

# Portage Bayshore Declarations

## DECLARATION AND COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS FOR THE PORTAGE BAYSHORE

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### DECLARATION AND COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS FOR THE PORTAGE BAYSHORE

Bayshore Associates, hereinafter referred to as the "Developer," the sole owner of the property described herein, makes this Declaration pursuant to the provisions of the Horizontal Property Regimes Act, Chapter 64.32 of the Revised Code of Washington.

## **SECTION 1 - INTERPRETATION**

1.01 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of this Horizontal Property Regime under the provisions of the relevant Washington statutes. It is intended also that, insofar as it

affects this Declaration and condominium project, the provisions of the Act referenced herein under which this Declaration is Operative, shall be liberally construed to effect the intent of this Declaration.

- 1.02 Terms Consistent With Act. The terminology used herein is intended to have the meaning set forth in the Act unless the context clearly requires otherwise.
- 1.03 Covenants Running with Land. It is intended that this Declaration (until terminated as provided herein, or as provided in the Act) shall be operative as a set of covenants running with the land, or equitable servitudes, supplementing and interpreting the Act, and operating independently of the Act, should the Act be, in any respect, inapplicable.
- 1.04 Singular/Plural, Etc. The singular may include the plural, and the masculine may include the feminine, or vice versa. where the context so requires.
- 1.05 Developer Is Original Owner. Developer is the original owner of all units and property and will continue to be deemed the owner thereof except as conveyances or documents changing such ownership regarding specifically described units are filed of record.
- 1.06 Unit and Building Boundaries. In interpreting the Survey Map and Plans, the existing physical boundaries of the building and each condominium unit, as constructed, shall be conclusively presumed to be the correct boundaries.
- 1.07 Percentage of Mortgagees. For purposes of determining the percentage of first mortgagees approving a proposed decision or course of action in cases where a mortgagee holds first mortgages on more than one unit, each such mortgagee shall be deemed a separate mortgagee for each first mortgage so held.
- 1.08 Captions and Exhibits. Captions given to the various Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein and attached hereto shall be deemed incorporated herein by reference as though fully set forth where such reference is made.
- 1.09 Inflationary Increase in Dollar Limits. The dollar amounts specified in Sections 10, 14 and 15, may, in the discretion of the Board of Directors, be increased proportionately to the increase in the Consumer Price Index. For All Urban Consumers, Seattle-Everett, Washington prepared by the United States Department of Labor, as compared with the base period, November, 1978, to adjust for any inflation in the value of the dollar. For this purpose, the index for "Housing" as published shall be used, unless

not available, in which case the index for "All Items" shall be used.

- 1.10 Definitions. The following definitions shall apply in this Declaration, unless the context requires otherwise:
- 1.10.1 "The Act" means the Horizontal Property Regimes Act (Revised Code of Washington, Chapter 64.32), as amended from time to time.
- 1.10.2 "Association" or the "Condominium Unit Owners' Association" means all of the unit owners as a group operating in accordance with the Bylaws and with this Declaration as it is recorded, or as either may be amended.
- 1.10.3 "Board of Directors" means the individuals elected by the Association to manage and administer the property in accordance with the Bylaws of the Association, this Declaration and the Act, after the Developer or his managing agent no longer provides such management. The term "Board of Directors" shall also refer to the Temporary Board of Directors or the Developer acting as the Board of Directors during the interim period during which the Developer manages and administers the property, set forth in Section 9.
- 1.10.4 "Building," means the building or buildings containing the condominium units and related facilities comprising a part of the property.
- 1.10.5 "Bylaws" means the Bylaws of the Association as initially promulgated by the Developer and as amended from time to time, which with this Declaration provide for the organization of the Association and for the administration of the property.
- 1.10.6 "Condominium" means the development which is the subject of this Declaration.
- 1.10.7 "Common Area" means the portions of the property described as such in this Declaration in which each owner of a unit has an undivided percentage interest. The common area includes all limited common area.
- 1.10.8 "Developer" means the undersigned, the party developing the condominium and signing this Declaration, or the heirs, successors or assigns thereof.
- 1.10.9 "Declaration" means this instrument, as amended from time to time, by which the property is submitted to provisions of the Act.
- 1.10.10 "Interior Surfaces" (where that phrase is used in defining the boundaries of units or limited common area) shall not include paint, wallpaper, paneling, carpeting, tiles or other such decorative surface coverings or finishes. Said decorative finished and coverings, along with fixtures and other tangible personal property (including furniture, planters, mirrors, and the like) located in and used in connection with a unit or limited common area, shall be deemed a part of the unit or limited common area.
- 1.10.11 "Land" means the earth and the free or occupied space for an indefinite distance upward as well as downward, subject to the provisions or limitations contained in Section 2.01 of this Declaration, and subject to limitations upon the use of airspace imposed and rights in the use of the airspace granted, by the laws of the State of Washington or of the United States.
- 1.10.12 "Limited Common Areas" means those portions of the common area described in Section 6.
- 1.10.13 "Moorage Commission" means the individuals elected by the Moorage Division to

manage and administer the Moorage Unit and its appurtenant limited common area in accordance with the Bylaws of the Moorage Division, the Declaration and the Act, after the Developer or his managing agent no longer provides such management. The term "Moorage Commission" shall also refer to the temporary Moorage Commission or the Developer acting as the Moorage Commission during the interim period during which the Developer manages and administers the property, set forth in section 9 of the Declaration.

- 1.10.14 "Moorage Unit" means the apartment defined in the Declaration, and depicted in the Survey Map and Plans as the "Moorage Unit", constituting a portion of the southwest end of the building, at the boat moorage level of the building, beneath the first floor.
- 1.10.15 "Mortgage" shall include a deed of trust.
- 1.10.16 "Mortgagee" shall include a deed of trust beneficiary, and also includes a mortgagee of the condominium and a mortgagee of an apartment.
- 1.10.17 "Mortgagee of a Tenancy" means the holder of a mortgage on a tenancy in common of the Moorage Unit, which mortgage was recorded simultaneously with or after the recordation of the Declaration. Unless the context requires otherwise, the term "Mortgagee of a Tenancy" shall also be deemed to include the mortgagee of the Moorage Unit, if any, and the mortgagee of the Condominium.
- 1.10.18 "Mortgage Foreclosure" shall include a deed of trust sale and a deed given in lieu of such foreclosure or sale.
- 1.10.19 "Mortgagee of a Unit" means the holder of a mortgage on a unit, which mortgage was recorded simultaneously with or after the recordation of this Declaration. Unless the context requires otherwise, the term "Mortgagee of a Unit" shall also be deemed to include the Mortgagee of the Condominium.
- 1.10.20 "Mortgagee of the Condominium" means the holder of a mortgage on the real property which this Declaration affects, which mortgage was recorded prior to the recordation of this Declaration. The term "Mortgagee of the Condominium" does not include mortgagees of the individual units.
- 1.10.21 "Person" includes an individual, corporation, partnership, association, trustee, or other legal entity.
- 1.10.22 "Property" means the land, the buildings, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personality intended for use in connection therewith, which have been, or are intended to be, submitted to the provisions of the Act.
- 1.10.23 "Survey Map and Plans" means the survey map and the set of plans to be filed simultaneously with this Declaration showing the location, boundaries and other information relating to the land, the buildings and the units, as required by the Act.
- 1.10.24 "Temporary Board of Directors" means the individuals appointed to act as the Board of Directors by the Developer to manage and administer the property until such time as the unit owners elect a Board of Directors as provided in this Declaration.
- 1.10.25 "Tenancy" or "Tenancy in Common" means, unless the context indicates otherwise, an



undivided percentage interest in the Moorage Unit and its appurtenances. The percentage of each such undivided interest is set forth in Exhibit "C" hereof.

- 1.10.26 "Tenancy Owner" means the person owning a specified tenancy in fee simple absolute or qualified (or a purchaser under a real estate contract) together with an undivided percentage interest in a like estate, in the limited common area and facilities appurtenant to the Moorage Unit as specified and established in the Declaration and particularly Exhibit "D" thereto.
- 1.10.27 "Unit" and "Condominium Unit" mean a part of the property intended for individually owned residential use and occupancy, referred to as an "apartment" in the Act; and also includes Moorage Unit. The boundaries of a unit are the unfinished interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, including outlets of utility service lines, but not the lines themselves. Any hot water heaters or heating equipment (including radiant heating cables or pipes and their matrix, connections and controls), or lighting or plumbing fixtures, or appliances are part of the unit. The unit includes both the portions of the building so described and the airspace so encompassed.
- 1.10.28 "Unit Owner" means the person or persons owning a unit in fee simple absolute or qualified (or a purchaser under a real estate contract) together with an undivided percentage interest, in a like estate, in the common area and facilities (which include the limited common area and facilities) as specified and established in this Declaration. "Unit Owner" also includes the tenancy owners of the Moorage Unit.

## **SECTION 2 - DESCRIPTION OF LAND**

2.01 Land Described. The Developer is the sole owner of the tract of property legally described in Exhibit "A" hereto on which the buildings and improvements are located and which is being developed as a condominium.

2.02 Location of Land. The property is located at Seattle, Washington. It abuts Boyer Avenue East on the southwest, the right of way of primary state highway No. 1 on the north, and the submerged extension of Fuhrman Avenue East at the northeast end of the property.

## **SECTION 3 - DESCRIPTION OF BUILDINGS AND IMPROVEMENTS**

3.01 Description and Location of the Buildings. As set forth and located on the Survey Map and Plans filed in conjunction with this Declaration, there is one (1) building on the land. The building has four (4) stories, a basement moorage unit level, and a subbasement storage area and boat moorage level.

3.02 Construction of Building. The building is constructed principally of wood, glass, concrete, and other fire resistant material.

3.03 Other Improvements. The property has been further improved by the construction of a complex of boat moorages underneath and adjacent to the building. Additionally, there are a paved parking lot and covered parking facilities underneath the southwest end of the building.

#### **SECTION 4 - DESCRIPTION OF CONDOMINIUM UNITS ACCESS AND PARKING SPACES**

4.01 Designation of Condominium Units. The designation of each unit, its floor location, its area, the parking space and storage area assigned to it and other data concerning its proper identification are set forth in Exhibit "B" hereto and on the Survey Maps and Plans filed in conjunction with this Declaration.

4.02 Description of Condominium Units. The Condominium Project contains twenty-four (24) residential units and one (1) moorage unit. Each residential unit except No 434 has two bedrooms, one bathroom, kitchen, living room and dining room Unit No. 434 has one bedroom, one bathroom, kitchen, living room and dining room. The moorage unit consists of one (1) room containing storage lockers for owners of tenancies therein.

4.03 Joint Ownership of Moorage Unit. The moorage unit shall be divided into twenty-seven (27) tenancies in common as set forth in Exhibit "C" hereto. Such tenancies in common in the moorage unit may, however, be owned jointly by more than one person. Each tenancy in common in the moorage unit shall be assigned a moorage slip as set forth in Exhibit "C" hereto and the Survey Map and Plans filed in conjunction with this Declaration.

4.04 Access. Each unit has access to Boyer Avenue East via the apartment entry way, common walks, parking areas and driveway.

4.05 Parking Spaces. There are a total of twenty-four (24) parking spaces.

#### **SECTION 5 - DESCRIPTION OF COMMON AREA**

5.01 Description of Common Area. The common area consists of the following:

5.01.1 Land. The land above described on which the building is situated.

5.01.2 Structural Elements. The foundations, studding, joists, beams, supports, walls (excluding only non-bearing interior partitions of the units), roofs, chimneys and all other structural parts of the building to the unfinished interior surfaces of the units' perimeter walls, floors, ceilings, fireplace, if any, windows and doors (that is, to the boundaries of the unit

under the Act).

- 5.01.3 Central Services. The wires, pumps, motors, fans, ducts and all other parts or apparatus of any common utility service, such as power, light, gas, hot and cold water, heating, air conditioning, incinerating, elevator and sewer whether they are located in partitions or otherwise, excluding the hot water tanks, baseboard heaters, air conditioners and other such appliances located within individual units.
- 5.01.4 Access Features The corridors, lobbies and halls outside the units, stairways, elevators and elevator shafts, and the entrances and exits of the building.
- 5.01.5 Landscaped Areas. The yards, gardens, and landscaped areas which surround the building, and any planters built into or adjacent to the building.
- 5.01.6 Walkways and Driveways. The driveways and walkways providing access to the building and the parking areas.
- 5.01.7 Areas for Equipment; Equipment. The rooms or areas containing the elevator machinery, electrical, or other building equipment, and any such machinery or equipment itself.
- 5.01.8 Laundry Rooms The room containing laundry facilities, including washers, dryer, and any other laundry-related facilities.
- 5.01.9 Other Rooms. The rooms designated Work Room, Storage Room and Utility Room in the Survey Map and Plans filed herewith, and the first floor room set aside for storage lockers for each residential unit. Exclusive of the actual storage lockers, which are limited common areas.
- 5.01.10 Communication Elements. The wires, cables or conduit and all other mechanical or electrical equipment used in extending telephone, television, intercom or other communications services to or within the building and to each unit, excluding telephone, television and intercom equipment located within individual units.
- 5.01.11 Refuse Disposal. The containers or equipment for refuse disposal, the refuse chutes, and the rooms where they are located or where refuse is placed or stored.
- 5.01.12 All Other Parts of the Property Necessary or Convenient to the condominium's existence, maintenance and safety, or normally in common use, including the unit if any, designated for the use of the building manager in the Survey Maps and Plans.
- 5.01.13 Portions of Common Area to be Maintained by Owner. Certain items which are ordinarily considered common area, such as but not limited to screen doors, window screens, awnings, storm windows, planter boxes, and the like, may, pursuant to decision of the Board of Directors and specification in the Bylaws or administrative rules, be designated as

items to be furnished and maintained by owners at their individual expense.

5.01.14 Freestanding Fireplaces. The chimney or flue portion of any freestanding fireplace or woodburning stove located in walls, partitions, ceilings or running outside the building. The freestanding fireplace or woodburning stove and all portions of the chimney or flue located in the unit shall not be common area.

## **SECTION 6 - DESCRIPTION OF LIMITED COMMON AREA**

6.01 Description of Limited Common Area. The limited common area, which is reserved for the use of designated units (or, in the case of the Moorage Unit, to specified tenancies in common therein) to the exclusion of the other units (or tenancies in common), consists of the following:

6.01.1 Balcony or Deck. The balcony or deck accessible from any unit as shown on the Survey Map and Plans. The boundaries of such areas are defined as the interior surfaces of the walls, floor, ceiling, windows, ground, railings, or fence enclosing such areas. If no such enclosure exists, the boundaries shall be as depicted on the Survey Map and Plans.

6.01.2 Parking. The parking space assigned to each unit by the Developer as shown on the Survey Map and Plans, the boundaries of said space being defined as the interior surfaces of walls, floor and striping enclosing said parking space.

6.01.3 Storage. The storage lockers (except those within the Moorage Unit) assigned to each unit by the Developer as shown on the Survey Map and Plans, the boundaries of such lockers being defined as the interior surfaces of the top, bottom, and sides of the locker. The storage lockers contained in the Moorage Unit shall not be limited common area, but shall be reserved for the exclusive use of tenancy owners of the Moorage Unit, as determined and controlled by rules and regulations adopted by the Moorage Commission and set forth in the Bylaws of the Moorage Division.

6.01.4 Moorage Facilities. The docks, catwalks, slips, finger piers, pilings, (except concrete pilings constituting the foundation of the building) walkways and other facilities, including fittings, cleats and other property, which constitute the moorage facilities beneath and adjacent to the building, as shown on the Survey Map and Plans. All items in this subsection are reserved for the exclusive use of tenancy owners of the Moorage Unit. The individual moorage slips shall be assigned to the tenancies in common in the Moorage Unit as shown on Exhibit "C" hereto and on the Survey Map and Plans, the boundaries of such space being defined as the interior surfaces of the docks or piers enclosing or partially enclosing such space.

6.02 Parking, Etc. Assignment The Developer reserves the right to make the initial assignment of parking spaces and storage lockers to each unit, such assignment either being made by amendment to the Declaration and Survey Map and Plans, or by designation contained in the initial deed, contract or other conveyance executed by the Developer. With respect to each unit, the Developer shall make such assignment prior to or contemporaneously with the closing of the sale of such unit by the Developer. The balance of any parking spaces and storage lockers, if any, not so

assigned to specific units shall constitute part of the common area to be used in accordance with the rules and regulations established from time to time by the Board of Directors.

6.03 Transfer of Parking Rights, Etc. After the Developer's initial assignment, a unit owner may rent or lease the parking space and/or storage locker assigned to that unit to any other unit owner; provided, that the rental or lease term shall automatically expire on the date the lessor/unit owner disposes of his interest in the unit (whether such disposition is by deed, contract or otherwise); and provided further, that the Board of Directors shall be notified in writing of the existence of any such rental or lease arrangement. In addition, any two unit owners may exchange, either on a permanent or temporary basis, parking spaces and/or storage lockers assigned to their respective units; provided, any such exchange made on a permanent basis, shall be made by a jointly executed and recorded instrument approved by the Board of Directors.

## **SECTION 7 - VALUE AND VOTING RIGHTS OF EACH CONDOMINIUM UNIT**

7.01 Value of Property; Unit Percentage Interests. The total value of the property is \$2,386,780. Of this total, \$2,012,780 is allocated as the total value of residential units; the value of \$374,000 is allocated to the moorage unit. Exhibit "C" hereto sets forth the value of each condominium unit, its percentage of undivided interest in the common and limited common area and its voting rights.

7.02 Value of a Condominium Unit. The value of each condominium unit consists of the value of the unit together with the value of its percentage of undivided interest in the common area and limited common area pertaining thereto and its other appurtenances. The unit values are scheduled to establish the percentages required by the Act and do not reflect, necessarily, the amount for which a condominium unit will be sold, from time to time, by the Developer or by others. The established percentage interests shall be deemed to be conveyed with and as an encumbrance on the units, although not mentioned in the instrument evidencing the encumbrance or conveyance.

## **SECTION 8 - CONDOMINIUM UNIT OWNERS' ASSOCIATION**

8.01 Form of Association. Initially the Condominium Unit Owners' Association (the "Association") may be an unincorporated association. The Board of Directors (or the Developer, until such time, as the temporary Board of Directors is selected) may at any time if deemed advisable in the exercise of its sole discretion, without necessity of prior approval or other action by the members, cause such unincorporated association to be converted to a non-profit corporation under the laws of the State of Washington; provided, that, from and after the formation of such non-profit corporation, the rights and duties of the members and of such corporation shall continue to be governed by the provisions of the Act and this Declaration. In dealing with others the Association shall be known as The Portage Bayshore Condominium Association.

The Association shall contain and include a separate division, to be known as the Moorage Division. The provisions of this Declaration dealing specifically with the operation of the Moorage Division and the Moorage Unit and its appurtenant limited common area are contained in Exhibit "D" hereto, hereinafter referred to as the "Supplemental Declaration."

8.02 Membership. Each of the residential unit owners, including the Developer, shall be a member of the Association and shall be entitled to one membership for each unit so owned. All of the owners of tenancies in common in the moorage unit shall, in the aggregate, constitute one member of the Association. Each owner of a tenancy in common of the moorage unit shall be a member of the Moorage Division, and shall be entitled to one membership in such division for each tenancy in common so owned.

8.03 Transfer of Membership. The Association and Division memberships of each owner (including the Developer) shall be appurtenant to the unit giving rise to such membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to said unit and then only to the transferee of title to such unit. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a unit shall operate automatically to transfer the membership in the Association appurtenant thereto to the new owner.

8.04 Number of Votes. The total voting power in the Association of all owners shall be 100 votes, and the total number of votes of the owner or owners (hereinafter referred to collectively as "owner") of any one unit (or in the case of the Moorage Unit, of a tenancy in common therein) shall be equal to the percentage of undivided interest in the common areas and facilities pertaining to such unit (or tenancy in common) as set forth in Section 7.01 and Exhibit "C".

8.05 Voting Owner The owner of each unit except the Moorage Unit shall designate one representative to represent him in the Association, by written notice to the Board of Directors. The tenancy owners of the Moorage Unit may, but are not required to, elect a single voting representative, in accordance with Section 8.07. A designated representative need not be an owner of a unit. A designation may be revoked at any time by the owner of a unit on written notice to the Board of Directors, and the death or judicially declared incompetence of all persons constituting the owner of a unit shall revoke the designation; provided, however, that such revocation shall not be effective until the Board of Directors has been notified. Where no designation is made, or where a designation has been made, but is revoked and no new designation is made, the designated representative of such unit shall be the group comprised of all persons constituting the owner. If a person owns more than one unit, he shall have the votes for each unit owned. The Developer shall be the voting owner with respect to any unit owned by it. Natural persons, partnerships, corporations, trusts or other legal entities may own or have an ownership interest in units.

8.06 Pledged Votes. In the event the owner of a unit has pledged his vote regarding special matters to a mortgagee, or to the vendor under a real estate contract and written evidence of the pledge has been filed with the Association, only the vote of such mortgagee or vendor will be recognized concerning the special matters for which the vote was pledged. This paragraph shall not be amended without the written consent of all the owners and their respective mortgagees or vendors.

8.07 Joint Owner Disputes. The vote for any unit other than the Moorage Unit must be cast as a single vote, and fractional votes shall not be allowed. In the event that joint owners other than tenancy owners of the Moorage unit, are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. In the event more than one vote is cast for a particular unit none of said votes shall be counted, and said votes shall

be deemed void. The tenancy owners of the Moorage Unit may, by a majority of the voting power of the Moorage Division, designate one voting representative to vote on behalf of the Moorage Unit in all matters before the Association. The foregoing notwithstanding, the vote of the owners of the Moorage Unit must be cast as a single vote in all action taken to amend this Declaration under Section 21.01.

8.08 Annual Meetings. The Association shall hold its annual meeting in the first quarter of each year at such reasonable place and time as may be designated by written notice of the Board of Directors to the owners no less than fifteen (15) days prior to the date fixed for the meeting.

8.09 Special Meetings. A special meeting of the Association may be called by the President on the vote of a majority of the Board of Directors or at the written request of the owners having fifty-one (51.0) or more votes. Written notice shall be given to all owners not less than fifteen (15) days prior to the date fixed for the special meeting, in accordance with Article 1 of the Bylaws.

8.10 Quorum. The quorum at an annual or special meeting of the Association shall be the presence, in person or by proxy, of owners having fifty-one (51.0) or more votes. If a quorum is present at any such meeting, any action may be taken by an affirmative vote of a majority of the total votes present at the meeting, unless otherwise expressly provided herein. In the event a quorum is not present at any meeting, the owners present, though less than a quorum, may adjourn the meeting to a later date and give notice thereof to all the owners in accordance with the notice provisions of this Declaration and at the reconvened meeting whatever number of owners are present shall constitute a quorum; provided that, at such reconvened meeting, no amendment to the Declaration shall be adopted except as provided in Section 21 herein, and no amendment to the Bylaws may be adopted unless owners having sixty (60.0) or more votes vote in favor of such amendment, and all other requirements of Article X of the Bylaws are complied with.

## **SECTION 9 - ADMINISTRATION DURING INTERIM PERIOD, ELECTION OF BOARD OF DIRECTORS AND OFFICERS, AND ADOPTION OF BYLAWS**

9.01 Adoption of Bylaws. The Developer shall adopt the initial Bylaws of the Association to provide for the administration of the condominium consistent with this Declaration and the

Act.9.02 Management by Developer. The Developer shall, at such time as it deems appropriate, appoint a Temporary Board of Directors of three (3) persons who need not be owners of condominium units. This Temporary Board of Directors (and the Developer in the absence of such Temporary Board of Directors) shall exercise the rights, duties and functions of the Board of Directors as set forth in this Declaration until the Developer calls a special meeting of the Association for the purpose of electing the Board of Directors as set forth in Section 9.03 below; provided that, after appointing the Temporary Board of Directors, the Developer in the exercise of its sole discretion may at any time terminate such temporary board and reassume its management authority or select a new Temporary Board of Directors.

9.03 Election of the Board of Directors. The Developer shall call a special meeting of the Association for the purpose of electing the Board of Directors no later than two (2) years from the

date this Declaration is filed or the date on which the Developer shall have closed the sale of seventy-five percent (75%) of the residential units, whichever is earlier. At said special meeting the owners shall elect a Board of Directors consisting of five (5) persons, who shall serve without compensation.

9.04 Term of Directors. The Term of office of the directors shall be two (2) years, with two (2) directors being elected at each annual meeting during even-numbered years, and three (3) directors being elected at each meeting during odd-numbered years. At the special meeting called for the purpose of electing directors, the five (5) directors so elected shall, by lot, determine whether each shall have a one or two-year term to stagger the expiration dates of the terms of the appropriate number of directors. Any director may be elected to serve for an additional term or terms.

9.05 Vacancies on Board of Directors. Vacancies in the Board of Directors may be filled by the remaining directors. Any director may be removed and a successor elected for the unexpired portion of his term by a majority of the owners present at a special meeting called for such purpose.

9.06 Quorum. Three (3) members of the Board of Directors shall be required for a quorum. The Board of Directors shall act by majority vote of those present at its meetings where a quorum exists. Meetings may be called, held and conducted in accordance with such rules and regulations as the Board of Directors may adopt.

9.07 Officers. The Board of Directors shall elect a President of the Association from among its members, who shall hold office for one (1) year or until his successor is elected and shall preside over both its meetings and those of the Association. The Board of Directors shall also elect a Vice President, a Secretary, and a Treasurer who shall hold office for one (1) year or until their successors are elected.

9.08 Indemnification. Every director and officer, and every Moorage Commissioner, shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a director or officer of the Association, or a Moorage Commissioner, or any settlement thereof, whether or not he is a director, officer or commissioner at the time such expenses are incurred, except in such cases where the director, officer or commissioner is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification provided herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interests of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such director, officer or commissioner may be entitled.

9.09 No Personal Liability. So long as a Director, or an Association committee member, or an Association officer, or a Moorage Commissioner, or Developer exercising the powers of the Board of Directors, has acted in good faith, without willful or intentional misconduct, upon the basis of such information as may be possessed by such person, then no such other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act. Omission,



error or negligence of such person; provided, that this section shall not apply where the consequences of such act, omission, error or negligence are covered by insurance obtained by the Board of Directors.

9.10 Amendment of Bylaws. The Bylaws may be amended in whole or in part by the Board of Directors or by vote of unit owners having sixty percent (60%) of the voting power at any annual meeting or special meeting called for that purpose. The Board of Directors shall not amend or repeal any Bylaws adopted by the owners, provided that the owners shall not amend the Bylaws without the Developer's written consent until the developer has closed the sale of seventy-five percent (75%) of the residential units. The foregoing notwithstanding, any provisions in the Bylaws dealing specifically with the Moorage Unit may not be amended without the vote of tenancy owners having sixty percent (60%) of the voting power of the Moorage Division (see Exhibit "C" hereto).

### ***SECTION 10 - AUTHORITY AND DUTIES OF BOARD OF DIRECTORS***

10.01 Authority of the Board of Directors. The Board of Directors, for the benefit of the condominium and the owners, shall enforce the provisions of this Declaration and of the Bylaws, shall have all powers and authority permitted to the Board of Directors under the Act and this Declaration, and shall acquire and pay for out of the common expense fund, hereinafter provided for, all goods and services requisite for the proper functioning of the condominium, including but not limited to the following:

10.01.1 Utilities All necessary utility services for the common area and all such services for the limited common areas and the units if not separately metered or charged, in which case, the Board of Directors may by reasonable formula allocate a portion of such expense to each such unit involved as part of its common expense.

10.01.2 Insurance. Policies of insurance or bonds providing coverage for fire and other hazards, liability for personal injury and property damage, and for fidelity of Association officers and other employees, as the same are more fully required hereafter and in the Bylaws. The Association shall separately charge the Moorage Unit for a portion of the cost of such owners of the Moorage Unit for a portion of the cost of such policies or bonds, in accordance with Section 5.01.2 of the Supplemental Declaration.

10.01.3 Additions to Common Area. Additions or improvements to the common area or facilities not provided by the Developer.

10.01.4 Workmen's Compensation Insurance. Workmen's compensation insurance to the extent necessary to comply with any applicable laws.

10.01.5 Manager. The services of a person or firm to manage the building (herein called the "Manager") to the extent it deems advisable as well as such other personnel as are necessary in its opinion for the proper operation of the condominium. The Board of Directors may delegate any of its duties, powers or functions to the Manager, provided that any such delegation shall be under a written contract permitting termination by the Association, for cause, upon 30 days' written notice and also permitting termination by either party without cause or payment of a termination fee, on 90 days' written notice, and containing such other terms and conditions as the Board of Directors may determine. A contract for management may not be for a term in excess of one (1) year, renewable by agreement of the parties for successive one-year periods. The members of the Board of Directors shall not be liable

for any omission or improper exercise by the Manager of any such duty, power or function so delegated.

10.01.6 Professional Services. The legal and accounting services necessary or proper for the operation of the project or enforcement of this Declaration, the Bylaws and the Association rules and regulations.

10.01.7 Maintenance. The painting, maintenance, repair and all landscaping and gardening work for the common areas and limited common areas, exclusive of the decks adjacent to the residential units, and exclusive of the walkways, docks and moorage facilities appurtenant to the moorage unit. Such balconies and decks may be maintained, painted or repaired with the use of Association funds if the Board of Directors, in its discretion, determines that such use of funds is advisable. In accordance with other sections of this Declaration, the maintenance of limited common areas for the exclusive use of the tenants in common of the moorage unit will be undertaken by the moorage division as a separate entity, with a separate budget.

10.01.8 Furnishings. Such furnishings and equipment (and maintenance of such items) for the common areas, as it shall select.

10.01.9 Other Necessary Expenditures. Any other materials, supplies, structural alterations, furniture, labor, services, insurance, taxes or assessments which the Board of Directors is required to secure or pay for pursuant to the terms of this Declaration, 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; provided that if any such services are provided for particular units, the cost thereof shall be specially assessed to the owners of such units and shall be immediately due and payable to the Association.

10.01.10 Liens. The Board of Directors 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, in the opinion of the Board of Directors, to constitute a lien against the property or against the common area, rather than merely against the interests 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, any costs and expense incurred by the Board of Directors 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.

10.01.11 Repair of Unit. The maintenance or repair of any unit, if (1) such maintenance or repair is necessary, in the discretion of the Board of Directors to protect or preserve the appearance and value of the common area or any other portion of the property, and (2) the owner of said unit has failed or refused to perform the maintenance or repair within a reasonable time after written notice of the owner by the Board of Directors. The Board of Directors shall levy a special assessment against such unit and the owner thereof for the cost of the maintenance or repair and the same shall be immediately due and payable to the Association.

10.02 Limitations on Board of Directors' Authority. Despite the foregoing, the Board of Directors shall not have the authority to acquire and pay for out of the common expense fund capital additions and improvements (other than for purposes of restoring, repairing or replacing portions of the common area) having a total cost in excess of Five Thousand Dollars (\$5,000.00) without first obtaining the affirmative vote of the owners holding a majority of the voting power represented at a meeting called for such purpose, or if no such meeting is held, then the written consent of the owners having not less than fifty-one (51.0) votes;

provided that any expenditure or contract for capital additions or improvements in excess of Fifty Thousand Dollars (\$50,000.00) must be approved by the owners having not less than seventy-five (75) votes.

10.03 No For-Profit Business. Nothing contained herein shall be construed to give the Board of Directors authority to conduct an active business for profit on behalf of the owners.

10.04 Exclusive Right to Contract. The Board of Directors shall have the exclusive right to contract for all goods and services, the payment for which is to be made from the common expense fund.

10.05 No Structural Changes Without Authorization. The Board of Directors shall not make or permit any structural changes in the building without the approval by a vote of the owners holding no less than seventy-five (75) votes. No structural change which affects a condominium unit shall be made except with the approval of the owner and mortgagee of the unit affected.

10.06 Acquisition of Property. The Board of Directors may, from common funds of the Association, acquire and hold in the name of the Association, for the benefit of the owners, tangible and intangible personal property and real property and interests therein, and may dispose of the same by sale or otherwise; and the beneficial interest in such property shall be owned by the owners in the same proportion as their respective interests in the common area, and such property shall thereafter be held, sold, leased, rented, mortgaged or otherwise dealt with for the benefit of the common fund of the Association as the Board of Directors may direct. The Board of Directors shall not, however, in any case acquire by lease or purchase real or personal property valued in excess of Five Thousand Dollars (\$5,000.00) without first obtaining the affirmative vote of the owners holding a majority of the voting power represented at a meeting called for such purpose, or if no such meeting is held then the written consent of the owners having not less than fifty-one (51.0) votes, or valued in excess of Fifty Thousand Dollars (\$50,000.00) without first obtaining the affirmative vote of the owners having not less than seventy-five (75) votes.

10.07 Authorization to Board of Directors. In the event the moneys in the common expense fund are insufficient to pay the expenditures provided for herein, the Board of Directors is authorized to borrow money to meet such expenditures on behalf of the Association and, to secure the repayment thereof encumber (subject to the limitations set forth in this Declaration) the common area and facilities, the Association's funds and the undivided interest of each owner therein. Notwithstanding the foregoing, however, any owner of a unit may remove said unit and the percentage of undivided interest in the common area appurtenant to such unit from the lien of such encumbrance or from any other lien arising pursuant to the provisions of RCW 64.32.070 by payment of the fractional or proportional amounts attributable to such unit. Such individual payments shall be computed by reference to the percentages appearing in this Declaration. Subsequent to any such payment, discharge, or satisfaction, the percentage of undivided interest in the common area and facilities appurtenant thereto shall thereafter be free and clear of the liens so paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and the percentage of undivided interest in the common area and facilities appurtenant thereto not so paid, satisfied, or discharged.

10.08 Limitation on Liability of Directors. To the extent permitted by law, the members of the Board of Directors and the Association shall not be liable for any failure of any utility or other service to be obtained and paid for by the Board of Directors hereunder, or for injury or damage to person or property caused by the elements or by another owner or person; or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of the building, or from any of its pipes, drains, conduits, appliances or equipment, or from any other cause or place, or resulting from loss, damage or theft of articles used or stored by owners on the property or in units. No diminution or abatement of assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements

to the common area, or from any action taken to comply with any law, ordinance or orders of a governmental authority. This Section shall not be interpreted to impose any form of liability by any implication upon the Board of Directors or upon the Association. This Section also extends to the Developer exercising the powers of the Board of Directors during the initial period of operation of the Association and condominium.

10.09 Entry for Repair. The Board of Directors may enter any unit when necessary in connection with any maintenance or construction for which the Board of Directors is responsible. Such entry shall be made with as little inconvenience to the owner as practicable, and any damage caused thereby shall be repaired by the Board of Directors at the expense of the common expense fund. The Board of Directors shall be provided with door keys and burglar alarm keys for each unit to facilitate access in an emergency.

10.10 Notice of Conveyances Required. The right of an owner to sell, transfer, or otherwise convey his unit shall not be subject to any right of approval, disapproval, first refusal, or similar restriction by the Association or the Board of Directors, or anyone acting on their behalf. An owner, other than a tenancy owner in the Moorage Unit, intending to sell a unit shall deliver a written notice to the Board of Directors, at least two weeks before closing, specifying the unit being sold; the name and address of the purchaser, of the closing agent, and of the title insurance company insuring the purchaser's interest; and the estimated closing date. The Board of Directors shall have the right to notify the purchaser, the title insurance company, and the closing agent of the amount of unpaid assessments and charges outstanding against the unit, whether or not such information is requested.

10.11 Responsibility of Moorage Division. Notwithstanding any of the foregoing provisions of this Section 10, it is the responsibility of the Moorage Division to provide for maintenance of facilities attributable to or appurtenant to the Moorage Unit and its appurtenant limited common area.

## ***SECTION 11 - COMMON EXPENSE FUND AND ASSESSMENTS***

11.01 Estimated Expenses. The Board of Directors shall have power to levy assessments against all units for the purpose of creating and replenishing a common expense fund with which to pay "common expenses" as that term is defined in the Act and any other expenditures which the Board of Directors is herein authorized to make. All such assessments for "common expenses" shall be levied in proportion to the value of the respective units as shown in Exhibit "C". Within thirty (30) days prior to the beginning of each calendar year, or such other fiscal year as the Board of Directors may adopt, the Board of Directors shall estimate the charges (including common expenses, and any special charges for particular units) to be paid during such year; shall make provision for creating, and funding and maintaining reasonable reserves for contingencies and operations, as well as for repair, replacement and acquisition of common area and facilities; and shall take into account any expected income and any surplus available from the prior year's operating fund. Without limiting the generality of the foregoing but in furtherance thereof, the Board of Directors shall also create a reserve fund for replacement of those common area facilities which may reasonably be expected to require replacement prior to the end of the useful life of the building. The Board of Directors shall calculate the contributions to said reserve fund from the regular monthly assessments so that there are sufficient funds therein to replace each common area facility covered by the fund at the end of the estimated useful life of each such common area facility. The Developer or the Temporary Board of Directors may at any suitable time establish the first such estimate. If the sum estimated and budgeted at any time proves inadequate for any reason (including non-payment for any reason of any owner's assessment), the Board of Directors may at any time levy a further assessment, which shall be assessed to the owners in like proportions. Notwithstanding the provisions of this Section 11.01, until the Developer's management authority under Section 9.02 terminates,

the Developer may elect to collect neither the full budgeted assessment for each month nor any assessments for reserve funds (other than reserves for insurance premiums), and instead may collect and expend only the actual costs of operation of the common area. The budget may be reviewed and revised by the Association at any annual meeting, or any special meeting called for such purpose, but if it is not so reviewed or if no change is made, it shall be deemed approved.

11.02 Payment by Owners. Each owner shall be obligated to pay his share of the common expenses and special charges made pursuant to this Section 11 to the Treasurer for the Association in equal monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Board of Directors shall designate. Any unpaid assessments shall bear interest at the rate of twelve percent (12%) per annum (or at the highest rate otherwise provided by law) from due date until paid. Unpaid assessments shall constitute a lien upon the unit which has not paid its respective share thereof from the due date until paid.

11.03 Separate Accounts. The Board of Directors shall require the Association to maintain separate accounts for current operations, reserves, and a special separate reserve account for payment of insurance. Each month the Board of Directors shall first deposit to the insurance reserve account that portion of the common expense assessment necessary to pay at least one-twelfth of the total cost of all of the insurance policies regarding the condominium project and such insurance reserve account shall be held separate and inviolate until utilized for payment of insurance premiums. Thereafter, the remainder of the common expense assessment collected may be utilized for payment of other expenses or deposited or credited to other accounts.

11.04 Failure to Assess Not Waiver. Any failure by the Board of Directors or the Association before the expiration of any year to fix the estimated cash requirements and assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provision of this Declaration, or a release of the owner from the obligation to pay the assessments, or any installment thereof, for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

11.05 Recordkeeping. The Board of Directors shall cause to be kept detailed, accurate records, in the form established by the Association's accountant, of the receipts and expenditures of the Association, specifying and itemizing the maintenance and repair expenses of the common area and any other expense incurred. Such records and any resolutions authorizing the payments involved shall be available for examination by any owner during normal business hours.

11.06 Developer Liability. The assessments provided for in this Declaration shall be imposed on units owned by the Developer on the same basis as imposed on all other units, regardless of whether Developer-owned units are vacant or have been sold, leased or rented.

11.07 Moorage Unit Expenses. Notwithstanding the foregoing provisions of this Section 11, the common expenses attributable to the Moorage Unit and its appurtenant common area, which are of the type referred to in Section 5 or the supplemental Declaration, shall be calculated, estimated and collected by the Moorage Division pursuant to the provisions of the Supplemental Declaration.

## ***SECTION 12 - COLLECTION OF ASSESSMENTS***

12.01 Lien Indebtedness. Unpaid assessments shall be the separate, joint and several personal debts of the owner or contract purchaser of units for which the same are assessed. Suit to recover a money

judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing same. The amount of any assessment against a unit, plus interest as set forth herein and costs (including attorney's fees), shall constitute a lien upon such unit prior to all other liens, except (1) tax liens on the unit in favor of any assessing entity or special district, and (2) all sums unpaid on all mortgages of record, made in good faith and for value.

12.02 Collection of Delinquent Assessments. The Board of Directors shall enforce collection of any delinquent assessment in the following manner, or in any other manner permitted by law:

12.02.1 Termination of Utilities. If any installment of an assessment becomes delinquent for sixty (60) days, the Board of Directors may give notice to the owner of the unit that, unless the assessment is paid in full within ten (10) days, some or all utilities to the unit will be severed, until all assessments are paid or until possession of the unit is surrendered to the Board of Directors. After such ten (10) day notice, the Board of Directors may sever some or all utilities to such unit until possession is so surrendered. The surrender of possession shall not relieve the owner of such unit of liability for any assessments, but the Board of Directors may, at its option, rent such unit and apply the rents after paying all expenses of renting the unit against the delinquent assessments. The Board of Directors may, at the same time it is proceeding under this Section, pursue any other remedy available to it for the collection of such assessments.

12.02.2 Security Deposit. Should an owner be chronically delinquent in paying any assessments, the Board of Directors may, in its discretion, require such owner from time to time to make a security deposit not in excess of three (3) months' estimated monthly assessments, which may be collected in the same manner as other assessments. Such deposit shall be held in a separate fund, credited to such owner, and resort may be made thereto at any time when an owner is ten (10) days or more delinquent in paying his monthly or other assessments.

12.02.3 Collection of Rent From Undertenants. If an owner shall at any time lease or rent his unit and shall default for a period of thirty (30) days or more in the payment of any assessments, the Board of Directors may, at its option, so long as such default shall continue, demand and receive from any lessee or renter (hereinafter in this Section referred to as "lessee") occupying the unit the rent due and becoming due from such lessee up to an amount sufficient to pay all sums due from the owner, including interest, if any, and any such payment of such rent to the Board of Directors by the lessee shall discharge the obligation of such lease, as between such lessee and the owner, to the extent of the amount so paid; but any such demand or acceptance of rent from any lessee shall not be deemed to be a release or discharge of any of the obligations of the owner hereunder or a waiver or surrender of any rights or duties hereunder. In the event that the Board of Directors makes demand upon the lessee as aforesaid, the lessee shall not have the right to question the right of the Board of Directors to make such demand, but shall be obligated to make such payments to the Board of Directors as demanded by the Board of Directors with the effect as aforesaid; provided, however, that the Board of Directors may not exercise this right if a receiver has been appointed to take charge of the premises pending a mortgage foreclosure.

12.02.4 Action to Foreclose. The Board of Directors may commence an action to foreclose a lien for assessments and in any such action shall be entitled to recover reasonable attorneys' fees and all costs and expenses reasonably incurred in the preparation or the prosecution of said action, in addition to taxable costs permitted by law. Upon commencing action to foreclose such lien, the Board of Directors may apply for the appointment of a receiver for the unit and such receiver shall require the payment of a reasonable rental for such unit from the owner of that unit, which rental shall be in no event less than an amount equal to the regular monthly assessments and any special and additional assessments plus taxes and other charges accruing against such unit hereunder or otherwise. If the owner or possessor shall fail to pay such rental, the

receiver shall be entitled to remove the owner or tenant therefrom and may refurbish the unit to bring it up to a standard for rental units in buildings or similar type, and may rent or permit its rental to others. The sums received by the receiver from such rental shall be applied as follows:

1<sup>st</sup> – to pay the expenses of the receivership, including reasonable attorneys’ fees;

2<sup>nd</sup> – to reimburse the costs of refurbishing the unit, if any;

3<sup>rd</sup> – to pay unpaid taxes and other public charges against the unit;

4<sup>th</sup> – to pay all delinquent mortgage payments on the unit; and

5<sup>th</sup> – to pay to the Association all delinquent assessments accrued or accruing against the unit and any sums the Association may have advanced to protect the lien of its assessments.

The judgment in the action foreclosing the lien shall be for an amount equal to all delinquent assessments and advances, plus all costs and expenses in connection with such action and any receivership, including a reasonable sum as attorneys’ fees and for the cost, if any, of obtaining a title report.

12.03 Liability of Mortgagee. In the event the Mortgagee of the Condominium is conveyed any unsold units in lieu of foreclosure, obtains possessory rights, legal title or sheriff’s certificates or certificate of sale to or covering said unsold units as a result of the foreclosure of the mortgage or deed of trust covering the condominium or if after initial sale the mortgagee reacquires any unit, or if at any time the mortgagee retains any unit and grants or leases the same, the mortgagee shall be liable for the normal assessments for such unit, provided that in no event will the mortgagee be liable for any past-due assessments which accrued or became due prior to the time the mortgagee obtained possession of a unit by foreclosure or by deed in lieu of foreclosure.

12.04 Certificate of Assessment. A certificate executed and acknowledged by the Board of Directors stating the indebtedness or lack thereof secured by the lien upon any unit created hereunder shall be conclusive upon the Board of Directors and the owners as to the amount of such indebtedness, on the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any owner or any encumbrancer of a unit within a reasonable fee. Unless otherwise prohibited by law, any encumbrancer holding a lien on a unit may pay any unpaid assessments or charges with respect to such unit, and, upon such payment, any encumbrancer shall have a lien on such unit for the amounts paid of the same rank as the lien of his encumbrance.

12.05 Late Charges. The Board of Directors may from time to time establish late charges to be charged on assessments that may thereafter become delinquent.

## SECTION 13

### REGULATIONS OF USES

13.01 Residential Use. The building, except the moorage unit and limited common areas appurtenant to that unit, and the residential units shall be used for single family residential purposes only, on an ownership, rental or lease basis; and for the common social, recreational and other reasonable uses normally incident to such purposes. The moorage unit and its limited common area shall be used for storage of personal property, for moorage of floating watercraft only, on an ownership, rental or lease basis, and for the social, recreational and other reasonable uses normally incident to such purposes. The building and units may also be used for the purpose of operating and managing the condominium. Determination of

reasonableness and whether or not a use is incident to residential or moorage uses shall be made by the Board of Directors and shall be binding on all owners, including owners of the Moorage Unit. The Board of Directors may by rule or regulation specify the limits of this use in general and also in particular cases, and the rules, interpretations and regulations of the Association shall govern in the event of any inconsistent rule, interpretation or regulation by the Moorage Division.

13.02 Facilities Required By Developer. Notwithstanding any other provisions of this Declaration, the Developer, its agents, employees and contractors, may maintain during the period of completion of the condominium and until the Developer has sold all units, upon such portion of the property as the Developer may choose, such facilities as in the sole opinion of the Developer may be reasonable required, convenient or incidental to the completion, sale, rental or management of units, a business or sales office, signs and storage facilities, or any combination thereof.

13.03 Parking. Parking spaces are restricted to use for parking of operative automobiles. Other items and equipment may be parked or kept therein only subject to the rules and regulations of the Association. The Board of Directors may require removal of any inoperative or unsightly vehicle, and any other equipment or item not stored in parking spaces in accordance with this provision. If the same is not removed, the Board of Directors may cause removal at the risk and expense of the owner thereof. The use of all parking areas is also subject to rules and regulations adopted for the Association.

13.04 Driveways, Walkways, etc. Driveways, walkways, halls, corridors, stairways and other portions of the common areas and facilities used for access shall be used exclusively for normal ingress and egress, and no obstructions shall be placed therein unless permitted by the Board of Directors or the Association's rules and regulations.

13.05 Maintenance and Modification of Units and Limited Common Area.

13.05.1 Maintenance of Unit. Each unit owner shall, at his sole expense, keep the interior of his unit, all parts of its related limited common or exclusive use areas, and the equipment, appliances, and appurtenances relating thereto, in good order, condition, repair and appearance. Each unit owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, fans, heating or other equipment, fireplace flues, electrical fixtures or appliances which may be in, or are part of, his unit.

13.05.2 Right to Modify Unit. Without limiting the generality of the foregoing, each unit owner may, at his sole cost and expense, maintain, repair, paint, or finish, refinish or change surfacing of the interior surfaces of the ceilings, floors, window frames, doors, trim, and the perimeter walls of his unit, provided that hard surface flooring not originally installed may not be installed without the prior written approval of the Board of Directors. Each unit owner may alter, substitute, add or remove any fixtures attached to said ceilings, floors or walls. This section shall not be construed to permit interference with or damage to the structural integrity of the building or interference with the use and enjoyment of the common area and facilities, or of the other units, or to authorize, without Board of Directors' approval and compliance with the requirements of this Declaration, intrusion unto the common or limited common area, or any waste.

13.05.3 Appearance of Limited Common Area. Notwithstanding the provisions of Section 13.05.1, residential unit owners may not modify, paint or otherwise decorate, or in any way alter their respective limited common area without prior approval of the Board of Directors and in all events must act pursuant to the Association's rules and regulations. The Board of Directors may in whole or in part assume the maintenance for limited common area appurtenant



to residential units. Any maintenance of the moorage unit or its appurtenant limited common area pursuant to the provisions of the Supplemental Declaration shall be subject to the Association's Rules and Regulations and the other terms of this Declaration. The Board of Directors may, if it deems such action necessary, assume in whole or in part the maintenance for limited common areas appurtenant to the moorage unit.

13.06 Exterior Appearance. In order to preserve the uniform appearance of the building, and the common and limited common area, particularly those visible to the public, the Board of Directors may require and provide for the painting and finishing of the building, balconies, decks, moorage, facilities or other common or limited common area and facilities, and prescribe the type and color of the surfaces and finishes. It may prohibit, require or regulate any modification or decoration of the building, balconies, decks, moorage facilities or other common or limited common area, including any such items as screens, doors, awnings, rails or other portions of each unit and the building visible from the exterior. The Board of Directors may regulate and control the items stored in or used on the limited common area in order to preserve the good appearance and condition of the entire condominium. In addition, this regulatory power extends to the control of the color of draperies and under-drapes or drapery linings of each unit.

13.07 Uses Affecting Insurance. The unit owners shall not permit anything to be done or kept in the units or in the common or limited common area which will increase the insurance premiums for the condominium or result in the cancellation of insurance on any part of the condominium without the consent of the Board of Directors.

13.08 Signs. No signs of any kind shall be displayed to the public view on or from any unit or from the common or limited common area without the consent of the Board of Directors or pursuant to the Association's rules and regulations.

13.09 Animals. The facilities and surroundings of the condominium are not designed for and are not reasonably appropriate for the maintenance of large pets or animals, and therefore, all such are prohibited; provided, however that the Board of Directors may adopt rules and regulations permitting cats, small dogs and similar household pets. The Board of Directors may at any time require the removal of any animal that it, in its sole discretion, finds unreasonably disturbing to other owners and may exercise this authority for specific animals even though other animals are permitted to remain.

13.10 Offensive Activity. No noxious or offensive activity shall be carried on in any unit or common or limited common areas, nor shall anything be done therein which may be or become an annoyance or nuisance to other unit owners, or which would be in violation of any laws.

13.11 Construction Work – Common and Limited Common Area. The common and limited common area, except limited common area appurtenant to the moorage unit, shall not be reconstructed, rebuilt, altered, removed or replaced except by the Association acting through the Board of Directors acting in accordance with the Act, this Declaration, and the Bylaws.

13.12 Rentals. No unit owner may lease or rent less than his entire unit, and the terms of any such lease or rental agreement shall be subject to and incorporate the rental agreements shall be subject to and incorporate the provisions of this Declaration and the Bylaws. All leases or rental agreements shall be in writing and a copy thereof shall be filed with the Board of Directors. Owners may not lease their units for transient or hotel purposes. Other than the foregoing, there shall be no limitation on an owner's right to lease his unit.

## SECTION 14

### INSURANCE

14.01 Insurance Coverage. The Board of Directors shall obtain and maintain at all times as a common expense an insurance policy or policies and bonds as follows:

14.01.1 Fire Insurance, with extended coverage (including vandalism, malicious mischief, sprinkler leakage, debris removal, cost of demolition, windstorm and water damage) endorsement, in an amount as near as practicable to the full insurable replacement value (without deduction for depreciation) of the common and limited common area and the units, with the Board of Directors named as the insured as trustee for the benefit of the owners and mortgagees as their interest may appear, or such other fire and casualty insurance as the Board of Directors shall determine to give substantially equal or greater protection insuring the owners and their mortgagees, as their interests may appear. Said policy or policies shall provide for separate protection for each unit to the full insurable replacement value thereof (limited as above provided), and a separate loss payable endorsement, in favor of the mortgagee or mortgagees or each unit, if any, and further, a separate loss payable clause in favor of the Mortgagee of the Condominium, if any. All insurance shall be obtained from an insurance carrier rated Triple A (and rated as in Class XI or better financial condition) by Best's Insurance Reports or equivalent rating service, and licensed to do business in the state of Washington.

14.01.2 General Comprehensive Liability Insurance insuring the Board of Directors of the Association, the owners, Developer and Manager against any liability to the public or to the owners of units and their invitees, or tenants, incident to the ownership or use of the common and limited common area (including but not limited to owned and non-owned automobile liability, water damage, host liquor liability, liability for property of others and, if applicable, elevator collision, and garagekeeper's liability). The amount of such insurance shall be determined by the Board of Directors after consultation with insurance consultants, but not less than \$1,000,000.00 covering all claims for personal injury and/or property damage arising out of a single occurrence (such policy limits to be reviewed at least annually by the Board of Directors and increased in its discretion).

14.01.03 Fidelity bonds naming the members of the Board of Directors, the Manager and its employees and such other persons as may be designated by the Board of Directors as principals and the Association as obligee, in an amount equal to at least one-half of the total estimated cash (including reserves) to be collected as assessments each year. Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar term.

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

14.01.05 If the condominium contains a steam boiler, a broad form policy of repair and replacement, boiler and machinery insurance of at least \$50,000 per accident, per location.

14.01.06 Such other insurance as the Board of Directors deems advisable; provided, that notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium projects established by Federal National Mortgage

Association and Government National Mortgage Association, so long as either is a mortgagee or owner of a unit within the condominium, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association or Government National Mortgage Association.

14.02 Owner's Additional Insurance. Each owner shall obtain additional insurance respecting his unit as contemplated under RCS 64.32.220 and 64.32.010 (1) at his own expense; no owner shall, however, be entitled to exercise his right to maintain insurance coverage in any manner which would decrease the amount which the Board of Directors, or any trustee for the Board of Directors, on behalf of all of the owners, will realize under any insurance policy which the Board of Directors may have in force on the condominium at any particular time. Each owner is required to and agrees to notify the Board of Directors of all improvements by the owner to his unit the value of which is in excess of One Thousand Dollars (\$1,000). Each owner is hereby required to file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after purchase of such insurance, and the Board of Directors shall immediately review its effect with its insurance broker, agent or carrier.

14.03 Insurance Proceeds. Insurance proceeds for damage or destruction to any part of the property shall be paid to the Board of Directors on behalf of the Association which shall segregate such proceeds from other funds of the Association for use and payment as provided for in Section 15. The Association acting through its Board of Directors shall have the authority to settle and compromise any claim underinsurance obtained by the Association, and the insurer may accept a release and discharge of liability made by the Board of Directors on behalf of the named insureds under the policy.

14.04 Additional Provisions. The Board of Directors shall exercise its reasonable best efforts to obtain insurance policies containing (or omitting, as indicated below) the following provisions:

14.04.01 Contribution. A provision that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of, any other insurance obtained by or for any unit owner or any mortgagee.

14.04.02 Matters Association Cannot Control. No provision relieving the insurer from liability for loss because of any act or neglect of unit owners which is not within the control of the Association or because of any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control;

14.04.03 Subrogation. A waiver of subrogation by the insurer for any and all claims against the Association, the owner of any condominium unit and/or their respective agents, employees or tenants, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

14.04.04 Restoration Limited. A provision prohibiting the insurer from electing to restore damage in lieu of making a cash settlement, without first obtaining the written approval of the Association, or, if the Association is a party to an insurance agreement, the written approval of the trustee.

14.04.05 Cancellation. A provision that coverage may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to any and all insureds named thereon, including the servicers on behalf of mortgage insuring companies or agencies, or corporations or agencies administering programs creating any form of market for mortgages.

## SECTION 15

### DAMAGE OR DESTRUCTION; RECONSTRUCTION

15.01 Initial Board of Directors' Determinations. In the event of damage or destruction to any part of the property other than the limited common area appurtenant to the moorage unit, the Board of Directors shall promptly, and in all events within twenty (20) days after the date of damage or destruction, make the following determinations with respect thereto employing such advice as the Board of Directors deems advisable:

15.01.1 Extent of Damages. The nature and extent of the damage or destruction, together with an inventory of the improvements and property directly affected thereby.

15.01.2 Estimates. A reasonably reliable estimate of the cost to repair and restore the damage and destruction, which estimate shall, if reasonably practicable, be based upon two or more firm bids obtained from responsible contractors.

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

15.01.4 Cost in Excess of Insurance. The amount, if any, that the estimated cost of repair and restoration exceeds the anticipated insurance proceeds therefore and the amount of assessment to each unit if such excess is paid as a maintenance expense and specially assessed against all the units in proportion to their percentage of interest in the common area.

15.01.5 Recommendation. The Board of Directors' recommendation whether or not such damage or destruction should be repaired or restored.

15.02 Notice of Damage or Destruction. The Board of Directors shall promptly, and in all events within sixty (60) days after the date of damage or destruction, provide each owner and each mortgagee who has theretofore requested special notice, with a written notice summarizing the initial Board of Directors' determinations made under Section 15.01. If the Board of Directors fails to do so within said sixty (60) days, then any owner or mortgagee may make the determinations required under Section 15.01 and give the notice required under this Section 15.02.

15.03 Definitions:

15.03.1 Restoration. As used in this Section 15, the words "repair", "reconstruct", "rebuild", or "restore" shall mean restoring the improvements to substantially the same condition in which they existed prior to the damage or destruction, with each unit and the common and limited common area having substantially the same vertical and horizontal boundaries as before. Modifications to conform to then applicable governmental rules and regulations or available means of construction may be made.

15.03.2 Emergency Work. As used in this Section 15, the term "emergency work" shall mean that work which the Board of Directors deems reasonably necessary to avoid further damage, destruction or substantial diminution in value to the improvements and to reasonable protect the owners from liability from the condition of the site.

15.04 Restoration by Board of Directors.

15.04.1 Board of Directors Shall Restore. Unless prior to the commencement of repair and restoration work (other than emergency work referred to in subsection 15.03.2) the owners shall have decided not to repair and reconstruct in accordance with the provisions of either subsection 15.05.3 or 15.06.3, the Board of Directors shall promptly repair and restore the damage and destruction, use the available insurance proceeds therefore, and pay for the actual cost of repair and restoration in excess of insurance proceeds as a common expense which shall be specially assessed against all units in proportion to their percentages of interest in the common area.

15.04.2 Authority to Contract. The Board of Directors shall have the authority to employ architects and attorneys, advertise for bids, let contracts to contractors and others, and to take such other action as is reasonably necessary to effectuate the repair and restoration. Contracts for such repair and restoration shall be awarded when the Board of Directors, by means of insurance proceeds and sufficient assessments, has made provision for the cost thereof. The Board of Directors may further authorize the insurance carrier to proceed with repair and restoration upon satisfaction of the Board of Directors that such work will be appropriately carried out.

15.04.3 Insurance Trustee. The Board of Directors may enter into a written agreement in recordable form with any reputable financial institution or trust or escrow company that such firm or institution shall act as an insurance trustee to adjust and settle any claim for such loss in excess of Fifty Thousand Dollars (\$50,000.00) or for such firm or institution to collect the insurance proceeds and carry out the provisions of this Section 15.

15.05 Limited Damage; Assessment Under \$5,000. If the amount of the estimated assessment determined under subsection 15.01.4 does not exceed Five Thousand Dollars (\$5,000.00) for any one unit then the provisions of this Section 15.05 shall apply;

15.05.1 Special Meeting of Association. The Board of Directors may, but shall not be required to, call a special owners' meeting to consider such repair and restoration work, which notice shall be given simultaneously with the notice required to be given by the Board of Directors under Section 15.02 above. If the Board of Directors shall fail to call such meeting, then the requisite number of owners, within fifteen (15) days of receipt of the notice given by the Board under Section 15.02 above, or the expiration of the sixty (60) day period for notice described in Section 5.02, whichever is less, may call a special owners' meeting to consider such repair and restoration work. Any meeting held pursuant to this Section 15.05.1 shall be called by written notice and shall be convened not less than ten (10) nor more than twenty (20) days after the date of the notice of meeting.

15.05.2 No Restoration Work Prior to Meeting. Except for emergency work, no repair and restoration work shall be commenced until after the expiration of the notice period set forth in Section 15.05.1 and until after the conclusion of said special meeting if such meeting is called within said notice period.

15.05.3 Unanimous Decision Required. A unanimous decision of all the unit owners will be required to avoid the provisions of subsection 15.04.1 and to determine not to repair and restore the damage and destruction; provided, that the failure of the Board of Directors or

the requisite number of owners to call for a special meeting at the time or in the manner set forth in Section 15.05 shall be deemed a unanimous decision to undertake such work.

15.06 Major Damage; Assessment Over \$5,000. If the amount of the estimated assessment determined under subsection 15.01.4 exceeds Five Thousand Dollars (\$5,000.00) for any one unit, then the provisions of this Section 15.06 shall apply.

15.06.1 Special Meeting of Association. The Board of Directors shall promptly, and in all events within sixty (60) days after the date of damage or destruction, provide written notice of a special owners' meeting to consider repair and restoration of such damage or destruction, which notice shall be delivered with the notice required to be provided under Section 15.02 above. If the Board of Directors fails to do so within said sixty (60) day period, then notwithstanding the provisions of this Declaration or the Bylaws with respect to calling special meetings, any owner (the provisions of Section 8.06, notwithstanding) may within fifteen (15) days after the expiration of said sixty (60) day period, call a special meeting of the owners to consider repair and restoration of such damage or destruction by providing written notice of such meeting to all owners and mortgagees. Any meeting held pursuant to this Section 15.06 shall be called by written notice and shall be convened not less than ten (10) nor more than fifteen (15) days from the date of the notice of meeting.

15.06.2 No Restoration Work Prior to Meeting. Except for emergency work, no repair and restoration work shall be commenced until the conclusion of the special owners' meeting required under subsection 15.06.1.

15.06.3 Vote Required Not to Rebuild. The affirmative vote of owners having at least seventy-five (75) votes will be required to avoid the provisions of Section 15.04 and to determine not to repair and restore the damage and destruction/ provided, however, that the failure to obtain said affirmative vote of owners having at least seventy-five (75) votes shall be deemed a decision to rebuild and restore the damage and destruction; provided, further that the failure of the Board of Directors, or owners to convene the special meeting required under Section 15.06.1 within ninety (90) days after the date of damage or destruction shall be deemed a unanimous decision not to undertake such repair and restoration work.

15.07 Decision Not to Restore; Disposition. In the event of a decision under either subsections 15.05.3 or 15.06.3 not to repair and restore the damage and destruction, the Board of Directors may nevertheless expend such of the insurance proceeds and common funds as the Board of Directors deems reasonably necessary for emergency work (which emergency work may include but is not necessarily limited to removal of the damaged or destroyed building and clearing, filling and grading the real property),. And the remaining funds, if any, and property shall thereafter be held and distributed as follows:

15.07.1 Property Held in Common. The property shall be owned in common by the unit owners and shall no longer be subject to this Declaration or to condominium ownership;

15.07.2 Owner's Undivided Interest. The undivided interest in the property owned in common which appertains to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common area;

15.07.3 Mortgages Transferred. Any mortgages or liens affecting any of the units shall be deemed transferred in accordance with the existing priorities to the percentage of

the undivided interest of the owner in the property as provided herein; and

15.07.4 Partition. The property shall be subject to an action for partition at the suit of any owner, in which event the net proceeds of sale, together with the net proceeds of the insurance of the property, if any, shall be considered as one fund; such fund shall be divided into separate shares one for each owner in a percentage equal to the percentage of undivided interest owned by each such owner in the property; then, after first paying out of the respective share of each owner, to the extent sufficient for the purpose, all mortgages and liens on the undivided interest in the property owned by such unit owner, the balance remaining in each share shall then be distributed to each owner respectively.

15.08 Damage Limited to Moorage Facilities. In the event of damage or destruction limited in extent to the limited common area appurtenant to the moorage unit only, such damage or destruction shall be repaired or restored by the Association in accordance with this Declaration. In such event, the Association shall not have the right to elect not to repair or restore damage or destruction.

15.09 Miscellaneous. The provisions of this Section 15 shall constitute the procedure by which a determination is made by the owners to repair, restore, reconstruct or rebuild as provided in the Act. By the act of accepting an interest in the property, each owner and party claiming by, through or under such owner, hereby consents and agrees to the provisions hereof. In the event that any provision of this Section 15 shall be determined to be invalid or unenforceable by any court of competent jurisdiction, such determination shall not affect the validity of any other provision of this Declaration. The purpose of this Section 15 shall be to provide a fair and equitable method of allocating the costs of repair and restoration and making a determination for repair and restoration if all or a portion of the improvements are damaged or destroyed. The provisions of this Section 15 shall be liberally construed to accomplish such purpose. Notwithstanding the foregoing, however, the owners may by unanimous vote, which vote shall be taken within ninety (90) days after the damage or destruction, determine to do otherwise than provided in this Section 15.

## SECTION 16

### CONDEMNATION

16.01 Consequences of Condemnation. If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the property shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the provisions of this Section 16 shall apply. If any unit or portion thereof or the common or limited common area (except limited common area appurtenant to the moorage unit) or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Board of Directors shall provide each owner and each mortgagee written notice of any such proceeding or proposed acquisition.

16.02 Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Board of Directors on behalf of the Association.

16.03 Complete Taking. In the event that the entire property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership thereof shall terminate.

The Condemnation Award shall be apportioned among the owners in proportion to the respective undivided interests in the common area; provided, that if a standard different from the value of the property as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. On the basis of the foregoing principle, the Board of Directors shall as soon as practicable determine the share of the Condemnation Award to which each owner is entitled. After first paying out of the respective share of each owner, to the extent sufficient for the purpose, all mortgages and liens on the interest of such owner, the balance remaining in each share shall then be distributed to each owner respectively.

16.04 Partial Taking. In the event that less than the entire property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each owner shall be entitled to a share of the Condemnation Award to be determined in the following manner:

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

16.04.2 Apportionment Among Owners. Subject to the provisions of Subsection 16.04.4, the Board of Directors shall apportion the amounts so allocated to the taking of or injury to the common area which, in turn, shall be apportioned among owners in proportion to their respective undivided interests in the common area.

16.04.3 Severance Damages. The total amount allocated to severance damages shall be apportioned to those units which were not taken or condemned.

16.04.4 Damage to a Particular Unit. The respective amount allocated to the taking of or injury to a particular unit and/or the improvements an owner has made within his own unit shall be apportioned to the particular unit involved. In the event of a taking or injury restricted in extent to the limited common area appurtenant to the moorage, all amounts allocated to such taking or injury shall be distributed and apportioned in accordance with the condemnation provisions applicable to the membership of the Moorage Division.

16.04.5 Consequential Damages. The amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Board determines to be equitable under the circumstances.

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

16.04.7 Distribution of Proceeds. Distribution of apportioned proceeds shall be made to the respective owners and their respective mortgagees in the manner provided in Section 16.03.

16.05 Reductions of Condominium Upon Partial Taking. In the event that (a) a partial taking occurs which pursuant to Section 16.04 does not result in a termination of condominium ownership hereunder, and (b) at least one (1) unit is taken or condemned and (c) the condemning authority elects not to hold, use and own said unit as a condominium unit owner subject to and in accordance with the Declaration, then the provisions of this Section 16.05 shall take effect immediately upon the condemning authority taking



possession of the unit or units so taken or condemned.

16.05.1            Reduction of Declaration.    The units subject to this Declaration shall be reduced to those units not taken or condemned (or not sold or otherwise disposed of in lieu of or in avoidance thereof).

16.05.2            Reduction of Common Area.    The common area subject to this Declaration shall be reduced to that common area not taken or condemned.

16.05.3            Reduction of Limited Common Area.    Except for limited common area appurtenant to the moorage unit, the limited common area, which was not taken or condemned, but which was appurtenant to units that were taken or condemned, shall be deemed part of the general common area remaining subject to this Declaration.

16.05.4            Recalculation of Percentages.    The percentage of undivided interest in the common area appurtenant to each unit not so taken or condemned shall be recalculated on the basis that the value of each of said units shall remain the same as set forth in Exhibit "C" and the value of the entire property not so taken or condemned shall be the aggregate of said values of said units.

16.05.5            Interest of Owner of Condemned Unit.    Except with respect to the share of proceeds apportioned pursuant to Section 16.04, no owner or mortgagee of a unit so taken or condemned shall have, nor shall there be appurtenant to any unit so taken or condemned, any right, title, interest, privilege, duty or obligation in, to or with respect to the Association and any unit, common area or limited common area which remains subject to this Declaration and which is not so taken or condemned.

16.05.6            Interest of Owners of Remaining Units.    Except as otherwise expressly provided in Section 16.05, the rights, title, interests, privileges, duties and obligations of an owner and mortgagee in, to or with respect to a unit not so taken or condemned (and in, to or with respect to the Association and the common areas and limited common area appurtenant to said unit) shall continue in full force and effect as provided in this Declaration.

16.05.7            This Section Binding.    The provisions of Section 16.05 shall be binding upon and inure to the benefit of all owners and mortgagees of (and other persons having or claiming to have any interest in) all units which are, as well as all units which are not, so taken or condemned. All such owners, mortgagees and other persons covenant to execute and deliver any documents, agreements or instruments (including, but not limited to, appropriate amendments to the Declaration, Survey Map and Plans) as are reasonably necessary to effectuate the provisions of Section 16.05. Notwithstanding the above provisions, all amendments to this Declaration and to the Supplemental Declaration shall be in accordance with Sections 12 and 14 thereof, respectively.

16.06    Reconstruction and Repair.    Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Section 15 above, provided that the Board of Directors may retain and apply such portion of each owner's share of the Condemnation Award as is necessary to discharge said owner's liability for any special assessment arising from the operation of said Section 15.

## SECTION 17

### MORTGAGEE PROTECTION

17.01 Priority of Mortgages. Notwithstanding all other provisions hereof and as provided in the Act, the liens created under this Declaration upon any unit for assessments shall be subject to tax lien on the unit in favor of any rights of the secured party in the case of any indebtedness secured by mortgages which were made in good faith and for value upon the unit. Where such mortgagee of the unit, or other purchaser of a unit, obtains possession of a unit thereof, such possessor and his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such unit which become due prior to such possession, but will be liable for the common expenses and assessments accruing after such possession. Such unpaid share of common expenses collectible from all of the unit owners including such possessor, his successor and assigns.

17.02 Abandonment of Condominium Status. Except when acting pursuant to the provisions of the Act involving damage, destruction, or condemnation, the Association shall not, without consent of seventy-five percent (75%) of all first mortgagees of record of the units, seek by act or omission to abandon the condominium status of the project, or to abandon, encumber, sell or transfer any of the common area.

17.03 Partition and Subdivision. The Association shall not combine nor subdivide any unit or the appurtenant limited common area, nor abandon, partition, subdivide, encumber or sell any common area, or accept any such proposal, without the prior approval of seventy-five percent (75%) of all first mortgagees of the units to be combined or subdivided.

17.04 Material Amendments to Declaration and Bylaws. The Association shall not make any material amendment to the Declaration or Bylaws (including changes in the percentages of interest in the common area) without the prior approval of seventy-five (75%) of all first mortgagees or record of the units, and without unanimous approval of the first mortgagees of the units for which the percentage(s) would be changed.

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

17.06 Written Notices. Where a first mortgagee of a unit or a tenancy of the moorage unit has filed a written request with the Board of Directors, the Board of Directors shall:

17.06.1 Furnish Copies. Furnish such mortgagee with a copy of any insurance policy or evidence thereof which is intended to cover the unit on which such mortgagee has a lien.

17.06.2 Notice of Cancellation. Require any insurance carrier to give the Board of Directors and any and all insureds (including such mortgagees) at least thirty (30) days' written notice before canceling, reducing the coverage or limits, or otherwise substantially modifying any insurance with respect to the property on which the mortgagee has a lien (including cancellation for a premium non-payment).

17.06.3 Approval of Settlement. Not make any settlement of any insurance claim for loss or damage to any such unit, common area or limited common area exceeding Five Thousand Dollars (\$5,000) without the approval of such mortgagee; provided, that the withholding of such approval shall not be unreasonable or in conflict with the provisions of Section 15.

17.06.4 Notice of Taking. Give such mortgagee written notice of any loss or taking affecting common area, if such loss or taking exceeds \$10,000.

17.06.5 Notice of Damage. Give such mortgagee written notice of any

loss, damage or taking affecting any unit or limited common area in which it has an interest, if such loss, damage or taking exceeds One Thousand Dollars (\$1,000).

17.06.6 Notice of Owner's Default. Give such mortgagee written notice that an owner/mortgagor of a unit has for more than sixty (60) days failed to meet any obligation under the condominium documents.

17.06.7 Notice of Meetings. Give such mortgagee written notice of all meetings of the Association and permit such mortgagee to designate a representative to attend all such meetings.

17.07 Insurance Policy Terms. The insurance policy required under Section 14 shall contain a standard mortgagee clause which shall, if reasonably obtainable:

17.07.1 Reference to All Holders of Mortgages. Provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any unit or unit lease or sublease of the project, in their respective order and preference, whether or not named therein;

17.07.2 Mortgagee's Interest not to be Validated. Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Board of Directors or unit owners or any persons under any of them:

17.07.3 Waiver of Certain Provisions. Waive any provision invalidating such mortgage clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy; any requirement that the mortgagee pay any premium thereon; and any contribution clause.

17.08 Inspection of Books; Audited Financial Statements. First mortgagees shall be entitled to inspect at all reasonable hours of week days all of the books and records of the Association, and, upon request, to receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.

17.09 Obtaining Developer's Powers. In the event the Mortgagee of the Condominium becomes bound by this Declaration by granting one or more partial releases or otherwise, and forecloses its mortgage or acquires a deed in lieu of foreclosure, and obtains possessory rights, legal title, or certificates of sale to the unsold unit or units and appurtenant common area covered by the respective deed of trust or mortgage liens, then the Mortgagee of the Condominium may succeed to and assume, to the exclusion of the Developer, the powers of the Developer as set forth in this Declaration.

17.10 Extension of Developer's Powers. In the event that the Developer's obligation to the Mortgagee of the Condominium has not been paid in full at the time the Developer's management power has expired under Section 9.03 then said powers conferred upon the Developer by said Section and to which the Mortgagee of the Condominium may succeed, shall be extended for an additional two (2) years. The Mortgagee of the Condominium shall be entitled to appoint a receiver during the pendency of any foreclosure, and said receiver shall immediately, upon appointment, succeed to and assume the rights and powers of the Developer as set forth in this Declaration, and the receiver shall be entitled to sell unsold condominium units during the pendency of said foreclosure, and said sales shall be subject to confirmation by court order.

17.11 Right of Board of Directors to Cure Defaults. Nothing herein contained shall limit or restrict the right of the Board of Directors on behalf of all the owners to cure defaults under mortgages to which the liens created hereunder are subordinated under this Section. The Board of Directors is expressly authorized to cure any and all such defaults by payments to the mortgagee or mortgagees of any defaulting owner from the maintenance fund. Any such payments shall be specially assessed against the unit of the defaulting owner and said special assessment shall be secured by the lien created under Section 12 hereof;

provided, however, that the Board of Directors shall not be able to assign their lien rights under Section 12 or otherwise transfer the unit or any interest therein except when such transfer occurs pursuant to a lien foreclosure proceeding.

17.12 Change in Manager. In the event that professional management is employed by the Association, at least thirty (30) days' notice of any contemplated change in the professional manager shall be given to any first mortgagee which has requested to be notified. The Association shall not elect to terminate professional management and assume self-management without the prior consent of seventy-five (75%) of all first mortgagees who have requested to be advised of such election; provided that such prior consent shall not be required to change from one professional manager to another professional manager.

## SECTION 18

### COMPLIANCE

18.01 Enforcement. Each owner shall comply strictly with the provisions of this Declaration, the Bylaws, and the administrative rules and regulations made pursuant thereto as they may be lawfully amended from time to time. Failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Board of Directors on behalf of the owners, or in a proper case, by any aggrieved owner. Failure to comply shall also entitle the Board of Directors to collect all attorneys' fees incurred by it by reason of such failure, irrespective of whether any suit or other judicial proceeding is commenced; and if suit is brought because of such failure, all costs of suit may be recovered in addition to attorneys' fees.

18.02 Termination of Utilities. If any owner or occupant of a unit violates or permits the violation by his guests and invitees of any provisions hereof or of the Bylaws, or of the rules and regulations, and the Board of Directors determines that violations have been repeated and that a prior notice to cease has been given, the Board of Directors may give notice to such occupant and the owner of such unit to forthwith cease such violations, and if the violation is thereafter repeated, the Board of Directors may sever some or all of the utilities to the unit for such period of time as it may determine, not to exceed two (2) weeks. This remedy shall be in addition to all other remedies available to the Board of Directors.

18.03 No Waiver of Strict Performance. The failure of the Board of Directors in any one or more instances to insist upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or of the Bylaws, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Board of Directors of any sum from an owner, with knowledge of any such breach shall not be deemed a waiver of such breach, and no waiver by the Board of Directors of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors. This section also extends to the Developer's managing agent, exercising the powers of the Board of Directors during the initial period of operation of the Association and the condominium development.

## SECTION 19

### EASEMENTS

19.01 In General. It is intended that in addition to rights under the Act, each unit has an easement in and through each other unit and the common and limited common area for all support elements

and utility, wiring, heat and service elements, and for reasonable access thereto, as required to effectuate and continue proper operation of this condominium plan. Without limiting the generality of the foregoing, each unit and all common and limited common area is specifically subject to easements as required for the intercom and electrical entry system, if any, for the electrical wiring and plumbing, for the air conditioning lines and equipment, if any, for each unit, for the vacuum system roughed-in in each unit, if any, for fireplaces and associated flues or chimneys, if any, and for the master antenna cable system, if any. Finally, each unit as it is constructed is granted an easement to which each other unit and all common and limited common area is subject for the location and maintenance of all the original equipment and facilities and utilities for such unit. The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for common facilities reserved by law. All such easements shall be located as such features are located in the buildings as built, or as they may become located due to settling or repair or reconstruction.

In addition to the general easements discussed above, each tenancy in the Moorage Unit has and is subject to reciprocal easements over adjoining water areas to provide for possible lateral shifting of the moorage slips and finger piers caused by natural movement of the waters.

19.02 Association Functions. There is hereby reserved to Developer and the Association, or their duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Association as are set forth in the Declaration, the Bylaws, or the Association's rules and regulations.

19.03 Encroachments. Each unit and all common and limited common area is hereby declared to have an easement over all adjoining units and common and limited common area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other similar cause, and any encroachment due to building overhand or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner or owners if said encroachment occurred due to the willful act or acts with full knowledge of said owner or owners. In the event a unit area or common or limited common area is partially or totally destroyed, and then repaired or rebuilt, the owners agree that minor encroachments over adjoining units and common and limited common area shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any unit.

19.04 Easement for Construction. There is retained by the Developer, for exercise by it and its successors and assigns, or for exercise by the Board of Directors if work is not completed by Developer or his successors and assigns, an easement for the purpose of completing construction or repair of the condominium and all its units. This easement affects all parties of the property as required.

19.05 Right of Entry for Maintenance, Repairs, Emergencies or Improvements. The Association shall have the right to have access to each unit from time to time as may reasonably be necessary for maintenance, repair or replacement or improvement of any of the common area and facilities accessible therefrom, or for making repairs necessary to prevent damage to the common area and facilities or to the other units, or for any emergency situations.

## SECTION 20

### PROCEDURES FOR SUBDIVIDING OR COMBINING

20.01 Procedure. Subdivision or combining of any unit or units, common area and facilities or limited common area and facilities or limited common area and facilities are authorized only as follows:

20.01.1 Proposal for Subdividing or Combining. Any owner of any unit may propose any subdividing or combining of a unit or units, appurtenant common area or limited common area in writing, together with complete plans and specifications for accomplishing the same and a proposed amendment to the Declaration, Survey Map and Plans covering such subdividing or combining, to the Board of Directors, which shall then notify all other owners of the requested subdivision, combination or partition.

20.01.2 Necessary Vote. Upon written approval of such proposal by owners having at least seventy-five (75) votes and the unanimous approval of the proposal by the owners of the units to be subdivided or combined, together with such mortgagee approval as is required in Section 17, the owner making the proposal may proceed according to such plans and specifications; provided that the Board of Directors may in its discretion (but it is not mandatory that the Board exercise this authority) require that the Board of Directors administer the work or that provisions for the protection of other units or common area or reasonable deadlines for completion of the work be inserted in the contracts for the work.

## SECTION 21

### AMENDMENT OF DECLARATION, SURVEY MAP, PLANS

21.01 Declaration Amendment. Amendments to the Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Board of Directors prior to its adoption by the owners. Amendments may be adopted at a meeting of the owners if at least seventy-five percent of the owners vote in favor of such amendment, or without any meeting if all owners have been duly notified and at least seventy-five percent of the owners consent in writing to such amendment. For the purposes of this subsection, the owners of the Moorage Unit, shall be deemed, in the aggregate, one owner; and an owner of more than one unit will be regarded as a separate owner for each separate unit owned. In all events, the amendment when adopted shall bear the signature of the president of the Association and shall be attested by the secretary, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon recording in the appropriate governmental offices. Any decision changing the values and percentage of interest expressed herein, except as the unit owners and their mortgagees. It is specifically covenanted and understood that any amendment to this Declaration properly adopted will be completely effective to amend any or all of the covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration or Survey Map and Plans unless otherwise specifically provided in the section being amended or the amendment itself.

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

county office in conjunction with the Declaration amendment.

21.03 Certain Amendments by Developer or Association. The Developer may at any time, until all units have been sold by Developer, record an amendment to the Declaration assigning any unassigned parking spaces or storage lockers to units and, during the period of Developer's management authority provided under Section 9.02, changing the person who is to receive service, and such amendment need be executed and acknowledged only by the Developer and need not otherwise comply with the requirements of this Section 21. After termination of the period of Developer's management authority under Section 9.02, the Association may record, at any time, an amendment to the Declaration changing the person who is to receive service of process for the Association; such amendment need be executed and acknowledged only by the officers of the Association and need not otherwise comply with the requirements of this Section 21.

21.04 Amendments to Conform to Construction. In addition, Developer, upon Developer's sole signature, may at any time until all units have been sold by Developer, file an amendment to the Declaration and to the Survey Map and Plans to conform them to the actual location of any of the constructed improvements and to establish, vacate and relocate utility easements, access road easements, or unassigned storage facilities, and any such amendment need not otherwise comply with the requirements of this Section 21.

21.05 Discontinuance of Condominium. Any decision or failure to act by the owners under this Declaration or any applicable provision of law which intends or requires discontinuance of this condominium or removal of the property from the provisions of the Act, shall, if such decision or failure to act is sufficient under the Act, also terminate and discontinue the effect of any and all of the covenants, conditions, and restrictions set forth herein, and all provisions of the Survey Map and Plans, unless other specific provision is made by recorded amendments to the Declaration, and, if required, to the Survey Map and Plans.

21.06 Amendments of Supplemental Declaration. All amendments to Exhibit "D" to this Declaration shall be adopted in accordance with the provisions of Section 14 of the Supplemental Declaration; however, no amendment of the Supplemental Declaration which affects any owner or mortgagee of a unit in this condominium other than the Moorage Unit shall be adopted without conforming to the provisions of this Section 21.

## SECTION 12

### MISCELLANEOUS

22.01 Notice. Except as may be specifically provided herein, all notices, requests, demands, statements, advices, assessments, notifications and other communications contemplated hereunder or given pursuant hereto shall be in writing and shall be deemed given and effective when delivered personally, or twenty-four (24) hours after a copy has been deposited in the mails, first class postage prepaid, addressed as follows:

To Association:

To the address of the condominium.

To Owners or Their Designated Representatives:

To the address in the State of Washington specified by such owner in writing to the Board of

Directors in accordance with the Bylaws, or, if no such address has been so specified, to the address of the unit owned by such owner.

To Other Persons Entitled to Notice:

To the address provided to the Association by each such person pursuant to a written request for such notice.

To the Directors, Moorage Commissioners, Moorage Division, Manager, President, Secretary and Treasurer:

To such person or entity at the address of the condominium.

22.02 Notice to Mortgagee. Upon written request to the Board of Directors for notices and for a period of three (3) years thereafter (or for such longer period as the Board of Directors shall set), the holder of any recorded mortgage against any unit or any contract vendor of any unit will be entitled to each notice permitted or required herein to be given to the owner whose unit is subject to the mortgage or real estate contract. No notice to such owner shall be deemed validly given until and unless each mortgagee or contract vendor of such owner entitled to notice is also given such notice. A request for notices may be renewed periodically until said mortgage or real estate contract is discharged of record.

22.03 Service of Process. Until such time as the Board of Directors is elected by the owners at a meeting of the Association called for that purpose, the Developer is hereby authorized to receive service of process on behalf of the Association in cases provided for in the Act. The place of business of Bayshore Associates is 2033 6<sup>th</sup> Avenue, Suite 111, Seattle, Washington. After the election of a Board of Directors, the President of said Board and each successor President, during the time he is President, is authorized to receive service of process in cases provided for in the Act.

22.04 Remedies Not Exclusive. No right or remedy conferred or reserved by this Declaration is exclusive of any other right or remedy, but each is cumulative, and shall be in addition to every other right or remedy given hereby or hereafter existing at law or equity or by statute.

22.05 Mortgagee's Acceptance.

22.05.1 Priority of Mortgage. This Declaration shall not initially be binding upon any mortgagee of record at the time of recording of said Declaration but rather shall be subject and subordinate to the interest of said mortgagee.

22.05.2 Acceptance Upon First Conveyance. Developer shall not consummate the conveyance of title of any unit until said mortgagee shall have accepted the provisions of this Declaration and made appropriate arrangements, in accordance with the Act, for partial release of units with their appurtenant limited common area and percentages of interest in common area from the lien of said mortgage. The issuance and recording of the first such partial release by said mortgagee shall constitute its acceptance of the provisions of this Declaration and the condominium status of the units remaining subject to its mortgage as well as its acknowledgment that such appropriate arrangements for partial release have been made; provided, that, except as to units so released, said mortgage shall remain in full effect as to the entire property.

22.06 Severability. If any term or provision of this Declaration or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Declaration, and the application of such term or provision to persons or circumstances other than those to which it is invalid or enforceable to the fullest extent.



22.07 Effective Date. The Declaration shall take effect upon recording.

22.08 Reference to Survey Map and Plans. The Survey Map and Plans of the building referred to herein were filed with the Recorder of King County, Washington, simultaneously with the recording of this Declaration under File No. 790302115 in Volume 29 of Condominiums, pages 63 through 64.

DATED this 15<sup>th</sup> day of February, 1979.

Developer:  
Bayshore Associates, a  
Washington Limited Partnership

By \_\_\_\_\_  
RONALD G DANZ, General Partner

By \_\_\_\_\_  
V.B. RASMUSSEN, General Partner

STATE OF WASHINGTON

COUNTY OF KING

On this 15<sup>th</sup> day of February, 1979, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared RONALD G. DANZ and V.B. RASMUSSEN, to me known to be the General Partners of BAYSHORE ASSOCIATES, a Washington Limited Partnership, the partnership that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said partnership, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the State of Washington, residing at Bellevue.