

## PUBLIC OFFERING STATEMENT

Current as Of: October 22, 2025

- 1) Declarant Name: C13 Townhomes LLC
- 2) Declarant Address: PO Box 13161, Olympia, WA 98501
- 3) Management Company name: Twinpeaks Group Inc
- 4) Management Company address: 551 16th Avenue SE, Olympia, WA 98501
- 5) Relationship of the Management Company to the Declarant, if any: Managing Member of the Declarant is also President of the Management Company
- 6) Project Name: Thirteen & Cherry Townhomes
- 7) Project Address:     Building A  
                              1213-1227 Cherry St SE  
                              Olympia, WA 98501  
  
                              Building B  
                              516-530 13th Avenue SE  
                              Olympia, WA 98501
- 8) Thirteen & Cherry Townhomes Association is a residential condominium community.

**RIGHT TO CANCEL. (1) You are entitled to receive a copy of this public offering statement and all material amendments to this public offering statement before conveyance of your unit. Under RCW 64.90.635, you have the right to cancel your contract for the purchase of your unit within seven days after first receiving this public offering statement. If this public offering statement is first provided to you more than seven days before you sign your contract for the purchase of your unit, you have no right to cancel your contract. If this public offering statement is first provided to you seven days or less before you sign your contract for the purchase of your unit, you have the right to cancel, before conveyance of the unit, the executed contract by delivering, no later than the seventh day after first receiving this public offering statement, a notice of cancellation pursuant to section (3) of this notice. If this public offering statement is first provided to you less than seven days before the closing date for the conveyance of your unit, you may, before conveyance of your unit to you, extend the closing date to a date not more than seven days after you first received this public offering statement, so that you may have seven days to cancel your contract for the purchase of your unit.**

**You have no right to cancel your contract upon receipt of an amendment to this public offering statement; however, this does not eliminate any right to rescind your contract, due to the disclosure of the information in the amendment, that is otherwise available to you under generally applicable contract law.**

**If you elect to cancel your contract pursuant to this notice, you may do so by hand-delivering notice of cancellation, or by mailing notice of cancellation by prepaid United States mail, to the seller at the address set forth in this public offering statement or at the address of the seller's registered agent for service of process. The date of such notice is the date of receipt, if hand-delivered, or the date of**

deposit in the United States mail, if mailed. Cancellation is without penalty, and all payments made to the seller by you before cancellation must be refunded promptly.

**OTHER DOCUMENTS CREATING BINDING LEGAL OBLIGATIONS.** This public offering statement is a summary of some of the significant aspects of purchasing a unit in this Project. The governing documents and the purchase agreement are complex, contain other important information, and create binding legal obligations. You should consider seeking the assistance of legal counsel.

**OTHER REPRESENTATIONS.** You may not rely on any statement, promise, model, depiction, or description unless it is (1) contained in the public offering statement delivered to you or (2) made in writing signed by the Declarant or dealer or the Declarant's or dealer's agent identified in the public offering statement. A statement of opinion, or a commendation of the real estate, its quality, or its value, does not create a warranty, and a statement, promise, model, depiction, or description does not create a warranty if it discloses that it is only proposed, is not representative, or is subject to change.

**MODEL UNITS.** Model units are intended to provide you with a general idea of what a finished unit might look like. Units being offered for sale may vary from the model unit in terms of floor plan, fixtures, finishes, and equipment. You are advised to obtain specific information about the unit you are considering purchasing.

**RESERVE STUDY.** The association does not have a current reserve study. Any reserve study should be reviewed carefully. It may not include all reserve components that will require major maintenance, repair, or replacement in future years, and may not include regular contributions to a reserve account for the cost of such maintenance, repair, or replacement. You may encounter certain risks, including being required to pay as a special assessment your share of expenses for the cost of major maintenance, repair, or replacement of a reserve component, as a result of the failure to: (1) Have a current reserve study or fully funded reserves, (2) include a component in a reserve study, or (3) provide any or sufficient contributions to a reserve account for a component.

**DEPOSITS AND PAYMENTS.** Only earnest money and reservation deposits are required to be placed in an escrow or trust account. Any other payments you make to the seller of a unit are at risk and may be lost if the seller defaults.

**CONSTRUCTION DEFECT CLAIMS.** Chapter 64.50 RCW contains important requirements you must follow before you may file a lawsuit for defective construction against the seller or builder of your home. Forty-five days before you file your lawsuit, you must deliver to the seller or builder a written notice of any construction conditions you allege are defective and provide your seller or builder the opportunity to make an offer to repair or pay for the defects. You are not obligated to accept any offer made by the builder or seller. There are strict deadlines and procedures under state law, and failure to follow them may affect your ability to file a lawsuit.

**ASSOCIATION INSURANCE.** The extent to which association insurance provides coverage for the benefit of unit owners (including furnishings, fixtures, and equipment in a unit) is determined by the provisions of the declaration and the association's insurance policy, which may be modified from time to time. You and your personal insurance agent should read the declaration and the association's policy prior to closing to determine what insurance is required of the association and unit owners, unit owners' rights and duties, what is and is not covered by the association's policy, and what additional insurance you should obtain.

**QUALIFIED WARRANTY.** Your unit is covered by a qualified warranty under chapter 64.35 RCW.

- 9) A list, current as of the date the public offering statement is prepared, of up to the five most recent common interest communities in which at least one unit was sold by the Declarant or an affiliate of the Declarant within the past five years, including the names of the common interest communities and their addresses:
- None within the last five (5) years.
- 10) The nature of the interest being offered for sale:
- Each Unit offered for sale includes ownership of a single townhome in a residential building.
- 11) A general description of the Project, including to the extent known to the Declarant, the types and number of buildings that the Declarant anticipates including in the Project and the Declarant's schedule of commencement and completion of such buildings and principal common amenities:
- "Thirteen & Cherry Townhomes" ("13&C" or the "Property") is a multi-family residential townhome complex being built in Olympia, Washington. The Property will have twelve "air space" development units. Each unit will include an attached three-story townhome. The ground floor will be a garage, with two floors of living space directly above each garage. Each unit will contain approximately 575 or 638 square feet of land area (although the land is not divided for separate ownership) and, at the time of this Public Offering Statement, approximately 1,830 square feet of indoor living space. Each unit will have a ground-level private garage and outdoor patio. The units and common elements will be created when the plat and Declaration are recorded.
  - **No assurances are being made regarding the boundaries of any units.**
- 12) The number of existing units in the Project.
- As of the date the Declaration is recorded, there will be 12 units in the Project.
- 13) Brief descriptions of (i) the existing principal common amenities, (ii) those amenities that will be added to the Project, and (iii) those amenities that may be added to the Project;
- (i) 13&C will share as Common Elements: a private common driveway, community gathering space, and the grassy areas, sidewalk and landscaping outside the Units. The Common Elements will also include any utilities or other fixture that lies partially within and partially outside the designated boundaries of a Unit if it serves more than one Unit;

- (ii) no common amenities will be added by the Declarant;
  - (iii) no common amenities may be added by the Declarant.
- 14) A brief description of the limited common elements, other than those described in RCW 64.90.210 (1)(b) and (3), that may be allocated to the units being offered for sale:
- i) All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and any other materials constituting any part of the finished surfaces of a wall between two or more Units are a part of the Unit, and all other portions of the shared walls are limited common elements of the Units that share the wall.
  - ii) Any portion of a chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture that lies partially within and partially outside the designated boundaries of a Unit that serve only one Unit, is a limited common element allocated solely to that Unit; while any portion thereof serving more than one Unit is a limited common element of the Units that are so served.
  - iii) Any fireplaces, shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, decks, patios, roofs, siding, facade, veneer, paneling, all exterior doors and windows or other exterior fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are limited common elements allocated exclusively to that Unit.
  - iv) Any portion of a fence that stands directly on or lies partially within and partially outside the boundary one or more Units, that is designed to serve more than one Unit, is a limited common element of the Units served by that portion of the fence.
  - v) The dirt and utilities below the Units of Building A, and the roof of Building A, are limited common elements of Building A.
  - vi) The dirt and utilities below the Units of Building B, and the roof of Building B, are limited common elements of Building B.
- 15) The identification of any rights of persons other than unit owners to use any of the common elements, and a description of the terms of such use:
- a) Puget Sound Energy, Inc (“PSE”) has been granted a nonexclusive perpetual easement for the purpose of operating, maintaining, repairing, replacing, improving, removing, upgrading and/or extending utility systems that transmit, distribute, and/or sale electricity to the Project.
  - b) Comcast Cable Communication Management LLC (“Comcast”) has been granted a non-exclusive easement pursuant to a Services Agreement to conduct, use, maintain, operate, alter, add to, repair, replace, reconstruct, inspect and/or remove broadband communications systems (“Distribution System”).
- 16) The identification of any real property not in the Project that unit owners have a right to use and a description of the terms of such use:
- a) Not applicable.

- 17) Any services the Declarant provides or expenses that the Declarant pays that are not reflected in the budget, but that the Declarant expects may become at any subsequent time a common expense of the association, and the projected common expense attributable to each of those services or expenses:
  - a) None anticipated at the time of this Offering.
- 18) An estimate of any assessment or payment required by the declaration to be paid by the purchaser of a unit at closing:
  - An operating capital assessment of \$ 500.00 per lot may be charged at closing.
- 19) A brief description of any liens or monetary encumbrances on the title to the common elements that will not be discharged at closing:
  - a) None anticipated at the time of this Offering.
- 20) A brief description or a copy of any express construction warranties to be provided to the purchaser:
  - a) The Declarant provides the following warranties:
    - i) Structural Warranty: Coverage for structural components for six [6] years.
    - ii) Mechanical Systems Warranty: Coverage for HVAC, plumbing, and electrical systems for [2] years.
    - iii) Cosmetic Warranty: Coverage for cosmetic defects for [12] months.
- 21) The units and common elements are covered by a qualified warranty.
- 22) The Project does not and is not intended to contain any multiunit residential building subject to chapter 64.55 RCW.
- 23) There are no unsatisfied judgments or pending suits against the Association.
- 24) A statement of any litigation brought by an owners' association, unit owner, or governmental entity in which the Declarant or any affiliate of the Declarant has been a defendant arising out of the construction, sale, or administration of any Project within the previous five years, together with the results of the litigation, if known:
  - a) None anticipated at the time of this Offering.
- 25) A brief description of:
  - a) Any restrictions on use or occupancy of the units contained in the governing documents – Units may be used only for residential purposes. Except with the Board's consent or as otherwise allowed by RCW 64.90, no trade, craft, business, profession, commercial activity, or similar activity of any kind may be conducted in any Unit, and no goods, equipment, vehicles, materials, supplies used in connection with any trade, service, or business may be kept or stored on any Unit. These restrictions shall not prohibit (a) activities relating to the sale of residences, (b) the right of Declarant or any contractor or homebuilder to construct residences on any Unit, to store construction materials and equipment on such Units in the normal course of construction, and to use any residence as a sales office or model home for purposes of sales in 13+C, or (c) the right of the Owner of a lot to maintain the Owner's personal business or professional library, keep the Owner's personal business or professional records or accounts, handle the Owner's personal

business or professional telephone calls, or confer with business or professional associates, clients, or customers in the Owner's residence. The Board will not approve commercial activities otherwise prohibited by this Article unless the Board determines that only normal residential activities would be observable outside of the residence and that the activities would not violate applicable local government ordinances.

- b) Any restrictions on the renting or leasing of Units by the Declarant or other lot owners contained in the governing documents – all leases for Units and/or parts of Units must be in writing and must provide a copy of the Governing Documents to the tenant(s). Failing to meet these requirements renders the lease voidable;
- c) Any rights of first refusal to lease or purchase any lot or any of the common elements contained in the governing documents – none; and
- d) Any restriction on the amount for which a lot may be sold or on the amount that may be received by a lot owner on sale – none.

26) A description of the insurance coverage provided for the benefit of lot owners:

a) Property Insurance (Master Policy)

i) Scope: Special form (all-risk) coverage insuring all common elements and limited common elements not reserved to individual Units, including:

- (1) Building exteriors and structural components
- (2) Roofs, siding, foundations, and entry features
- (3) Common systems (e.g., shared utility infrastructure, irrigation, exterior lighting)
- (4) Amenities and shared landscaping, driveways, or signage

ii) Valuation: Full replacement cost basis, with periodic review

iii) Coinsurance: None (to be waived or satisfied via agreed amount clause)

iv) Deductible: Estimated at \$5,000–\$25,000 per occurrence (subject to underwriting)

b) Commercial General Liability Insurance

i) Scope: Covers bodily injury, property damage, and personal injury claims arising out of use or maintenance of the common elements

ii) Minimum Limits:

- (1) \$1,000,000 per occurrence
- (2) \$2,000,000 general aggregate

iii) Named Insureds: Association, managing agent (if applicable), and Declarant (until turnover)

27) Any current or expected fees or charges not included in the common expenses to be paid by lot owners for the use of the common elements and other facilities related to the Project, together with any fees or charges not included in the common expenses to be paid by lot owners to any master or other association:

a) None anticipated at the time of this Offering.

28) The extent, if any, to which bonds or other assurances from third parties have been provided for completion of all improvements that the Declarant is obligated to build pursuant to RCW 64.90.695:

a) None anticipated at the time of the Offering..

- 29) The Project is not a cooperative.
- 30) The Project is not a leasehold project.
- 31) A summary of, and information on how to obtain a full copy of, any reserve study and a statement as to whether it was prepared in accordance with RCW 64.90.545 and 64.90.550 or the governing documents:
- The Association has not prepared a reserve study because the anticipated cost of such a study is expected to be more than 10% of the Association's annual budget.
- 32) A brief description of any arrangement described in RCW 64.90.110 binding the association – none.
- 33) The estimated current common expense liability for the Units being offered is \$0. Assessments are anticipated to begin on or after February 1, 2026. Once assessments begin, they are estimated to be \$300.00 per month per lot. Purchasers will be assessed a Working Capital Contribution as explained in section 18, above.
- 34) Except for real property taxes, real property assessments and utility liens, any assessments, fees, or other charges known to the Declarant and which, if not paid, may constitute a lien against any lot or common elements in favor of any governmental agency – none;
- 35) A brief description of any parts of the Project, other than the owner's lot, which any owner must maintain:
- Through the Association, Owners will be required to maintain all common elements, including but not limited to: the driveway, the open space, the mechanical rooms, the landscaping, and the sidewalks.
- 36) Timesharing is not prohibited.
- 37) The Project is subject to the following special Declarant rights:
- a) General. Declarant is undertaking the work of developing Units and other improvements within 13&C. The completion of the development work and the marketing and sale of the Units is essential to the establishment and welfare of the Property as a residential community. Until the Homes on all Units on the Property have been constructed, fully completed, and sold, and the Transition Meeting has occurred, Declarant has and reserves the special declarant rights set forth in RCW 64.90.010(51) and the Declaration.
  - b) Development Rights. Declarant reserves the right to complete any improvements indicated on the Map or described in the Declaration or this public offering statement. Declarant reserves the right to exercise any development right, including but not limited to the right to add real estate or improvements to 13&C; create Units, common elements or limited common elements; subdivide or combine Units; convert Units into common elements; withdraw real estate from 13&C; and/or reallocate limited common elements with respect to Units that have not been conveyed by Declarant. Declarant reserves the right to create additional Units and build additional Homes as specified in the Declaration.
  - c) Additional Real Estate. Declarant reserves the right to add the real estate identified as “conceptual” in Exhibit B of the Declarations and as legally described and specified in Exhibit C to the Declaration, as well as unspecified real estate to 13&C by amending the Declaration at any time during the period specified in the Declaration. The amount of unspecified real estate added

to 13&C may not exceed ten percent of the total real estate described in Exhibit A of the Declaration plus the additional, specified real estate identified in Exhibit C to the Declaration. Declarant reserves the right to add phase(s) of development to 13&C during the period of Declarant Control by amending the Declaration and may petition the Board to add phase(s) of development to 13&C after the period of Declarant Control.

- d) Additional Units and Homes. Declarant reserves the right to complete any improvements indicated on the Map or described in the Declaration or the public offering statement. Declarant reserves the right to exercise any development right and create additional Units and Homes on the Property, not to exceed the total number of Units and total number of Homes specified in the Table of Units and Homes at Exhibit B of the Declaration. Declarant does not agree to build any improvements not described in the Declaration. **No assurances are being made regarding the boundaries of any Units, phases of development, order of development, or the timing of any development.**
  - e) Merge or Consolidate. Declarant reserves the right to merge or consolidate 13&C with another residential or mixed-use common interest community.
  - f) Inferences from Action or Inaction. The exercise of any development right does not trigger or require the exercise of any other development right. No assurances are being made that any future development will, in fact, occur. When all development rights have been exercised or such development rights have expired, then real estate that was subject to such development rights shall remain property of the Declarant or the Declarant's successor in interest, subject to future development upon obtaining approval of the ARC.
  - g) Marketing Rights. Notwithstanding anything to the contrary in the Declaration, Declarant has the right to maintain one or more sales office(s), management office(s), and model(s) on one or more of the Units that Declarant owns. Declarant and prospective purchasers and their agents have the right to use and occupy the sales office and models during reasonable hours any day of the week. Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property, including, without limitation, on the Common Elements and Limited Common Elements.
  - h) Declarant Easements. Declarant reserves easements over the Property as more fully described in the Declaration.
  - i) Association Board, Meetings, Committees, and Records. Declarant reserves the right to appoint or remove any officer or board member of the Association or any Master Association or veto or approve a proposed action of any board or association. Declarant reserves the right to attend meetings of the Owners and, except during an executive session in which Declarant would otherwise be excluded, meetings of the Board. Declarant reserves the right to appoint all members of the ARC and all replacements thereto until 13&C is one hundred percent (100%) built out or the expiration of Special Declarant Rights, whichever occurs first. Declarant reserves the right to establish other committees of the Association during the period of Declarant Control. Declarant reserves the right to access the records of the Association to the same extent as an Owner.
  - j) Expiration. Declarant's special rights shall expire twenty (20) years after the Declaration is recorded and/or the day Declarant records an amendment to the Declaration surrendering all Special Declarant Rights, whichever occurs first. Declarant remains liable for expenses associated with real estate subject to a development right when those development rights expire.
  - k) Transfer. Transfer or Extinguishment of Special Declarant Rights shall be accomplished in accordance with RCW 64.90.425.
- 38) Any liens on real estate to be conveyed to the association required to be disclosed pursuant to RCW 64.90.650(3)(b) – None anticipated at the time of this Offering;

- 39) There are no physical hazards known to the Declarant that particularly affect the Project or the immediate vicinity in which the Project is located, and which are not readily ascertainable by the purchaser.
- 40) There are no building code violation(s) of which the Declarant has actual knowledge, and which has not been corrected.
- 41) The Project does not contain a conversion building.
- 42) The Project does not contain a multiunit residential building.
- 43) Any other information and cross-references that the Declarant believes will be helpful in describing the Project to the recipients of the public offering statement, all of which may be included or not included at the option of the Declarant:
  - a) Eight (8) year multi family housing limited property tax exemption on all vertical or structural improvements granted by the City of Olympia, subject to Original MFTE Agreement, Successor Agreement, and Approval of Extension.
- 44) There are no age-related occupancy restrictions affecting the Project.

Attachments:

- a) The declaration;
- b) the map;
- c) the organizational documents;
- d) the rules and regulations, if any;
- e) the current or proposed budget for the Association;
- f) a dated balance sheet of the Association, if any;
- g) any inspection and repair report or reports prepared in accordance with RCW 64.55.090 [Does not apply]; and
- h) express construction warranties
- i) The Declarant provides the following warranties:
  - (1) Structural Warranty: Coverage for structural components for six [6] years.
  - (2) Mechanical Systems Warranty: Coverage for HVAC, plumbing, and electrical systems for [2] years.
  - (3) Cosmetic Warranty: Coverage for cosmetic defects for [12] months.

## Attachment A

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RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Maren L. Calvert  
Schwabe, Williamson & Wyatt PC  
700 Washington St, Suite 701  
Vancouver, WA 98660

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THIRTEEN & CHERRY TOWNHOMES**

THIS COMMUNITY IS A CONDOMINIUM  
AS DEFINED IN RCW CHAPTER 64.90

**Grantor:** C13 TOWNHOMES LLC,  
a Washington Limited Liability Company

**Grantee:** Thirteen & Cherry Townhomes Association, a  
Washington nonprofit corporation

**Abbreviated Legal:** Section 23 Township 18 Range 2W Plat PATTISONS  
SUBDIVISION BLK 1 LT 10 Document 001/165;  
Section 23 Township 18 Range 2W Quarter NW NE  
Plat PATTISONS SUBDIVISION BLK 1 LT 9  
Document 001/165

**Assessor's Tax Parcel Nos.:** 68300101000; 68300100900

**Full Legal Description:** Full Legal on Exhibit A

**Reference Nos.** Map - \_\_\_\_\_

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THIRTEEN & CHERRY TOWNHOMES**

**RECITALS**

A. “Thirteen & Cherry Townhomes” (the “Property”) is a multi-family residential complex located in Olympia, Washington.

B. The Declarants, who own the Property, are recording this Declaration and the Map to create Condominiums on the Property pursuant to RCW chapter 64.90 and to address the rights and responsibilities of the owners of units within the Thirteen & Cherry Townhomes, including such matters as the control, use, maintenance, repair, replacement and insurance of the Buildings, and governance, voting and enforcement rights related to the shared common elements and limited common elements. This Declaration and the Map impose a condominium regime upon the Property as a whole.

NOW, THEREFORE, Declarant makes this Declaration and declares that the Project subject to this Declaration shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, reservations, grants of easement rights, rights of way, liens, charges and equitable servitudes, which are for the purpose of protecting the value and desirability of the Project and shall be binding on all parties having any right, title or interest in the Project or any part thereof, and shall inure to the benefit of each owner thereof. Any conveyance, transfer, sale, assignment, lease or sublease of a Lot or Unit in the Project shall be deemed to incorporate by reference all provisions of this Declaration. The provisions of this Declaration shall be enforceable by Declarant and the Association, and by any Lot Owner and/or first Mortgagee of any Lot to the extent that they are intended to be benefited by such provisions.

**ARTICLE 1. CONSTRUCTION AND VALIDITY OF DECLARATION**

**Section 1.1** Purpose; Effective Date. This Declaration and the Map impose the condominium form of ownership on the Property pursuant to the CIC Act, as more particularly described in Exhibit A, to enhance the value of the Condominium. This Declaration shall be effective as of the first date that it and the Map are recorded.

**Section 1.2** Construction. The creation and operation of the Condominium are governed by this Declaration, the Map, RCW 24.06 and the CIC Act. In the event a provision of the Declaration is inconsistent with a provision of the CIC Act, the provisions of the CIC Act will prevail. In the event of a conflict between a provision of this Declaration and the Bylaws, the Declaration will prevail except to the extent the Declaration is inconsistent with the CIC Act. An insignificant failure of the Declaration or the Map, or any amendment, to comply with the CIC Act will not invalidate the creation of the Condominium, nor will it make unmarketable or otherwise affect the title to a Unit and its Common Ownership Interest.

**Section 1.3** Covenant Running with Land. This Declaration shall operate as servitude and shall bind the Association, all Owners and any other Persons having any right, title or interest in the real estate subject to this Declaration, or any portion thereof, together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

**Section 1.4** Severability. The provisions of this Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision if the remaining provision or provisions comply with the CIC Act.

**Section 1.5** Percentage of Owners or Mortgagees. For purposes of determining the percentage of Owners, Mortgagees, or votes necessary to approve a proposed decision or course of action where an Owner owns, or a Mortgagee holds Mortgages on, more than one Unit, an Owner shall be deemed a separate Owner for each Unit so owned and a Mortgagee shall be deemed a separate Mortgagee for each Mortgage so held.

**Section 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 shall be proportionately increased on July 1 of each year by the percentage change in the consumer price index specified in RCW 64.90.065, as if RCW 64.90.065 applied to such amounts.

## **ARTICLE 2. DEFINITIONS**

**Section 2.1** Words Defined. For the purposes of this Declaration and any amendments, the following definitions shall apply. The singular form of words includes the plural and the plural includes the singular.

“Allocated Interests” means the Common Ownership Interest, the Common Expense Liability and the Voting Interest allocated to each of the Units in the Condominium. The formulas used to determine the Allocated Interests is one (1) divided by the number of Units in the Property. Currently, there are twelve (12) Units. Thus, each Unit shall pay 1/12<sup>th</sup> of the Common Expenses and shall have one vote, of a total of twelve (12) votes available in the Association. Because the City of Olympia prefers to have allocated interests expressed in percentages, the percentage allocations are show in Exhibit B attached to this Declaration and incorporated by this reference. Units 101, 106, 107, and 112 have a slightly larger percentage interest than the other units to address the repeating decimal. Allocated interests in fractional form are rounded to the nearest whole number, per Unit, such that each Unit shall have the same voting power. If Units are added to or taken out of the Association, then the interests shall be re-allocated in accordance with this formula.

“Applicant” means the Owner submitting an application to the Architectural Control Committee for review.

”Articles” means the Articles of Incorporation for the Association.

“Assessments” means all sums chargeable by the Association against a Unit, including, without limitation: (a) general and special assessments for Common Expenses; (b) charges and fines imposed by the Association; (c) interest and late charges on any delinquent account; and (d) costs of collection, including reasonable attorneys’ fees, incurred by the Association in connection with the collection of a delinquent Owner’s account.

“Association” means the owners’ association defined in Section 11.1.

“Authorized Users” means the Tenants, family members, agents, servants, invitees, and licensees of an Owner who are accorded rights, directly or indirectly, by that Owner to use or access all or a portion of that Owner’s Unit and its appurtenant interest in the Common Elements.

“Board” means the Board of Directors of the Association, as described in ARTICLE 12 and in the Bylaws.

“Books and Records of the Association” means the books and records of the Association, including, without limitation, the following:

- a) The budget, detailed records of receipts and expenditures affecting the operation and administration of the association, and other appropriate accounting records within the last seven years;
- b) Minutes of all meetings of its unit owners and board other than executive sessions, a record of all actions taken by the unit owners or board without a meeting, and a record of all actions taken by a committee in place of the board on behalf of the association;
- c) The names of current unit owners, addresses used by the association to communicate with them, and the number of votes allocated to each unit;
- d) Its original or restated declaration, organizational documents, all amendments to the declaration and organizational documents, and all rules currently in effect;
- e) All financial statements and tax returns of the association for the past seven years;
- f) A list of the names and addresses of its current board members and officers;
- g) Its most recent annual report delivered to the secretary of state, if any;
- h) Copies of contracts to which it is or was a party within the last seven years;
- i) Materials relied upon by the board or any committee to approve or deny any requests for design or architectural approval for a period of seven (7) years after the decision is made;
- j) Materials relied upon by the board or any committee concerning a decision to enforce the governing documents for a period of seven (7) years after the decision is made;
- k) Copies of insurance policies under which the Association is a named insured;
- l) Copies of all notices provided to Unit Owners or the Association in accordance with the CIC Act or the Governing Documents;
- m) Ballots, proxies, absentee ballots, and other records related to voting by Unit Owners for one year after the election, action, or vote to which they relate; and
- n) Materials related to the operation, inspection, maintenance, repair and replacement of the improvements within the Condominium.

“Building” means each structure with walls and a roof, as the term is commonly known, on the Property. The term includes the Building Core, Building Enclosure and Common Equipment.

“Building Core” means all of the Building’s structural elements including mechanical, electrical, and plumbing (MEP), bearing walls, shear walls, columns, piers, piles, pillars, beams, braces, ceiling slabs and floor slabs, and their internal components and connectors.

“Building Enclosure” means those systems that separate the exterior environment from the interior environment of the Building, including without limitation, roofs, decks, terraces, patios, garages and garage doors, curtain walls, window walls, wall panels, windows and doors, skylights and all membranes, flashing, sealants, weatherproofing, insulation, fireproofing, supports and fasteners associated with the foregoing.

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

“CIC Act” means the Washington Uniform Common Interest Ownership Act, chapter 64.90 RCW, as it may be from time to time amended.

“Common Elements” means all portions of the Condominium other than the Units, including without limitation (i) the Limited Common Elements, (ii) the Common Equipment, (iii) the Building Core, and (iv) the Building Enclosure.

“Common Expense” means expenditures made by or financial liabilities of the Association, together with any allocations to reserves. Some Common Expenses are allocated to the Units according to the Common Expense Liability of the Unit.

“Common Equipment” means fire and life safety systems; electrical, heating, ventilation, and air conditioning systems; plumbing and other systems benefitting more than one Unit, and, solar panels and or solar power if shared between two or more units.

“Common Expense Liability” means the liability for Common Expenses (other than Specially Allocated Expenses) allocated to each Unit. The Common Expense Liability may change if additional Units are added to the Condominium.

“Common Ownership Interest” means the undivided ownership interest in any Common Elements that are owned in common by the Unit Owners, allocated to each Unit, as described in ARTICLE 4. The Common Ownership Interest may change if additional Units are added to the Condominium.

“Condominium” means the condominium form of ownership created by this Declaration and the Map pursuant to the CIC Act, as they may be amended.

“Convey” or “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 created from a leasehold estate, a transfer by lease or assignment thereof. A transfer solely as security for a debt or other obligation shall not constitute a Conveyance.

“Declarant” means C13 TOWNHOMES LLC or its successors and assigns.

“Declaration” means this Declaration of Covenants, Conditions and Restrictions as it may from time to time be amended.

“Electronic Transmission” or “electronically transmitted” means any electronic communication (a) not directly involving the physical transfer of a Record in a Tangible Medium and (b) that may be retained, retrieved, and reviewed by the sender and the recipient of the communication, and that may be directly reproduced in a Tangible Medium by a sender and recipient.

“Eligible Mortgagee” means an “eligible mortgagee” as defined in the CIC Act.

“Foreclosure” means a forfeiture or judicial or non-judicial foreclosure of a Mortgage or a deed in lieu thereof.

“Governing Documents” means this Declaration, the Map, and the Articles, the Bylaws, and the Rules of the Association, as they may be amended from time to time.

“Home” means any portion of a structure situated on a Unit designed and intended for use and occupancy as a residence by a single family or household. If a Unit contains a duplex or a primary residence and an additional dwelling unit (“ADU”), the owner of the Unit is a Member of the Association and shall be considered to have two “Homes” as each side of the duplex is considered a “Home” and the primary residence and ADU are each considered a “Home.”

“Identifying Number” means the name or number of each Unit shown on the Map.

“Limited Common Element” means a portion of the Common Elements allocated in this Declaration, or by operation of law, for the exclusive use of one or more but fewer than all of the Units.

“Managing Agent” means the Person, if any, designated by the Board.

“Map” means the Map, as defined in the CIC Act, for the Community, which was recorded simultaneously with this Declaration at the document number referenced on the cover page to this Declaration. The Map includes any recorded amendments, corrections, and addenda thereto.

“Mortgage” means a recorded mortgage, deed of trust or real estate contract.

“Mortgagee” means any holder, insurer or guarantor of a Mortgage on a Unit.

“Notice and Opportunity to Be Heard” means the procedure described in Section 16.6.

“Owner” or “Unit Owner” means any Person or Entity who owns a Unit.

“Person” means a natural person, corporation, partnership, limited partnership, trust, governmental agency or other legal entity.

“Qualified Financial Institution” means a bank, savings association, or credit union whose deposits are insured by the federal government.

“RCW” means Revised Code of Washington.

“Record”, when used as a noun, means information inscribed on a Tangible Medium or contained in an Electronic Transmission.

“Rules” means a policy, guideline, restriction, procedure or regulation adopted by the Association, however denominated, that is not set forth in the Declaration, Articles or Bylaws, and that governs the conduct of Persons or the use or appearance of property.

“Specially Allocated Expenses” means those Common Expenses described in Section 13.6 of this Declaration.

“Tangible Medium” means a writing, copy of a writing, facsimile, or a physical reproduction, each on paper or on other tangible material.

“Tenant” means an occupant of a Unit other than the Unit Owner, or the Owner’s personal guests, family members, care givers, or roommates. The term includes renters, lessees, tenants, and subtenants.

“Timesharing” means timesharing as defined in Chapter 64.36 RCW, and any other form of fractional ownership, timesharing, or vacation club arrangement.

“Unit” means a physical portion of the Condominium designated for separate ownership, the boundaries of which are described in Section 3.4 and are shown on the Map.

“Voting Interest” means the proportionate number of votes in the Association allocated to each Unit, as described in Section 11.5. The Voting Interest may change if additional Units are added to the Condominium.

**Section 2.2** Statutory Definitions. Some of the terms defined above are also defined in the CIC Act. The definitions in the Declaration are not intended to limit or contradict the definitions in the CIC Act. If there is any inconsistency or conflict, the definition in the CIC Act will prevail.

### **ARTICLE 3. DESCRIPTION OF REAL ESTATE & UNITS**

**Section 3.1** Name. The name of the Condominium is Thirteen & Cherry Townhomes.

**Section 3.2** Description of Real Estate. The real estate subject to this Declaration is described in Exhibit A.

**Section 3.3** Number and Identification of Units. This Declaration creates twelve (12) Units in the Condominium. The location, number, and configuration of each Unit are shown on the Map.

**Section 3.4** Unit Boundaries. The Units are what are commonly referred to as “airspace units.” Their boundaries are vertical and horizontal planes in space as shown on the Map. The vertical boundaries are planes in space that follow the location of the vertical boundaries of each unit. The lower horizontal boundary of each Unit is the ground elevation below the finish floor. The upper boundary of the units is fifty (50) feet above the finished floor. The exterior location of the boundary of each Unit is determined by the shared drive aisle boundaries along the front of the units and the shared wall along the back and side of said units and the intersection extension thereof. The boundary line of all units that share a demising wall are determined by the centerline of said demising wall and continues in a straight line in an east and west direction until it intersects with the outside of the exterior wall at the front of the unit and the shared wall at the back of the unit regardless of shown or not shown dimensions. Except for Common Elements described in ARTICLE 4, and Limited Common Elements described in ARTICLE 5, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

**Section 3.5** Allocation Generally. The Allocated Interests and the title to a Unit may not be separated or separately conveyed, whether voluntarily or involuntarily, except in conformity with this Declaration. The Allocated Interests shall be deemed to be conveyed with the Unit to which they are allocated even though the description in the instrument of Conveyance may refer only to the title to the Unit. The Allocated Interests of the Units can only be changed as provided in this Declaration.

**Section 3.6** Derivation of Allocated Interests. Each Unit shall have one vote. Each unit shall have a proportionate share interest in the Common Ownership Interests and of the Common Expense Liability. The total number of votes and total number of Common Ownership Interests and Common Expense Liability interests shall be derived from the total number of occupiable Units on the Property. As of the date of this Declaration, there are twelve (12) occupiable Units on the Property.

## **ARTICLE 4. COMMON ELEMENTS**

**Section 4.1** Description. The Common Elements are all portions of the Condominium other than the Units, namely all land and improvements other than the Units and Limited Common Elements, including but not limited to the shared drive aisle(s), community gathering space, the electrical/riser rooms, the dirt and utilities below the Units, and the grassy areas, sidewalk and landscaping outside the Units. The Common Elements also include any utilities or other fixture that lies partially within and partially outside the designated boundaries of a Unit if it serves more than one Unit.

**Section 4.2** Use of Common Elements. Except as otherwise stated in this Declaration, no Owner may alter any Common Element or construct or remove anything in or from any Common Element except upon the prior written consent of the Board. The right to use the Common Elements, including the Limited Common Elements, shall be governed by the provisions of the CIC Act and the Governing Documents.

**Section 4.3** Conveyance or Encumbrance of Common Elements. Any Conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) by a Unit Owner of its interest in the Common Elements shall be void unless the Unit to which that interest is allocated is also transferred. The Association may not convey or subject to a security interest any portion of the Common Elements unless authorized to do so by Owners holding at least 11/12ths of the Voting Interests in the Association. Any agreement to convey Common Elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications of an agreement, in the same manner as a deed, by the requisite number of Unit Owners. The agreement must specify a date after which it will be void unless recorded before that date. The agreement and all ratifications of the agreement must be recorded in every county in which a portion of the Condominium is located and will only be effective upon recordation. A conveyance or encumbrance of Common Elements shall not affect the priority or validity of preexisting encumbrances.

## **ARTICLE 5. LIMITED COMMON ELEMENTS**

**Section 5.1** Description and Allocation of Limited Common Elements. The following portions of the Common Elements are Limited Common Elements.

5.1.1. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and any other materials constituting any part of the finished surfaces of a wall between two or more Units are a part of the Unit, and all other portions of the shared walls are limited common elements of the Units that share the wall.

5.1.2. Any portion of a chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture that lies partially within and partially outside the designated boundaries of a Unit that serve only one Unit, is a limited common element allocated solely to that Unit; while any portion thereof serving more than one Unit is a limited common element of the Units that are so served.

5.1.3. Any fireplaces, awnings, window boxes, doorsteps, stoops, porches, balconies, decks, patios, roofs, siding, facade, veneer, paneling, all exterior doors and windows or other exterior fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are limited common elements allocated exclusively to that Unit.

**Section 5.2** Conversion of Common Elements. No Common Element may be reallocated as a Limited Common Element, and no Common Element or Limited Common Element may be incorporated into an existing Unit without the vote or approval of Unit Owners holding at least 90% of the Voting Interest in the Association. Such reallocation or incorporation shall be reflected in an amendment to the Declaration and the Map.

**Section 5.3** Reallocation Between Units. A Limited Common Element may be reallocated between Units only with the approval of the Unit Owners and by an amendment to the Declaration executed by the Owners of the Units to which the Limited Common Element was and will be allocated. The amendment shall be recorded in the names of the parties and of the Condominium.

**Section 5.4** Right to Use Limited Common Elements. Each Owner of a Unit to which a Limited Common Element is allocated shall have the exclusive right to use the Limited Common Element, in cooperation with any other owner benefited by that Limited Common Element. The right to use the Limited Common Element extends to the Owner's Authorized Users, but is governed by the provisions of the CIC Act and the Governing Documents.

## **ARTICLE 6. EASEMENTS**

**Section 6.1** Subjacent and Lateral Support. Each Unit and all Common Elements have an easement to use the land beneath the Unit and the foundation and structural support components of the Units for subjacent and lateral support.

**Section 6.2** Ingress and Egress. Each Unit has an easement for ingress and egress through any portion of the Condominium intended for access or for common use, including, without limitation, entries, exits, walkways, sidewalks, driveways and plazas. This easement is for the purpose of accommodating normal and customary ingress and egress, and emergency ingress and egress, to and from each Unit. The Unit Owners and the Association may install in any such areas security devices, panic hardware, signage, access restrictions and other features that comply with this Declaration and applicable ordinances and regulations relating to ingress and egress and relocate such areas to accommodate changes or improvements within a Unit or the Condominium, subject to the other provisions of the Governing Documents.

**Section 6.3** Utility and Service Facilities. Each Unit has an easement in and through each other's Units, the Common Elements, and the Limited Common Elements for (a) existence, installation, use, maintenance, repair and replacement of all utility and service elements, equipment and facilities serving the Unit, and for reasonable access thereto, as required to effectuate and continue the proper operation of the Condominium; and (b) wireless signals reasonably necessary to facilitate Internet, cellular phone, and other wireless services; provided, however, that use of wireless signals by one or more Units shall not unreasonably interfere with any other Unit's access to such services or with the reasonable use and enjoyment of such Unit. Without limiting the foregoing, such elements, equipment and facilities include conduits, ducts, pipes, wires, pumps, controls, communication systems and safety systems; provided, however, that such rights shall be subject to the following limitations: (i) such party shall bear all expenses associated with its exercise of such rights; (ii) the exercise of such rights shall be accomplished in a manner that does not interrupt the normal use and enjoyment of the Unit Owners and their tenants, guests and invitees; and (iii) the exercise of such rights shall not unreasonably interfere with the common use or integrity of the Common Elements, the Limited Common Elements, or with the allowed use of the other Units.

**Section 6.4** Association Functions. The Association and its duly authorized agents and representatives have such easements as are necessary to perform its and their duties and obligations as set forth in the CIC Act or the Governing Documents. Without limiting the foregoing, such easements shall include a right to enter into any Unit to inspect and to cure any condition that may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Unit Owner.

**Section 6.5** Maintenance. Each Unit and the Association has an easement in, over, and through the Units, Limited Common Elements, and Common Elements as reasonably necessary to enable the Owner of the Unit or the Association, as applicable, to fulfill its obligations and exercise its rights under this Declaration to maintain and repair the Building, the Condominium, or any portion thereof; provided, however, that such rights shall be subject to the following limitations: (a) except as set forth herein, such party shall bear all expenses associated with its exercise of such rights; and (b) such work shall be accomplished in a manner that does not unreasonably interrupt the normal use and enjoyment of the Unit Owners and their tenants, guests and invitees. This easement includes, but is not limited to, an easement through Unit 101 in Building B benefitting Units 102, 103, 104, 105, and 106 for access to the roof to repair and maintain their associated HVAC unit located on the roof and an easement through Unit 112 in Building B benefitting Units 107, 108, 109, 110, and 111 for access to the roof to repair and maintain their associated HVAC unit located on the roof

## **ARTICLE 7. USE RESTRICTIONS AND CONDUCT RESTRICTIONS**

**Section 7.1** Use Restrictions Applicable to All Units. The Units may be used only for residential uses consistent with residential developments in the Ridgefield, Washington area.

**Section 7.2** Conduct Restrictions Applicable to All Units. The following conduct restrictions set forth below shall apply to all Units and Authorized Users, except that they shall not apply to any conduct of Declarant authorized by the CIC Act or Governing Documents. The Association shall have the exclusive authority to enforce and regulate the matters set forth in this Section.

7.2.1. Trash and Garbage. All trash, garbage, compostable materials and recycling shall be deposited only in designated containers or compactors. Each Owner will obtain such equipment or services for its own Unit and store said equipment off of the road or other common areas, in designated trash receptacles in their garage until the schedule date for refuse pick-up, where it will be rolled to the designated refuse pick up location for each building.

7.2.2. Vibrations, Noises and Odors. No Owner may conduct or allow any continuing vibration, noise or odor that is obnoxious or offensive to emanate from its Unit or Limited Common Elements into another Unit or its Limited Common Elements. This paragraph shall not be deemed to prohibit (i) the construction, remodeling or maintenance of a Unit or its Limited Common Elements, or (ii) ordinary sounds generated by residents (but not shouting or rowdiness).

7.2.3. Driveways, Walkways, Etc. Roads, sidewalks, driveways, walkways, halls, corridors, stairways, and other portions of the Common Elements used for access shall be used exclusively for normal ingress and egress. No obstructions shall be placed therein unless permitted by the Board or the Rules.

7.2.4. Effect on Insurance. Except for such activities and improvements as are permitted by the CIC Act or the Governing Documents, nothing shall be done or kept in any Unit or in any Common Element that will increase the rate of insurance or result in the cancellation of insurance on the Property without the prior written consent of the Board.

7.2.5. Leases. Any rental or lease agreement shall (a) be in a Record, (b) shall provide that the lease or rental is subject to the Governing Documents, and (c) shall provide that any failure to comply with any provisions of the Governing Documents shall be a default under the terms of the rental or lease agreement. If any lease or rental agreement does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be part of the instrument and binding upon the Thirteen & Cherry residential unit owner and the Tenant by reason of this Declaration. Prior to the Tenant's occupancy of a Unit, the

Owner shall ensure the Tenant receives a copy of the Governing Documents. An Owner shall at all times be responsible for its Tenant's compliance with all of the provisions of the Association Governing Documents.

7.2.6. Hazardous Substances. No Owner may permit any Hazardous Substance to be released or disposed of in the Condominium. Each Owner must indemnify, defend, and hold harmless the other Owners and the Association from all fines, suits, procedures, claims, and actions of any kind arising out of or in any way connected with any spills or discharges of Hazardous Substances or wastes arising from the operation or use of the Unit or the Property by the Owner, Tenants, or invitees of the Unit. As used herein, the term "Hazardous Substance" means any hazardous, toxic, or dangerous substance, waste, or material which is or becomes regulated under any federal, state, or local statute, ordinance, rule, regulation, or other law now or hereafter in effect pertaining to environmental protection, contamination, or cleanup, including without limitation any substance, waste, or material which now or hereafter is designated as a "Hazardous Substance" under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601, et seq.); or under any local or state rule or regulation. Notwithstanding the foregoing, the term "Hazardous Materials" does not include products or materials normally used or stored in similar properties for the maintenance, cleaning or operation of the Property or for household use by residents and which are used or stored in compliance with Environmental Laws.

7.2.7. Conveyance by Owners: Notice Required. The right of an Owner to Convey the Unit is not 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 Convey a Unit must, however, deliver a written notice to the Board at least two weeks before closing specifying (a) the Unit being sold; (b) the name and address of the purchaser, the closing agent, and the title insurance company insuring the purchaser's interest; and (c) the estimated closing date. The Board shall notify the purchaser of any pending litigation or arbitration in which the Association is a party. The Board has 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. Promptly upon the Conveyance of a Unit, the new Unit Owner must notify the Association of (i) the date of the Conveyance; (ii) the Unit Owner's name and address; and (iii) the name and notice address of every Mortgagee of the Unit.

## **ARTICLE 8. MAINTENANCE OF UNITS AND COMMON ELEMENTS**

**Section 8.1** Owner's Maintenance and Repair Responsibilities. Each Owner must, at the Owner's sole expense, maintain and repair (i) the Unit and all betterments, fixtures, equipment, appliances, and appurtenances including, without limitation, all plumbing fixtures (including pipes, hoses, drains, toilets, showers, tubs, dishwashers, faucets and garbage disposals), water heaters, hot water tanks, heating and cooling equipment, electrical fixtures, and appliances. Each Owner must, at the Owner's sole expense, maintain and repair any HVAC equipment, ductwork and refrigerant lines, vent hoods, exhaust fans, grease interceptors, signage, security systems and outdoor fences or partitions serving only its Unit whether it is within the Unit or is a Limited Common Element. Each Owner must keep all of the foregoing in good repair and must keep the foregoing and the porches, patios, balconies, decks, outdoor seating or serving areas, doors, screens, fireplaces, parking spots, car parks, and other Limited Common Elements allocated to such Owner's Unit in neat, clean and sanitary condition, in accordance with applicable laws and the Governing Documents. Notwithstanding the foregoing, and subject to modification related to Limited Common Elements, the Association shall be solely responsible to maintain and repair, and the Unit Owner shall have no right to alter, the Common Elements.

**Section 8.2** Association's Maintenance and Repair Responsibilities. The Association is responsible for the maintenance and repair of the Common Elements regardless of location and the maintenance and repair of the siding and/or other exterior wall facades, roofs, and shared fences, which are Limited Common

Elements. Unit Owners are responsible for other share Limited Common Elements. The Association must keep all of the foregoing in good repair and in neat, clean and sanitary condition, in accordance with applicable laws and the Governing Documents, and shall not allow them to fail, deteriorate or cease functioning through lack of regular or proper maintenance. Without limiting the foregoing, the Board shall develop, update and adhere to schedules and procedures for the periodic inspection, maintenance, repair and replacement of the Common Elements for which the Association is responsible. The schedules and procedures shall be based upon sound property management principles and practices sufficient to maintain the Common Elements in the condition required herein.

## **ARTICLE 9. SPECIAL DECLARANT RIGHTS**

**Section 9.1** General. Declarant is undertaking the work of developing Units and other improvements within the Property. The completion of the development work and the marketing and sale of the Units is essential to the establishment and welfare of the Property as a residential community. Until the Buildings on all Units on the Property have been constructed, fully completed, and sold, and the Transition Meeting described in Section 10 has occurred, Declarant has and reserves the Special Declarant Rights set forth in RCW 64.90.010(52) and this Declaration.

**Section 9.2** Development Rights. Declarant reserves the right to complete any Improvements indicated on the Map or described in this Declaration or the Condominium public offering statement. Declarant reserves the right to exercise any development right, including but not limited to the right to add real estate or Improvements to the Condominium; create Units, common elements, or limited common elements; subdivide or combine Units; convert Units into common elements; withdraw real estate from the Condominium; and/or reallocate limited common elements with respect to Units that have not been conveyed by Declarant.

**Section 9.3** Additional Real Estate. Declarant reserves the right to add the real estate identified as “conceptual” in Exhibit B and as legally described and specified in Exhibit C to this Declaration, as well as unspecified real estate to the Condominium by amending the Declaration at any time during the period specified in Section 9.7. The amount of unspecified real estate added to the Condominium may not exceed ten percent of the total real estate described in Exhibit A plus the additional, specified real estate identified in Exhibit C to this Declaration. Declarant reserves the right to add phase(s) of development to the Condominium during the period of Declarant Control by amending the Declaration and may petition the Board to add phase(s) of development to the Condominium after the period of Declarant Control.

**Section 9.4** Additional Units and Homes. Declarant reserves the right to complete any improvements indicated on the Map or described in this Declaration or the public offering statement. Declarant reserves the right to exercise any development right and create additional Units and Homes on the Property, not to exceed the total number of Units and total number of Homes specified in the Table of Units and Homes at Exhibit B. Declarant does not agree to build any Improvements not described in this Declaration. No assurances are being made regarding the boundaries of any Units, phases of development, order of development, or the timing of any development.

**Section 9.5** Merge or Consolidate. Declarant reserves the right to merge or consolidate the Condominium with another condominium community.

**Section 9.6** Inferences from Action or Inaction. The exercise of any development right does not trigger or require the exercise of any other development right. No assurances are being made that any future development will, in fact, occur. When all development rights have been exercised or such development rights have expired, then real estate that was subject to such development rights shall remain property of

the Declarant or the Declarant's successor in interest, subject to future development upon obtaining approval of the ACC.

**Section 9.7** Marketing Rights. Notwithstanding anything to the contrary in this Declaration, Declarant has the right to maintain one or more sales office(s), management office(s), and model(s) on one or more of the Units that Declarant owns. Declarant and prospective purchasers and their agents have the right to use and occupy the sales office and models during reasonable hours any day of the week. Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property, including, without limitation, on the Common Elements and Limited Common Elements.

**Section 9.8** Easements. While Declarant owns any Unit, Declarant reserves an easement over, under, and across the Common Elements and Limited Common Elements as may be reasonably necessary to discharge Declarant's obligations, exercise special Declarant rights, and/or carry out sales activities necessary or convenient for the sale of Units. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress to, from, over, in, upon, under, and across the Common Elements and Limited Common Elements, and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the improvements on the Property in such a way as not to interfere unreasonably with the occupancy, use, enjoyment, or access to an Owner's Unit by the Owner or the Owner's family, tenants, employees, guests, or invitees.

**Section 9.9** Association Board, Meetings, Committees, and Records. Declarant reserves the right to appoint or remove any officer or board member of the Association or any Master Association or veto or approve a proposed action of any board or association. Declarant reserves the right to attend meetings of the Owners and, except during an executive session in which Declarant would otherwise be excluded, meetings of the Board. Declarant reserves the right to appoint all members of the ACC and all replacements thereto until the Condominiums are one hundred percent (100%) built out or the expiration of the Special Declarant Rights, whichever occurs first. Declarant reserves the right to establish other committees of the Association during the period of Declarant Control. Declarant reserves the right to access the records of the Association to the same extent as an Owner.

**Section 9.10** Expiration. Declarant's Special Rights shall expire twenty (20) years after the Declaration is recorded and/or the day Declarant records an amendment to the Declaration surrendering all Special Declarant Rights, whichever occurs first. Declarant remains liable for expenses associated with real estate subject to a development right when those development rights expire.

**Section 9.11** Transfer. Transfer or Extinguishment of Special Declarant Rights shall be accomplished in accordance with RCW 64.90.425.

## **ARTICLE 10. DECLARANT CONTROL**

**Section 10.1** Declarant-Controlled Board and Officers. Notwithstanding anything to the contrary in this Declaration or the Bylaws, Declarant hereby reserves administrative control of the Association prior to the Transition Meeting. During the period of Declarant Control, Declarant, in its sole discretion, has the right to appoint and remove members of the Board. This Declarant-controlled Board will manage the affairs of the Association and be vested with all powers and rights of the Board until the Transition Meeting (as hereinafter defined). The Declarant-controlled Board will elect officers. During the period of Declarant Control, the Board must meet at least four times a year and at least one of those meetings must be held at the Property or a place convenient to the Property.

10.1.1. No later than sixty (60) days after conveyance of twenty-five percent (25%) of the anticipated Lots to owners other than Declarant, at least one member of the Board, constituting at least twenty-five percent (25%) of the total number of Board Members, must be elected by owners other than Declarant.

10.1.2. No later than sixty (60) days after conveyance of fifty percent (50%) of the anticipated Lots to Owners other than Declarant, at least thirty-three and one third percent (33 and 1/3%) of the total number of Board Members must be elected by owners other than Declarant.

**Section 10.2** No Other Recordation. During the period of Declarant Control, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent, which consent may be withheld by Declarant in its sole and absolute discretion. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant.

**Section 10.3** Voluntarily Surrender. If Declarant voluntarily surrenders the right to appoint and remove officers and Board Members, Declarant may require specified actions of the Association or Board to be approved by Declarant before they become effective.

10.3.1. Any such requirement shall be described in a recorded amendment to the Declaration, executed by Declarant.

10.3.2. Declarant's failure to veto or approve such proposed action within thirty (30) days after receipt of written notice of the proposed action shall be deemed approval by Declarant.

**Section 10.4** Transition Meeting.

10.4.1. Declarant must call a meeting for the purposes of turning over administrative control of the Association from Declarant to the other Association members within ninety (90) days after the earlier of the following dates:

- Ten (10) years after the date on which this Declaration is recorded;
- Sixty (60) days after conveyance of seventy-five percent (75%) of the units that may be created to Owners other than Declarant;
- Two (2) years after the last conveyance of a Lot, except to a dealer;
- Two (2) years after any right to add new Lots was last exercised; or
- The day Declarant records an amendment to the Declaration surrendering all rights to appoint and remove officers and Board Members.

10.4.2. Notice. Declarant must give notice of the Transition Meeting to each Owner as provided in the Bylaws. If Declarant does not call the Transition Meeting required under this Section 10.4.2, any Owner may do so.

10.4.3. Election. At the Transition Meeting, the Owners must elect a board in accordance with RCW 64.90.410(2).

10.4.4. Transfer. Delivery of the required documents and transfer of Association Property shall occur no later than thirty (30) days after the Transition Meeting and in accordance with RCW

64.90.420 and .425. On the date of the Transition Meeting, if not accomplished sooner, any real estate that was subject to development rights shall remain property of the Declarant or the Declarant's successor in interest, subject to future development upon obtaining approval of the ACC.

10.4.5. Audit. Pursuant to RCW 64.90.420(2), no later than sixty (60) days following the Transition Meeting, the Board must retain the services of a certified public accountant to audit the records of the Association as of the date of the Transition Meeting in accordance with generally accepted auditing standards unless the unit owners, other than the Declarant, to which a majority of the votes are allocated elect to waive the audit. The cost of the audit must be a Common Expense. The accountant performing the audit must examine supporting documents and records, including the cash disbursements and related paid invoices, to determine if expenditures were for Association purposes and the billings, cash receipts, and related records to determine if the Declarant was charged for and paid the proper amount of assessments.

**Section 10.5** Post-Transition Board Members and Officers. Effective as of the date of the Transition Meeting, at least a majority of the Board Members must be Owners other than the Declarant. After the Transition Meeting, the Declarant may only appoint or elect a Person or itself as a voting, *ex officio* or nonvoting board member, by submitting a vote as an Owner. Notwithstanding the above, the appointment of ACC membership and control shall be accomplished in accordance with Section 15.

## **ARTICLE 11. OWNERS ASSOCIATION**

**Section 11.1** Association. The Association shall be known as the Thirteen & Cherry Townhomes Association. The Association shall be organized as a non-profit miscellaneous or mutual corporation, no later than the date this Declaration is recorded. The Association shall be the Unit Owners Association required under RCW 64.90.400. It shall not be a "Association" under RCW 64.90.300. Except where expressly reserved to the Owners under the CIC Act or the particular Association Governing Documents, the affairs of the Association shall be managed by a Board. The rights and duties of the Board and the Association shall be governed by the provisions of the CIC Act, the Washington Miscellaneous and Mutual Corporations Act, chapter 24.06 RCW, the Declaration, and its Articles and Bylaws.

**Section 11.2** Bylaws. The initial Directors appointed in the Articles will adopt initial Bylaws to supplement the Declaration, to provide for the administration of the Association and the Condominium, and for other purposes not inconsistent with the CIC Act or the Governing Documents. The Bylaws of the Association may be amended pursuant to the procedures set forth in ARTICLE 22.

**Section 11.3** Qualifications for Membership. Each Unit Owner shall be a member of the Association. Corporations, partnerships, associations, and other legal entities, trustees under an express trust, other fiduciaries, and natural Persons may be members of the Association.

**Section 11.4** Transfer of Membership. The membership of an Owner in the Association is appurtenant to the Unit giving rise to the membership. The membership may not be transferred in any way except upon the transfer of title to the Unit and then only to the transferee of title to the Unit, provided that if a Unit has been sold on contract, the contract purchaser shall, except as otherwise set forth in the Governing Documents, exercise all rights of the Owner under the Governing Documents, and shall be the voting representative unless otherwise specified. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Unit will automatically transfer the membership in the Association to the new Owner.

**Section 11.5** Number of Votes. The allocation of Voting Interests in the Association is set forth in Section 6.2. Other matters concerning voting are set forth in the Bylaws.

## **Section 11.6** Powers of Association.

11.6.1. General Powers. Except to the extent limited by the Governing Documents, the Association shall have (i) all powers authorized under the CIC Act and the Washington Nonprofit Miscellaneous and Mutual Corporation Act; (ii) all powers necessary for the operation of the Condominium or governance of the Association; (iii) any other powers authorized by this Declaration; and (iv) all powers that may be exercised by any corporation of the same type as the Association.

11.6.2. Capital Improvements. The Association may cause additional improvements to be constructed within the Common Elements and may acquire, hold, encumber, convey, and dispose of, in the Association's name, any additional tangible or intangible personal property.

11.6.3. Rules. The Board shall have the power to adopt Rules for any purpose authorized under the CIC Act, including the establishment and enforcement of design criteria and aesthetic standards pertaining to the exterior of the Building. In adopting, amending or rescinding Rules, a Board (i) shall give consideration to the matters brought to its attention after notice to the Unit Owners; and (ii) shall give consideration to the interests of individual Owners and Authorized Users as well as the interests of the Association. All Rules must be reasonable. All Rules must treat similarly situated Units, Owners and Authorized Users similarly. No Rules shall be inconsistent with or violate the provisions of the Governing Documents. Before, adopting, amending or repealing any Rule, the Board must give all Owners within its jurisdiction notice of: (i) its intention to adopt, amend, or repeal a Rule and provide the text of the Rule or the proposed change; and (ii) a date on which the Board will act on the proposed Rule or amendment after considering comments from Owners. Following adoption, amendment, or repeal of a Rule, the Board must give notice to the Owners of its action and provide a copy of any new or revised Rule. No Rules shall alter the Allocated Interests of a Unit Owner, or the allowable uses of the Unit without the consent of the director elected by the Owner of the affected Unit.

**Section 11.7** Accounts, Records, Financial Statements, Audits and Funds. The Association must keep all of its funds in accounts in the name of the Association with a Qualified Financial Institution, except as provided in RCW 64.90.535. The Association shall keep financial records in accordance with accrual-based accounting principles. The Association must establish and maintain its accounts and records in a manner that will enable it to credit Assessments for Common Expenses and Specially Allocated Expenses, including allocations to reserves, and other income to the Association, and to charge expenditures, to the account of the appropriate Units in accordance with the provisions of this Declaration. To assure that the Unit Owners are correctly assessed for the actual expenses of the Association, the accounts of the Association must be reconciled at least annually unless the Board determines that a reconciliation would not result in a material savings to any Unit Owner. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association in accordance with accrual-based accounting principles. The financial statement shall be completed in time for the Association's annual meeting and in any event within one hundred twenty (120) days following the end of the fiscal year. The Board, or Persons having at least thirty five percent (35%) of the Voting Interests of the Association, may require that an audit of the Association and management books be presented at any special meeting. An Owner or Mortgagee, at such Person's expense, may at any reasonable time conduct an audit of the books of the Board and Association.

**Section 11.8** Inspection of Documents, Books and Records. The Association shall make available for inspection upon request, during normal business hours or under other reasonable circumstances to Owners, Mortgagees, prospective purchasers and their prospective Mortgagees, and the agents or attorneys of any of them, current copies of the Books and Records of the Association. The Association may require the requesting party to pay a reasonable charge to cover the cost of making copies.

## **ARTICLE 12. THE BOARD OF DIRECTORS**

**Section 12.1** Qualifications of Directors and Officers. The Board shall consist of up to three (3) directors (“Directors” or “Board Members”), elected by a majority vote of the Owners. The other qualifications, removal and terms of service of the Directors and officers of the Association shall be as specified in the Bylaws.

**Section 12.2** Powers of the Board. Except where expressly reserved to the Owners under the CIC Act or the Governing Documents, the affairs of the Association shall be managed by its Board. The Board may exercise all powers of the Association, except as otherwise provided in the CIC Act, or the Governing Documents. The Board shall have the exclusive power to contract for and provide goods and services necessary for the proper functioning of the Condominium pursuant to the Governing Documents. Those goods and services may include, but are not limited to, the following:

12.2.1. Utilities. All necessary utility services for the Common Elements and the Units.

12.2.2. Additions to Common Elements. The addition of improvements or personal property to the Common Elements.

12.2.3. Professional Services. Legal, management, and accounting services necessary or proper for the operation of the Condominium or enforcement of Governing Documents; services of a hearing officer for quasi-judicial disputes; or services of an architect or other professional to assist with applications for changes to the Condominium.

12.2.4. Maintenance. The maintenance, repair, and replacement of the Common Elements including the Limited Common Elements.

12.2.5. Other Necessary Expenditures. Any other materials, supplies, furniture, labor, services, insurance, taxes, or assessments which the Board is required to secure or pay for pursuant to the terms of this Declaration or the Bylaws, or under law, or which, in its opinion, is necessary or proper for the operation of the Condominium, or for the enforcement of this Declaration or the Bylaws.

12.2.6. Liens. The Board may also pay any amount necessary to discharge any lien or encumbrance levied against the entire property or any part thereof which may or is claimed to, in the opinion of the Board, constitute a lien against the Property or against the Common Elements, rather than merely against the interest therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs and expense incurred by the Board by reason of such lien or liens shall be assessed against the Owners and the Units responsible to the extent of their responsibility and shall be immediately due and payable to the Association.

12.2.7. Easements. The Board shall grant, manage, negotiate, terminate, and enforce the Puget Sound Energy easement recorded in Thurston County at \_\_\_\_\_, as it may be amended from time to time, and any other easements that may be granted over, under, or through, the Common Elements, the Limited Common Elements, or more than one (1) Unit.

**Section 12.3** Managing Agent. The Board may contract with a Managing Agent to assist the Board in the management and operation of the Condominium and may delegate such of its powers and duties to the Managing Agent as it deems to be appropriate, except as limited herein. Any contract with a Managing Agent shall have a term no longer than one (1) year (but may be renewable by agreement of the parties for successive one-year periods) and shall be terminable by the Board without payment of a termination fee,

either (a) for cause, on thirty (30) days' written notice; or (b) without cause, on not more than ninety (90) days' written notice.

**Section 12.4** Authority to Borrow. If the Board determines that the funds of the Association are or will be insufficient to pay the expenses of the Association, the Association may borrow funds to pay such expenses. To secure the repayment thereof, the Association may encumber any portion of the Common Elements. Proceeds of the Conveyance or financing are an asset of the Association. In addition, to secure the repayment thereof, the Association may assign (subject to the limitations set forth in this Declaration) its right to receive future income, including any receivable, right to payment, and special and general Assessments from the Unit Owners. In connection with the encumbrance of future income of the Association, the Association may execute such loan documents and undertake such obligations as the lender may require to realize on the encumbrance including powers of attorney, control over deposit accounts, the right to file or foreclose Assessment liens, and the right to contact account debtors (including the Unit Owners) and require that payment be made directly to the lender.

**Section 12.5** Standard of Conduct. In the performance of their duties, the officers and Directors are required to exercise the degree of care and loyalty to the Association required of an officer or a director of a corporation organized, and are subject to the conflict of interest rules governing Directors and officers, under chapter 24.06 RCW.

**Section 12.6** Limitations on Board Authority. The Board shall act reasonably, in light of the facts determined by the Board, in making all determinations, exercising its discretion, granting or withholding consent, or taking any action on behalf of the Association. The Board shall not, without the required vote or agreement of the Unit Owners, (i) amend the Declaration, (ii) amend the organizational documents of the Association, (iii) terminate the Condominium, (iv) appoint Directors of the Association, or (v) determine the qualifications, powers, duties, or terms of office of Directors of the Association.

**Section 12.7** Limitation of Liability: Indemnification. The liability of each director, officer and committee member shall be limited as set forth in the Association's Articles. Each director, officer and committee member shall be entitled to indemnity, reimbursement of expenses and advances of expenses as set forth in the Association's Articles.

**Section 12.8** Entry for Repairs or Maintenance. The Association, the Managing Agent, and their agents or employees may enter a Unit and the Limited Common Elements allocated thereto to inspect and to effect repairs, improvements, replacements, maintenance or sanitation work deemed by the Board to be necessary in the performance of its duties; to obtain access to Common Elements; to do work that the Owner has failed to perform in violation of this Declaration; to prevent damage to the Common Elements or to another Unit; or to prevent unnecessary Common Expenses. If the Board determines there is a need to repair or replace a portion of a Unit or Limited Common Element, the Association may either require the Owner to make the repair or replacement or make the repair or replacement itself and allocate the cost to the Owner. The Board may levy a special Assessment against the Owner of the Unit for all or a part of such sums, which may be collected and foreclosed by the Association in the same manner as Assessments are collected and foreclosed under ARTICLE 14. In furtherance of this right, the Board may require Owners and their Authorized Users to furnish the Board or its agent with duplicate keys to the Units.

**Section 12.9** Lawsuits or Arbitration Proceedings. The Association may institute, defend, or intervene in litigation or in arbitration, mediation, or administrative proceedings or any other legal proceedings in its own name on behalf of itself or on behalf of two or more Unit Owners, in a representative capacity, on matters affecting the Condominium, but any action on behalf of Unit Owners shall not convert any individual claims or legal rights that the Unit Owners may have into claims or rights of the Association.

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

**Section 13.1** Fiscal Year. The Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year.

**Section 13.2** Preparation of Budget. Not less than thirty (30) days before the end of the fiscal year in which Assessments are collected, the Board shall prepare a budget for the Association for the coming year. The budget must include: (i) the projected income to the Association by category, (ii) the projected Common Expenses by category, (iii) the amount of Assessments per Unit and the date the Assessments are due, (iv) the amount of regular Assessments budgeted for contribution to the reserve account, (v) 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 (vi) the current deficiency or surplus in reserve funding expressed on a per unit basis. The budget shall also take into account any surplus or deficit carried over from the preceding year, and make provision for reasonable reserves for contingencies. The Board need not reserve for items that can reasonably be funded from cash flow or borrowing, and need not adopt a “fully funded” reserve plan or contribution and may adopt such plan and contribution rate as it deems appropriate in its reasonable discretion. The Board may at any suitable time require the commencement of contributions to such reserve accounts.

**Section 13.3** Ratification of Budget. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Board shall provide a copy of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not fewer than fourteen (14) or more than fifty (50) days after mailing of the summary. Unless at that meeting an Owner rejects the budget, the budget and the Assessments against the Units included in the budget are ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. If the Board proposes a supplemental budget during any fiscal year, such budget shall not take effect unless ratified by the Owners in accordance with this Section 13.3.

**Section 13.4** Revisions to Budget. The Board may revise the budget and any Assessments based thereon, from time to time for any reason, including non-payment of any Owner’s Assessments. Any revision to the budget is, however, subject to the notice requirements and the right of Owners to ratify the revised budget set forth in Section 13.3.

**Section 13.5** Assessments for Common Expenses. All Assessments shall be levied by the Association. The sums required by the Association for Common Expenses as reflected in the annual budget and any supplemental budget shall be divided into installments to be paid each month over the period to be covered by the budget or supplemental budget. The monthly Assessment for Common Expenses for each Unit shall be the sum of (a) the Common Expense Liability of that Unit multiplied by the total monthly installment for Common Expenses (except Specially Allocated Expenses) for all Units; and (b) any Specially Allocated Expenses of that Unit. Monthly Assessments shall commence against all Units that have been created by this Declaration no later than the day of the first full month after the date of recording of this Declaration.

**Section 13.6** Specially Allocated Expenses. The Common Expenses described in this Section 13.6 shall be assessed against the Units as described herein, and not on the basis of the Unit’s Common Expense Liability.

13.6.1. Limited Common Elements. Any Common Expense associated with the operation, maintenance, repair, or replacement of a Limited Common Element shall be paid in proportionate shares by the Owner(s) of the Unit to which such Limited Common Element is allocated. The proportion of each

owner's share shall be one (1) divided by the number of Units allocated to that Limited Common Element. For example, if two (2) Units are allocated a Limited Common Element, then each Unit shall pay ½ of the Common Expenses associated with that Limited Common Element.

13.6.2. Intentional Misconduct and Gross Negligence. The Association may specially assess common expenses pursuant to RCW 64.90.480(6).

13.6.3. Negligence. The Association may specially assess common expenses arising from the negligence of a Unit Owner or its Authorized Users.

13.6.4. Deductibles and Uninsured Amounts. The Association may specially assess common expenses for deductibles and uninsured amounts pursuant to ARTICLE 18 of this Declaration.

**Section 13.7** Special Assessments. For those Common Expenses which cannot reasonably be calculated and paid on a monthly basis, the Board may levy special Assessments for such expenses against the Units, subject to ratification by the Owners.

**Section 13.8** Reserve Studies. The Association shall obtain reserve studies and updated reserve studies as may be required by the CIC Act.

**Section 13.9** Creation of Reserve Account. Once Assessments for replacement reserves are collected, the Board shall establish one or more accounts for the deposit of reserve contributions at a financial institution domiciled in the United States that is regulated by FINRA or by the office of the comptroller of the currency. Any reserve account must be an income-earning account maintained under the direct control of the Board, and the Board is responsible for administering the reserve account. Reserve accounts must be maintained such that the reserve funds are not commingled with other funds of the Association. The operation of the reserve account and any Assessments for contribution to the reserve account shall be further governed by the provisions of RCW 60.90.535, this Article, and the Bylaws.

**Section 13.10** Withdrawals from Reserve Accounts. The Board may withdraw funds from the Association's reserve accounts 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 (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. The Board may withdraw funds from the reserve account without satisfying the notification of repayment requirements to pay for replacement costs of reserve components not included in the reserve study.

**Section 13.11** Payment of Monthly Assessments. On or before the first day of each calendar month, or such other date as the Board may establish by Rule, each Owner shall pay or cause to be paid to the treasurer or designated agent of the Association all Assessments against the Unit for that month. Any Assessment that is not paid when due will be subject to late charges, interest charges and collection adopted by the Board. The Association must provide at least one method of accepting payment of Assessments from Owners at no charge or as a Common Expense.

**Section 13.12** Proceeds Belong to Association. All Assessments and other receipts received by the Association on behalf of the Condominium shall belong to the Association.

**Section 13.13** Failure to Assess. Any failure by the Board or the Association to make the budgets and Assessments hereunder before the expiration of any year for the ensuing year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay Assessments during that or any subsequent year, and the monthly Assessment amounts established for the preceding year shall continue until new Assessments are established.

**Section 13.14** Certificate of Unpaid Assessments. Upon the request of any Owner or Mortgagee of the Owner's Unit, the Board must furnish a statement signed by an officer or authorized agent of the Association stating the amount of unpaid Assessments against that Unit. The Association must furnish the statement within fifteen (15) days after receiving the request. The statement shall be binding on the Association, the Board and every Unit Owner, unless and to the extent known by the recipient to be false. The Board may establish a reasonable fee to be charged to reimburse it for the cost of preparing the statement.

**Section 13.15** Recalculation of Assessments. If Common Expense Liabilities are reallocated, Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated liabilities. The Board shall have the discretion to determine when to impose the recalculated Assessments, but in no event shall the Board delay imposition beyond the fiscal year during which the Common Expense Liabilities were reallocated.

**Section 13.16** Property Taxes Prior to Creation of Individual Tax Accounts. Until the county assessor has created separate property tax accounts and mailed separate property tax bills for each Unit, the Association shall, if requested by Declarant, assess the taxes and assessments against the Units as a Common Expense according to the Common Expense Liability, and either remit such sums to the Declarant if the Declarant has paid the taxes and assessments or pay the taxes and assessments as a Common Expense if the Declarant has not paid the taxes and assessments. The Association shall revise the budget as needed to include such taxes and assessments as a Common Expense.

## **ARTICLE 14. LIEN AND COLLECTION OF ASSESSMENTS**

### **Section 14.1** Assessments Are a Lien: Priority.

14.1.1. The Association has a lien on each Unit for any unpaid Assessment levied against that Unit from the time the Assessment is due. Each Unit shall have the right under RCW 64.90.490(c), as applicable, to obtain a release of the Association lien by paying its proportionate share of the lien.

14.1.2. A lien under this Article shall be prior to all other liens and encumbrances on a Unit except: (i) liens and encumbrances recorded before the recording of this Declaration; (ii) a Mortgage on the Unit recorded before the date on which the unpaid Assessment became due; and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit.

14.1.3. Except as provided in this Section, the lien shall also be prior to the Mortgages described in 14.1.2(ii) to the extent of an amount equal to:

14.1.3.1. Assessments for Common Expenses, excluding any amounts for capital improvements, based on the periodic budgets 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 a Mortgage described in 14.1.2(ii); plus

14.1.3.2. The Association's actual costs and reasonable attorneys' fees incurred in foreclosing its lien but incurred after the giving of the notice described in 14.1.3.3; provided,

however, that the costs and reasonable attorneys' fees that will have priority under this Section shall not exceed two thousand dollars and no/100 (\$2,000) or an amount equal to the amounts described in 14.1.3.1, whichever is less.

14.1.3.3. The notice must satisfy the requirements of RCW 64.90.485(3)(a)(iii).

14.1.4. Recording of this Declaration constitutes recorded notice and perfection of the lien for Assessments; however, the Association may record a notice of claim of lien for Assessments in the real estate records of the county in which the Condominium is located. Such recording shall not constitute the notice referred to in 14.1.3.3.

**Section 14.2** Judicial Foreclosure. A lien arising under this Article may be enforced judicially by the Association or its authorized representative in the manner set forth in chapter 61.12 RCW, subject to any rights of redemption under chapter 6.23 RCW. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months.

**Section 14.3** Non-Judicial Foreclosure. A lien arising under this Article may be foreclosed non-judicially in the manner set forth in chapters 61.24 RCW and 64.90 RCW for non-judicial foreclosure of deeds of trust. Each Unit Owner shall retain the right to possession of its Unit so long as the Unit Owner is not in default of an obligation to pay Assessments. The Units are not used principally for agricultural or farming purposes. If the Association forecloses its lien non-judicially, it shall not be entitled to the lien priority over Mortgages provided in 14.1.3 and shall be subject to the limits on deficiency judgments under chapter 61.24 RCW.

**Section 14.4** Receiver During Foreclosure. In an action to collect Assessments or to foreclose on a lien on a Unit, the Association shall be entitled to the appointment of a receiver to collect all sums due and owing to the Unit Owner before commencement of the action or during the pendency of the action. The receivership shall be governed by chapter 7.60 RCW. During the pendency of the action, the court may order the receiver to pay sums held by the receiver to the Association for any Assessments against the Unit. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Unit.

**Section 14.5** Effect of Foreclosure. 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. Nothing in this Article shall prohibit the Association from taking a deed in lieu of Foreclosure. Except as provided in 14.1.3, the holder of a Mortgage or other purchaser of a Unit who obtains the right of possession of a Unit through Foreclosure shall not be liable for any Assessments or installments thereof that became due prior to such right of possession. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Owners, including such Mortgagee or other purchaser of the Unit. Foreclosure of a Mortgage does not relieve the prior Owner of personal liability for Assessments accruing against the Unit prior to the date of such sale.

**Section 14.6** Separate Action to Collect. Suit to recover judgment for any delinquent Assessments shall be maintainable without foreclosing or waiving the liens securing them. However, each Unit Owner shall have the right to obtain a release from any such suit or similar action by paying its proportionate share of the delinquent Assessment(s) in the same manner provided for release of liens under RCW 64.90.490(c).

**Section 14.7** Extinguishment of Lien and Personal Liability. A lien for unpaid Assessments and the personal liability for payment of Assessments are extinguished unless legal proceedings to enforce the lien

or collect the debt are instituted within six (6) years after the full amount of the Assessments sought to be recovered becomes due.

**Section 14.8 Joint and Several Liability.** In addition to constituting a lien on the Unit, each Assessment shall be the joint and several obligation of the Owner or Owners of the Unit to which the same is assessed as of the time the Assessment is due. In a voluntary Conveyance, other than by Foreclosure, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor up to the time of the grantor's Conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee for such Assessments. 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.

**Section 14.9 Late Charges and Interest on Delinquent Assessments.** The Association may from time to time establish reasonable late charges and a rate of interest to be charged, not to exceed the maximum rate calculated under RCW 19.52.020, on all subsequent delinquent Assessments or installments thereof. If the Association has not established such a 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.

**Section 14.10 Recovery of Attorneys' Fees and Costs.** The Association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent Assessments, whether or not such collection activities result in a 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.

**Section 14.11 Limitations on Foreclosure Proceedings.** The Association may not commence an action to Foreclose a lien on a Unit under this Article unless: (i) the Unit Owner, at the time the action is commenced, owes a sum equal to a at least three months of Assessments, and (ii) the Board approves commencement of a Foreclosure action specifically against that Unit. Every aspect of a collection, Foreclosure, sale or other conveyance under this Article, including the method, advertising, time, date, place and terms must be commercially reasonable.

**Section 14.12 Remedies Cumulative.** The remedies provided herein are cumulative, and the Board may pursue them, and any other remedies which may be available under law although not expressed herein, either concurrently or in any order.

## **ARTICLE 15. ARCHITECTURAL CONTROL COMMITTEE (ACC)**

**Section 15.1 Committee Authority.** The ACC shall be a committee created by the Board of Directors. The ACC, from time to time and subject to the Board's approval or consent, may adopt architectural, construction, and design criteria, rules, regulations, and guidelines and aesthetic standards ("ACC Guidelines") for the Condominium. Such ACC Guidelines may require a fee to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The ACC shall determine the amount of such fee in a reasonable manner. Such fees shall be used to defray the costs and expenses of the ACC or for such other purposes as established by the Board. If the ACC establishes ACC Guidelines, the ACC will, from time to time and in its sole discretion, adopt and publish procedures for approval of applications and rules to enforce the ACC Guidelines, including a reasonable time within which the Association must act after an application is submitted and the consequences of a failure to act, that supplement the provisions provided in this Article and in the Bylaws. The ACC will review and approve

or deny applications for proposed changes to Improvements consistent with the Governing Documents. A decision of the ACC will be made by majority vote of the ACC members who are also Directors.

**Section 15.2 Minimum Standards.** This Article's purpose is to ensure quality of workmanship and materials and harmony between exterior design and the existing improvements and landscaping and between location and topography and finished-grade elevations. The ACC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes, or other governmental regulations, all of which are the Applicant's responsibility. All utilities are to be located outside of the sidewalk section and shall be underground where possible. The ACC reserves the right to require architectural alterations or enhancements to a proposed design at its discretion in order to preserve the upscale nature of the community.

**Section 15.3 Approval Required First.** No Improvement may be commenced, erected, placed, or materially altered on or in any Unit until the construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the Improvement have been submitted to and approved in writing by the ACC.

**Section 15.4 Appointment and Removal.** The ACC will consist of no fewer than three members and no more than five members, and at least two members shall also be Directors. Members of the ACC shall also be Members of the Association. ACC members who are not Directors shall serve in an ex officio capacity and shall not have voting authority. Each ACC member will serve for one year. Declarant reserves the right to appoint all members of the ACC and all replacements thereto until the Condominium is one hundred percent (100%) built out. After build-out, Declarant will assign to the Board the right to appoint and remove members of the ACC. If an ACC has not been appointed, the Board will serve as the ACC.

**Section 15.5 Declarant and Successor Exempt from ACC.** During the period of Declarant Control, the Declarant and its successor to all the unsold Units are exempt from the requirement to submit to and have plans approved by the ACC.

**Section 15.6 Conditions of Approval.** The ACC may condition its approval of proposals or plans and specifications upon such changes therein as it deems appropriate, or upon the agreement of the Owner Applicant, and may require submission of additional plans and specifications or other information before approving or disapproving material submitted.

**Section 15.7 Non-Liability of ACC Members.** Neither the ACC nor any member thereof, nor its duly authorized ACC representative, shall be liable to the Association, or to any Owner or Grantee for any loss, damage or injury arising out of or in any way connected with the performance of the ACC's duties hereunder, provided such Person has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct. The ACC shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment, which would result in the immediate vicinity and to the Property generally. The ACC shall take into consideration the aesthetic aspects of the architectural designs, placement of building, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design imply structural safety or conformance with building or safety codes, or any other requirements of any government or agency having jurisdiction..

**Section 15.8 Variances.** The ACC may authorize variances from compliance with any of the architectural provisions of this Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship,

aesthetic or environmental considerations may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the ACC who are also directors, and shall become effective upon recordation. If such variances are granted, no violation of the restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to zoning ordinances and Lot set-back lines or requirements imposed by any governmental or municipal authority.

**Section 15.9** Enforcement. Any Improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or ACC, such offending Owner shall, at such Owner's own cost and expense, remove such Improvement AND restore the Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the Unit, remove the violation, and restore the Unit to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the Unit and collected as a Limited Assessment. The ACC may decline to approve any proposed architectural, construction, or landscaping work on the Property that involves or is to be performed by any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of the Declaration and the ACC Guidelines. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of the Declaration and the decisions of the ACC.

## **ARTICLE 16. ENFORCEMENT OF GOVERNING DOCUMENTS**

**Section 16.1** Rights of Action. Each Owner and its Authorized Users and the Association shall comply with the Governing Documents and the proper decisions of the Board. The Declarant shall enjoy all the rights and assume all the obligations of an Owner as to each unsold Unit in the Condominium owned by the Declarant. The Association acting on behalf of the Owners or any Owner acting on its own behalf may bring an action to recover sums due or damages, or for injunctive relief, or any or all of them, against any party who fails to comply with the Governing Documents and the proper decisions of the Board.

**Section 16.2** Additional Rights. In addition to any rights authorized by the CIC Act, a Board may, after Notice and Opportunity to Be Heard, take any of the following actions against any party who fails to comply with the Governing Documents and the proper decisions of the Board:

16.2.1. Require an Owner, at its own expense, to stop work on, and remove, any improvement from such Owner's Unit or other areas of the Condominium in violation of the Governing Documents and to restore the Property to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the Property, remove the violation and restore the Property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

16.2.2. Levy Assessments to cover costs incurred by the Association to cure a violation of the Governing Documents;

16.2.3. Apply a security deposit posted by an Owner to any unpaid charges or Assessments;

16.2.4. Suspend any right or privilege of a Unit Owner who fails to pay an Assessment, but the Association may not (i) deny a Unit Owner or other occupant access to the Owner's Unit, (ii) suspend a Unit Owner's right to vote, or (iii) withhold services provided to a Unit or a Unit Owner by the Association if the effect of withholding the service would be to endanger the health, safety, or property of any Person; and

16.2.5. Exercise self-help or take action to abate any violation of the Governing Documents. Notice and Opportunity to Be Heard shall not be required in an emergency situation.

**Section 16.3** Remedies Cumulative: Attorneys' Fees. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association or Owner prevails, it shall be entitled to recover all costs, including, without limitation, its attorneys' fees and court costs, reasonably incurred in such action.

**Section 16.4** Enforcement Discretion. The decision to pursue enforcement action on behalf of the Association in any particular case shall be left to the judgment of the Board, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

16.4.1. The Association's position does not justify taking action or further action;

16.4.2. The covenant, restriction or Rule being enforced is, or is likely to be, construed as inconsistent with applicable law;

16.4.3. Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable Person or to justify expending the Association's resources; or it is not in the Association's best interests to pursue enforcement action.

**Section 16.5** No Waiver. Such a decision shall not be construed to be a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or Rule. The receipt by the Board of payment of an Assessment from an Owner, with knowledge of a breach by the Owner, shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless expressed in a Record and signed for by the Board. This Section also extends and applies to the Declarant.

**Section 16.6** Notice and Opportunity to Be Heard. Whenever this Declaration requires that an action of a Board be taken after Notice and Opportunity to Be Heard, the following procedure shall be observed: The Board shall give written notice of the proposed action to all Owners, Tenants or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing, which shall be not less than five days from the date notice is delivered by the Board. At the hearing, the affected Person shall have the right, personally or by a representative, to give testimony orally, in a Record or both (as specified in the notice), subject to reasonable Rules of procedure established by the Board to ensure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the Board. The affected Person shall be notified of the decision in the same manner in which notice of the meeting was given.

## **ARTICLE 17. TORT AND CONTRACT LIABILITY**

**Section 17.1** Declarant Liability. An Owner is not liable, solely by reason of being an Owner, for an injury or damage arising out of the condition or use of the Common Elements. An action alleging a wrong

done by the Association must be brought against the Association and not against any Owner. An Owner is not precluded from bringing an action contemplated by this Section 21.1 because it is a Unit Owner or a director or officer of the Association.

**Section 17.2** Limitation of Liability for Utility Failure. Except to the extent covered by insurance obtained by the Association, neither the Association, the Board, nor the Managing Agent shall be liable to any Unit Owner for:

17.2.1. The failure of any utility or other service to be obtained and paid for by the Board;

17.2.2. Injury or damage to Person or property caused by the elements, or resulting from electricity, water, rain, dust, mold or mildew which may leak, travel or flow from outside of any building; from any Unit, Common Element or part of the building; from any pipes, drains, conduits, appliances, or equipment; or from any other place; or

17.2.3. Inconvenience or discomfort resulting from any action taken to comply with the Governing Documents or 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.

## **ARTICLE 18. INSURANCE**

**Section 18.1** Required Insurance. Commencing not later than the date of recording of this Declaration, the Association shall maintain in its own name, to the extent reasonably available and subject to reasonable deductibles, insurance meeting the requirements of this Article. All insurance must be obtained from insurance carriers who are generally acceptable for similar projects, are authorized to do business in the State of Washington. The Board shall review at least annually the adequacy of the Association's insurance coverage. The Board shall promptly notify the Unit Owners if the required property or liability insurance is not reasonably available.

**Section 18.2** Property Insurance Requirements. The Association shall maintain property insurance written on a "special cause of loss" form of coverage. The property insurance shall cover (i) all Common Elements, (ii) the Limited Common Elements managed by the Association, (iii) the units – but excluding all improvements and betterments to the units, which shall be insured by the Unit Owner, and (iv) to the extent not described in the foregoing clauses, all personal property of the Association including, without limitation, furniture, media equipment, and appliances. The property insurance shall insure against all risks of direct physical loss and may, but need not, include damage caused by earthquakes or terrorism. The property insurance shall not provide coverage for individual Units, furniture, art, personal effects or other personal property of the Unit Owners. Unit Owners must provide their own insurance. The amount of insurance shall not be less than one hundred percent (100%) of the current 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. The policy shall contain, if available, agreed amount and inflation guard endorsements. The policy shall contain a construction code endorsement to the extent the applicable building codes require changes to undamaged portions of the Condominium when only a part of the Condominium is destroyed by an insured hazard and, when deemed appropriate by the Board or any Mortgagee, a mechanical breakdown or equivalent endorsement which provides for the insurer's minimum liability per accident of at least the lesser of (a) Two million dollars and no/100 (\$2,000,000), or (b) the insurable value of the building. If any portion of the Condominium is in a special flood hazard area, the Board shall obtain a master or blanket policy of flood insurance that complies with Fannie Mae requirements. To ensure adequate property insurance coverage, the Board shall periodically obtain insurance replacement cost appraisals of the building and personal property for which insurance is

required under this Section, and each Unit Owner shall be required to promptly notify the Board in a Record of any improvements, betterments, alterations and additions to the Owner's Unit costing more than twenty five thousand dollars and no/100 (\$25,000). The Board may, in its discretion (but without any obligation to do so), from time to time obtain, cancel, increase or reduce earthquake insurance on any portion of the Condominium that is to be insured by the Association. If the Board cancels or reduces existing earthquake coverage, it will endeavor to notify Unit Owners of the change, so that Unit Owners can determine if they want to procure such coverage individually. Any Owner, including Declarant, (and/or its lenders) may maintain earthquake insurance for its own benefit.

**Section 18.3 Liability Insurance Requirements.** The Association shall maintain commercial general liability insurance, including medical payment insurance, which provides coverage for bodily injury and property damage resulting from the operation, maintenance or use of the Common Elements in an amount of at least one million dollars and no/100 (\$1,000,000) for any single occurrence and two million dollars and no/100 (\$2,000,000) aggregate and which contains a specific endorsement to preclude the insurer's denial of a Unit Owner's claim because of the negligent act of an Association or other Unit Owners.

**Section 18.4 Fidelity Insurance Requirements.** The Association shall maintain, or require its Managing Agent to maintain, fidelity insurance naming the Association and its officers, Directors, trustees and employees, any Managing Agent, and all other Persons who handle or are responsible for handling funds held or administered by an Association, whether or not the Person receives compensation for services, as insured. The bond shall contain waivers of any defense based upon the exclusion of Persons who serve without compensation from any definitions of employee" or similar expression. The policy must provide minimum limits at least equal to the larger of (i) the highest amount of funds, including reserve funds, that an Association is expected to hold at any time while the policy is in force, or (ii) three (3) months of the expected aggregate annual Assessments for the policy term, plus reserve funds.

**Section 18.5 Additional Insurance Requirements.** The insurance policies obtained pursuant to Section 18.2 shall:

18.5.1. Provide that the Association, is a named insured, and that each Unit Owner is an insured under the policy with respect to liability arising out of the Owner's interest in the Common Elements, specific Limited Common Elements, or membership in the Association;

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

18.5.3. Provide that no act or omission by any Unit Owner, unless acting within the scope of that Person's authority on behalf of an Association, and no failure of an 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;

18.5.4. 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 Unit Owners 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 to set-off, counterclaims, apportionment, proration, contribution or assessment by reason of, any other insurance obtained by or for the Association;

18.5.5. 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, and that insurance trust agreements will be recognized; and

18.5.6. Contain standard mortgagee clauses which name Mortgagees and their successors and assigns, require at least ten (10) days' prior written notice to the insureds before the policy may be cancelled or substantially modified and contain no provision (other than insurance conditions) which will prevent Mortgagees from collecting insurance proceeds.

**Section 18.6** Adjustment of Losses; Insurance Trustee; Power of Attorney. Any loss covered by the insurance described in Section 18.2 must be adjusted with the Association, but the 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 must hold any insurance proceeds in trust for the Association, Unit Owners and lien holders as their interests may appear. Subject to the provisions of Section 18.9 and Section 19.4, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, 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. Each Owner appoints the Association, or any insurance trustee or successor trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to accomplish such purposes. Each Owner and the Owner's Mortgagee, if any, are beneficiaries of the policy in accordance with percentages established by the Common Ownership Interest of the Owner's Unit.

**Section 18.7** Additional Insurance. The Association may maintain such other insurance as the Board deems advisable; provided that notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood, loss of assessments and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for similar projects established by Fannie Mae, Freddie Mac, HUD or VA, or other governmental agencies involved in the secondary mortgage market, so long as such agency is a Mortgagee or an Owner of a Unit, except to the extent such coverage is not reasonably available or has been waived in a Record by such agency.

**Section 18.8** Owners' Individual Insurance. The Owners of each Unit shall obtain and maintain (or cause their Tenants to obtain and maintain) standard condominium unit owner's or renter's insurance, which shall, at a minimum, cover any obligation to pay or reimburse the Association for any deductible under the Association's property insurance or for any portion of loss not covered by the Association's property insurance. Owners must obtain the required insurance from insurance carriers authorized to do business in the State of Washington. All policies must provide that coverage may not be canceled without thirty (30) days written notice to the Association. The Board may adopt Rules that establish additional requirements for such Owners' and Tenants' policies, including minimum amounts and types of coverage. The Association shall have the right, but not the obligation, to monitor the maintenance of such insurance by Unit Owners and Tenants and shall have the right, but not the obligation, to obtain such insurance for a Unit Owner or Tenant if the Owner or Tenant fails to obtain or maintain such insurance, and to specially assess the cost thereof to the Owner.

**Section 18.9** Use of Insurance Proceeds. The Association must repair or replace any damaged or destroyed portion of the Condominium that the Association is required to insure.

**Section 18.10** Responsibility for Deductibles and Uninsured Amounts. Notwithstanding any other provision of this Declaration, and except to the extent that a lack of insurance results from the negligence or breach of a duty to insure of the Board:

18.10.1. Where any expense of the Association results from the negligence of a Unit Owner or its Authorized Users (including for purposes of this paragraph, any member of the Thirteen & Cherry Owner Group), including without limitation the failure to maintain any appliance, equipment or fixture that the Owner is responsible to maintain, the Association may, after Notice and Opportunity to Be Heard, assess that expense against such Unit, to the extent of the Association's deductible and any expenses not covered by an insurance policy issued to the Association. If any such assessment relates to the negligence of an individual Unit Owner, the Association will have the right to pass such assessment through to said Unit Owner as a special assessment against the Unit Owner's unit under the Declaration.

18.10.2. Except as provided in 18.10.1 or where damage to the Condominium is a result of the sole fault of the Association, where the damage is limited solely to a single Unit or the Limited Common Element allocated to that Unit, the Owner of that Unit shall be responsible for paying the loss or damage within the limits of the deductible under any Association policy of insurance.

18.10.3. Except as provided in 18.10.1 or 18.10.2 or where the damage to the Condominium is a result of the sole fault of the Association, where the damage to the Community involves both the Common Elements and/or one or more Units or the Limited Common Elements assigned to such Units, the Association and the Owners of the damaged Units shall be responsible for paying any loss or damage within the limits of the deductible under any Association policy of insurance in proportion to the relative amounts of damage to the Common Elements and to each of the damaged Units and their Limited Common Elements.

18.10.4. Notwithstanding any other provision of this Section, any deductibles or otherwise uninsured amounts arising from perils, such as earthquake, flood or terrorism, that have a materially higher deductible than the Association's standard property insurance shall be a Common Expense allocated according to the Common Expense Liability.

18.10.5. Nothing in this Section shall be deemed as limiting the association's authority under RCW 64.90.480(6), as it may be amended.

**Section 18.11** 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 Mortgagee. 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 non-renewal of contracts of insurance.

**Section 18.12** Notification of Sale of Unit. Promptly upon 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 of the name and address of the new Owner and request that the new Owner be made a named insured under such policy.

## **ARTICLE 19. DAMAGE AND REPAIR OF DAMAGE TO PROPERTY**

**Section 19.1** Definitions. As used in this ARTICLE 19:

19.1.1. "Damage" shall mean all kinds of damage, whether of slight degree or total destruction, caused by casualty or an occurrence, but shall not include construction defects, deterioration, or wear and tear.

19.1.2. "Emergency Work" shall mean work that the Board deems reasonably necessary to avoid further Damage or substantial diminution in value to the improvements and to protect the Owners from liability from the condition of the site.

19.1.3. "Repair" shall mean restoring the damaged improvements to substantially the condition they were in before they were damaged, with the Unit and the Common Elements having substantially the same boundaries as before. "Repair" does include restoration of improvements or betterments installed after Conveyance by the Declarant if those improvements or betterments are not insured because the Owner failed to notify the Board of their installation. Modifications to conform to applicable governmental rules or available means of construction may be made.

19.1.5. "Substantial Damage" shall mean that in the judgment of a majority of the Board the estimated Assessment determined under 19.2.4 for any one Unit exceeds thirty percent (30%) of the full, fair market value of the Unit before the Damage occurred, as determined by the then current assessed value for the purpose of real estate taxation.

**Section 19.2** Initial Board Determination. In the event of Damage to any portion of the Condominium that the Association is required by this Declaration to insure, the Board shall promptly take the following actions. In doing so, the Board shall obtain such advice from professionals (such as engineers, architects, contractors, insurance consultants, lenders and attorneys) as the Board deems advisable and shall consider the information then known to the Board.

19.2.1. Determine the nature and extent of the Damage to the insured property and loss to the Association and Unit Owners, together with an inventory of the improvements and property directly affected thereby.

19.2.2. Obtain as reliable an estimate as possible of the cost and time to Repair the Damage, which estimate shall, if reasonably practicable, be based upon two or more firm bids obtained from responsible contractors.

19.2.3. Determine the insurance proceeds and reserves, if any, that will likely be available to pay for the Damage.

19.2.4. Determine (i) the amount, if any, by which the estimated cost of Repair is likely to exceed the expected insurance proceeds, the reserves available to Repair the Damage, other available funds of the Association, and the deductibles owed by Owners; and (ii) the likely amount of the Assessments that would have to be made against each Unit if the excess cost were to be paid as a Common Expense.

**Section 19.3** Notice of Damage. The Board shall provide each Owner with a written notice summarizing the initial Board determinations made under Section 19.2, explaining any further information needed by the Board to make a final decision on the cost and schedule for Repairs. If the Board determines that the Damage is Substantial Damage then the notice shall also explain any further information needed by the Board to allow the Owners to make an informed decision about Repairs to the Condominium, and shall call a special meeting to consider whether to Repair the Damage. If the Board fails to call a meeting within thirty (30) days of the Damage, any Owner may call such a meeting. The Board may, but is not required to, call such a meeting in other circumstances.

**Section 19.4** Execution of Repairs.

19.4.1. The Board shall promptly Repair any damaged portion of the Condominium that the Association is responsible to insure and to maintain or repair unless:

19.4.2. The Condominium is terminated by vote at a special meeting and taken in accordance with the termination provisions of the Declaration and CIC Act; or

19.4.3. Repair would be illegal under any state or local health or safety statute or ordinance.

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

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

19.4.6. The Board may expend so much of the insurance proceeds and Association funds as the Board deems reasonably necessary for Emergency Work (which Emergency Work may include but is not necessarily limited to removal of the damaged improvements and clearing, filling, and grading the land), and the remaining funds, if any, and the property shall thereafter be held and distributed. The cost of Repair in excess of insurance proceeds, reserves, and deductibles paid by Owners is a Common Expense.

**Section 19.5** Effect of Decision Not to Repair. If all of the damaged or destroyed portions of the insured property are not repaired or replaced:

19.5.1. 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;

19.5.2. The insurance proceeds attributable to Units and Limited Common Elements that are not repaired or replaced 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

19.5.3. The remainder of the proceeds shall be distributed to all the Unit Owners or lien holders, as their interests may appear, in proportion to their Common Ownership Interests.

19.5.4. Notwithstanding the provisions of this Section, ARTICLE 23 governs the distribution of insurance proceeds if the Condominium is terminated.

**ARTICLE 20. CONDEMNATION**

**Section 20.1** Power of Attorney. The Association shall represent the Unit Owners in any legal proceedings related to the condemnation of a Common Element, Limited Common Element, or one or more Unit(s) of the Condominium, and shall have the sole authority to control, negotiate and settle such matters on behalf of the Unit Owners. Each Owner appoints the Association as attorney-in-fact for the purpose of

representing the Owners in any proceedings, negotiations, settlements or agreements regarding such a condemnation . Any proceeds from such a condemnation shall be paid to the Association for the benefit of affected Units and their Mortgagees, as set forth herein. Should the Association not act, based on its right to act pursuant to this Section, the affected Owners may individually or jointly act on their own behalf. Notwithstanding anything to the contrary herein, if a condemnation affects only one Unit of the Condominium, that Unit Owner may choose to represent themselves in any proceedings, negotiations, settlements or agreements regarding such a condemnation and shall notify the Board of such an election in writing. Upon receiving notice of such an election, the Board shall have no further authority relating to the single Unit condemnation.

**Section 20.2** Consequences of Condemnation; Notices. If any Unit or portion thereof or the Common Elements or Limited Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Association shall promptly give notice of the proceeding or proposed acquisition to each Owner and Mortgagee.

**Section 20.3** Condemnation of a Unit. If a Unit is acquired by condemnation, or if part of a Unit is acquired by condemnation leaving the Unit Owner with a remnant of a Unit that may not practically or lawfully be used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and its interest in the Common Elements, whether or not any Common Elements are acquired. The award shall be distributed to the Owner or lien holder of the Unit, as their interests may appear. 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 this 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.

**Section 20.4** Condemnation of Part of a Unit. Except as provided in Section 20.3, 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 interest in the Common Elements, whether or not any Common Elements are acquired. The award shall be distributed to the Owner or lien holders of the Unit, as their interests may appear. Upon acquisition, unless the decree otherwise provides: (a) that Unit's Common Ownership Interest and Common Expense Liability 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 is 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.

**Section 20.5** Condemnation of Common Element or Limited Common Element. If part of the Common Elements is acquired by condemnation, any portion of the award attributable to the acquisition of a Limited Common Element must be equally divided among the Owners of the Unit to which that Limited Common Element was allocated at the time of the acquisition, or to lien holders, as their interests may appear, and the portion of the award attributable to the other Common Elements shall be distributed to the Association. If the Board determines that a particular Owner's interest in the Common Elements will be diminished with respect to other Owners by the acquisition of a Common Element, the Declaration may be amended to adjust that Owner's Common Expense Liability allocation, or to remove the allocation of a Limited Common Element to that Owner's Unit, as the case may be.

**Section 20.6** Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in ARTICLE 19.

## **ARTICLE 21. ALTERATIONS AND RELOCATION OF BOUNDARIES**

**Section 21.1** Alteration of Common Elements. Unit Owners may not modify or in any way alter the Common Elements, including their respective Limited Common Elements without prior approval of the Board. Subject to the foregoing, the Association shall have the exclusive power to alter the Common Elements.

**Section 21.2** Alteration of Units. Subject to applicable law and the other provisions of the Governing Documents, an Owner may, without the approval of the Board, make any improvements or alterations to the Owner's Unit that do not affect the structural, mechanical, plumbing or electrical systems, the Building Enclosure or Common Elements. Any other improvements or alterations to the Unit require the permission of the ACC, including permanent exterior aesthetic changes unless they are compatible with the existing style of the Units.

**Section 21.3** Relocation of Boundaries Between Units. The boundaries between Units may be relocated only in accordance with this Section.

21.3.1. Approval. An amendment altering the boundaries between Units must be approved by the vote or agreement of Unit Owners holding a majority of the Voting Interest in the Association.

21.3.2. Amendment of Governing Documents. Upon approval, the Association must prepare, execute and record amendments to this Declaration and the Map in accordance with the requirements of RCW 64.90.225 and RCW 64.90.245. The amendment to the Declaration must be executed by the Association and the Owner of the Unit(s) involved, contain words of conveyance between them, and be recorded in the names of the Owner or Owners and the Association, as grantor or grantee as appropriate and as required under RCW 64.90.285(3) and describe any reallocation of the Allocated Interests among the Units involved. The amendment to the Map must show the relocated Unit boundaries.

**Section 21.4** Relocation of Boundaries Between Units and Common Elements. The boundaries between Units and Common Elements may be relocated to incorporate Common Elements into a Unit only in accordance with this Section.

21.4.1. Approval. The amendment may only be approved by the vote or agreement of Unit Owners holding a majority of the Voting Interest in the Association.

21.4.2. Fees Allowed. The Association may require payment to the Association of a one-time fee or charge, or continuing fees or charges payable by the Owners of the Unit that will have its boundary relocated to include Common Elements.

21.4.3. Amendment of Governing Documents. Upon approval, the Association must prepare, execute and record amendments to this Declaration and the Map in accordance with the requirements of RCW 64.90.225 and RCW 64.90.245. The amendment to the Declaration must be executed by the Association and the Owner of the Unit(s) involved, contain words of conveyance between them, and be recorded in the names of the Owner or Owners and the Association, as grantor or grantee as appropriate and as required under RCW 64.90.285(3) and describe any reallocation of the Allocated Interests among the Units involved. The amendment to the Map must show the relocated Unit boundaries.

## **ARTICLE 22. AMENDMENT OF DECLARATION, MAP, ARTICLES OR BYLAWS**

**Section 22.1** Procedures. Except in cases of amendments that may be executed by the Declarant, the Association, or certain Owners under other provisions of this Declaration or under the CIC Act, the

Declaration, the Map, the Articles and the Bylaws may be amended only by vote or agreement of the Board as specified in this Article.

22.1.1. Amendments may be adopted at a meeting of the Board or by such alternative procedures as are allowed by the Bylaws, after such notice as is required by the Bylaws and this Declaration has been given to all Persons entitled to receive notices.

22.1.2. Upon its adoption and the receipt of any necessary consent under this Article, an amendment to the Declaration or the Map will become effective when it is recorded or filed in the real estate records in the county in which the Condominium is located. The 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. No action to challenge the validity of an amendment to the Governing Documents adopted by the Association pursuant to this Article may be brought more than one year after the amendment is recorded. An amendment to the Articles shall be effective upon filing the amendment with the Secretary of State. An amendment to the Bylaws shall be effective upon adoption.

22.1.3. Amendments under this Section 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.

**Section 22.2** Consent Required. The percentages of consent of Owners and Mortgagees required for adoption of amendments to the Declaration, the Articles and the Bylaws are as follows:

22.2.1. General. An amendment to the Declaration, the Map, the Articles or Bylaws of the Association shall require the vote or agreement of Unit Owners holding a majority of the Voting Interest in the Association.

22.2.2. Modification of Allowed and Prohibited Uses. Except to the extent permitted or required under the CIC Act or this Declaration, an amendment to the Declaration, Articles or Bylaws that changes, or has the effect of changing, the allowed or prohibited uses of the Units under Section 7.1 or Section 7.2 shall require the vote or agreement of the Owners holding a majority of the Voting Interest in the Association, including the vote or agreement of Owners of the Units subject to the proposed change. Any such amendment must provide reasonable protection for a use permitted at the time the amendment is adopted.

22.2.3. Director and Officer Indemnification. No amendment to any provision in the Declaration, Articles or Bylaws may restrict, eliminate or modify (i) any right of a director or officer of an Association to indemnification or (ii) any limitation of liability of such Person, as to conduct that occurred prior to the amendment. Any current or former director or officer affected by such amendment is a third-party beneficiary of this provision and entitled to enforce it.

## **ARTICLE 23. TERMINATION OF CONDOMINIUM**

**Section 23.1** Action Required. Except in the case of the taking of all Units by condemnation or a judicial termination of the Condominium pursuant to the CIC Act, the Condominium may be terminated only by agreement of Owners holding at least ninety percent (90%) of the Voting Interest in the Association.

**Section 23.2** CIC Act Governs. The applicable provisions of the CIC Act relating to termination of common interest communities, contained in RCW 64.90.290, as it may be amended, shall govern the termination of the Condominium, including, but not limited to, the disposition of real estate in the Condominium and the distribution of proceeds from the sale of real estate.

## **ARTICLE 24. NOTICES**

**Section 24.1** Form and Delivery of Notice. Notices to the Association, Board, any Owner or any occupant of a Unit must be provided in such manner as provided in the CIC Act (including with respect to delivery of electronic notices).

## **ARTICLE 25. DISPUTE RESOLUTION**

**Section 25.1** Mediation and Binding Arbitration of Claims. Any and all claims, disputes or controversies (whether under federal, state or local law) between or among any of the Association, the Board or one or more Unit Owners or Authorized Users arising from or related to (i) the Governing Documents, (ii) the Condominium, or (iii) the management or operation of the Condominium or the Association, including, without limitation, any such claim of breach of contract, negligence, breach of any duty under the Washington Uniform Common Interest Ownership Act or breach of any alleged duty of good faith and fair dealing (collectively, “Claims”), must be resolved by binding, non-appealable, arbitration as set forth herein, upon agreement of the parties to the dispute. Any party to a Claim may include by joinder any other Persons substantially involved in common questions of law or fact, or both, whose presence is required to afford complete relief to a party. Notwithstanding the foregoing, the following matters shall not be Claims subject to mandatory mediation or arbitration under this Article: (i) any action or remedy initiated by or against any Mortgagee, (ii) judicial Foreclosure actions, (iii) non-judicial trustee’s sales, (iv) the appointment of a receiver during Foreclosure, or (v) actions to collect or enforce any order, decision or award rendered by arbitration.

**Section 25.2** Initiation of Arbitration; Mediation. If after a good-faith effort, any party to a Claim determines that the Claim cannot be resolved without intervention, then that party shall give notice in a Tangible Medium to all other parties to the Claim requesting that the Claim be submitted to mediation and arbitration pursuant to this Article. The parties shall attempt to resolve any Claims in good faith through mediation at the outset of any arbitration proceeding. Any administrative fees of the mediation service and fees of the mediator shall be borne equally by the parties to the mediation. Each party shall pay its own attorneys’ fees and costs in connection with the mediation.

**Section 25.3** Arbitrator’s Authority. Without limiting the authority of the arbitrator under the applicable arbitration rules, the arbitrator shall have the authority to decide (i) the substance of the Claim and any defenses and counterclaims relating thereto, (ii) procedural or evidentiary issues, (iii) issues relating to discovery, (iv) issues relating to applicable law, and (v) issues as to the interpretation or the enforceability of this arbitration agreement, including, without limitation, its revocability, unconscionability or voidability, and the scope of issues arbitrable hereunder. The arbitrator shall have the authority to award both damages and injunctive relief and to enforce the arbitration award. The arbitrator shall not have the authority to (x) amend the Governing Documents, (y) render a decision that has the effect of amending the Governing Documents by ignoring a provision of the Governing Documents or excusing material non-compliance with a mandatory provision of the Governing Documents, or (z) award punitive or exemplary damages.

**Section 25.4** Arbitration Fees. All administrative fees of the arbitration service and fees of the arbitrator shall be borne equally by the parties to the arbitration, subject to the discretion of the arbitrator to reallocate such fees in the interests of justice.

**Section 25.5** Arbitration Service: Arbitrator. The arbitration shall be conducted by Judicial Arbitration and Mediation Services (“JAMS”) pursuant to the JAMS Streamlined Arbitration Rules and Procedures for claims that do not exceed two hundred fifty thousand dollars (\$250,000) or the JAMS Comprehensive

Arbitration Rules and Procedures for claims that exceed such amount in effect as of the date of the arbitration demand. The arbitrator shall possess sufficient knowledge in residential common interest communities as determined by the arbitration service.

**Section 25.6** Arbitration Procedures and Hearing. All arbitration hearings and meetings shall occur in the county in which the Condominium is located. The arbitrator shall apply the substantive law of the State of Washington. The arbitrator may allow factual discovery of information from the parties and witnesses to the extent reasonably relevant to claims and damages at issue but shall protect the parties from irrelevant, burdensome or unreasonable discovery. Prior to the arbitration hearing, the parties must agree upon a written statement of the claim theories to be arbitrated. The arbitrator shall schedule the arbitration hearing for the earliest possible time that is consistent with fairness to the parties and the complexity of the issues. A party may request a stenographic record of the arbitration hearing. At the conclusion of the hearing in making the award, the arbitrator shall state in writing the theories raised by the parties and on which the award is based.

**Section 25.7** Attorneys' Fees and Costs. The arbitrator shall have the authority to award actual reasonable attorneys' fees and costs to the prevailing party. An attorneys' fee award shall be calculated based upon the actual reasonable hours spent multiplied by a reasonable hourly rate given the experience and knowledge of the biller, without adjustment for risk, delay or difficulty. An attorneys' fee award must be reasonable under the Washington Rules of Professional Conduct. For purposes of this Section, a party is a prevailing party if it recovers the majority of the relief it has claimed, or if it prevents another party from recovering the majority of the relief it has claimed, including the enforcement of this Article. It may be appropriate in some cases to determine the prevailing party on a claim by claim basis. In some cases there may be no prevailing party.

**Section 25.8** Finality. The decision and award of the arbitrator shall be final and binding and may not be appealed to an arbitration panel or a court. The arbitrator's decision and award may be entered as a judgment in any state or federal court of competent jurisdiction, and a party may institute judicial proceedings to enforce the arbitration award.

**Section 25.9** Applicability of Statutes of Limitations. No Claim can be asserted in arbitration after the date such claim could be asserted in a judicial proceeding under applicable statutes of limitation and repose.

**Section 25.10** Enforceability. This Article shall inure to the benefit of, and be enforceable by, the Association, the Declarant, the Board, the Unit Owners and Authorized Users and their respective members, managers, officers, Directors, employees, agents, attorneys and insurers. The initiation of a judicial proceeding concerning this arbitration agreement or any matter arbitrable hereunder, or the filing of a lis pendens, by any party who reserves the right to arbitrate shall not be deemed a waiver of the right to arbitrate or to enforce this arbitration agreement, and, notwithstanding any provision of law to the contrary, shall not be asserted or accepted as a reason to delay or refuse to participate in arbitration, or to refuse to enforce this arbitration agreement.

**Section 25.11** Severability. If any provision of this Article shall be determined by the arbitrator or by any court to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

**Section 25.12** Waiver of Right to Judicial Proceedings. Each Person, subject to this Declaration who elects to invoke the dispute resolution provisions of this ARTICLE 25 waives any right it may have to institute a judicial proceeding to decide a Claim.

**Section 25.13** Waiver of Right to Jury Trial. Each Person subject to this Declaration who elects to invoke the dispute resolution provisions of this Article waives any right it may have to a jury trial under federal or state law as to any dispute between them arising from or involving a Claim.

**Section 25.14** Survival. The provisions of this Article shall survive the transfer by any party of its interest or involvement in the Condominium or any Unit and the termination of this Declaration.

## **ARTICLE 26. PROTECTION OF MORTGAGES**

**Section 26.1** No Impairment of Mortgages. No option or right of first refusal in favor of Declarant, any Unit Owner or Association in this Declaration or any other Governing Documents shall apply to or adversely affect the rights of any Mortgagee to foreclose or take title to a Unit pursuant to the remedies in its Mortgage, accept a deed or assignment in lieu of Foreclosure in the event of a default by the Unit Owner, or sell or lease a Unit acquired by the Mortgagee. In addition to any other voting requirements of the Governing Documents, (A) a proposed amendment to this Declaration that would be materially adverse to Mortgagees and (B) any action or vote to terminate the Association after substantial destruction or condemnation or for any other reason must be approved by at least fifty-one percent (51%) of the Owners of Units that are subject to Mortgages. If a Mortgagee does not respond to a Notice delivered by certified or registered mail regarding such votes, with a "return receipt" requested, pursuant to this section within sixty (60) days of delivery of such Notice, then the Association may presume the Mortgagee consented to the action or amendment.

**Section 26.2** Inspection, Copying and Audit of Documents, Books and Records. The Association shall make available for inspection upon request, during normal business hours or under other reasonable circumstances to Mortgagees and prospective Mortgagees of Units, and the agents or attorneys of any of them, current copies of the Books and Records of the Association. Upon written request of any Mortgagee or prospective Mortgagee, the Association shall provide within a reasonable time a financial statement of the Association for the preceding fiscal year. The Association may require the requesting party to pay a reasonable charge to cover the cost of making copies. A Mortgagee of a Unit at such Person's expense, may at any reasonable time conduct an audit of the Books and Records of the Board and Association.

**Section 26.3** Certificate of Unpaid Assessments. A Mortgagee shall be entitled to receive and rely upon a certificate of unpaid assessments as to the mortgaged Unit pursuant to Section 13.14.

**Section 26.4** Mortgagee Notice. The Association shall provide timely written notice to the Mortgagee and guarantor of any Mortgage on any unit identified by an Owner pursuant to Section 13.14 of:

26.4.1 Any condemnation or casualty loss that affects either a material portion of the project or of the unit securing the affected Mortgage;

26.4.2 Any 60-day delinquency in the payment of Assessments owed by the Owner of any unit on which the Mortgagee holds a Mortgage;

26.4.3 A lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

26.4.4 Any proposed action that requires the consent of a Specified Percentage of Mortgagees.

**Section 26.5** Mortgagee Priority. No provision of this Declaration or other Governing Document shall be interpreted to give an Owner or any other party priority over any rights of the first Mortgagee on the

Unit securing a Mortgage, subject to the terms of the Mortgage, in the case of payment to the Owner of insurance proceeds or condemnation awards for losses to or a taking of that Units and/or the Owner's interest in the Common Elements.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the day and year written below.

**DECLARANT:**

C13 TOWNHOMES LLC,  
a Washington Limited Liability Company

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF WASHINGTON                    )  
  )  
COUNTY OF \_\_\_\_\_ )            ss.

On this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_ to me personally known (or proven on the basis of satisfactory evidence) to be \_\_\_\_\_ of \_\_\_\_\_, that executed the within and foregoing instrument, and acknowledged 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 s/he was authorized to execute the said instrument on behalf of said company.

WITNESS my hand and seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print of Stamp Name of Notary)

Notary public in and for the state of Washington,  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

**Exhibit A**

LEGAL DESCRIPTION PER THURSTON COUNTY TITLE REPORT  
COMMITMENT NO. TH42985 DATED APRIL 15, 2024:

LOTS 9 AND 10 IN BLOCK 1 OF PATTISON'S SUBDIVISION  
OF LOT NOS. 9, 10, 11, AND 12 OF BLOCK NO. 57 AND  
BLOCK NOS. 62 AND 63 OF SWAN'S ADDITION TO THE  
TOWN OF OLYMPIA, AS RECORDED IN VOLUME 1 OF  
PLATS, PAGE 65;

SITUATE IN THE CITY OF OLYMPIA, COUNTY OF THURSTON,  
STATE OF WASHINGTON.

**Exhibit B**

**Table of Units and Homes**

| Building | Unit No. | Allocated Ownership | Address   |
|----------|----------|---------------------|---|
| B        | 101      | 8.34%               | 516 13 <sup>th</sup> Avenue SE, Olympia, WA 98501 |
| B        | 102      | 8.33%               | 518 13 <sup>th</sup> Avenue SE, Olympia, WA 98501 |
| B        | 103      | 8.33%               | 522 13 <sup>th</sup> Avenue SE, Olympia, WA 98501 |
| B        | 104      | 8.33%               | 524 13 <sup>th</sup> Avenue SE, Olympia, WA 98501 |
| B        | 105      | 8.33%               | 528 13 <sup>th</sup> Avenue SE, Olympia, WA 98501 |
| B        | 106      | 8.34%               | 530 13 <sup>th</sup> Avenue SE, Olympia, WA 98501 |
| A        | 107      | 8.34%               | 1227 Cherry Street SE, Olympia, WA 98501          |
| A        | 108      | 8.33%               | 1225 Cherry Street SE, Olympia, WA 98501          |
| A        | 109      | 8.33%               | 1221 Cherry Street SE, Olympia, WA 98501          |
| A        | 110      | 8.33%               | 1219 Cherry Street SE, Olympia, WA 98501          |
| A        | 111      | 8.33%               | 1217 Cherry Street SE, Olympia, WA 98501          |
| A        | 112      | 8.34%               | 1213 Cherry Street SE, Olympia, WA 98501          |