unit shall not be subject to any right of approval, disapproval, first refusal,

or similar restriction by the Association or the Board, or anyone acting on their behalf. An owner intending to sell a Unit shall deliver a written notice to the Board, at least two (2) weeks before closing specifying: the Unit to be sold; the name and address of the Purchaser, of the closing agent, and of the title insurance company insuring the Purchaser's interest; and the estimated closing date. The Board shall have the right to notify the Purchaser, the title insurance company, and the closing agent of the amount of unpaid assessments and charges outstanding against the Unit, whether or not such information is requested. It is understood, however, that a violation of this Section shall not invalidate a sale, transfer or other conveyance of a Unit which is otherwise valid under applicable law.

22.4. Effective Date. This Amended and Restated Declaration shall take effect upon recording.

22.5. Reference to Survey Map and Plans. The Survey Map and Plans of the Condominium consist of eight (8) sheets as prepared by Leonard, Boudinot and Skodje, Inc., and were filed with the Recorder of Skagit County, Washington under File No200209120078.

Article 23 DISPUTE RESOLUTION

23.1. Litigation. Venue for any disputes arising out of this Declaration or Bylaws shall lie exclusively in Skagit County Superior Court unless the parties mutually agree to an alternative form of dispute resolution, such as mediation and/or arbitration. The substantially prevailing party in any such litigation shall be entitled to an award of its reasonable attorneys' fees and costs.

Article 24 Trail and Rail Right-of-Way

24.1. Trail and Rail Right-of-Way. As Shown on **Exhibit B**, there is a seventy-five foot (75') wide right of way owned by the City of Anacortes, upon which the city has constructed a walking/biking trail known as the Tommy Thompson Trail. As shown on **Exhibit B**, the Trail separates the Fidalgo Bay Road portion of Lot D underlying the Condominium from the remaining Fidalgo Bay side of Lot D. The Trail is open to members of the public.

IN WITNESS WHEREOF, the Association caused this Amendment to be executed as of the date indicated below, by its President, who certifies that the Amendment was properly adopted.

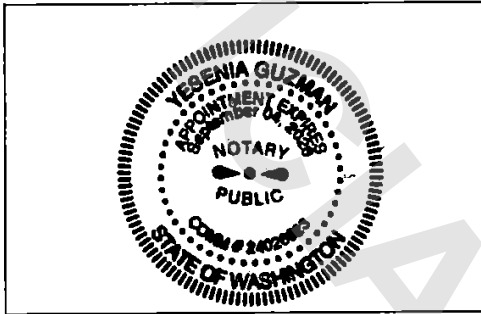
COVE AT FIDALGO BAY OWNERS ASSOCIATION,
a Washington Nonprofit Corporation

By: David H. White
Its: President Secretary

STATE OF WASHINGTON)
) ss.
 COUNTY OF SKAGIT)

Secretary
 On this day personally appeared before me David H White, to me known to be the ~~PRESIDENT~~ of the **COVE AT FIDALGO BAY OWNERS ASSOCIATION**, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute the said instrument on behalf of the corporation.

GIVEN under my hand and official seal this 29 day of July, 2026.



Yesenia Guzman
 Print Name: Yesenia Guzman
 NOTARY PUBLIC in and for the
 State of Washington, Residing at Anacortes
 My Commission Expires: September 4 2028

[NOTARY SEAL]

**COVE AT FIDALGO BAY CONDOMINIUM
EXHIBIT A TO AMENDED AND RESTATED
DECLARATION**

1. Description of Real Property included in Condominium:
Provided in Surveyor's As-Built Survey Exhibit B.
 - a. Legal Description of Condominium:
12 Units on Lot D in Exhibit B.
 - b. Legal Description of Phase 1:
Provided in Surveyor's As-Built Survey Exhibit B.
2. Moorage Slips: None.
3. Recreational Facilities: None.
4. Parking:
 - a. 19 Enclosed spaces assigned per Board policy, with each Unit being assigned at least one (1) space.
 - b. 6+ uncovered spaces.
5. Storage: Two (2) assigned to each Unit per Board policy.
6. Legal Description of Garage and Storage Area:
 - a. GARAGE AND STORAGE AREA, THE COVE ON FIDALGO BAY, A CONDOMINIUM, PHASE I, AS PER PLAT RECORDED ON SEPTEMBER 12, 2002 UNDER AUDITOR'S FILE NO. 200209120078, RECORDS OF SKAGIT COUNTY, WASHINGTON; AND THE DECLARATION RECORDED SEPTEMBER 12, 2002 UNDER AUDITOR'S FILE NO. 200209120077.

UNIT SQUARE FOOTAGE AREA NOTES

Square footages are based on surveyors "as built" certificate upon completion of construction, and may include perimeter wall thickness. Unit square footages are shown in Exhibit B.

ALLOCATED INTERESTS NOTES

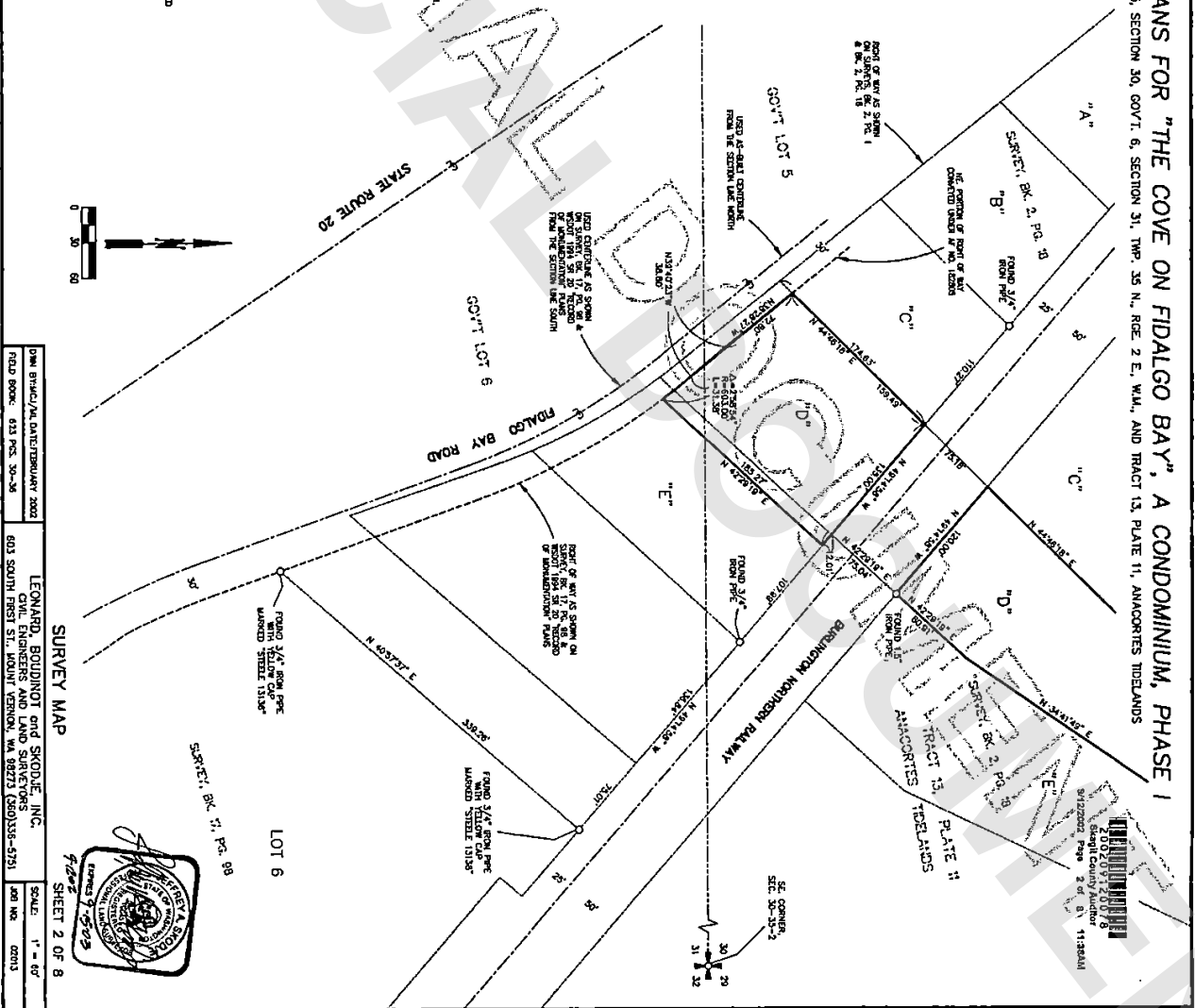
The Allocated Interest of a Unit in Common Expense liability, Association votes and Common Elements was determined as equal for all units as they are all of approximately equal size.

SURVEY MAP AND PLANS

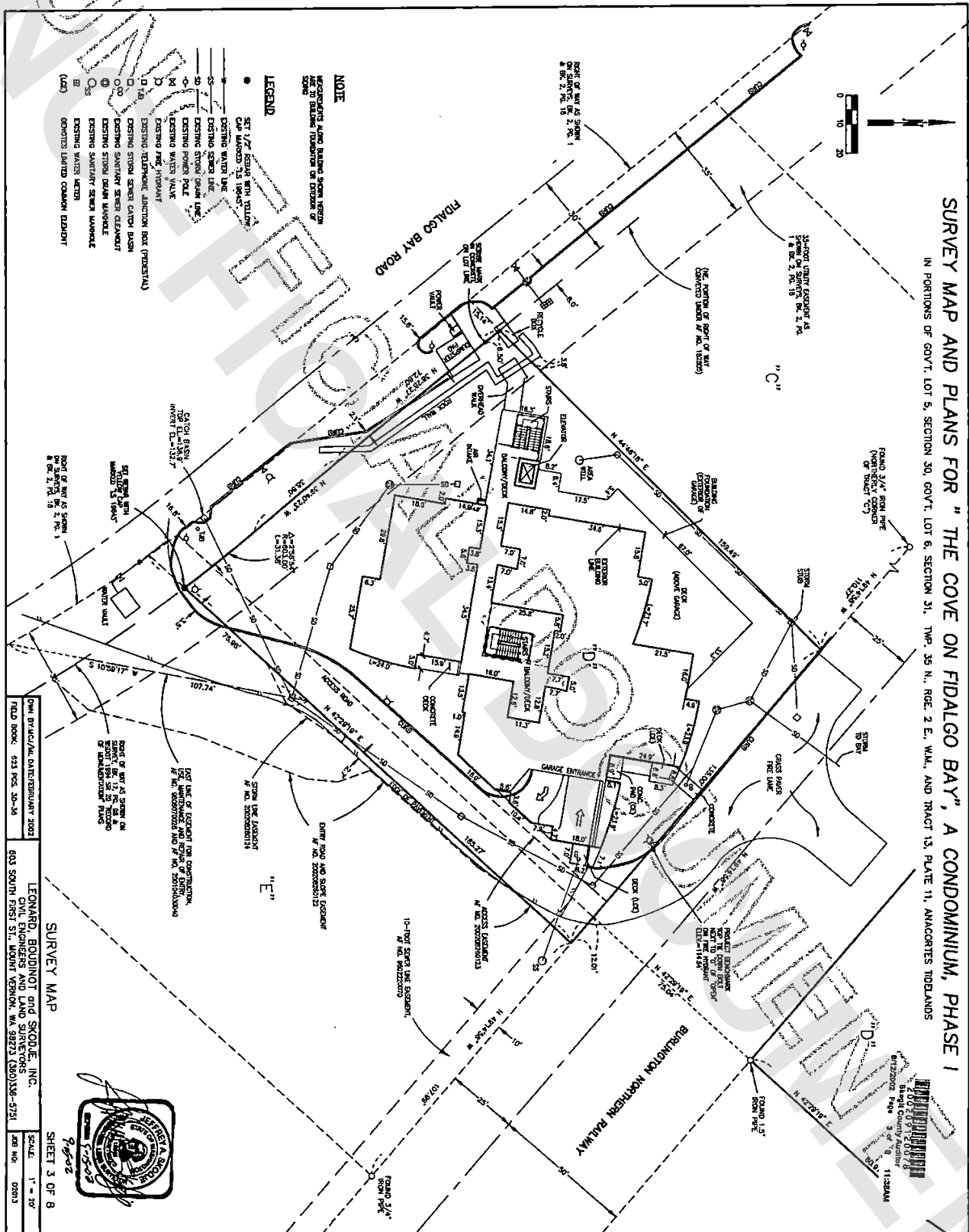
Attached as **Exhibit B** are the Survey Map and Plans for The Cove On Fidalgo Bay, A Condominium. These have been produced by Leonard, Boudinot and Skodje, Inc., Civil Engineers and Land Surveyors.

**COVE AT FIDALGO BAY CONDOMINIUM
EXHIBIT B TO AMENDED AND RESTATED DECLARATION
SURVEY MAP AND PLANS**

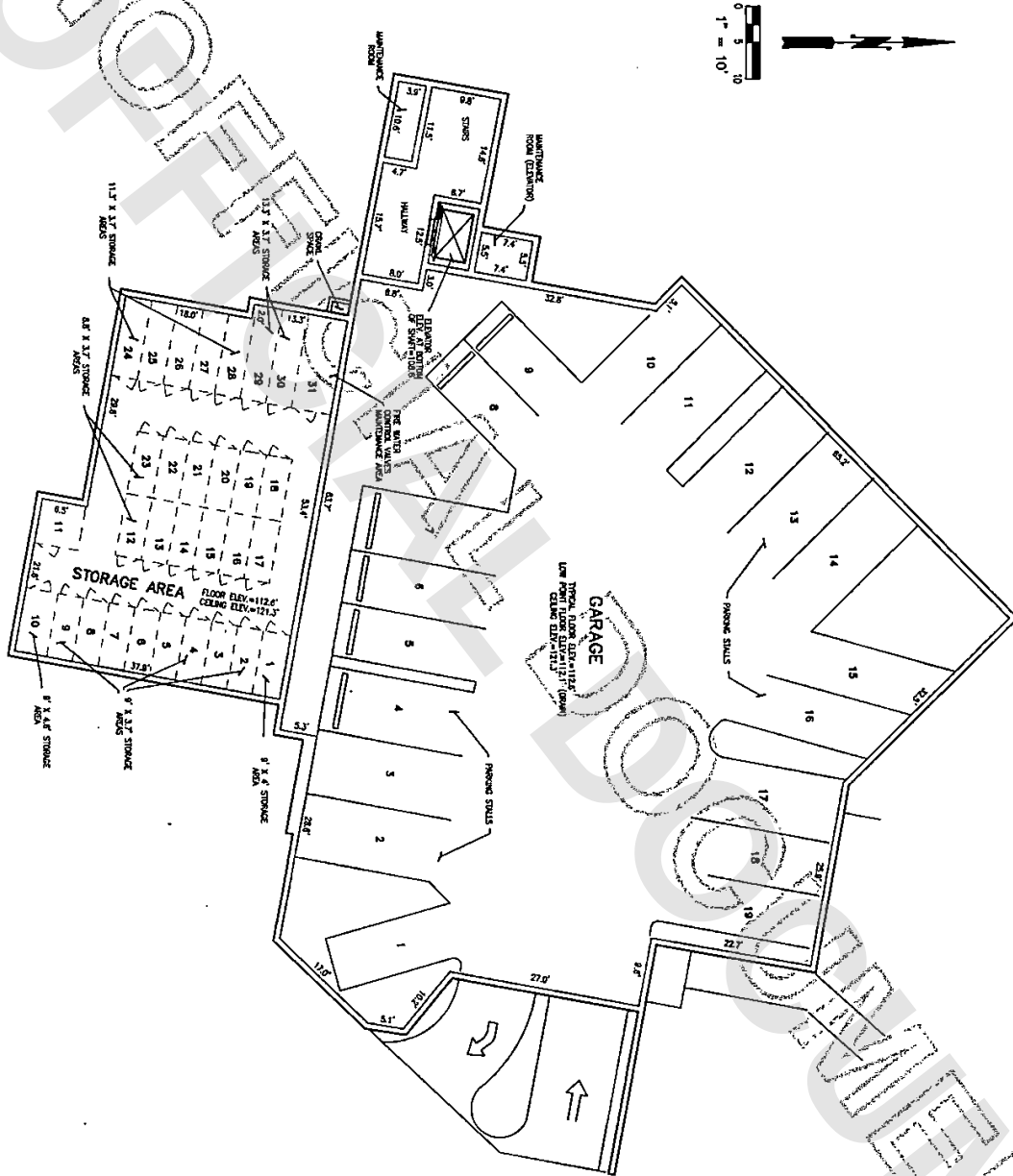
IN PORTIONS OF GOV'T. LOT 5, SECTION 30, GOV'T. 6, SECTION 31, TWP. 35 N., RGE. 2 E., W.M., AND TRACT 13, PLATE 11, ANACORTES TIDELANDS

[illegible]

IN PORTIONS OF GOV'T. LOT 5, SECTION 30, GOV'T. LOT 6, SECTION 31, TWP. 35 N., RGE. 2 E., W.M., AND TRACT 13, PLATE 11, ANACORTES TIDELANDS



SURVEY MAP AND PLANS FOR "THE COVE ON FIDALGO BAY", A CONDOMINIUM, PHASE I IN PORTIONS OF GOV'T. LOT 5, SECTION 30, GOV'T. LOT 6, SECTION 31, TWP. 35 N., RGE. 2 E., WM., AND TRACT 13, PLATE 11, ANACORTES TIDELANDS



GARAGE PLAN

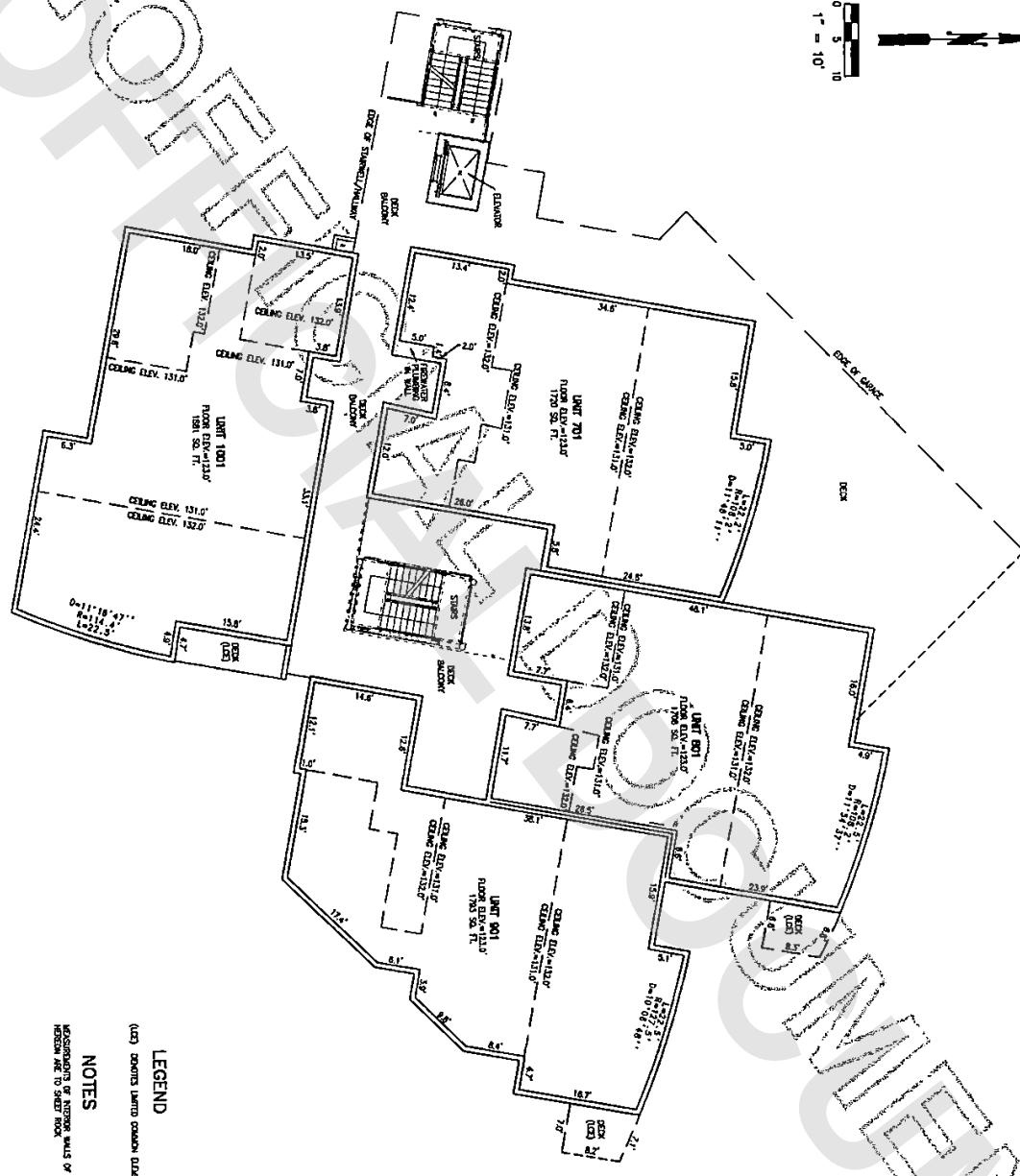
SHEET 4 OF 8

OWN: BOUNDAIR, DATED FEBRUARY 2003
FIELD BOOK: 603 PGS. 30-36
LEONARD, BOUDINOT and SKOOLIE, INC.
CIVIL ENGINEERS AND LAND SURVEYORS
603 SOUTH FIRST ST., MOUNT VERNON, WA 98273 (360)336-9791
SCALE: 1" = 10'
JOB NO: 02015



2003 05 12 0078
Washington County Auditor
8/12/2003, Page 4 of 8 17:30:00

SURVEY MAP AND PLANS FOR "THE COVE ON FIDALGO BAY", A CONDOMINIUM, PHASE I IN PORTIONS OF GOV'T. LOT 5, SECTION 30, GOV'T. LOT 6, SECTION 31, TWP. 35 N., RGE. 2 E., W.M., AND TRACT 13, PLATE 11, ANACORTES TIDE LANDS



LEGEND

(L)22 DOORS LIMITED COMMON ELEMENT

NOTES

CONDOMINIUM OR INTERIOR WALLS OF UNITS SHOWN
HEREIN ARE TO SHEET ROCK



FIRST FLOOR CONDOMINIUM PLAN

SHEET 5 OF 8

DATE: 02/20/2024
FILED BOOK: 403 PGS. 30-34
LEONARD, BOUDNOT and SKODJE, INC.
CIVIL ENGINEERS AND LAND SURVEYORS
803 SOUTH FIRST ST., PORT TOWNSEND, WA 98053 (206)335-5751
SCALE: 1" = 10'
JOB NO. 20013

8/12/2024 8:08:09 AM
Steph County Auditor
11:33AM

IN PORTIONS OF GOV'T. LOT 5, SECTION 30, GOV'T. LOT 6, SECTION 31, TWP. 35 N., RGE. 2 E., W.M., AND TRACT 13, PLATE 11, ANACORTES TIDELANDS



SHEET 6 OF 8

OWN BY/CA/AL DATE: FEBRUARY 2002	LEONARD, BOUDINOT and SKODJE, INC. CIVIL ENGINEERS AND LAND SURVEYORS 603 SOUTH FIRST ST., MOUNT VERNON, WA 98273 (360)336-5751	SCALE: 1" = 10'
FIELD BOOK: 603 PLS. 30-36		JOB NO: 02013

LEONARD, BOUDINOT and SKODJE, INC.
CIVIL ENGINEERS AND LAND SURVEYORS
SOUTH FIRST ST., MOUNT VERNON, WA 98275 (360)333-1111

SCALE: 1" = 10'

JOB NO: 02013

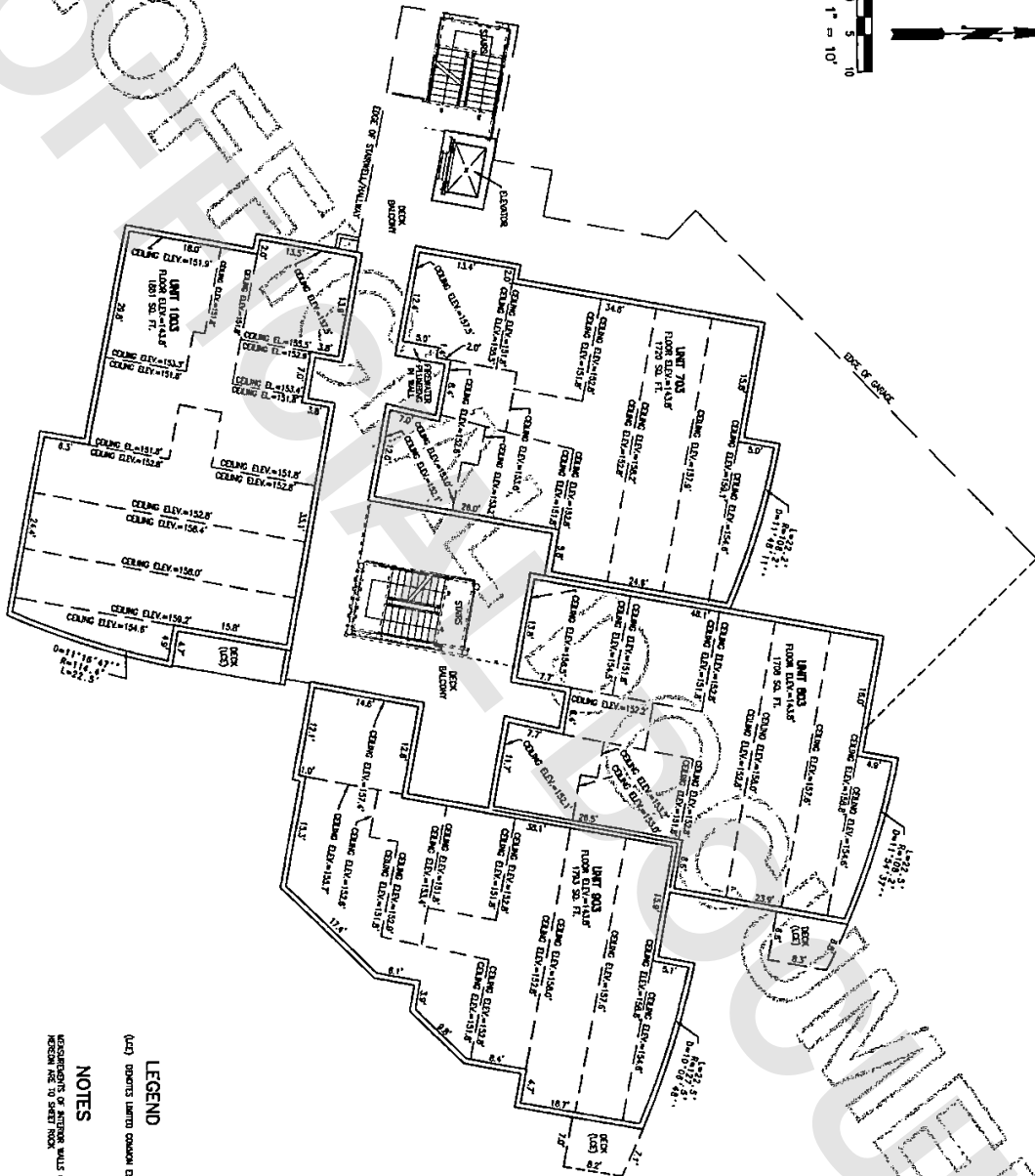
MEASUREMENTS OF INTERIOR WALLS OF UNITS SHOWN
HEREIN ARE TO SHEET ROCK

LEGEND

(LCC) DONATES LIMITED COMMON EQUITY



SURVEY MAP AND PLANS FOR "THE COVE ON FIDALGO BAY", A CONDOMINIUM, PHASE I IN PORTIONS OF GOV'T. LOT 5, SECTION 30, GOV'T. LOT 6, SECTION 31, TWP. 35 N., R2E. 2 E., WM., AND TRACT 13, PLATE 11, ANACORTES TIDELANDS



LEGEND

(L) DOTS LIMIT COMMON ELEMENT

NOTES

MEASUREMENTS OF EXISTING WALLS OF UNITS SHOWN
HEREIN ARE TO SHEET NO. 8



THIRD FLOOR CONDOMINIUM PLAN

SHEET 7 OF 8

DWG. DATE/REV. DATE/REVISION
FIELD BOOK: 603 PLOT 30-36

LEONARD, BOUDINOT AND SKODJE, INC.
CIVIL ENGINEERS AND LAND SURVEYORS
603 SOUTH FIRST ST., WEDNET VERNON, WA 98273 (360)336-5751

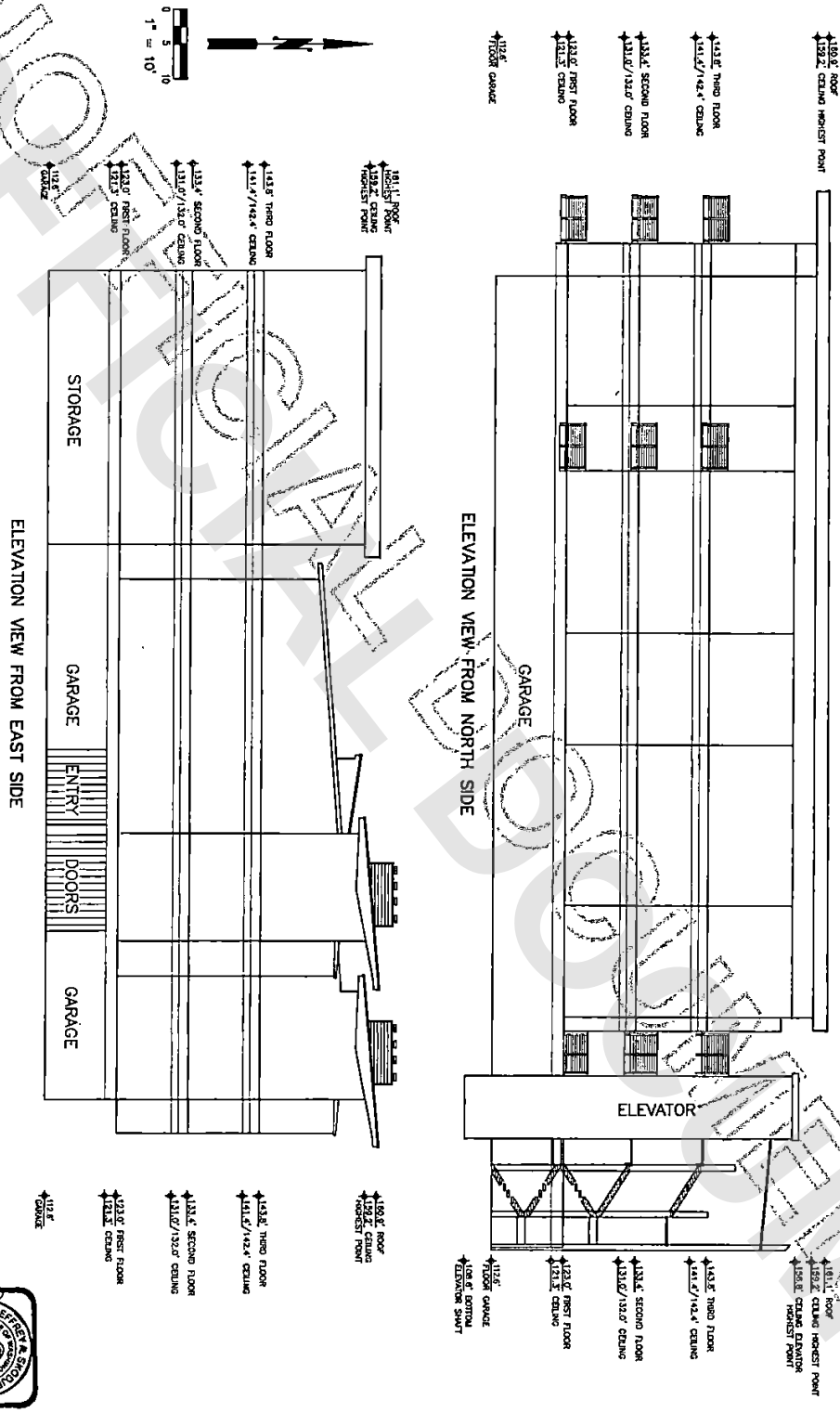
SCALE: 1" = 10'
JOB NO.: 02013

8/12/2002 7:41:30AM
Shelby County Auditor

SURVEY MAP AND PLANS FOR "THE COVE ON FIDALGO BAY", A CONDOMINIUM, PHASE I

IN PORTIONS OF GOV'T. LOT 5, SECTION 30, GOV'T. LOT 6, SECTION 31, TWP. 35 N., RGE. 2 E., W4E., AND TRACT 13, PLATE 11, ANACORTES TIDELANDS

Seal of the
Superior County Auditor
Superior County Auditor
Superior, WI 54980



ELEVATION VIEW CONDOMINIUM PLAN

DATE: FEBRUARY 2002

FILED BOOK: 803 PGS. 30-38

LEONARD, BOUNDNOT and SKODJE, INC.

CIVIL ENGINEERS AND LAND SURVEYORS

803 SOUTH FIRST ST., MOUNT VERNON, WA 98272 (360)336-5751

SHEET 8 OF 8

SCALE: 1" = 10'

PG. NO.: 02013

