

No. 495741-II

Court of Appeals
DIVISION II
STATE OF WASHINGTON

DONALD LEO,

APPELLANT,

v.

DIANA COURT OWNERS' ASSOCIATION, an unincorporated association and
VISTA VILLAGE RECREATIONAL AND MAINTENANCE ASSOCIATION, a not-for-profit
corporation,

RESPONDENTS.

APPELLANT DONALD LEO'S OPENING BRIEF

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I. INTRODUCTION

Appellant Donald Leo submits this Opening Brief. This case requires the Court to construe and apply certain provisions of the Condominium Acts¹ and the Diana Court Condominium Declaration.

Mr. Leo, the past president of the Diana Court Condominium Owners' Association, challenges (1) a purported amendment to the bylaws of the Diana Court Condominium Owners' Association; and (2) assessments imposing the cost of operating, maintaining, repairing, and replacing limited common areas² solely upon Mr. Leo and other owners of Diana Court condominium units who have been assigned the use of those limited common areas.

¹ The Legislature passed the Horizontal Property Regimes Act, Chapter 64.32 RCW, in 1963. See RCW 64.32.900. That Act applies to all condominiums created after its enactment, but before July 1990. RCW 64.34.010(1). The Diana Court Condominium Declaration was recorded in October, 1975. CP 35-49. Therefore the Horizontal Property Regimes Act applies to the Diana Court condominium.

The Legislature passed the Uniform Condominium Act, Chapter 64.34 RCW, in 1989. Many provisions of the Uniform Condominium Act apply to condominiums created prior to 1990 with respect to events and circumstances occurring after July 1, 1990. See RCW 64.34.010(1).

Throughout this brief, Mr. Leo refers to the applicable provisions of both Acts as the "Condominium Acts."

² The Horizontal Property Regimes Act describes these as limited common *areas*. RCW 64.32.010(11). The Uniform Condominium Act describes the same thing as limited common *elements*. RCW 64.34.020(27). Throughout this brief, Mr. Leo uses the term "limited common areas" to encompass both definitions except where he directly quotes the language of the Uniform Condominium Act.

Pursuant to RCW 64.34.208(3), the Court should hold that the challenged bylaw amendments are invalid, because their provisions conflict with the provisions of the Diana Court Declaration.

In addition, pursuant to RCW 64.34.360(3), the Court should hold that the practice of assessing individual Diana Court unit owners who have been assigned the use of a limited common area for the expense associated with the operation, maintenance, repair or replacement of that limited common area is improper, because nothing in the Diana Court Declaration REQUIRES the assessment of that expense on such individual unit owner.

II. ASSIGNMENTS OF ERROR

1. Paragraph 11 of the Diana Court Condominium Declaration specifically provides that bylaws for the Diana Court Condominium Owners' Association must be approved by the affirmative vote of a majority of the owners of living units in the Diana Court condominiums. RCW 64.34.208(3) provides that a condominium declaration's provisions prevail over inconsistent bylaws.

In response to a motion for summary judgment, the trial court held that paragraph 11 of the Diana Court Condominium Declaration applied to the bylaws of the Diana Court Condominium Owners' Association. But, the trial court held that the bylaws presented to it were not the bylaws of

the Diana Court Condominium Owners' Association. The trial court erred in so ruling.

2. RCW 64.34.360(3) provides that the expense associated with the operation, maintenance, repair or replacement of a limited common area shall be paid by the owner of or assessed against the units to which that limited common area is assigned "to the extent REQUIRED by the condominium declaration." (Emphasis added.)

The trial court held, on summary judgment, that the expense associated with the operation, maintenance, repair and replacement of limited common areas may be assessed solely upon the individual Diana Court condominium unit owners to whom the use of those limited common elements has been assigned, even though nothing in the Diana Court Condominium Declaration so REQUIRES. The trial court erred in so ruling.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Paragraph 11 of the Diana Court Condominium Declaration provides that the owners of living units in the Diana Court condominiums shall only be subject to bylaws which a majority of the owners of those Diana Court condominiums have affirmatively approved. Paragraph 22 of the Declaration also delegates to the Vista Village Recreational and Maintenance Association, a "master association," the power to propose

and enforce bylaws which would otherwise be exercised by the Board of the Diana Court Condominium Owners' Association.

a. Are bylaws proposed by the master association, which state on their face that they are bylaws of the Diana Court Condominium Owners' Association, in fact “bylaws for the administration of the Diana Court Condominium Owners Association” within the meaning of paragraph 11 of the Diana Court Declaration? **Short Answer: Yes.**

b. Does the master association have the power to propose and enforce bylaws for the Diana Court Condominium Owners' Association which (i) have not been affirmatively approved by a majority of the owners of living units in Diana Court as required by paragraph 11 of the Diana Court Declaration, and (ii) which do not recognize the right reserved to Diana Court unit owners by paragraph 11 of the Diana Court Declaration to be subject only to bylaws affirmatively approved by a majority of the owners of living units in Diana Court? **Short Answer: No.**

2. The Condominium Acts describe limited common areas as areas that are owned by the unit owners in common, but that are assigned to the use of specific owners. The Acts generally provide that the expense associated with the operation, maintenance, repair and replacement of all

common areas, including limited common areas, be spread out amongst and born by all the unit owners.

However, the Legislature has authorized a departure from this general rule, and has authorized the assessment of the expense of the operation, maintenance, repair and replacement of limited common areas solely upon the individual unit owner to which the use of a limited common area is assigned, but only “to the extent REQUIRED in the Declaration.” RCW 64.34.360(3) (emphasis added).

a. Does anything in the Diana Court Declaration REQUIRE the cost of the operation, maintenance, repair or replacement of a limited common area be imposed solely upon the individual unit owner to whom the limited common area is assigned? **Short Answer: No.**

b. In the absence of anything in the Diana Court Declaration REQUIRING that the cost of the operation, maintenance, repair or replacement of a limited common area be imposed upon the individual unit owner to which the limited common area is assigned, does a master association have the authority to impose such expenses solely upon such individual unit owner? **Short Answer: No.**

IV. STATEMENT OF THE CASE

A. The Diana Court Condominium and Condominium Association.

Diana Court is a condominium established by a Declaration recorded in October, 1975. CP 29-30, 35-49.

The Diana Court Owners' Association is an unincorporated entity created by the Diana Court Declaration. Its members consist of all persons owning a condominium unit in Diana Court. CP 30, 39 (Diana Court Declaration, ¶ 7).

Donald Leo owns a condominium unit located in Diana Court. Mr. Leo is thus a member of the Diana Court Owners' Association. CP 29 (Leo Declaration, ¶ 2-3).

B. The Diana Court Declaration.

The Diana Court condominium, like any other condominium, is established by and governed by its Declaration. RCW 64.32.090. See CP 35-49.

The Legislature has authorized a condominium declaration to provide for the administration of the condominium property by a board whose duties and powers are defined in the bylaws. RCW 64.32.090(11). The Diana Court Declaration establishes such a Board. CP 37, 40-41 (Diana Court Dec., ¶ 1(j), ¶ 10). Mr. Leo is a past president of that Board. CP 29.

As required by the Legislature, the Diana Court Declaration also spells out the procedure necessary for condominium unit owners to make changes to the Declaration. RCW 64.32.090(13); CP 42 (Diana Court Dec., ¶ 12). As the Legislature has specified, the Declaration requires that changes to the Declaration require a 60% super majority vote of unit owners to take effect. *Id.*

By statute, a declaration's provisions prevail over any inconsistent provisions contained in a condominium's bylaws. RCW 64.34.208(3) :

In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

C. The Diana Court Declaration requires amended bylaws to be approved by a majority of Diana Court unit owners.

As provided by the Legislature, the Diana Court Condominium Declaration authorizes the owners of living units in Diana Court to enact or amend bylaws. RCW 64.32.090(11); CP 42 (Diana Court Dec., ¶ 11). The Diana Court Declaration subjects this right to two restrictions: First, the bylaws must not be inconsistent with the Condominium Act or with the terms or intent of the Diana Court Declaration; second, the bylaws must be approved by a vote of a majority of the owners of living units in the condominium:

By-laws: By-laws for the administration of the Diana Court Owners Association and the development, and for other

purposes not inconsistent with the Condominium Act or with the terms or intent of this Declaration, shall be adopted by an affirmative vote of a majority of the owners of the living units at a meeting to be called and held for that purpose. Notice of the time, place and purpose of such meeting shall be delivered to each owner at least ten days prior to such meeting. Amendments to the bylaws may be adopted by the same vote at a meeting similarly called . . .

CP 42 (Diana Court Dec., ¶ 11).

D. The Diana Court Declaration requires common expenses to be assessed against all unit owners equally.

The Diana Court Declaration further authorizes the Board to impose assessments for the payment of common expenses upon all the members of the Association:

Common Expenses, Assessments:

Within thirty (30) days prior to the beginning of each fiscal year, the Board shall estimate the net charges to be paid during such year (including a reasonable provision for contingencies and replacements and less any expected income in any surplus from the prior year's fund). In establishing each unit's share of the "estimated cash requirements", some costs will be allotted evenly, others by unit square footage, as the Board deems appropriate. . . .

CP 43 (Diana Court Dec., ¶ 14 (a)).

The Declaration thus requires the levying of assessments for common expenses against all the owners on either a “by unit” or a “by square footage basis.” *Id.* Either way, the Declaration requires the Board to collect assessments to pay all common expenses **from all unit owners equally.** *Id.*

E. The Diana Court Declaration does not REQUIRE expenses associated with limited common elements to be assessed against individual unit owners.

Limited common areas are those common areas or facilities assigned to the particular use of specific condominium unit owners. See RCW 64.32.010(11), RCW 64.34.020(27); CP 36-38 (Diana Court Dec., ¶ 1(f), (g), 3, 4). Limited common areas include such things as carports, patios, walkways, foundations, columns, girders, beams, supports, main walls, roofs, windows, and entrances and exits. *Id.*

"Limited common areas" are a subset of "common areas," the responsibility for operating, maintaining, repairing, and replacing which is generally born by the whole condominium association. See RCW 64.32.010(6) (defining "common areas and facilities" as encompassing "limited common areas and facilities"); RCW 64.32.010(11) (defining "limited common areas and facilities" as that subset of "common areas and facilities" designated by the Declaration as reserved for the use of certain apartment or apartments to the exclusion of other apartments"); RCW 64.32.080 (requiring common expenses to be charged to all owners based on their percentage of ownership of undivided interest in the common areas); RCW 64.34.360(1) ("The association is responsible for maintenance, repair, and replacement of the common elements, including

the limited common elements," "except to the extent provided by the declaration." (emphasis added).

Nothing in the Diana Court Declaration purports to require the Diana Court Board to impose the common expense associated with the operation, maintenance, repair or replacement of a limited common area upon the owner of the unit to which the use of that limited common area has been assigned. See CP 43 (Diana Court Dec., ¶ 14)

F. The Vista Village Recreational and Maintenance Association ("VVRMA").

Diana Court is one of five adjoining condominiums, each possessing and governed by its own Declaration. The five condominiums are Athena Court, Bacchus Court, Calypso Court, Diana Court, and Electra Court. CP 30 (Leo Dec., ¶ 7).

The Legislature has authorized individual condominium association boards to delegate certain powers to master associations:

If the declaration provides that any of the powers described in RCW 64.34.304 are to be exercised by or may be delegated to a profit or nonprofit corporation which exercises those or other powers on behalf of a development consisting of one or more condominiums or for the benefit of the unit owners of one or more condominiums, **all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section.**

RCW 64.34.276(1) (emphasis added). The Vista Village Recreational and Maintenance Association ("VVRMA") is such a master association.

The VVRMA is an incorporated entity. The members of the VVRMA are condominium unit owners from each of these five condominiums. The Board of Directors of the VVRMA consists of the presidents of the Boards of each of these five condominiums. CP 30 (Leo Dec., ¶ 9).

Pursuant to RCW 64.34.276(1), the VVRMA is entitled to exercise powers that would otherwise be exercised by the Diana Court Owners' Association if: (1) the power is one described in RCW 64.34.304; and (2) the Diana Court Declaration so provides.

RCW 64.34.304 describes the powers that may be delegated to a master association:

(1) Except as provided in subsection (2) of this section, and subject to the provisions of the declaration, the association may:

(a) Adopt and amend bylaws, rules, and regulations;

(b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from unit owners;

...

The Legislature has thus authorized individual condominium associations to delegate to a master association the power to adopt and amend bylaws that would otherwise be exercised by the individual condominium association, and the power to impose assessments for

common expenses that would otherwise be imposed by the individual condominium association. However, to the extent an individual condominium association delegates these powers to a master association, the Legislature has subjected such master associations to the exact same obligations and restrictions imposed by the Condominium Acts that would apply to the individual unit owners' association. RCW 64.34.276(1) (final clause).

Here, the Diana Court Declaration generally delegates the power to propose and enforce bylaws and the power to impose assessments to the VVRMA:

Every person or entity acquiring an ownership interest in a living unit under this declaration shall become a member of the Vista Village Recreational and Maintenance Association, and by acquiring said ownership interest shall become bound by the rules and regulations and bylaws of said association as established by the Board of Directors of the Vista Village Recreational and Maintenance Association; and further . . .

Membership in the Vista Village Recreational and Maintenance Association shall include the obligation to pay dues and assessments as established by the Board of Directors of said association . . .

CP 47 (Diana Court Dec., ¶ 21 at pages 12-13).

G. The Diana Court Condominium Owners' Association's bylaws.

Since at least the early 1990s, Vista Village has been operating under a set of uniform bylaws separately applicable to each of the five individual court owners' associations. These bylaws state that they are the:

AMENDED AND RESTATED VISTA VILLAGE
CONDOMINIUMS BYLAWS OF THE COURT
OWNERS' ASSOCIATIONS, including ATHENA,
BACCHUS, CALYPSO, DIANA, AND ELECTRA
COURTS.

Article 1

Identity

Section 1. These are the amended and restated bylaws of the court owners' associations (COAs), associations organized for the purpose of administering five condominium courts respectively, (1) Athena Court, (2) Bacchus Court, (3) Calypso Court, (4) Diana Court, and (5) Electra Court . . .

CP 50 (Leo Dec., Ex. B). See also CP 61 (2014 proposed amended bylaws); CP 76 (2015 proposed amended bylaws).

The bylaws quoted above, which describe themselves as being the bylaws of, among others, the Diana Court Owners' Association, are the only bylaws to which the owners of Diana Court condominium living units have ever been subject. There was no evidence introduced to the trial court that

the VVRMA had ever adopted bylaws applicable to VVRMA's members as such.

H. In 2014, Diana Court rejects proposed Bylaws, and the VVRMA recognizes that Diana Court's rejection means they have not been validly adopted.

In early 2014, the VVRMA proposed amendments to the bylaws separately applicable to each of the condominium owners' associations. CP 31; 61-75 (Leo Dec., ¶ 12 and Ex. C).

Diana Court held a vote on these proposed bylaws. The members of the Diana Court Condominium Owners' Association voted against adopting the proposed bylaws. CP 31 (Leo Dec., ¶ 13).

Because these proposed amended bylaws purported to separately apply to all five Vista Village Courts, including Diana Court, because the Diana Court Declaration expressly provides that members of Diana Court are only subject to bylaws affirmatively approved by a majority of the owners of Diana Court living units, and because a majority of the owners of Diana Court living units had voted to reject the proposed amended bylaws, the VVRMA recognized that the proposed bylaws amendment had NOT been validly adopted. Diana Court, as well as all the other court associations in Vista Village, continued to function under the old bylaws. CP 31 (Leo Dec., ¶ 14).

I. In 2015, the VVRMA proposes new amendments to the bylaws which conflict with the Declaration because they do not require future bylaws to be approved by a majority of Diana Court unit owners.

In the fall of 2015, the VVRMA proposed a new amendment to the bylaws separately applicable to each of the Condominium Owners' Associations. CP 31; 76-90 (Leo Dec., ¶ 15 and Ex. D). The proposed amendment to the bylaws changed Article V, relating to future bylaw amendments, to read as follows:

These amended and restated by-laws, or any part thereof, may be amended by the approval of three out of the five COAs after one COA has voted its approval and made recommendations to the other COAs. Each COA shall vote within 30 days according to Section 11 of its Declarational Covenants, Conditions and Restrictions as identified in Article 1, Section 1 above. This is subject to the power of all owners to approve, change or repeal such by-laws by a majority vote at any general meeting or at any other meeting of all owners called for that purpose.

CP 82.

Thus, the 2015 proposed amended bylaws purport to institute a system whereby changes to the bylaws will be effective as against the members of each of the five Condominium Owners' Associations as long as the majority of the members of three other Condominium Owners' Associations have voted to approve the bylaws, **even though the majority of the owners of living units in a specific court, such as Diana Court, have not affirmatively approved the amended bylaws.** CP 32 (Leo Dec., ¶ 18).

Diana Court, under the leadership of Mr. Leo as its then Board President, took the position that this proposed amendment to the bylaws deprived members of Diana Court of their right established by paragraph 11 of the Diana Court Declaration to be subject only to bylaws affirmatively approved by a majority of the owners of living units in Diana Court. Therefore, Diana Court refused to hold a vote on the 2015 proposed amended bylaws on the grounds that the proposed amended bylaws were inconsistent with the right reserved to Diana Court unit owners under the Diana Court Declaration, and therefore could not be enforced even if they were approved. CP 32 (Leo Dec., ¶ 19).

Despite this, based on the claim that the members of other Court Owners' Associations had voted to approve the proposed 2015 amended bylaws, the VVRMA has taken the position that these bylaws are effective and enforceable, including against the members of Diana Court. CP 32 (Leo Dec., ¶ 20).

J. The VVRMA purports to assess the cost of repairs to limited common areas upon the condominium owner to whom the use of the limited common areas has been assigned, even though nothing in the Diana Court Declaration purports to REQUIRE the imposition of such costs solely upon individual condominium unit owners.

In addition, the VVRMA has purported to assess the cost of repairs to limited common areas against the owner of the unit to which the use of the limited common area has been assigned. The VVRMA has imposed

the cost of repairing such limited common areas as exterior siding, roofing, water pipes, gutters, and covered walkways upon individual unit owners. CP 33-34; 91-92 (Leo Dec., ¶ 25 and Ex. E).

In particular, the VVRMA recently took the position that the gutters on the covered space where Mr. Leo and two other unit owners have designated parking spots should be replaced. The VVRMA has attempted to impose the cost of replacing these gutters solely upon the three unit owners, including Mr. Leo. CP 34 (Leo Dec., ¶ 26). The VVRMA has refused to undertake what it acknowledges to be needed maintenance and repair of this limited common area unless and until Mr. Leo and the other unit owners agree to the VVRMA's demand that they bear the entire cost of these repairs. CP 34 (Leo Dec., ¶ 27).

K. Lawsuit and trial court proceedings.

The Legislature has specifically authorized any person or class of persons adversely affected by any person's failure to comply with any provision of the Condominium Acts or with a condominium declaration with the right to pursue a claim for appropriate relief. RCW 64.34.455. Dissatisfied with the VVRMA's failure to respect his and the other unit owners' rights as set forth in the Diana Court Declaration, Mr. Leo commenced this action. CP 4-24.

Mr. Leo filed a Motion for Partial Summary Judgment. CP 93-107. Mr. Leo asked the trial court to enter a judgment determining that the proposed 2015 Diana Court bylaw amendments were invalid because they conflicted with the rights expressly reserved to Diana Court unit owners in paragraph 11 of the Diana Court Declaration only to be subject to bylaws which have been affirmatively approved by a majority of the Diana Court unit owners. *Id.* CP 108-10. Mr. Leo also asked the Court to determine that the VVRMA's practice of imposing assessments for the cost of the operation, maintenance, repair or replacement of limited common areas upon the owners of the units to which the limited common areas are assigned is invalid, because the Legislature in RCW 64.34.360(3) only provides for this cost to be so imposed to the extent REQUIRED by the Diana Court Declaration, and the Diana Court Declaration did not so REQUIRE. *Id.*

After briefing and argument, the trial court entered an Order denying Mr. Leo's Motion for Partial Summary Judgment. CP 295-97. In its oral ruling, the trial court agreed with Mr. Leo that the rights reserved to Diana Court unit owners in paragraph 11 of the Diana Court Declaration generally prevailed over contrary provisions of the Diana Court bylaws. RP (September 23, 2016) at p. 36, lines 1-4. The trial court further agreed with Mr. Leo that paragraph 11 of the Diana Court

Declaration did require amendments to bylaws applicable to Diana Court to be affirmatively approved by a majority of Diana Court unit owners. *Id.* But, adopting an argument that had not been advanced by the Defendants, the trial court held that the bylaws presented to it were not bylaws of the Diana Court Unit Owners Association to which these restrictions applied, but were instead VVRMA bylaws, to which the Declaration's restrictions did not apply. *Id.* (lines 7-17).

With respect to the issue of assessments for the operation, maintenance, repair and replacement of limited common areas, the trial court described the issue as whether paragraph 21 of the Diana Court Declaration, by broadly delegating to the VVRMA the authority to impose assessments, adequately put unit owners on notice that the VVRMA had the discretion to and might act to impose the cost of the operation, maintenance, repair and replacement associated with a limited common area upon the owners of the individual units to which the limited common area was assigned. *Id.* at p. 37, line 21-p. 38, line 7.

Based on these oral rulings, the trial court signed an order denying Mr. Leo's motion for partial summary judgment. CP 295-97.

Mr. Leo promptly filed two follow up motions. First, Mr. Leo asked the trial court to reconsider its decisions. CP 313-17. Second, because the trial court had in fact ruled on the issues presented by Mr.

Leo's complaint as a matter of law, if the trial court declined to reconsider, Mr. Leo asked the trial court to enter a final judgment. CP 318-19.

On October 7, 2016, the trial court, without substantively addressing Mr. Leo's motion for reconsideration, entered an order denying it. RP (October 7, 2016) at 8, lines 4-7; CP 325-26. The trial court, agreeing that it had in fact ruled on the issues presented by Mr. Leo's complaint as a matter of law, then entered a Final Judgment. *Id.*, lines 18-19; CP 327-28.

Mr. Leo timely filed a notice of appeal. CP 329-37.

V. STANDARD OF REVIEW

This case principally involves construction of the language of the Condominium Acts and construction of the language of the Diana Court Declaration. The Court of Appeals reviews these issues *de novo*. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 525-26, 243 P.3d 1283 (2010).

Mr. Leo submitted a detailed declaration describing the facts pertaining to this matter. CP 29-92. Although each Defendant also submitted a declaration, those declarations are of attorneys without personal knowledge of the underlying facts. CP 120-180; 193-265. These attorney declarations do not actually set forth any facts. *Id.* These attorney declarations do not purport to address or rebut Mr. Leo's specific

and detailed description of the facts. *Id.* Instead, Defendants' attorney "witnesses" simply attached documents, many of which are copies of documents attached to Mr. Leo's declaration. *Id.*

In light of the Defendants' complete failure to address or rebut any of the detailed factual averments in Mr. Leo's declaration, the trial court should have, and this Court should, accept each of Mr. Leo's averments as true.

VI. ARGUMENT

This case requires this Court to address and decide two substantive issues: First, do the provisions of the purported 2015 amendments to the Diana Court Owners' Association bylaws conflict with the provisions of paragraph 11 of the Diana Court Declaration, such that the proposed amended bylaws are invalid? Second, should the VVRMA's practice of imposing assessments for the cost of the operation, maintenance, repair and replacement of limited common areas solely upon the individual unit owners to whom the use of that limited common area has been assigned be invalidated on the grounds that nothing in the Diana Court Declaration requires the VVRMA to do so? Finally, assuming Mr. Leo prevails, the Court will need to address Mr. Leo's request for an award of his attorneys' fees.

A. The 2015 Bylaw Amendments conflict with the Diana Court Condominium Declaration, and are therefore invalid.

A condominium declaration's provisions control over contrary provisions in a condominium's bylaws. The bylaws at issue in this case are "bylaws for the Diana Court Owner's Association." The Diana Court declaration requires that any bylaws for the administration of the Diana Court Owners' Association are effective only if adopted by the affirmative vote of the majority of the Diana Court unit owners. Because the purported 2015 amended bylaws conflict with the provisions paragraph 11 of the Diana Court Declaration, the Court should hold that the 2015 purported amended bylaws are invalid.

1. A condominium declaration's provisions control over contrary provisions in a condominium's bylaws.

The first issue presented by this case is whether the 2015 proposed amendments to the bylaws applicable to the Diana Court Condominium Association are invalid because they conflict with the right reserved to Diana Court unit owners in paragraph 11 of the Diana Court Declaration to be subject only to bylaws affirmatively approved by a majority of Diana Court unit owners.

In order to properly resolve this first issue, the Court must clearly understand the relationship between a condominium's declaration and a condominium's bylaws. Under the Condominium Acts, the provisions of a

condominium declaration control over contrary provisions in a condominium's bylaws.

A condominium declaration is the basic document that governs the rights and duties of members of a condominium association. RCW 64.32.090. The declaration must describe the land being made into a condominium, describe each unit, describe the common areas and facilities and limited common areas and facilities, describe the voting rights of each unit, and describe any restrictions on the use of any unit. *Id.* Further, the declaration must set forth the procedure by which the declaration may be amended, and set forth the procedure for adopting and amending bylaws. *Id.* Any change to the contents of the declaration must be recorded to be valid. RCW 64.32.140.

In the event of a conflict between what the declaration provides, and what the bylaws provide, the declaration prevails:

In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

RCW 64.34.208(3). See also *Shorewood West Condominium Ass'n v. Sadri*, 140 Wn. 2d 47, 992 P. 2d 1008 (2000) (the terms of the declaration control over inconsistent provisions in bylaws).

In their briefing to the trial court, Defendants themselves admitted that when there is a conflict between the declaration and the bylaws, the declaration prevails. See CP 187 (VVRMA Brief, p. 7, lines 7-10) ("[T]he Declaration controls when there is a conflict between the bylaws and the declaration.").

Here, the Diana Court Declaration's provisions control over inconsistent provisions in the Diana Court Association's bylaws. To the extent that there is a conflict between what is provided for in the Declaration, and what is provided for in the bylaws, the Declaration prevails.

2. The bylaws at issue in this case are "bylaws for the Diana Court Owners' Association."

Contrary to what the trial court held, the bylaws at issue in this case are "bylaws for the administration of the Diana Court Owners' Association."

Paragraph 11 of the Diana Court Condominium Declaration contains provisions describing minimum requirements for adopting and amending "[b]ylaws for the administration of the Diana Court Owners' Association." CP 42. In its oral ruling, the trial court agreed any bylaws for the administration of the Diana Court Owners' Association that purported to contain provisions inconsistent with this paragraph of the Diana Court Declaration would be invalid on the grounds that the

provisions of the Declaration must prevail. RP (September 23, 2016) at p. 36, lines 1-4 ("I agree with Plaintiff that Section 11 [of the Diana Court Condominium Declaration] says that the bylaws can only be amended through the process set forth in the Diana Court Declaration.").

However, adopting a position not advanced by either of the Defendants in this case, the trial court held the bylaws that had been presented to it were "VVRMA bylaws," not bylaws for the administration of the Diana Court Condominium Owners' Association, and thus not bylaws to which the provisions of paragraph 11 of the Diana Court Declaration applied:

I am not, however, going to grant summary judgment and rule as a matter of law in the Plaintiff's favor on his first request, because I don't understand what was done with regard to the Vista Village bylaw amendments over the last few years was an amendment to the Diana Court bylaws. I see the action as an amendment of the Vista Village bylaws, which are not addressed by paragraph 11 of the Diana Court Declaration.

RPC (September 23, 2016) at p. 36, lines 4-13.

The trial court plainly erred. Each set of bylaws presented to the Court state, on their face, that they constitute bylaws separately applicable to each of the five Vista Village condominium court owners' associations, including the Diana Court Owners' Association:

AMENDED AND RESTATED VISTA VILLAGE
CONDOMINIUMS BYLAWS OF THE COURT
OWNERS' ASSOCIATIONS, including ATHENA,

BACCHUS, CALYPSO, DIANA, AND ELECTRA
COURTS.

Article 1

Identity

Section 1. These are the amended and restated bylaws of the court owners' associations (COAs), associations organized for the purpose of administering five condominium courts respectively, (1) Athena Court, (2) Bacchus Court, (3) Calypso Court, (4) Diana Court, and (5) Electra Court . . .

CP 50 (Leo Dec., Ex. B). See also CP 61, 76.

The bylaws presented in this case thus state on their face that they are bylaws separately applicable to each court owners' association, including the Diana Court Condominium Owners' Association. Their purpose is to provide for the administration of the Diana Court Condominium Owners' Association. The trial court thus plainly erred in holding these were not “bylaws for the administration of the Diana Court Condominium Owners' Association” to which paragraph 11 of the Diana Court Condominium Declaration applied.

The fact that the individual court owners' associations delegated the power to adopt and amend bylaws to the VVRMA as a master association does not compel any different result. The Legislature has authorized master associations only to exercise the powers expressly delegated to them by each individual condominium unit owner

associations. RCW 64.34.276(1), 304. And, the Legislature has specifically provided that the all the provisions of the Condominium Acts applicable to unit owners associations apply with equal force to the VVRMA as a master association. RCW 64.34.276(1). This includes the rule codified at RCW 64.34.208(3) that the provisions of the condominium declaration prevail over inconsistent bylaws.

Nothing in the statutes describing the powers granted to master associations authorizes master associations to exercise any further power. Nothing authorizes a master association, simply because it proposes to enact a single set of bylaws separately applicable to multiple condominium owners' associations, to implement bylaws that are inconsistent with the provisions of any specific condominium declaration.

Further, a condominium declaration should be interpreted such that each of its provisions has force and effect. *Bogomolov v. Lake Villas Condo. Ass'n of Apartment Owners*, 131 Wash.App. 353, 361, 127 P.3rd 762 (2006). The trial court's decision not only ignored the plain language of the bylaws presented to it, it also had the effect of rendering the language of paragraph 11 of the Diana Court Condominium Declaration without force and effect. Under the trial court's ruling there has never been, there is not, and there will never be bylaws to which the minimum standards and conditions set forth in paragraph 11 of the Diana Court

Condominium Declaration apply. The trial court's construction of paragraph 11 incorrectly renders this language in paragraph 11 utterly without any force and effect.

The Court of Appeals should reverse the trial court's ruling on this issue. It should hold that the bylaws at issue in this case are "bylaws for the administration of the Diana Court Owners' Association," to which the provisions of paragraph 11 of the Diana Court Condominium Declaration apply.

3. The Diana Court Declaration requires that any bylaws for the administration of the Diana Court Owners' Association are effective only if adopted by the affirmative vote of the majority of Diana Court unit owners.

The Diana Court Declaration requires that any bylaws for the administration of the Diana Court Owners' Association are effective only if adopted by the affirmative vote of the majority of Diana Court unit owners:

By-laws: By-laws for the administration of the Diana Court Owners' Association and the development, and for other purposes not inconsistent with the condominium act or with the terms or intent of this declaration, shall be adopted by an affirmative vote of the majority of the owners of the living units at a meeting to be called and held for that purpose. Notice of the time, place and purpose of such meeting shall be delivered to each owner at least 10 days prior to such meetings. Amendments to the by-laws may be adopted by the same vote at a meeting similarly called.

Diana Court Dec., ¶ 11.

Tracking RCW 64.34.208(3), paragraph 11 of the Diana Court Declaration specifies that bylaws governing Diana Court shall be "not inconsistent with the Condominium Act or with the terms of this declaration." Paragraph 11 of the Diana Court Declaration also states that the bylaws "shall be adopted by an affirmative vote of a majority of the owners of the living units."

Therefore, pursuant to RCW 64.34.208(3), and pursuant to paragraph 11 of the Diana Court Declaration, amendments to the bylaws for the Diana Court Owners' Association are effective only if the amendments are: (1) not inconsistent with the Condominium Acts or with the terms or intent of the Diana Court Declaration, and (2) **approved by a majority vote of the owners of the living units at Diana Court**

Up until 2015, VVRMA recognized the separate right of Diana Court unit owners arising under the Diana Court Declaration to approve or reject bylaws. In particular, VVRMA recognized that new bylaws would take effect only if separately approved by a vote of the majority of the members of each of the five condominium units comprising the VVRMA. Leo Dec., ¶ 12-14.

In 2014, VVRMA proposed an amendment to the bylaws applicable to each Court. CP 31; 61-75 and Ex. C (Leo Dec., ¶ 12). Although other courts approved the proposed amended bylaws, Diana

Court voted against adopting the proposed amended bylaws. CP 31 (Leo Dec., ¶ 13). Consistent with the rights reserved to Diana Court unit owners by paragraph 11 of the Diana Court Declaration, the VVRMA accordingly treated the proposed bylaws as having not been validly adopted. *Id.* The old bylaws remained in force and effect. *Id.*

In 2015, in response to Diana Court's rejection, the VVRMA proposed to amend the bylaws applicable to each Court to provide that new bylaws, and amendments to bylaws, would take effect if a majority of the members of three of the five condominium courts voted to approve them. CP 31-32; 76-89 (Leo Dec., ¶ 17 and Ex. D). Under these new proposed bylaws, amendments would become effective even if the majority of the owners of living units in Diana Court voted in opposition to the bylaws. *Id.*, esp. CP 82.

These new bylaws were inconsistent with the long recognized right reserved by paragraph 11 of the Diana Court Declaration to the Diana Court unit owners to be subject only to bylaws approved by a majority of the Diana Court unit owners. Because the proposed amended bylaws conflicted with rights clearly and explicitly vested in unit owners under the Diana Court Declaration, Diana Court refused to even vote on them. CP 32 (Leo Dec., ¶ 19).

The new bylaws were not separately approved by each of the courts, as required by the bylaws then in effect. And, the new bylaws adopted a system for future amendments to the bylaws that was positively inconsistent with the rights reserved to Diana Court unit owners in the Diana Court Declaration to be subject only to those bylaws approved by a majority vote of the members of Diana Court.

For both reasons, the 2015 bylaws are therefore invalid. This Court should so hold.

B. The VVRMA is not entitled to assess the cost of the operation, maintenance, repair or replacement of limited common areas solely upon the owners of condominiums to which those limited common areas are associated.

RCW 64.34.360(3) provides that the common expense associated with the operation, maintenance, repair or replacement of a limited common area shall be paid by the owner of or assessed against the units to which that limited common area is assigned only "to the extent REQUIRED by the condominium declaration" (emphasis added). The second issue presented by this case is (a) whether the Diana Court Condominium Declaration REQUIRES assessment of limited common area costs solely upon the owners of the units to which those limited common areas are assigned, and (b) if it does not, whether the trial court

should have ordered the VVRMA to stop imposing assessments for such costs solely upon such owners.

The Legislature has generally provided that the expense of maintaining and improving common areas is an expense to be born equally by all members of a condominium association. See RCW 64.32.010(6) (defining common areas); RCW 64.32.010(11) (defining "limited common areas" as part of the common areas); RCW 64.32.080 (requiring common expenses to be charged to all owners based on their percentage of ownership of undivided interest in the common areas). See also RCW 64.34.360(1) ("The association is responsible for maintenance, repair, and replacement of the common elements, including the limited common elements").

The Legislature has, by statute, authorized condominium associations to require the expense associated with the operation, maintenance, repair or replacement of a "limited common area" to be born other than by all unit owners equally. However, the Legislature has provided that in order to do this, the condominium declaration must expressly REQUIRE that expenses associated with limited common areas will be treated in this manner:

(3) To the extent REQUIRED by the declaration:

- (a) Any common expense associated with operation, maintenance, repair, or replacement of a limited common

element shall be paid by the owner of or assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides; ...

RCW 64.34.360(3) (emphasis added).

There are several important reasons why the Legislature has required that any change to the "normal" rule that all common expenses are shared equally be set forth in the declaration.

First, the declaration, and all amendments to the declaration, must be recorded. RCW 64.32.140. This ensures that anyone acquiring an interest in the condominium has notice of the rules governing the assessment of expenses, and in particular of the fact that individual unit owners may have to suddenly themselves pay for the potentially substantial expense associated with the operation, maintenance, repair or replacement of a limited common area whose use has been assigned to their unit.

Second, the granting of power to a condominium association to suddenly impose potentially substantial expenses upon individual unit owners vests the association with considerable discretionary power. Individual condominium unit owners, like Mr. Leo, who take wholly legitimate positions at odds with the desires of those in control of the association may suddenly find that the association has decided that a limited common area assigned to their use must be repaired or replaced, and that they must suddenly produce the funds with which to do so or else have their

unit lien and foreclosed on. By requiring any change to the general rule that common expenses be assessed against all unit owners in common to be spelled out in a declaration, whose provisions can only be changed by a special vote, the Legislature has ensured that condominium unit owners will not casually vest associations with this substantial discretionary power.

Finally, a super-majority vote is necessary to effect a change to the declaration. RCW 64.32.090(13). The rights of an owner who purchases an interest in the condominium in reliance upon the rules set forth in the declaration are therefore subject to special protection.

In sum, for good and valid reasons, the Legislature has made it plain in RCW 64.34.360(3) that common expenses associated with the operation, maintenance, repair or replacement of a limited common area may be imposed upon a unit owner to whom the use of that limited common area has been assigned if, and only if, the declaration so REQUIRES.

Here, nothing in the Diana Court Declaration REQUIRES the expense associated with the operation, maintenance, repair or replacement of a limited common area be imposed solely upon the individual Diana Court unit owner to whom the use of the limited common area has been assigned. Therefore, the VVRMA does not, in fact, possess the power to impose these expenses solely upon individual unit owners.

Despite this, the VVRMA has purported to require individual condominium unit owners to bear the cost of operating, maintaining, repairing and replacing limited common elements associated with individual units. For example, the VVRMA has imposed the cost of repairing common areas such as exterior siding, roofing, frozen water pipes, gutters, and covered walkways upon individual unit owners. CP 33-34; 91-92 (Leo Dec., ¶ 25 and Exhibit E)

In particular, in 2015 the VVRMA decided that the gutters on the covered space where Mr. Leo and two other unit owners have designated parking spots should be replaced. The VVRMA has attempted to impose the cost of replacing these gutters solely upon the three unit owners, including Mr. Leo. CP 34 (Leo Dec., ¶ 26). The VVRMA has refused to undertake what it acknowledges to be needed maintenance and repair of this limited common area unless and until Mr. Leo and the other unit owners agree to the VVRMA's demand that they bear the entire cost of these repairs. CP 34 (Leo Dec., ¶ 27).

Faced with these clear violations of RCW 64.34.360(3), the trial court should have declared these practices illegal, and enjoined them. But the trial court did not do so.

The trial court refused to apply RCW 64.34.360(3) according to its plain language. Instead, in its oral decision, the trial court incorrectly

described the issue presented to it as whether the Diana Court Declaration, by delegating the general power to impose assessments to the VVRMA, put individual unit owners on notice that the VVRMA might, in the exercise of its discretion, elect to impose such costs upon individual unit owners:

[P]aragraph 21 [of the Diana Court Condominium Declaration] amounts to a broad delegation of authorities in a declaration, and it puts owners through the recording [of the Diana Court Condominium Declaration] on notice.

RP (September 23, 2016) at p. 37, lines 21-23. The trial court held the issue to be one of notice.

The trial court did not apply the applicable statutory standard. Under the statute, the issue is not one of notice. Pursuant to RCW 64.34.360(3), the expense associated with limited common areas may be imposed on individual unit owners if, and only if, the condominium declaration itself so **REQUIRES**. Here, nothing in the Diana Court Declaration **REQUIRES** the imposition of assessments for the cost of the operation, maintenance, repair or replacement of limited common elements to be imposed solely upon the owner of the condominium unit to which the use of the limited common element has been assigned.

This Court should reverse the trial court's decision, and remand to the trial court with instructions that it declare that the VVRMA's practice

of imposing assessments for the expense associated with the operation, maintenance, repair or replacement of a limited common area solely upon individual unit owners to whom the limited common area has been assigned violates RCW 64.34.360(3), and to enter an injunction prohibiting the VVRMA from doing so in the future.

C. To the extent this Court finds for Mr. Leo, it should award him attorneys' fees.

Finally, to the extent this Court finds for Mr. Leo, it should award him attorneys' fees.

RCW 64.34.455 provides:

If . . . any . . . person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award reasonable attorney's fees to the prevailing party.

Here, VVRMA is a person for the purpose of the Condominium Acts. RCW 64.34.020(30) ("person" means "any legal entity"). By attempting to enforce byattlaws that are inconsistent with the provisions of the Diana Court Declaration, and by purporting to impose assessments with respect to limited common elements solely upon the owners of the units to which those limited common elements are assigned, even though nothing in the Diana Court Declaration so requires, the VVRMA has acted contrary to the provisions of the Condominium Acts.

Mr. Leo has, individually, incurred significant attorneys' fees associated with his efforts to enforce the Diana Court unit owners' rights arising under the Condominium Acts against the VVRMA, making this an appropriate case for an award of attorneys' fees. Therefore, assuming Mr. Leo prevails on either issue raised in this case, the Court should award Mr. Leo his reasonable attorneys' fees. Assuming he prevails, Mr. Leo is entitled to an award, from the VVRMA, of both the attorneys' fees he incurred before the trial court, and the attorneys' fees he has incurred on appeal.

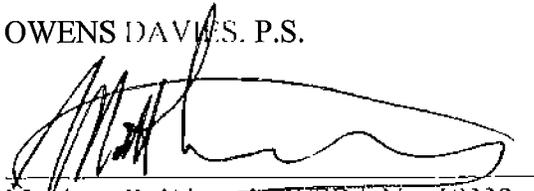
VII. CONCLUSION

The Court should reverse the Order on Summary Judgment and Final Judgment entered by the trial court. It should hold that because the 2015 proposed bylaw amendments are inconsistent with the rights reserved to Diana Court unit owners in paragraph 11 of the Diana Court Declaration, the bylaw amendments are invalid. The Court should further hold that because nothing in the Diana Court Declaration purports to REQUIRE the VVRMA to impose the cost associated with the operation, maintenance, repair or replacement of limited common elements solely upon the individual unit owners to whom the use of the limited common element has been assigned, the VVRMA's practice of doing so is illegal.

The Court should reverse and remand to the trial court with instructions that the trial court enter appropriate declaratory and injunctive

relief. And, the Court should award Mr. Leo the reasonable attorneys' fees he has incurred, both in litigating this matter before the trial court, and upon appeal.

OWENS DAVIS, P.S.

A handwritten signature in black ink, appearing to read "Matthew B. Edwards", written over a horizontal line.

Matthew B. Edwards, WSBA No. 18332
Attorney for Appellant Donald Leo

VIII. APPENDIX

RCW 64.34.208(3)

RCW 64.34.360(3)

First Amended Complaint

CP 4-24

Declaration of Donald Leo in Support of motion for
Partial Summary Judgment

CP 29-92

Order Denying Plaintiff's Motion for Partial Summary
Judgment

CP 295-297

Order Denying Plaintiff's Motion for Reconsideration

CP 325-326

Final Judgment

CP 327-328

Notice of Appeal to Court of Appeals, Division II

CP 329-337

RCW 64.34.208

Declaration and bylaws—Construction and validity.

(1) All provisions of the declaration and bylaws are severable.

(2) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to RCW 64.34.304(1)(a).

(3) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(4) The creation of a condominium shall not be impaired and title to a unit and common elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of the declaration or survey map and plans or any amendment thereto to comply with this chapter. Whether a significant failure impairs marketability shall not be determined by this chapter.

[1989 c 43 § 2-103.]

RCW 64.34.360**Common expenses—Assessments.**

(1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made against all units, based on a budget adopted by the association.

(2) Except for assessments under subsections (3), (4), and (5) of this section, all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to RCW 64.34.224(1). Any past due common expense assessment or installment thereof bears interest at the rate established by the association pursuant to RCW 64.34.364.

(3) To the extent required by the declaration:

(a) Any common expense associated with the operation, maintenance, repair, or replacement of a limited common element shall be paid by the owner of or assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited;

(c) The costs of insurance must be assessed in proportion to risk; and

(d) The costs of utilities must be assessed in proportion to usage.

(4) Assessments to pay a judgment against the association pursuant to RCW 64.34.368(1) may be made only against the units in the condominium at the time the judgment was entered in proportion to their allocated common expense liabilities at the time the judgment was entered.

(5) To the extent that any common expense is caused by the misconduct of any unit owner, the association may assess that expense against the owner's unit.

(6) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

[1990 c 166 § 5; 1989 c 43 § 3-116.]

NOTES:

Effective date—1990 c 166: See note following RCW 64.34.020.

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E-FILED
 SUPERIOR COURT
 THURSTON CO., WA
 February 2, 2016
 Linda Myhre Enlow
 Thurston County Clerk

**SUPERIOR COURT OF WASHINGTON
 COUNTY OF THURSTON**

DONALD LEO,
 Plaintiff,

v.
 DIANA COURT OWNERS ASSOCIATION,
 an unincorporated association and VISTA
 VILLAGE RECREATION AND
 MAINTENANCE ASSOCIATION, a not-for-
 profit corporation,
 Defendant.

NO. 16-2-00490-34
 FIRST AMENDED COMPLAINT

I. JURISDICTION AND VENUE

- 1.1 This Court has subject matter jurisdiction over this action.
- 1.2 This Court has personal jurisdiction over each defendant.
- 1.3 Venue lies with this Court.

II. PARTIES

2.1 The Plaintiff, Donald Leo, is a single individual residing in Thurston County, Washington.

2.2 The Defendant, Diana Court Owners Association, is an unincorporated association established by the Declaration of Covenants, Conditions and Restrictions Condominium Plan of Diana Court, consisting of all persons or entities satisfactory complying with the requirements for becoming a condominium unit owner under the provisions of the Declaration and duly adopted bylaws of the Association.

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 Olympia, Washington 98502
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 Facsimile: (360) 943-6150

1 on the owner of, or its assessment against the units to which the limited common element is
2 assigned, only **to the extent required by the Declaration.**

3 3.18 Because the Diana Court Declaration only authorizes the Board to impose charges as
4 provided in paragraph 14 of the Diana Court Declaration, and because nothing in the Diana Court
5 Declaration purports to authorize the imposition of common expenses associated with the operation,
6 maintenance, repair or replacement of a limited common element upon the owner, the Vista Village
7 Recreation and Maintenance Association has and is acting contrary to law in purporting to impose
8 and/or assess such charges upon the owners of the units to which the limited common elements are
9 assigned.

10 3.19 Despite the clear legal requirement that such charges be borne by all unit owners
11 equally, the Vista Village Recreation and Maintenance Association has been assessing individual
12 Diana Court unit owners, including but not limited to Donald Leo, for the cost of repair of limited
13 common elements which the Vista Village Recreation and Maintenance Association considers to be
14 assigned to that individual's condominium.

15 3.20 The Court should enter a declaratory judgment determining that this practice on the
16 part of the Vista Village Recreation and Maintenance Association is contrary to the provisions of
17 Section 14 of Diana Court Declaration and RCW 64.34.360(3) identified above.

18 3.21 The Court should enter an injunction prohibiting the Vista Village Recreation and
19 Maintenance Association, and/or the Diana Court Owners Association, from assessing Donald Leo,
20 or any other member of the Diana Court Owners Association, for the cost of repair to limited
21 common areas other than on the basis authorized by Section 14 of the Diana Court Declaration.

22 3.22 The Court should enter an Order requiring that Vista Village Recreation and
23 Maintenance Association, and/or the Diana Court Owners Association, account for and refund, with
24 interest, the cost of any assessment that has been imposed upon Donald Leo that is inconsistent with
25 the foregoing.

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ADDITIONAL CLAIMS

3.23 Discovery in this matter is just beginning. Plaintiff Donald Leo reserves the right to amend this Complaint to assert additional claims after conducting discovery.

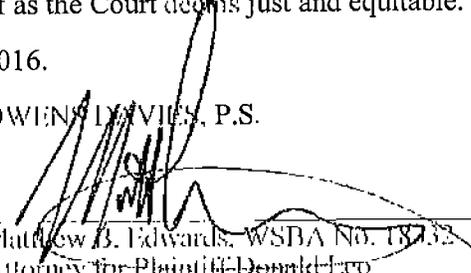
IV. PRAYER

Based on the foregoing, the Plaintiff, Donald Leo prays the Court for the entry of Orders granting him the following relief:

- 1. For declaratory relief, as specified herein;
- 2. For injunctive relief, as specified herein;
- 3. For an Order requiring Vista Village Recreation and Maintenance Association and/or Diana Court Homeowners Association to account for any improperly imposed assessment, and to make refund of the same, with interest;
- 4. For the right to assert additional claims for relief by amending this Complaint after conducting discovery;
- 5. For pre and post-judgment interest to the maximum extent permitted by law;
- 6. For attorney's fees, expert witness fees and costs, all to the maximum extent provided for under any statute, contract, or pursuant to any other applicable rule of law; and
- 7. For such other and further relief as the Court deems just and equitable.

DATED this 1st day of February, 2016.

OWENS DAVIES, P.S.



Matthew B. Edwards, WSBA No. 18732
Attorney for Plaintiff Donald Leo

OWENS DAVIES, P.S.
1115 West Bay Drive, Suite 302
Olympia, Washington 98502
Phone: (360) 943-8320
Facsimile: (360) 943-6150

The DIANA COURT Declaration was originally filed with the Thurston County Auditor, Olympia, Washington, under filing reference #948931, October 8, 1975, Volume 709, Pages 125-137, and is annotated to reference all amendments through April, 1992)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
CONDOMINIUM PLAN OF DIANA COURT

This declaration of Covenants, Conditions and Restrictions, hereinafter called "Declaration" is made and executed in Olympia, Thurston County, Washington, this *8th day of October, 1975*, by TURN KEY DEVELOPMENT, INC., a Washington corporation, hereinafter called "Declarant" pursuant to the provisions of the RCW 64.32 Horizontal Property Regimes Act (Condominiums);

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property described as follows:

The Condominium Plan of Diana Court comprises:

A tract of land in government lots #6 of Section 26, Township 18 N, Range 1 W.W.M. particularly described as follows, and being in Thurston County, Washington.

BEGINNING at dthe NW corner of said Government Lot #6, thence S 0° 15' 04" W along the west side of said government lot 484.49 ft. to the true point of beginning described tract; thence S 89° 44' 56" E 395.43 ft; thence S 0° 15' 14" W 25.00 ft; thence S 61° 30' 0" E 128.00 ft; thence S 6° 38' 41" E 347.93 ft; thence N 89° 44' 56" W 550.00 ft. to the West line of government Lot #6; thence N 0° 15' 04" E 430.00 ft. along the West line of said government lot to the true point of beginning.

Described tract contains 5.04 acres more or less.

WHEREAS, Declarant is the owner of certain living units and certain other improvements heretofore constructed or hereafter to be constructed upon the aforesaid premises which property constitutes a "Condominium Development" under the terms of the provisions of the Washington State Horizontal Property Regimes Act, and it is the desire and the intention of the Declarant to divide the development into condominiums and to sell and convey the same to various purchasers, subject to the covenants and restrictions herein reserved to be kept and observed; and

WHEREAS, on the *10th day of October, 1975*, Declarant filed for record in the office of the Thurston County Auditor, State of Washington a certain instrument entitled, "Record of Survey Map of Diana Court" hereinafter referred to as "Map," and

WHEREAS, Declarant desires and intends by filing this Declaration and the aforesaid Map to submit the above described property and the Living itUns and other

EXHIBIT A

improvements constructed thereon, together with all appurtenances thereto, to the provisions of the aforesaid Act as a condominium development and to impose upon such property mutually beneficial restrictions under a general plan of improvement for the benefit of all of said condominiums and the owners thereof.

NOW, THEREFORE, the Declarant does hereby publish and declare that all of the property described above is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions, restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into condominiums, and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns and any person acquiring or owning an interest in the real property and improvements their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. Definitions: Certain terms as used in this Declaration shall be defined as follows, unless the context clearly indicates a different meaning therefor:

(a) "Declarant" shall mean TURN KEY DEVELOPMENT, INC., the developer of Diana Court.

(b) "Declaration" shall mean this instrument by which Diana Court is established as provided for under the Horizontal Property Regimes Act.

(c) "Development" or "Property" shall mean the land, the building, all improvements and structures thereon, all owned in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, and all easements, rights and appurtenances belonging thereto, none of which shall be considered as a security or security interest, and all articles of personalty intended for use in connection therewith, which have been or are intended to be submitted to the provisions of RCW 64.32 by this Declaration.

(d) "Map" shall mean the Record of Survey Map of Diana Court filed of record herewith by Declarant.

(e) "Living Unit" or "Apartment" shall mean the elements of a condominium which are not owned in common with the owners of other living units in the development as shown on the Map, including the decorated surfaces of the perimeter walls, floors, ceiling, windows and doors bounding the Living Units.

(f) "Common Area" shall mean all land and all portions of the property not located within any Living Unit, and also includes, but not by way of limitation, greens, gardens, service streets, parking areas, recreational greens, and facilities, all installations of powers, lights, and water existing for common use and all other parts of the property necessary or convenient to its existences, maintenance and safety, or normally in common use and consists of all of the area within the legal description of the property on Page 1 of this Declaration.

(g) "Limited Common Area" shall consist of carports, carport storage pods, patios and the Living Unit foundations, columns, girders, beams, supports, main walls, roofs, windows and entrances and exits, as identified in the Survey Map recorded herewith. The use and enjoyment of these "Limited Common Areas" shall be limited to "designated owners" as shown on the Map recorded herewith. Provided, however, that the use of the designated owner shall not interfere with the proper use of adjacent owners, particularly with reference to

carport areas to the end that the use of the limited common area shall not be so exclusive as to deprive other owners from the use and enjoyment of their portion of the "limited common areas."

(h) "Condominium" shall mean the entire estate in the real property owned by any owner, consisting of an undivided interest in the Common Area and ownership of separate interest in a Living Unit.

(i) "Owner" shall mean any person with an ownership interest in a condominium in the development. A majority of owners shall be the owners with fifty-one percent, or more, of the votes in accordance with the percentage assigned in this declaration for voting purposes

(j) "Board" shall mean the Board of Directors of the governing body of the Owners Association, elected pursuant to the By-Laws.

(k) "Manager" shall mean the person or firm designated by the Board to manage the affairs of the development.

(l) "Mortgage" shall mean a deed of trust as well as a mortgage.

(m) "Mortgagee" shall mean a beneficiary under or holder of a deed of trust as well as a mortgagee.

(n) "Record" means to file of record with the office of the Thurston County Auditor, Olympia, Washington.

(o) "Condominium Act" shall mean the Horizontal Property Regimes Act (RCW 64.32).

(p) "Association" shall mean Diana Court Owners" Association.

(q) "Diana Court" means the property above described and hereby established as a condominium development pursuant to RCW 64.32.

2. Description of Condominium Buildings: Seven triplex living units within Diana Court, located and numbered 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, and 61 on the Survey Map referred to herein; all seven six room units, seven seven room units, and seven seven room units with fireplace, each of the above named units having a separate enclosed one car garage. These living units are one story and are principally constructed of wood and plaster with masonry exteriors, and said living units have access to and use of the common areas and limited areas as set forth hereinafter.

3. Description of Common Areas and Facilities: The common areas and facilities consist of those specified in RCW 64.32.010(6) as well as the following: (1) the land above described, (2) the roadways and driving areas which provide access to the limited common areas for parking and to the living units, (3) the greens, landscaped areas and walkways which surround and provide access to the living units or are used for recreational purposes, and (4) the central courts, fence areas, grass and landscaped areas.

Use of the common areas, and parking spaces shall be limited by the rules of the Board, which rules shall provide for use of a reasonable number of said spaces for guest park-

ing in convenient locations about the property. Until such time as all living units have initially been sold, declarant shall determine use, assignment and eventual disposition of all unassigned parking spaces.

4. Description of Limited Common Areas: The limited common areas and facilities consist of (1) the patios adjacent to each living unit, (2) the carports and carport storage pods adjacent to each living unit, (3) the living units foundations, columns, girders, beams, supports, main walls, roofs, windows, entrances and exits and the walkways adjacent to living unit.

5. Certain Provisions Required by the Condominium Act: The total value of the property is SEVEN HUNDRED THIRTY SEVEN THOUSAND, ONE HUNDRED DOLLARS (\$737,100.00). Said property is made up of seven six room units valued at thirty two thousand, five hundred dollars (\$32,500.00) each, seven seven room units valued at thirty four thousand, nine hundred dollars (\$34,900.00) each and seven seven room units valued at thirty seven thousand nine hundred dollars (\$37,900.00) each; together with the one car enclosed garages and common areas as shown on the survey map and building plans as filed and recorded herewith.

The buildings described herein and each living unit are intended for residential purposes only, but the accessory recreation structures and buildings, if any, may be used for such common social, recreational or other reasonable uses or purposes as are from time to time determined appropriate by the Board of Directors of the Diana Court Owners' association. Living units or the buildings may be used for the purposes of operating the owners' association and for the management of the condominium.

Fred G. Thunberg, President of Turn Key Development, Inc. as agent for declarant shall receive any process, as provided by law, and the registered office for process shall be 3300 Carpenter Road, S.E., Olympia, Washington 98503. Upon the election of the first Board of Directors, service of process for the purposes provided in the condominium act shall be made upon the president of the Board of the owners' association.

The number, location, approximate area and number of rooms of each living unit, along with the immediate common area to which it has access are clearly shown and depicted on the Survey Map of Diana Court filed and recorded herewith as required by RCW 64.32.100.

6. Percentage of Interest Value of Units:

Amendment, Fee No. 8403070130, Volume 1238, Pages 641-642, records of the Thurston County Auditor, dated the 7th day of March, 1984, to clarify interpretation of "percentage of interest value".

The following is a list of the various living units and the percentage of undivided interest in the common areas and the limited common areas as appurtenant to each. This percentage is to be utilized ~~to determine allocation of assessments;~~ for voting, and for all requirements or procedures of the condominium act based upon such percentage. This percentage of interest applied to the total value produces the value of the living units assigned to said unit for the purpose of the Declaration. This percentage is a relevant schedule for the purposes required for this Declaration and does not necessarily reflect what will, from time to time, be the market or sales price of the living units obtained by declarant or the owners hereof, and such market price will fluctuate and may be modified.

Condominium Plan of Diana Court
Auditors File No. 948931, Volume 586

Percentage of Ownership of each unit as an undivided interest in the Common Areas and facilities and for voting purposes as described herein:

<u>UNIT NO.</u>		<u>CARPOT AND LIMITED COMMON</u>	<u>PERCENTAGE OF OWNERSHIP</u>
	<u>AREAS NUMBER</u>		
41	\$29,900.00	41	4.00%
42	36,900.00	42	4.94
43	39,900.00	43	5.34
44	29,900.00	44	4.00
45	36,900.00	45	4.94
46	39,900.00	46	5.34
47	29,900.00	47	4.00
48	36,900.00	48	4.94
49	39,900.00	49	5.34
50	29,900.00	50	4.00
51	36,900.00	51	4.94
52	39,900.00	52	5.34
53	29,900.00	53	4.00
54	36,900.00	54	4.94
55	39,900.00	55	5.34
56	29,900.00	56	4.00
57	36,900.00	57	4.94
58	39,900.00	58	5.34
59	29,900.00	59	4.00
60	36,900.00	60	4.94
61	39,900.00	61	5.34

7. Membership - Diana Court Owners' Association: Every person or entity satisfactorily complying with the requirements for becoming a condominium living unit owner under the provisions of this Declaration and the By-Laws duly adopted by the Association, shall be a member of the Diana Court Owners' Association and shall have a percentage of interest in the condominium as provided for in paragraph 6 above.

8. Damage or Destruction: In case of fire, casualty or other disaster covered by the insurance policies carried by the Diana Court Owners' Association, causing any damage or destruction to any living unit or common areas, the insurance proceeds shall be applied toward the reconstruction of the buildings. Reconstruction, as used in this paragraph, means restoration of the buildings to substantially the same condition in which they were prior to the fire, casualty, or other disaster with each living unit and the common areas having the same vertical and horizontal boundaries as before; provided, modification conforms to then applicable governmental rules and regulations. Such reconstruction shall be accomplished by the Board, or the manager at the Board's direction, and it shall have the authority to employ an architect, advertise for bids and let contracts to contractors and others as required to effect the reconstruction. The Board may authorize the insurance companies to proceed with the

reconstruction upon satisfaction of the Board that such reconstruction will be appropriately carried out.

If the insurance proceeds are not sufficient to repair or reconstruct the building or buildings, damage to or destruction of the buildings shall nevertheless be promptly repaired and restored by the Board, utilizing available insurance funds, and all living unit owners shall be liable equally for assessment for any deficiency as a common expense.

A unanimous decision of the living unit owners will be required to avoid the provisions of this section and determine not to rebuild the buildings. In the event of a decision not to rebuild the Board may nevertheless expend such of the insurance proceeds as may be necessary to remove the remains of buildings and place the site in condition required by any applicable governmental rule or regulation, or in such condition as the Board may determine is necessary to reasonably protect the owners from liability arising from the condition of the site, and the remaining funds shall thereafter be held and distributed as provided by statute.

9. Provisions Regarding Modification of Living Units-
Subdividing and Combining:

(a) An owner shall not, without first obtaining written consent of the Board (which consent or rejection shall be given within twenty (20) days of the owner's written request; failure of the Board to act within twenty (20) days shall be deemed consent) to make or permit to be made any structural alteration, improvement or addition in or to his individual living unit or in or to the exterior of the buildings or common or limited common areas. The owner shall do no act nor any work that will impair the structural soundness or integrity of the buildings or safety of the property or impair any easement or hereditament without the written consent of all owners.

(b) Subdivision and/or combining of any living unit or units, common areas and facilities or limited common areas and facilities are authorized only as follows: Any owner of a living unit or living units may propose to every other living unit owner a plan in writing for subdividing and/or combining, together with complete plans and specifications for accomplishing the same, prepared by a registered architect, engineer or surveyor, and a proposed amendment to the Declaration covering such subdividing or combining. Upon written approval of such proposal and signature of the amendment to the Declaration by every other owner, the owner making the proposal may proceed according to such plans and specifications. The changes in the Survey map, Plans and Declaration shall be placed on record as amendments to the Survey Map, Plans, and Declaration of Condominium. This section is subject to Section 12 hereof.

10. Board of Directors of the Association-Composition,
Election, Term, Proceedings, Rights and Powers
of Declarant.

(a) COMPOSITION: The Board of Directors of the Diana Court Owners' Association shall be composed of five living unit owners. Individual owners, general partners of partnerships, and officers of corporations with ownership interest may be elected to and serve on the Board. During the period of time Declarant retains any unsold living units, one of the Declarant's officers, shall, at Declarant's request, be a member of the Board.

(b) ELECTION: At each annual meeting of the Diana Court Owners' Association, subject to the provisions of sub-paragraphs (a) and (f) of this section, the owners

shall elect directors to replace those whose terms have expired; provided, however, that the first Board elected hereunder shall be elected at a special meeting duly called by Declarant, said Board to serve until the first annual meeting held thereafter.

(c) **TERM:** Members of the Board of Directors shall serve for a term of two years, provided that three of the five members of the first Board elected shall serve for a one year term. The other two shall serve for a two year period. The members of the Board shall serve until their respective successors are elected, or until their death, resignation or removal; provided that if any member ceases to be an owner, his membership on the Board shall thereupon terminate. In the event of a vacancy occasioned by any cause other than removal, the remaining Board members may select a replacement Board member who may serve until the next annual meeting or until any special meeting called to elect a new Board member.

(d) **REMOVAL:** Subject to the provisions of subparagraphs (a) and (f) hereof, any Board member may be removed from membership on the Board and a successor may be elected for the unexpired term by a vote of the owners at a special meeting called for such purpose; provided that unless the entire Board is removed, an individual member shall not be removed if the number of votes cast, at any such meeting, against his removal exceeds twenty percent of the total voting power at such meeting.

(e) **PROCEEDINGS:** Three members of the Board shall constitute a quorum and, if a quorum is present, the decision of a majority of those present shall be the act of the Board. From its membership the Board shall elect a president of the Board and of the Association who shall preside over both its meetings and those of the owners. The Board shall additionally elect a vice president, a secretary and a treasurer. The latter two offices may be combined and a Manager may perform the functions of these offices under the direction of the president if the Board so directs. Meetings of the Board may be called, held and conducted in accordance with this Declaration and such By-Laws and regulations as the Board may adopt. The Board may also act without a meeting by unanimous written consent of its members as evidenced by their signature upon any minutes or resolutions of the Board.

(f) **DECLARANT MAY PERFORM ALL BOARD FUNCTIONS:** Until a date five years from the date of recording this Declaration, or until one year after all units have been sold and occupied, whichever is sooner, all of the rights, duties and functions of the Board and manager shall, at Declarant's option, be exercised solely and entirely by Declarant, or may be transferred to a Board elected as provided in this paragraph at such prior time as Declarant may determine. The Declarant may, but shall not be required to, hold elections and constitute an advisory board composed, insofar as reasonably possible, as provided in subparagraph (a) while continuing to exercise the powers of the Board for the term provided herein. To carry out this provision Declarant may, from and after the date of recording hereof, adopt and enforce temporary by-laws, rules and regulations for the Diana Court Owners' Association; may give notices and call meetings; determine, assess, collect, receive and expend assessments and Association funds; hire a manager or other employees or service agencies as required; purchase supplies and equipment and determine maintenance and other policies; set up and constitute Association books and accounts, and generally exercise all powers necessary to carry out the provisions of this Declaration and manage itself, or through employed management, the Condominium development. Acceptance of an interest in living units described in this Declaration indicates acceptance of this management authority in Declarant for the initial period of Condominium operation and development indicated above, and in carrying out the same the Declarant is entitled to the powers, indemnities and protections set forth in this Declaration for the Board.

11. By-Laws: By-laws for the administration of the Diana Court Owners Association and the development, and for other purposes not inconsistent with the Condominium Act or with the terms or intent of this Declaration, shall be adopted by an affirmative vote of a majority of the owners of the living units at a meeting to be called and held for that purpose. Notice of the time, place and purpose of such meeting shall be delivered to each owner at least ten days prior to such meeting. Amendments to the by-laws may be adopted by the same vote at a meeting similarly called.

12. Amendment of Declaration, Survey Map, Plans:

(a) Amendments to the Declaration shall be made in an instrument in writing entitled "Amendment to Declaration of Diana Court Condominium" which sets forth the entire amendment. Notice of any proposed amendment must be given to all owners of living units as provided herein and any proposed amendment must be approved prior to its adoption by a majority of the Board of Directors of the Diana Court Owners' Association. Amendments may be adopted at a meeting of the owners if sixty percent (60%) in percentage interest of the owners vote for such amendment, or without a meeting if such sixty percent (60%) interest consent in writing to such amendment. In all events, the amendment shall bear the signature of the president of the Board of the Diana Court Owners' Association and shall be attested to by the Treasurer, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments when properly adopted shall be effective upon recording in the office of the Thurston County Auditor. Any amendment changing the values and percentage of the interest expressed herein shall require the unanimous consent of the living unit owners. It is specifically covenanted and understood by all parties accepting an ownership interest in living units under this Declaration that any amendment to this Declaration properly adopted will be 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.

(b) Subject to the provisions of Section 9 hereof, the survey map and plan shall be amended by filing an amendment to the Declaration as provided in (a) above. Copies of any proposed amendment to the survey map and Declaration shall be made available for the examination of every owner. Such amendment to the survey map and Declaration shall be effective, once properly adopted upon recording in the office of the Thurston County Auditor.

13. Amendment by Declarant Regarding Living Unit Configuration:

Notwithstanding the provisions of Section 9 and 12 of this Declaration, the Declarant may alter the configuration of unsold living units to add or subtract rooms, provided that the percentage of interest of living units already sold is not modified, their assessments increased or voting rights affected. In furtherance of the authority granted herein, the Declarant may at any time record an amendment to this Declaration and any required amendments to the Survey Map and the owners of the living units shall not unreasonably withhold their approval of such amendment or amendments.

14. Common Expenses, Assessments:

Amendment, Fee No. 8403070130, Volume 1238, Page 641-642, records of the Thurston County Auditor, dated the 7th day of March, 1984, setting a "fiscal year" and re-defining the method of allocating assessments.

Amendment, Fee No. 9204230145, Volume 1935, Pages 483-485, records of the Thurston County Auditor, dated the 23rd day of April, 1992, adding paragraph (f) to conform this Declaration with Chapter 43, Laws of 1989, codified as RCW 64.34.

(a) Within thirty (30) days prior to the beginning of each calendar fiscal year, the Board shall estimate the net charges to be paid during such year (including a reasonable provision for contingencies and replacements and less any expected income and any surplus from the prior year's fund). Said "estimated-cash-requirement" shall be assessed to the owners pursuant to the percentages set forth in this Declaration. In establishing each unit's share of the "estimated cash requirements", some cost will be allotted evenly, others by unit square footage, as the Board deems appropriate. If said sum estimated proves inadequate for any reason, including nonpayment of any owner's assessment, the Board may at any time levy a further assessment, which shall be assessed to the owners in like proportions, unless otherwise provided herein. Each owner shall be obligated to pay assessments made pursuant to this paragraph to the Board in equal monthly installments on or before the first of each month during such year, or in such other reasonable manner as the Board shall designate.

(b) The rights, duties and functions of the Board set forth in this paragraph shall be exercised by Declarant for the period ending thirty (30) days after the election of the first Board hereunder.

(c) All funds collected hereunder shall be expended for the purposes designated herein.

(d) The omission by the Board, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the owner from the obligation to pay 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. Amendments to this paragraph shall be effective only upon unanimous written consent of the owners and their mortgagees. No owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas or by abandonment of his living unit.

(e) The Board or Manager shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common area, specifying and itemizing the maintenance and repair expenses of the common area and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by the owners at convenient hours of week days at the offices of the Board, or Declarant, as established in the By-Laws.

(f) The Board, with the concurrence of the membership of the Association, is hereby authorized to delegate to Vista Village Recreation and Maintenance Association, formerly Panorama Park Recreation and Maintenance Association, as referred to in Paragraph 21, below, all of the powers enumerated in Section 3-102 of the Washington Condominium Act (now codified as RCW 64.34) which are currently exercisable by the Board on terms to be negotiated or as authorized by the BYLAWS of the Association. (d. 30. 30d)

15. Default in Payment of Assessments - Collection -

Notice of Obligations:

(a) Each monthly assessment and each special assessment shall be a joint and several obligation of the owner or owners of living units for which the same are assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment, whether regular or special, assessed to the owner of any living unit and the unit, plus interest at the highest contractual rate, and costs, including reasonable attorney's fees, shall be a lien upon such living unit. The said lien for payment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except as provided in RCW 64.32 200(2).

(b) A certificate executed and acknowledged by the treasurer or the president of the Board or by the Manager if neither the president nor treasurer is available, stating the indebtedness or lack thereof secured by the lien upon any living unit created hereunder shall be conclusive upon the Board and the Association as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any owner or any encumbrancer or prospective encumbrancer of a living unit within a reasonable time after request, in recordable form, at a reasonable fee, not to exceed Ten Dollars (\$10.00). Any encumbrancer holding a lien on a living unit may pay any unpaid common expenses payable with respect to such living unit and upon such payment such encumbrancers shall have a lien on such living unit for the amounts paid of the same rank as the lien of his encumbrance.

(c) Security Deposit. A living unit owner may, from time to time, be required, by the Board to make a security deposit not in excess of three months' estimated monthly assessments, which may be collected as are other assessments. Such deposit shall be held in a separate fund, credited to such owner, and resort may be had thereto at any time when such owner is ten (10) days or more delinquent in paying his monthly or other assessment.

(d) Foreclosure of Assessment Lien - Attorney's Fees and Costs. The Declarant, while exercising the authority of the Board as provided herein, Manager, or Board on behalf of the Owners' Association may initiate action to foreclose the lien of any assessment. In any action to foreclose a lien against any living unit for non-payment of delinquent assessments, any judgment rendered against the owners or when in favor of the Association shall include a reasonable sum for attorney's fees and all costs and expenses reasonably incurred in preparation for or in the prosecuting of said action, in addition to taxable costs permitted by law. The Board, Manager, or Declarant shall have the power to bid in the condominium at foreclosure or other sale and to hold, lease, mortgage and convey the condominium.

(e) From the time of filing any action to foreclose a lien against any apartment for non-payment of delinquent assessments, the owner of such apartment shall pay to the Association the reasonable rental value of said living unit to be fixed by the Board of the Association and the plaintiff in any such foreclosure shall be entitled to the appointment of a receiver to collect the same, who may, if said rental is not paid, obtain possession of the living unit, refurbish it for rental up to a standard for rental units in this type of building, rent or permit the rental to others and apply rents first to costs of the receivership and attorney's fees thereof, then to cost of refurbishing the unit, then to public charges, then to the Association to pay delinquent assessment charges.

(f) Termination of Utility Services. In Addition to and not by way of limitation upon other methods of collecting any assessment, the Board shall have the right, after having given ten (10) days' notice to any living unit owner who is delinquent in paying his assessments, to cut off any or all utility services to the delinquent owner's living unit until such assessments are paid

(g) If a living unit is rented by its owner, the Board may collect and the tenant or lessee shall pay over to the Board so much of the rent thereof as is required to pay any amounts due the Board hereunder, plus interest and costs, if the same are in default over thirty days. The renter or lessee shall not have the right to question payment over to the Board, and such payment will discharge the lessee's or renter's duty of payment to the owner but will not operate to discharge the continuing obligations of the owner under this Declaration for assessments, or operate as an approval of the lease. The Board shall not exercise this power where a receiver has been appointed.

(h) The remedies provided are cumulative and the Board may pursue them concurrently, as well as any other remedies which may be available under law although not expressed herein.

16. Mortgage Protection: Notwithstanding all other provisions hereof, the liens created hereunder upon any living unit for assessments shall be subject and subordinate to, and shall not affect the rights of the holder of, any indebtedness secured by mortgages or deeds of trust upon the Living Unit made in good faith and for value, provided that after the foreclosure of any such mortgage or deed of trust there may be a lien created pursuant to the provisions hereof upon the interest of the purchaser at such sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an owner after the date of such sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein, all as provided in RCW 64.32.200.

17. Failure of Board to Insist on Strict Performance
- No Waiver:

The failure of the Board of Manager to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, 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 or Manager of any assessment from any owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Board or Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board or Manager. This section also extends to the Declarant's exercising the powers of the Board during the initial period of operation of the Owners' Association and the Condominium development.

18. Limitation of Board and Association Liability:

The Board shall not be liable for any failure of any utility or other service to be obtained and paid for the by the Board hereunder, or for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside from outside or from any parts of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment or from any other place. No diminution

or abatement of common expense 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 order of a governmental authority. This exemption extends to the entire Owners' Association as well as the Board. This section shall not be interpreted to impose any form of liability by any implication upon the Board or the Association. This section also extends to the Declarant's exercising the powers of the Board during the initial period of operation of the Association and Condominium development.

19. Indemnification of Board Members:

Each member of the Board shall be indemnified by the owners against all expenses and liabilities including attorney's 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 member of the Board, or any settlement thereof, whether or not he is a member of the Board at the time such expenses are incurred, except in such cases wherein the member of the Board is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association. This section shall apply also to the Declarant's exercising the powers of the Board during the initial period of operation of the Owners' Association and Condominium development.

20. Association Property:

The Board or Manager 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 interest therein, and may dispose of the same by sale or otherwise, and the beneficial interest in such personal 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 may direct. The Board shall not, however, in any case acquire real property or personal property valued in excess of Five Thousand Dollars (\$5,000.00) by lease or purchase except upon a majority vote of the owners.

Within thirty (30) days following the termination of Declarant's right to exercise the powers of the Board under this Declaration, the Declarant shall execute and deliver an appropriate document transferring title to the Board in behalf of all the owners, transferring any property located on the development and furnished by the Declarant, which property is intended for the common use and enjoyment of the owners.

Nothing herein shall authorize the Board or Owners' Association to carry on any business for profit.

Amendment, Fee No. 8403070130, Volume 1238, Page 641-642, records of the Thurston County Auditor, dated the 7th day of March, 1984, all references to Panorama Park are changed to read Vista Village.

21. Membership in ~~Panorama Park~~ Vista Village
Recreational and Maintenance Association

Every person or entity acquiring an ownership interest in a living unit under this Declaration shall become a member of the Vista Village Recreational and Maintenance Association, and by acquiring said ownership interest shall become bound by the rules and regulations and By-Laws of said Association as established by the Board of Directors of the Vista Village Recreational and Maintenance Association; and further, said purchasers acknowledge that the benefits of membership in the Vista Village Recreational and Maintenance Association are covenants running with the land and that membership in said Association may be terminated only by selling the ownership interest created under the Declaration.

Membership in the Vista Village Recreational and Maintenance Association shall include the obligation to pay dues and assessments as established by the Board of Directors of said Association according to the By-Laws of the Vista Village Recreational and Maintenance Association.

Turn Key Development, Inc., may from time to time convey to Vista Village Recreation and Maintenance Association, a non-profit Washington corporation, certain property and rights to be used and enjoyed as common facilities for the benefit of the members of the Vista Village Recreation and Maintenance Association. There shall be one membership in the Vista Village Recreation and Maintenance Association for each condominium living unit. Each membership for a condominium living unit shall be appurtenant to the title and shall be transferable only as a part of the transfer of the title of the condominium living unit. Each such membership shall entitle the owners of the condominium living unit, the residents thereon and their families to enjoy the facilities of the Association, subject to the rules, regulations, payments, and by-laws as may now or hereinafter be established by the Association, which rules, regulations, payments and by-laws shall apply equally to all memberships. Memberships in the Vista Village Recreation and Maintenance Association shall be available to the incorporators and the fee owners or contract purchasers of any condominium living unit located in (1) Diana Court Condominium and (2) the approximate 105 acres adjacent to Diana Court, described in that certain option entered into by Turn Key Development, Inc., on February 24, 1972, as such property may hereafter be developed by Turn Key Development, Inc., into a series of condominiums and which, if so developed, shall be known as "Vista Village, Long Lake Condominium Community."

Portions of the real property, if any, used by the Vista Village Recreation and Maintenance Association shall not be subject to the restrictions elsewhere imposed herein but shall be used for common service facilities as the Vista Village Recreation and Maintenance Association deems advisable for the benefit of its members. By accepting conveyances of condominium living units from Turn Key Development, Inc., its assigns and successors, the Vista Village Recreation and Maintenance Association and its members agree to comply with the provisions of this paragraph 21.

In order to provide for recreation, maintenance and improvements of its various properties, if any, each grantee and vendee of condominium living units, their heirs, successors and assigns shall and do by the act of accepting a deed or entering into a contract of sale as vendee under this Declaration, jointly and severally agree that they and each of them shall pay to the Vista Village Recreation and Maintenance Association the dues and charges levied according to the by-laws of the Vista Village Recreation and Maintenance Association. In the event that such dues or charges remain unpaid to the Vista Village Recreation and Maintenance Association for a period of sixty (60) days after the due date, then the Association may record a written notice with the Auditor of Thurston County, Washington, that it claims a lien against the condominium living unit to which the membership is appurtenant for the amount of delinquent dues and charges together with interest at the rate of 10% per

annum from the due date until paid and attorneys' fees as herein provided. From and after recording such notice, the condominium living unit to which the membership is appurtenant shall be subject to the Vista Village Recreation and Maintenance Association as security for dues and charges in the amount designated therein with interest and attorneys' fees and such lien may be foreclosed in the manner of a mortgage of real property and in such foreclosure action, the Vista Village Recreation and Maintenance Association shall recover a reasonable sum as attorneys' fees therein and the reasonable and necessary costs of searching and abstracting the public record.

Notwithstanding all other provisions hereof, the liens created hereunder upon any condominium living unit for assessments shall be subject and subordinate to and shall not affect the rights of the holder of any indebtedness secured by mortgages or deeds of trust upon the living unit made in good faith and for value, and/or any lien which may be established under paragraph 14 or 15 of this Declaration, provided that after the foreclosure of any such mortgage or deed of trust, or lien established under paragraph 14 or 15, there may be a lien created pursuant to the provisions hereof upon the interest of the purchaser at such sale to secure all assessments, whether regular or special, assessed under the by-laws of the Vista Village Recreation and Maintenance Association to such purchaser as an owner after the date of such sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as a mortgage on real property.

~~22. Right of First Refusal:~~

Amendment, Fee No. 8511010040, Volume 1372, Page 31, records of the Thurston County Auditor, dated the 1st day of November, 1985, to delete all reference to the "Right of First Refusal".

~~----- Right of First Refusal: The Board or its assignee, for the benefit of all owners shall have the right of first refusal in the event any owner of a living unit shall wish to sell, rent or lease said living unit. The terms and conditions of said right of first refusal shall be as set out in the by-laws of the Association, as adopted and amended from time to time.~~

Amendment, Fee No. 9204230145, Volume 1935, Pages 483-485, records of the Thurston County Auditor, dated the 23rd day of April, 1992, to define the Board of Directors.

The Board of Directors of Vista Village Recreation and Maintenance Association shall consist of the Presidents (or Chairmen) of the Board of Directors of each condominium composing the Vista Village condominium community. All members of the Board of Directors of each condominium subject to or comprising the membership of Vista Village, by electing its own President or Chairman, shall be deemed to have elected its representative to that Board of Directors.

Amendment, Fee No. 9204230145, Volume 1935, Pages 483-485, records of the Thurston County Auditor, dated the 23rd day of April, 1992, to define, by adding a new paragraph (22), the Vista Village Condominium Community as a community with "Adult Status" within the definition of the Federal Fair Housing Act; and, to add a new paragraph (23) thus conforming this Declaration with RCW 64.34. The following paragraphs are renumbered to maintain numerical sequence.

22. Adult Community Status: The Fair Housing Act as it now stands or may hereafter be amended is hereby incorporated into this Declaration by reference, it being the intent to maintain an adult community status by maintaining an 80% or more occupancy rate of all living units by at least one person 55 years of age or older. Significant facilities and

services have been specifically designated to meet the physical or social needs of older persons. Primary responsibility for promulgation of policies and procedures regarding fair housing for older persons and publication of such policies and procedures and giving of adequate notice shall be with the Board of Directors, however, these responsibilities may be delegated to Vista Village Recreation and Maintenance Association, acting as a master association, under delegation of authority provided for under Paragraph 14(f).

23. This Declaration of Covenant, Conditions and Restrictions, together with the foregoing and prior amendments, is further amended to acknowledge the applicability of Sections 1-105, 1-106, 1-107, 2-103, 2-104, 3-102(1)(a) through (f) and (k) through (r), 3-112, 3-117, 3-119, 4-107, 4-115, and 4-103 of the Washington Condominium Act (Chapter 43, Laws of 1989, 51st Legislative Regular Session), but only with respect to events and circumstances occurring after July 1, 1990, the effective date of the Act, and such sections do not invalidate or supersede the existing, inconsistent provisions of the Declaration, By-Laws or survey maps and plans of this condominium. *(See Page in front of this book)*

24. Enforcement: Each owner shall comply strictly with the provisions of this Declaration and with the administrative rules and regulations, and failure to comply shall be grounds for an action to recover sums due for damages, or injunctive relief, or both, maintainable by the Board or Manager on behalf of the owners, or in the proper case, by an aggrieved owner.

25. Interpretation: The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium development.

26. Severability: The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

27. Effective Date: This Declaration shall take effect upon recording.

28. Reference to Survey Map and Plans: The floor plans of the building referred to herein were filed with the Auditor of Thurston County, Washington, simultaneously with the recording of this Declaration under Auditor's File No. 948930, in Volume 1 of Condominiums, Pages 52-53.

29. Captions. The captions in this Declaration are inserted only as a matter of convenience and for reference and are in no way intended to define, limit, or describe the scope of this Declaration nor the intent of any provisions hereof.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 8th day of October, 1975.

TURN KEY DEVELOPMENT, INC.

By: /s/ Fred G. Thunberg,
Its President

By: /s/ Harold L. Hull ___
Its Secretary

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EXPEDITE
 Hearing is set:
Date: 9/16/16
Time: 9:00 a.m.
Judge/Calendar: Hon. Mary Sue Wilson
 No Hearing is set

E-FILED
SUPERIOR COURT
THURSTON CO., WA
July 21, 2016
Linda Myhre Enlow
Thurston County Clerk

SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

DONALD LEO,
Plaintiff,

NO. 16-2-00490-34

v.
DIANA COURT OWNERS ASSOCIATION,
an unincorporated association and VISTA
VII LAGE RECREATION AND
MAINTENANCE ASSOCIATION, a not-for-
profit corporation,
Defendant.

DECLARATION OF DONALD LEO IN
SUPPORT OF MOTION FOR PARTIAL
SUMMARY JUDGMENT

1. My name is Donald Leo. I am over 18 years of age and competent to testify as to all matters set forth herein.

2. I own a condominium located in the Diana Court Condominiums. I purchased that condominium in 1999. I have been living in that condominium ever since.

3. I am a member of the Diana Court Condominium Owners' Association. Between 2002 and 2011, and again in 2014-2015, I sat on the Diana Court Homeowners' Association Board. Between 2004 and 2008, and again in 2014-2015, I was President of the Diana Court Condominium Owners' Association.

DIANA COURT CONDOMINIUMS

4. The Diana Court Condominiums were established when the original developer, Turn Key Development, Inc., a Washington corporation, recorded a Declaration of Covenants, Conditions and Restrictions Condominium Plan of Diana Court on October 8, 1975 with the Thurston County Auditor under Thurston County Auditor filing number 948931. A true copy of the Declaration of Covenants, Conditions and Restrictions Condominium Plan of Diana Court,

DECLARATION OF DONALD LEO IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT - 1 -

OWENS DAVIES, P.S.
1115 West Bay Drive, Suite 302
Olympia, Washington 98502
Phone: (360) 943-8320
Facsimile (360) 943-6150

1 with all amendments thereto, as produced by the Defendants in response to a discovery request,
2 is attached to this Declaration as Exhibit A.

3 5. The Diana Court Owners' Association is an unincorporated entity created by the
4 Diana Court Declaration. Its members consist of all persons owning a condominium unit in
5 Diana Court. See Exhibit A (Diana Court Declaration, ¶ 7).

6 6. In addition to the Declaration, Diana Court is governed by a set of by-laws. A
7 true copy of the by-laws, as they were adopted in the early 1990s and have been in force since, is
8 attached to this Declaration as Exhibit B.

9 VISTA VILLAGE RECREATION AND MAINTENANCE ASSOCIATION

10 7. The original developer of the Diana Court Condominiums developed five
11 condominiums that are located adjacent to one another. These condominiums include Athena
12 Court, Bacchus Court, Calypso Court, Diana Court, and Electra Court.

13 8. The developer established each of these condominiums by recording a separate
14 declaration governing each court in the 1970s. Each of the declarations establishes a Court
15 Owners' Association to exercise the rights, privileges and responsibilities arising under the
16 respective Courts' declarations.

17 9. The Vista Village Recreation and Maintenance Association (hereinafter
18 "VVRMA") is a not for profit corporation, the members of which are condominium unit owners
19 from each of the five condominiums. The Board of the VVRMA consists of the presidents of the
20 Board of each of the five Condominium Owners' Associations.

21 10. Each of the five Owners' Associations, including the Diana Court Owners'
22 Association, has delegated to the VVRMA the right to collect dues and assessments associated
23 with the maintenance of the condominium units. The VVRMA has, in turn, accepted a
24 responsibility for performing necessary maintenance and repair work for all five condominiums.
25 See Leo Declaration, Exhibit A (Diana Court Declaration, ¶ 21).

26 ~~The VVRMA is attempting to enforce bylaws that have not been approved by the Diana
Court Condominium Owners' Association against the members of Diana Court.~~

11. The Diana Court Declaration contains the following provision governing bylaws:

1 By-laws: By-laws for the administration of the Diana Court Owners' Association
2 and the development, and for other purposes not inconsistent with the
3 condominium act or with the terms or intent of this Declaration, shall be adopted
4 by an affirmative vote of the majority of the owners of the living units at a
5 meeting to be called and held for that purpose. Notice of the time, place and
6 purpose of such meeting shall be delivered to each owner at least 10 days prior to
7 such meetings. Amendments to the by-laws may be adopted by the same vote at a
8 meeting similarly called.

9 12. In early 2014, the VVRMA proposed amendments to the bylaws applicable to
10 each of the condominium owners' associations in Vista Village. A true copy of these 2014
11 proposed bylaws is attached to my declaration as Exhibit C and incorporated by reference herein.

12 13. Diana Court held a vote on these proposed bylaws. The members of the Diana
13 Court Owners' Association voted 9-3 against adopting the proposed bylaws.

14 14. Because these proposed amended bylaws purported to affect all five Vista Village
15 courts, including Diana Court, and because Diana Court had voted to reject the proposed
16 amended bylaws, the VVRMA recognized that these proposed bylaws had NOT been validly
17 adopted. Diana Court, as well as the other court associations in Vista Village, continued to
18 function under the old set of bylaws.

19 15. In fall 2015, the VVRMA proposed a new set of amendments to the bylaws
20 applicable to each of the Condominium Owners' Associations. A true copy of the proposed new
21 bylaws, as produced by the Defendants, in response to a discovery request, is attached to this
22 Declaration as Exhibit D.

23 16. Prior to the proposed amendment, Article V of the bylaws governing
24 "Amendments" provided:

25 These amended and restated by-laws, or any part thereof, may be altered or
26 amended by a Court board after referral and consideration by all Court boards,
 and, with the concurrence of two other Court boards, subject to the power of all
 owners to change or repeal such by-laws by a majority vote at any general
 meeting or at any other meeting of all owners called for that purpose.

 See Exhibit B.

 17. The proposed 2015 amendment to the bylaws changed this Article to read as
 follows:

1 These amended and restated by-laws, or any part thereof, may be amended by the
2 approval of three out of the five COAs after one COA has voted its approval and
3 made recommendations to the other COAs. Each COA shall vote within 30 days
4 according to Section 11 of its Declarational Covenants, Conditions and
5 Restrictions as identified in Article 1, Section 1 above. This is subject to the
6 power of all owners to approve, change or repeal such by-laws by a majority vote
7 at any general meeting or at any other meeting of all owners called for that
8 purpose.

9 See Exhibit D.

10 18. Thus, the 2015 proposed amended bylaws purport to institute a system whereby
11 changes to the bylaws will be effective as against the members of each of the five condominium
12 owners' associations if the members of three other condominium owners' associations had voted
13 to approve the bylaws, **even though the members of the Diana Court Owners' Association**
14 **had not approved the amended bylaws.**

15 19. Diana Court, under my leadership as its then Board President, pointed out and
16 took the position that this proposed amendment to the bylaws deprived the members of Diana
17 Court of their rights as granted by the Diana Court Declaration. Paragraph 11 of the Diana Court
18 Declaration explicitly requires changes to the bylaws to take effect only if approved by a
19 majority of the owners of living units within Diana Court. But this proposed amendment to the
20 bylaws purports to authorize the members of three of the other court owners' associations to
21 impose changes to the bylaws applicable to Diana Court, regardless of whether a majority of the
22 unit owners within Diana Court had voted to approve the amended bylaws. Therefore, Diana
23 Court refused to hold a vote on the 2015 proposed amended bylaws on the grounds that the
24 proposed amended bylaws were inconsistent with the rights reserved to Diana Court unit owners
25 under the Diana Court Declaration, and therefore could not be enforced even if they were
26 approved.

27 20. Despite this, based on the claim that the members of the other court owners'
28 associations had voted to approve the proposed 2015 amended bylaws, the VVRMA is taking the
29 position that these bylaws are effective and enforceable, including against the members of Diana
30 Court.

1 21. In sum, (1) the Diana Court Declaration explicitly provides that changes to the
2 bylaws applicable to Diana Court condominium owners are only adopted when approved by a
3 majority vote of the members of the Diana Court Condominium Owners' Association; (2) the
4 Declaration controls over any inconsistent provision of the bylaws; (3) the proposed amended
5 bylaws have not been effectively adopted in the manner specified in the Declaration; and (4) the
6 proposed amended bylaws cannot be enforced against Diana Court or any of its condominium
7 owners.

8 22. The Court should enter a Declaratory Judgment determining that the 2015
9 proposed amended bylaws cannot be enforced against any member of the Diana Court
10 Condominium Owners' Association.

11 THE VVRMA WRONGFULLY REQUIRES UNIT OWNERS TO PAY
12 INDIVIDUALLY FOR THE COST OF REPAIRING LIMITED COMMON ELEMENTS

13 23. Paragraph 14 of the Diana Court Declaration (Exhibit A to this Declaration)
14 addresses the issues of common expenses and assessments:

15 Common Expenses, Assessments:

16 Within thirty (30) days prior to the beginning of each fiscal year, the Board shall
17 estimate the net charges to be paid during such year, including a reasonable
18 provision for contingencies and replacements (less any expected income in any
19 surplus from the prior year's fund) In establishing each unit's share of the
"estimated cash requirements", some costs will be allotted evenly, others by unit
square footage, as the Board deems appropriate. . . .

20 24. The Diana Court Declaration thus imposes the expense associated with the
21 operation, maintenance, repair and replacement of all common areas (including limited common
22 areas) upon the unit owners as a whole. Nothing in the Diana Court Declaration authorizes the
23 Diana Court Condominium Owners' Association (or the VVRMA as the Condominium Owners'
24 Associations' deleguee) to impose operation, maintenance, repair or replacement costs associated
25 with the limited common areas upon individual unit owners.

26 25. Despite this, the Diana Court Condominium Owners' Association, acting through
its designee, the VVRMA, has over my objection (and in my view illegally) purported to require
individual condominium unit owners to pay 100% of the cost of repairing common areas. The

1 VVRMA has imposed the cost of repairing common areas such as exterior siding, roofing, frozen
2 water pipes, gutters, and covered walkways upon individual unit owners. An Excel spreadsheet
3 identifying those instances in which the VVRMA has engaged in such conduct since the
4 beginning of 2012 is attached to this Declaration as Exhibit E.

5 26. In particular, in 2015 the VVRMA decided that the gutters on the covered space
6 where two other unit owners and I have designated parking spots should be replaced. The
7 VVRMA has attempted to impose the cost of replacing these gutters solely upon the three unit
8 owners.

9 27. I have refused to pay for these repairs to this limited common area on the grounds
10 that this is an expense that should be born by the Diana Court Condominium Owners'
11 Association as a whole. The VVRMA has refused to undertake what it acknowledges to be
12 needed maintenance and repair of this common area unless and until I and the other unit owners
13 agree to the VVRMA's illegal demand that we bear the entire cost of these repairs.

14 28. The VVRMA's position, and actions, in this regard are contrary to what is
15 provided by and required in the Diana Court Declaration.

16 29. The Court should enter a Declaratory Judgment declaring that the Diana Court
17 Board must pay for the operation, maintenance, repair and replacement of all common areas,
18 including limited common areas, and that it must fund the cost share of such work by imposing
19 assessments upon all unit owners, all as provided under state law and the Diana Court
20 Declaration

21 I declare under penalty of perjury under the laws of the State of Washington that the
22 foregoing is true and correct.

23 DATED this 21 day of July, 2016, at Olympia, Washington.

24
25
26
Donald Leo

DECLARATION OF DONALD LEO IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT - 6 -

OWENS DAVIES, P.S.
1115 West Bay Drive, Suite 302
Olympia, Washington 98502
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The DIANA COURT Declaration was originally filed with the Thurston County Auditor, Olympia, Washington, under filing reference #948931, October 8, 1975, Volume 709, Pages 125-137, and is annotated to reference all amendments through April, 1992.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
CONDOMINIUM PLAN OF DIANA COURT

This declaration of Covenants, Conditions and Restrictions, hereinafter called "Declaration" is made and executed in Olympia, Thurston County, Washington, this *8th day of October, 1975*, by TURN KEY DEVELOPMENT, INC., a Washington corporation, hereinafter called "Declarant" pursuant to the provisions of the RCW 64.32 Horizontal Property Regimes Act (Condominiums);

WITNESSETH.

WHEREAS, Declarant is the owner of certain real property described as follows:

The Condominium Plan of Diana Court comprises:

A tract of land in government lots #6 of Section 26, Township 18 N, Range 1 W.W.M particularly described as follows, and being in Thurston County, Washington

BEGINNING at the NW corner of said Government Lot #6, thence S 0° 15' 04" W along the west side of said government lot 484.49 ft. to the true point of beginning described tract; thence S 89° 44' 56" E 395.43 ft; thence S 0° 15' 14" W 25.00 ft; thence S 61° 30' 0" E 128.00 ft; thence S 6° 38' 41" E 347.93 ft; thence N 89° 44' 56" W 550.00 ft. to the West line of government Lot #6; thence N 0° 15' 04" E 430.00 ft. along the West line of said government lot to the true point of beginning.

Described tract contains 5.04 acres more or less.

WHEREAS, Declarant is the owner of certain living units and certain other improvements heretofore constructed or hereafter to be constructed upon the aforesaid premises which property constitutes a "Condominium Development" under the terms of the Washington State Horizontal Property Regimes Act, and it is the desire and the intention of the Declarant to divide the development into condominiums and to sell and convey the same to various purchasers, subject to the covenants and restrictions herein reserved to be kept and observed; and

WHEREAS, on the *10th day of October, 1975*, Declarant filed for record in the office of the Thurston County Auditor, State of Washington a certain instrument entitled, "Record of Survey Map of Diana Court" hereinafter referred to as "Map," and

WHEREAS, Declarant desires and intends by filing this Declaration and the aforesaid Map to submit the above described property and the Living Units and other

improvements constructed thereon, together with all appurtenances thereto, to the provisions of the aforesaid Act as a condominium development and to impose upon such property mutually beneficial restrictions under a general plan of improvement for the benefit of all of said condominiums and the owners thereof.

NOW, THEREFORE, the Declarant does hereby publish and declare that all of the property described above is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions, restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into condominiums, and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns and any person acquiring or owning an interest in the real property and improvements their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. **Definitions.** Certain terms as used in this Declaration shall be defined as follows, unless the context clearly indicates a different meaning therefor:

(a) "Declarant" shall mean TURN KEY DEVELOPMENT, INC., the developer of Diana Court.

(b) "Declaration" shall mean this instrument by which Diana Court is established as provided for under the Horizontal Property Regimes Act.

(c) "Development" or "Property" shall mean the land, the building, all improvements and structures thereon, all owned in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, and all easements, rights and appurtenances belonging thereto, none of which shall be considered as a security or security interest, and all articles of personality intended for use in connection therewith, which have been or are intended to be submitted to the provisions of RCW 64.32 by this Declaration.

(d) "Map" shall mean the Record of Survey Map of Diana Court filed of record herewith by Declarant.

(e) "Living Unit" or "Apartment" shall mean the elements of a condominium which are not owned in common with the owners of other living units in the development as shown on the Map, including the decorated surfaces of the perimeter walls, floors, ceilings, windows and doors bounding the Living Units.

(f) "Common Area" shall mean all land and all portions of the property not located within any Living Unit, and also includes, but not by way of limitation, patios, gardens, service streets, parking areas, recreational greens, and facilities, all installations of power, lights and water existing for common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use and control of all of the area within the legal description of the property on Page 1 of this Declaration.

(g) "Limited Common Area" shall consist of carports, carport storage pods, patios and the Living Unit foundation, columns, purlins, beams, supports, main walls, roofs, windows and entrances and ebits, as identified in the Survey Map recorded herewith. The use and enjoyment of these "Limited Common Area" shall be limited to "designated owners" as shown on the Map recorded herewith. Provided, however, that the use of the designated owner shall not interfere with the proper use of adjacent owners, particularly with reference to

carport areas to the end that the use of the limited common area shall not be so exclusive as to deprive other owners from the use and enjoyment of their portion of the "limited common areas."

(h) "Condominium" shall mean the entire estate in the real property owned by any owner, consisting of an undivided interest in the Common Area and ownership of separate interest in a Living Unit

(i) "Owner" shall mean any person with an ownership interest in a condominium in the development. A majority of owners shall be the owners with fifty-one percent, or more, of the votes in accordance with the percentage assigned in this declaration for voting purposes.

(j) "Board" shall mean the Board of Directors of the governing body of the Owners Association, elected pursuant to the By-Laws.

(k) "Manager" shall mean the person or firm designated by the Board to manage the affairs of the development.

(l) "Mortgage" shall mean a deed of trust as well as a mortgage

(m) "Mortgagee" shall mean a beneficiary under or holder of a deed of trust as well as a mortgagee.

(n) "Record" means to file of record with the office of the Thurston County Auditor, Olympia, Washington.

(o) "Condominium Act" shall mean the Horizontal Property Regimes Act (RCW 64.32).

(p) "Association" shall mean Diana Court Owners" Association.

(q) "Diana Court" means the property above described and hereby established as a condominium development pursuant to RCW 64.32.

2. Description of Condominium Buildings: Seven triplex living units within Diana Court, located and numbered 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, and 61 on the Survey Map referred to herein; all seven six room units, seven seven room units, and seven seven room units with fireplace, each of the above named units having a separate enclosed one car garage. These living units are one story and are principally constructed of wood and plaster with masonry exteriors, and said living units have access to and use of the common areas and limited areas as set forth hereinafter.

3. Description of Common Areas and Facilities The common areas and facilities consist of those specified in RCW 64.32.010(e) as well as the following: (1) the land above described, (2) the roadways and driving areas which provide access to the limited common areas for parking and to the living units, (3) the greens, landscaped areas and walkways which surround and provide access to the living units or are used for recreational purposes, and (4) the central courts, fence areas, grass and landscaped areas

Use of the common areas, and parking spaces shall be limited by the rules of the Board, which rules shall provide for use of a reasonable number of said spaces for guest park-

near convenient locations about the property. Until such time as all living units have initially been sold, declarant shall determine use, assignment and eventual disposition of all unassigned parking spaces.

4. Description of Limited Common Areas: The limited common areas and facilities consist of (1) the patio adjacent to each living unit, (2) the carports and carport storage pods adjacent to each living unit, (3) the living units' foundations, columns, girders, beams, supports, main walls, roofs, windows, entrances and exits and the walkways adjacent to living unit.

5. Certain Provisions Required by the Condominium Act: The total value of the property is SEVEN HUNDRED THIRTY SEVEN THOUSAND ONE HUNDRED DOLLARS (\$737,100.00). Said property is made up of seven six room units valued at thirty two thousand, five hundred dollars (\$32,500.00) each, seven seven room units valued at thirty four thousand, nine hundred dollars (\$34,900.00) each and seven seven room units valued at thirty seven thousand nine hundred dollars (\$37,900.00) each, together with the one car enclosed garages and common areas as shown on the survey map and building plans as filed and recorded herewith.

The buildings described herein and each living unit are intended for residential purposes only, but the accessory recreation structures and buildings, if any, may be used for such common social, recreational or other reasonable uses or purposes as are from time to time determined appropriate by the Board of Directors of the Diana Court Owners' Association. Living units or the buildings may be used for the purposes of operating the owners' association and for the management of the condominium.

Fred G. Thunberg, President of Turn Key Development, Inc. as agent for declarant shall receive any process, as provided by law, and the registered office for process shall be 1300 Carpenter Road, S.E., Olympia, Washington 98503. Upon the election of the first Board of Directors, service of process for the purposes provided in the condominium act shall be made upon the president of the Board of the owners' association.

The number, location, approximate area and number of rooms of each living unit, along with the immediate common area to which it has access are clearly shown and depicted on the Survey Map of Diana Court filed and recorded herewith as required by RCW 64.32.100.

6. Percentage of Interest Value of Unit:

Amendment, File No. 8403070130, Volume 1238, Pages 641-642, records of the Thurston County Auditor, dated the 7th day of March, 1984, to clarify interpretation of "percentage of interest value".

The following is a list of the various living units and the percentage of undivided interest in the common areas and the limited common areas as appurtenant to each. This percentage is to be utilized to determine allocation of assessments, for voting, and for all requirements or procedures of the condominium act based upon such percentage. This percentage of interest applied to the total value produces the value of the living units assigned to said unit for the purpose of the Declaration. This percentage is a relevant schedule for the purposes required for this Declaration and does not necessarily reflect what will, from time to time, be the market or sales price of the living units obtained by declarant or the owners hereof, and such market price will fluctuate and may be modified.

Condominium Plan of Diana Court
Auditors File No. 948931, Volume 586

Percentage of Ownership of each unit as an undivided interest in the Common Areas and facilities and for voting purposes as described herein:

<u>UNIT NO.</u>	<u>CARPORIT AND LIMITED COMMON AREAS NUMBER</u>		
41	\$29,900.00	41	4.00%
42	36,900.00	42	4.94
43	39,900.00	43	5.34
44	29,900.00	44	4.00
45	36,900.00	45	4.94
46	39,900.00	46	5.34
47	29,900.00	47	4.00
48	36,900.00	48	4.94
49	39,900.00	49	5.34
50	29,900.00	50	4.00
51	36,900.00	51	4.94
52	39,900.00	52	5.34
53	29,900.00	53	4.00
54	36,900.00	54	4.94
55	39,900.00	55	5.34
56	29,900.00	56	4.00
57	36,900.00	57	4.94
58	39,900.00	58	5.34
59	29,900.00	59	4.00
60	36,900.00	60	4.94
61	39,900.00	61	5.34

7. Membership - Diana Court Owners' Association: Every person or entity satisfactorily complying with the requirements for becoming a condominium living unit owner under the provisions of this Declaration and the By-Laws duly adopted by the Association, shall be a member of the Diana Court Owners' Association and shall have a percentage of interest in the condominium as provided for in paragraph 6 above.

8. Damage or Destruction: In case of fire, casualty or other disaster covered by the insurance policies carried by the Diana Court Owners' Association causing any damage or destruction to any living unit or common areas, the insurance proceeds shall be applied toward the reconstruction of the buildings. Reconstruction, as used in this paragraph means restoration of the buildings to substantially the same condition in which they were prior to the fire, casualty, or other disaster with each living unit and the common areas having the same vertical and horizontal boundaries as before; provided, modification conforms to then applicable governmental rules and regulations. Such reconstruction shall be accomplished by the Board, or the manager at the Board's direction, and it shall have the authority to employ an architect, advertise for bids and let contracts to contractors and others as required to effect the reconstruction. The Board may authorize the insurance companies to proceed with the

reconstruction upon satisfaction of the Board that such reconstruction will be appropriately carried out.

If the insurance proceeds are not sufficient to repair or reconstruct the building or buildings, damage to or destruction of the buildings shall nevertheless be promptly repaired and restored by the Board, utilizing available insurance funds, and all living unit owners shall be liable equally for assessment for any deficiency as a common expense.

A unanimous decision of the living unit owners will be required to avoid the provisions of this section and determine not to rebuild the buildings. In the event of a decision not to rebuild the Board may nevertheless expend such of the insurance proceeds as may be necessary to remove the remains of buildings and place the site in condition required by any applicable governmental rule or regulation, or in such condition as the Board may determine is necessary to reasonably protect the owners from liability arising from the condition of the site, and the remaining funds shall thereafter be held and distributed as provided by statute.

9. Provisions Regarding Modification of Living Units-
Subdividing and Combining:

(a) An owner shall not, without first obtaining written consent of the Board (which consent or rejection shall be given within twenty (20) days of the owner's written request; failure of the Board to act within twenty (20) days shall be deemed consent) to make or permit to be made any structural alteration, improvement or addition in or to his individual living unit or in or to the exterior of the buildings or common or limited common areas. The owner shall do no act nor any work that will impair the structural soundness or integrity of the buildings or safety of the property or impair any easement or hereditament without the written consent of all owners.

(b) Subdivision and/or combining of any living unit or units, common areas and facilities or limited common areas and facilities are authorized only as follows: Any owner of a living unit or living units may propose to every other living unit owner a plan in writing for subdividing and/or combining, together with complete plans and specifications for accomplishing the same, prepared by a registered architect, engineer or surveyor, and a proposed amendment to the Declaration covering such subdividing or combining. Upon written approval of such proposal and signature of the amendment to the Declaration by every other owner, the owner making the proposal may proceed according to such plans and specifications. The changes in the Survey map, Plans and Declaration shall be placed on record as amendments to the Survey Map, Plans, and Declaration of Condominium. This section is subject to Section 12 hereof.

10. Board of Directors of the Association-Composition,
Election, Term, Proceedings, Rights and Powers
of Declarant

(a) COMPOSITION: The Board of Directors of the Diana Court Owners' Association shall be composed of five living unit owners. Individual owners, general partners of partnerships, and officers of corporations with ownership interest may be elected to and serve on the Board. During the period of time Declarant retains any un-sold living units, one of the Declarant's officers, shall, at Declarant's request, be a member of the Board.

(b) ELECTION: At each annual meeting of the Diana Court Owners' Association, subject to the provisions of sub-paragraphs (a) and (f) of this section, the owners

shall elect directors to replace those whose terms have expired; provided, however, that the first Board elected hereunder shall be elected at a special meeting duly called by Declarant, said Board to serve until the first annual meeting held thereafter.

(c) **TERM:** Members of the Board of Directors shall serve for a term of two years; provided that three of the five members of the first Board elected shall serve for a one year term. The other two shall serve for a two year period. The members of the Board shall serve until their respective successors are elected, or until their death, resignation or removal; provided that if any member ceases to be an owner, his membership on the Board shall thereupon terminate. In the event of a vacancy occasioned by any cause other than removal, the remaining Board members may select a replacement Board member who may serve until the next annual meeting or until any special meeting called to elect a new Board member.

(d) **REMOVAL:** Subject to the provisions of subparagraphs (a) and (f) hereof, any Board member may be removed from membership on the Board and a successor may be elected for the unexpired term by a vote of the owners at a special meeting called for such purpose, provided that unless the entire Board is removed, an individual member shall not be removed if the number of votes cast, at any such meeting, against his removal exceeds twenty percent of the total voting power at such meeting.

(e) **PROCEEDINGS:** Three members of the Board shall constitute a quorum and, if a quorum is present, the decision of a majority of those present shall be the act of the Board. From its membership the Board shall elect a president of the Board and of the Association who shall preside over both its meetings and those of the owners. The Board shall additionally elect a vice president, a secretary and a treasurer. The latter two offices may be combined and a Manager may perform the functions of these offices under the direction of the president if the Board so directs. Meetings of the Board may be called, held and conducted in accordance with this Declaration and such By-laws and regulations as the Board may adopt. The Board may also act without a meeting by unanimous written consent of its members as evidenced by their signature upon any minutes or resolutions of the Board.

(f) **DECLARANT MAY PERFORM ALL BOARD FUNCTIONS:** Until a date five years from the date of recording this Declaration, or until one year after all units have been sold and occupied, whichever is sooner, all of the rights, duties and functions of the Board and manager shall, at Declarant's option, be exercised solely and entirely by Declarant, or may be transferred to a Board elected as provided in this paragraph at such prior time as Declarant may determine. The Declarant may, but shall not be required to, hold elections and constitute an advisory board composed, insofar as reasonably possible, as provided in subparagraph (a) while continuing to exercise the powers of the Board for the term provided herein. To carry out this provision Declarant may, from and after the date of recording hereof, adopt and enforce temporary by-laws, rules and regulations for the Duna Court Owners' Association, may give notices and call meetings, determine assessments, collect, receive and expend assessments and Association funds; hire a manager or other employees or service agencies as required, purchase supplies and equipment and determine maintenance and other policies; set up and constitute Association books and accounts, and generally, exercise all powers necessary to carry out the provisions of this Declaration and manage itself, or through employed management, the Condominium development. Acceptance of an interest in a unit, as described in this Declaration indicates acceptance of this management authority in Declarant for the initial period of Condominium operation and development and in carrying out the same the Declarant is entitled to the personal indemnity and protections set forth in this Declaration for the Board.

11. By-Laws. By-laws for the administration of the Diana Court Owners Association and the development, and for other purposes not inconsistent with the Condominium Act or with the terms or intent of this Declaration, shall be adopted by an affirmative vote of a majority of the owners of the living units at a meeting to be called and held for that purpose. Notice of the time, place and purpose of such meeting shall be delivered to each owner at least ten days prior to such meeting. Amendments to the by-laws may be adopted by the same vote at a meeting similarly called.

12. Amendment of Declaration, Survey Map, Plans:

(a) Amendments to the Declaration shall be made in an instrument in writing entitled "Amendment to Declaration of Diana Court Condominium" which sets forth the entire amendment. Notice of any proposed amendment must be given to all owners of living units as provided herein and any proposed amendment must be approved prior to its adoption by a majority of the Board of Directors of the Diana Court Owners' Association. Amendments may be adopted at a meeting of the owners if sixty percent (60%) in percentage interest of the owners vote for such amendment, or without a meeting if such sixty percent (60%) interest consent in writing to such amendment. In all events, the amendment shall bear the signature of the president of the Board of the Diana Court Owners' Association and shall be attested to by the Treasurer, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments when properly adopted shall be effective upon recording in the office of the Thurston County Auditor. Any amendment changing the values and percentage of the interest expressed herein shall require the unanimous consent of the living unit owners. It is specifically covenanted and understood by all parties accepting an ownership interest in living units under this Declaration that any amendment to this Declaration properly adopted will be effective to amend any or all of the covenants, conditions and restrictions contained herein which may be affected and any or all changes of this Declaration.

(b) Subject to the provisions of Section 9 hereof, the survey map and plan shall be amended by filing an amendment to the Declaration as provided in (a) above. Copies of any proposed amendment to the survey map and Declaration shall be made available for the examination of every owner. Such amendment to the survey map and Declaration shall be effective, once properly adopted upon recording in the office of the Thurston County Auditor.

13. Amendment by Declarant Regarding Living Unit Configuration:

Notwithstanding the provisions of Section 9 and 12 of this Declaration, the Declarant may alter the configuration of unsold living units to add or subtract rooms, provided that the percentage of interest of living units already sold is not modified, their assessments increased or voting rights affected. In furtherance of the authority granted herein, the Declarant may at any time record an amendment to this Declaration and any required amendments to the Survey Map and the owners of the living units shall not unreasonably withhold their approval of such amendment or amendments.

14. Common Expenses Allocation:

Amendment No. 8403070130, Volume 1238, Page 641-642, recorded in the Thurston County Auditor, dated the 7th day of March, 1984, setting a "fiscal year" and re-defining the method of allocating assessments.

Amendment, Fee No. 9204230145, Volume 1935, Pages 423-425, records of the Thurston County Auditor, dated the 23rd day of April, 1992, adding paragraph (f) to conform this Declaration with Chapter 43, Laws of 1987, codified as RCW 64.34

(a) Within thirty (30) days prior to the beginning of each calendar fiscal year, the Board shall estimate the net charges to be paid during such year (including a reasonable provision for contingencies and replacements and less any expected income and any surplus from the prior year's fund). Said "estimated cash requirements" shall be assessed to the owners pursuant to the percentages set forth in this Declaration. In establishing each unit's share of the "estimated cash requirements", **some cost will be allotted evenly, others by unit square footage, as the Board deems appropriate.** If said sum estimated proves inadequate for any reason, including nonpayment of any owner's assessment, the Board may at any time levy a further assessment, which shall be assessed to the owners in like proportions, unless otherwise provided herein. Each owner shall be obligated to pay assessments made pursuant to this paragraph to the Board in equal monthly installments on or before the first of each month during such year, or in such other reasonable manner as the Board shall designate.

(b) The rights, duties and functions of the Board set forth in this paragraph shall be exercised by Declarant for the period ending thirty (30) days after the election of the first Board hereunder.

(c) All funds collected hereunder shall be expended for the purposes designated herein.

(d) The omission by the Board, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the owner from the obligation to pay 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. Amendments to this paragraph shall be effective only upon unanimous written consent of the owners and their mortgagees. No owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas or by abandonment of his living unit.

(e) The Board or Manager shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common area, specifying and itemizing the maintenance and repair expenses of the common area and any other expense incurred. Records and vouchers authorizing the payments involved shall be available for examination by the owners at convenient hours of week days at the office of the Board or Declarant, as established in the By-Laws.

(f) The Board, with the concurrence of the membership of the Association, is hereby authorized to delegate to Vista Village Recreation and Maintenance Association, formerly Panorama Park Recreation and Maintenance Association, as referred to in Paragraph 11, below, all of the power enumerated in Section 3-102 of the Washington Condominium Act (now codified as RCW 64.34) which are currently exercisable by the Board on terms to be negotiated or established by the BY-LAWS of the Association. (L 92-01-304)

Notice of Obligations:

(a) Each monthly assessment and each special assessment shall be a joint and several obligation of the owner or owners of living units for which the same are assessed at the time the assessment is made and shall be collectible as a lien. The lien for a money judgment for unpaid common expenses shall be maintainable without foreclosure, as giving the lien securing the same. The amount of any assessment, whether regular or special, assessed to the owner of any living unit and the unit, plus interest at the highest contractual rate and costs, including reasonable attorney's fees, shall be a lien upon such living unit. The said lien for payment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except as provided in RCW 64.02.004(2).

(b) A certificate executed and acknowledged by the treasurer or the president of the Board or by the Manager if neither the president nor treasurer is available, stating the indebtedness or lack thereof secured by the lien upon any living unit created hereunder shall be conclusive upon the Board and the Association as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any owner or any encumbrancer or prospective encumbrancer of a living unit within a reasonable time after request, in recordable form, at a reasonable fee, not to exceed Ten Dollars (\$10.00). Any encumbrancer holding a lien on a living unit may pay any unpaid common expenses payable with respect to such living unit and upon such payment such encumbrancers shall have a lien on such living unit for the amounts paid of the same rank as the lien of his encumbrance.

(c) Security Deposit. A living unit owner may, from time to time, be required, by the Board to make a security deposit not in excess of three months' estimated monthly assessments, which may be collected as are other assessments. Such deposit shall be held in a separate fund, credited to such owner, and resort may be had thereto at any time when such owner is ten (10) days or more delinquent in paying his monthly or other assessment.

(d) Foreclosure of Assessment Lien - Attorney's Fees and Costs. The Declarant, while exercising the authority of the Board as provided herein, Manager, or Board on behalf of the Owners' Association may initiate action to foreclose the lien of any assessment. In any action to foreclose a lien against any living unit for non-payment of delinquent assessments, any judgment rendered against the owners or when in favor of the Association shall include a reasonable sum for attorney's fees and all costs and expenses reasonably incurred in preparation for or in the prosecuting of said action, in addition to taxable costs permitted by law. The Board, Manager, or Declarant shall have the power to bid in the condominium at foreclosure or other sale and to hold, lease, mortgage and convey the condominium.

(e) From the time of filing any action to foreclose a lien against any apartment for non-payment of delinquent assessments, the owner of such apartment shall pay to the Association the reasonable rental value of said living unit to be fixed by the Board or the Association and the plaintiff in any such foreclosure shall be entitled to the appointment of a receiver to collect the same, who may, if such rental is not paid, obtain possession of the living unit, refurbish it for rental up to a standard for rental units in this type of building, rent or permit the rental to others and apply rents first to costs of the receivership and attorney's fees then on the balance to reimbursing the unit, then to public charges, then to the Association's payment of special assessment charges.

(f) Termination of Utility Services In Addition to and not by way of limitation upon other methods of collecting any assessment, the Board shall have the right, after having given ten (10) days' notice to any living unit owner who is delinquent in paying his assessments, to cut off any or all utility services to the delinquent owner's living unit until such assessments are paid.

(g) If a living unit is rented by its owner, the Board may collect and the tenant or lessee shall pay over to the Board so much of the rent thereof as is required to pay any amounts due the Board hereunder, plus interest and costs, if the same are in default over thirty days. The tenant or lessee shall not have the right to question payment over to the Board, and such payment will discharge the lessee's or renter's duty of payment to the owner but will not operate to discharge the continuing obligations of the owner under this Declaration for assessments, or operate as an approval of the lease. The Board shall not exercise this power where a receiver has been appointed.

(h) The remedies provided are cumulative and the Board may pursue them concurrently, as well as any other remedies which may be available under law although not expressed herein.

16. Mortgage Protection. Notwithstanding all other provisions hereof, the liens created hereunder upon any living unit for assessments shall be subject and subordinate to and shall not affect the rights of the holder of, any indebtedness secured by mortgages or deeds of trust upon the Living Unit made in good faith and for value, provided that after the foreclosure of any such mortgage or deed of trust there may be a lien created pursuant to the provisions hereof upon the interest of the purchaser at such sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an owner after the date of such sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein, all as provided in RCW 64.32.200.

17. Failure of Board to Insist on Strict Performance - No Waiver:

The failure of the Board of Manager to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration or to exercise any right or option herein contained, 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 or Manager of any assessment from any owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Board or Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board or Manager. This section also extends to the Declarant's exercising the power of the Board during the initial period of operation of the Owners' Association and the Condominium development.

18. Limitation of Board and Association Liability:

The Board shall not be liable for any failure of any utility or other service to be obtained and paid for by the Board hereunder, or for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust or wind which may fall or flow from outside from outside or from any parts of the buildings, or from any utility pipe, drain, conduits, appliances, or equipment or from any other place. No limitation.

or abatement of common expense 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 order of a governmental authority. This exemption extends to the entire Owners' Association as well as the Board. This section shall not be interpreted to impose any form of liability by any implication upon the Board or the Association. This section also extends to the Declarant's exercising the powers of the Board during the initial period of operation of the Association and Condominium development.

19. Indemnification of Board Members:

Each member of the Board shall be indemnified by the owners against all expenses and liabilities including attorney's 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 member of the Board, or any settlement thereof, whether or not he is a member of the Board at the time such expenses are incurred, except in such cases wherein the member of the Board is adjudged guilty of willful misconduct or malfeasance in the performance of his duties, provided, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association. This section shall apply also to the Declarant's exercising the powers of the Board during the initial period of operation of the Owners' Association and Condominium development.

20. Association Property:

The Board or Manager 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 interest therein, and may dispose of the same by sale or otherwise, and the beneficial interest in such personal 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 may direct. The Board shall not, however, in any case acquire real property or personal property valued in excess of Five Thousand Dollars (\$5,000.00) by lease or purchase except upon a majority vote of the owners.

Within thirty (30) days following the termination of Declarant's right to exercise the powers of the Board under this Declaration, the Declarant shall execute and deliver an appropriate document transferring title to the Board in behalf of all the owners, transferring any property located on the development and furnished by the Declarant, which property is intended for the common use and enjoyment of the owners.

Nothing herein shall authorize the Board or Owners' Association to carry on any business for profit.

[Amendment, Fee No. 84030/0130, Volume 1238, Page 641-642, records of the Thurston County Auditor, dated the 7th day of March, 1984, all references to Panorama Park are hereby amended to read as follows:]

21. Membership in Panorama Park Vista Village
Recreational and Maintenance Association:

Every person or entity acquiring an ownership interest in a living unit under this Declaration shall become a member of the Vista Village Recreational and Maintenance Association, and by acquiring said ownership interest shall become bound by the rules and regulations and By-Laws of said Association as established by the Board of Directors of the Vista Village Recreational and Maintenance Association, and further, said purchasers acknowledge that the benefits of membership in the Vista Village Recreational and Maintenance Association are covenants running with the land and that membership in said Association may be terminated only by selling the ownership interest created under the Declaration.

Membership in the Vista Village Recreational and Maintenance Association shall include the obligation to pay dues and assessments as established by the Board of Directors of said Association according to the By-Laws of the Vista Village Recreational and Maintenance Association.

Turn Key Development, Inc., may from time to time convey to Vista Village Recreation and Maintenance Association, a non-profit Washington corporation, certain property and rights to be used and enjoyed as common facilities for the benefit of the members of the Vista Village Recreation and Maintenance Association. There shall be one membership in the Vista Village Recreation and Maintenance Association for each condominium living unit. Each membership for a condominium living unit shall be appurtenant to the title and shall be transferable only as a part of the transfer of the title of the condominium living unit. Each such membership shall entitle the owners of the condominium living unit, the residents thereon and their families to enjoy the facilities of the Association, subject to the rules, regulations, payments, and by-laws as may now or hereinafter be established by the Association, which rules, regulations, payments and by-laws shall apply equally to all memberships. Memberships in the Vista Village Recreation and Maintenance Association shall be available to the incorporators and the fee owners or contract purchasers of any condominium living unit located in (1) Diana Court Condominium and (2) the approximate 105 acres adjacent to Diana Court, described in that certain option entered into by Turn Key Development, Inc. on February 21, 1972, as such property may hereafter be developed by Turn Key Development, Inc. into a series of condominiums and which, if so developed, shall be known as "Vista Village, Long Lake Condominium Community."

Portions of the real property, if any, used by the Vista Village Recreation and Maintenance Association shall not be subject to the restrictions elsewhere imposed herein but shall be used for common service facilities as the Vista Village Recreation and Maintenance Association deems advisable for the benefit of its members. By accepting conveyance of condominium living units from Turn Key Development, Inc. its agents and successors, the Vista Village Recreation and Maintenance Association and its members agree to comply with the provisions of this paragraph 21.

In order to provide for recreation, maintenance and improvements of its common properties, if any, each grantor and vendee of condominium living units, their heirs, executors and assigns shall and do by the act of accepting a deed or entering into a contract of sale, as to all under this Declaration jointly and severally agree that they and each of them shall pay to the Vista Village Recreation and Maintenance Association the dues and charges levied according to the by-laws of the Vista Village Recreation and Maintenance Association. In the event that such dues or charges remain unpaid to the Vista Village Recreation and Maintenance Association for a period of sixty (60) days after the due date, then the Association may record a written notice with the Auditor of Thurston County, Washington that it claims a lien against the condominium living unit to which the membership is appurtenant for the amount of delinquent dues and charges together with interest at the rate of 10% per

amount from the due date until paid and attorney's fees as herein provided. From and after recording such notice, the condominium living unit to which the indebtedness is applied shall be subject to the Vista Village Recreation and Maintenance Association as security for dues and charges in the amount designated therein with interest and attorney's fees and such lien may be foreclosed in the manner of a mortgage of real property and in such foreclosure action, the Vista Village Recreation and Maintenance Association shall recover a reasonable sum as attorneys' fees therein and the reasonable and necessary costs of searching and abstracting the public record.

Notwithstanding all other provisions hereof, the liens created hereunder upon any condominium living unit for assessments shall be subject and subordinate to and shall not affect the rights of the holder of any indebtedness secured by mortgages or deeds of trust upon the living unit made in good faith and for value, and/or any lien which may be established under paragraph 14 or 15 of this Declaration, provided that after the foreclosure of any such mortgage or deed of trust, or lien established under paragraph 14 or 15, there may be a lien created pursuant to the provisions hereof upon the interest of the purchaser at such sale to whom, all assessments, whether regular or special, assessed under the by laws of the Vista Village Recreation and Maintenance Association to such purchaser as an owner after the date of such sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as a mortgage on real property.

13. Right of First Refusal

Amendment, Fee No. 8511010040, Volume 1372, Page 31, records of the Thurston County Auditor, dated the 1st day of November, 1985, to delete all reference to the "Right of First Refusal".

~~Right of First Refusal: The Board or its assignee, for the benefit of all owners, shall have the right of first refusal in the event any owner of a living unit shall wish to sell, rent or lease said living unit. The terms and conditions of said right of first refusal shall be as set out in the by-laws of the Association, as adopted and amended from time to time.~~

Amendment, Fee No. 9204230115, Volume 1935, Pages 483-485, records of the Thurston County Auditor, dated the 23rd day of April, 1992, to define the Board of Directors.

The Board of Directors of Vista Village Recreation and Maintenance Association shall consist of the President (or Chairmen) of the Board of Directors of each condominium composing the Vista Village condominium community. All members of the Board of Directors of each condominium subject to or comprising the membership of Vista Village, by electing its own President or Chairman, shall be deemed to have elected its representative to that Board of Directors.

Amendment, Fee No. 9204230115, Volume 1935, Pages 483-485, records of the Thurston County Auditor, dated the 23rd day of April, 1992, to define, by adding a new paragraph (22), the Vista Village Condominium Community as a community with "Adult Status" within the definition of the Federal Fair Housing Act; and, to add a new paragraph (23) thus conforming this Declaration with RCW 64.34. The following paragraphs are renumbered to maintain numerical sequence.

22. Adult Community Status. The Fair Housing Act as it now stands or may hereafter be amended is hereby incorporated into this Declaration by reference, it being the intent to maintain an adult community status by maintaining an 80% or more occupancy rate of all living units by at least one person 55 years of age or older. Significant facilities and

services have been specifically designated to meet the physical or social needs of senior persons. Primary responsibility for promulgation of policies and procedures regarding fire insurance for older persons and fulfillment of such policies and procedures and giving of adequate notice shall be with the Board of Directors, however, the responsibility may be delegated to Area Culture, Recreation and Maintenance Association, acting as a master association under delegation of authority provided for under Paragraph 14(f).

23. This Declaration of Covenant, Conditions and Restrictions, together with the foregoing and prior amendments, is further amended to acknowledge the applicability of Sections 3-105, 3-106, 3-107, 3-108, 3-109, 3-110, 3-111, 3-112, 3-113, 3-114, 3-115, 3-116, 3-117, 3-118, 3-119, 3-120, 3-121, 3-122, 3-123, 3-124, 3-125, 3-126, 3-127, 3-128, 3-129, 3-130, 3-131, 3-132, 3-133, 3-134, 3-135, 3-136, 3-137, 3-138, 3-139, 3-140, 3-141, 3-142, 3-143, 3-144, 3-145, and 3-146 of the Washington Condominium Act (Chapter 65, Laws of 1989, 51st Legislative Regular Session) but only with respect to events and circumstances occurring after July 1, 1990, the effective date of the Act, and such sections do not invalidate or supersede the existing, inconsistent provisions of the Declaration, By-Laws or survey maps and plans of this condominium. *(see page in front of this book)*

24. Enforcement: Each owner shall comply strictly with the provisions of this Declaration and with the administrative rules and regulations, and failure to comply shall be grounds for an action to recover sums due for damages, or injunctive relief, or both, maintainable by the Board or Manager on behalf of the owners, or in the proper case, by an aggrieved owner.

25. Interpretation: The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium development.

26. Severability: The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

27. Effective Date: This Declaration shall take effect upon recording.

28. Reference to Survey Map and Plans: The floor plans of the building referred to herein were filed with the Auditor of Thurston County, Washington, simultaneously with the recording of this Declaration under Auditor's File No. 948930, in Volume 1 of Condominiums, Pages 52-53.

29. Captions: The captions to this Declaration are inserted only as a matter of convenience and for reference and are in no way intended to define, limit, or describe the scope of this Declaration nor the intent of any provisions hereof.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 8th day of October, 1975.

TURN KEY DEVELOPMENT, INC

By: /s/ Fred G. Thunberg _____
Its President

**VISTA VILLAGE CONDOMINIUMS
 BYLAWS OF THE COURT OWNERS' ASSOCIATIONS
 including
 ATHENA, BACCHUS, CALYPSO, DIANA, AND ELECTRA COURTS**

ARTICLE I

Identity

Section 1. The name of the Bylaws of the Court Owners' Associations, associations organized for the purpose of administering five condominium courts, respectively, (1) Athena Court, (2) Bacchus Court, (3) Calypso Court, (4) Diana Court, and (5) Electra Court, each condominium court subject to that certain and respective Declaration of Covenants, Conditions and Restrictions recorded at the Office of the Thurston County Auditor with dates and references as follows:

COURT NAME	RECORD NUMBER	DATE RECORDED
Athena Court	863680	April 7, 1972
Bacchus Court	873169	August 24, 1972
Calypso Court	1063199	July 12, 1977
Diana Court	948934	October 8, 1975
Electra Court	1063790	December 27, 1978

The office of the Court Owners' Associations (COAs) shall be at 3300 Carpenter Road, SE, Lacey, Washington 98503.

The fiscal year of the COAs shall be May 1 through April 30.

Section 2. *Membership*. All present and future living-unit owners shall by virtue of such ownership be members of their respective Court Owners' Association with all rights, privileges, responsibilities and obligations accorded by these bylaws. Such membership will terminate upon the transfer of property title to another person or organization.

Section 3. *Application*. All present and future owners, mortgagees, lessees and occupants of living units and their employees or any other persons who may use the facilities of the condominium in any manner are subject to these bylaws, the declarations, the rules and regulations, and all covenants, agreements, conditions, and declarations of record (title conditions). The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a living unit shall constitute an agreement that these bylaws, the rules, regulations, and policies, the provisions of the Declarations, as they may be amended from time to time, and the title conditions are accepted, ratified and will be complied with.

ARTICLE II

Court Owners' Associations (COAs)

Section 1. Annual Meetings. There shall be an annual meeting of the living-unit owners, at least thirty (30) days prior to the end of the fiscal year, or may be designated by written notice of the respective Court Board delivered to the owner, not less than ten (10) days prior to the date fixed for said meeting.

Section 2. Special Meetings. Special meetings of a COA may be called at any time for the purpose of considering matters which by the terms of the governance documents require the approval of all or some of the owners, or for any other reasonable purpose. Said special meeting shall be called by written notice from the respective Court Board or by written petition of the owners having one-third (1/3) of the total vote and delivered not less than ten (10) days prior to the date fixed for said meeting. Said notice shall specify the date, time and place of the meeting and the matters to be considered at such meeting.

Section 3. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, such notice shall be deemed to have been delivered forty-eight hours after a copy of the notice has been deposited in the United States mail, postage prepaid, addressed to the person entitled to such notice at the address given by such person to the respective Court Board in writing for the purpose of service of such notice. Service to the owner or owners shall be sufficient if mailed to the living unit of such person or persons if no other mailing address has been given to the Court Board or by any of the persons so entitled. Such addresses may be changed from time to time by notice in writing to the Court Board.

Section 4. Voting. Each of the owners of a living unit shall constitute the COA in the respective Court Board. The COA shall consist of the owners of all living units in the Court Board.

or other lawful business entities may own or have ownership interests in living units.

The total voting power of all owners shall be 100% and the total number of votes available to the owner or owners of any one living unit shall be equal to the percentage of undivided interest in the common areas and facilities appertaining to such living unit as set out in the Declaration. If a person, corporation, or firm owns more than one living unit that entity shall have the votes for each living unit owned.

There shall be one voting owner or agent for each living unit. The owner or owners of each living unit or some person designated by such owner or owners or by proxy (any such party acting as proxy need not be an owner) shall be entitled to cast the votes appurtenant to such living unit at all meetings of the COA. Designation of any such proxy shall be made in writing to the respective Court Board and shall be revocable at any time by written notice to that Board by the owner or owners so designating. Any or all of such owners may be present at any meeting of a court association and may vote or take any other action as a unit, either in person or by proxy.

As used in these bylaws the term "mortgage" shall include a deed of trust and the term "beneficiary" shall include the beneficiary of a deed of trust. Owners may pledge their vote regarding special matters of the living unit. In the event the owner or owners have pledged their vote regarding special matters to a mortgagee or lender and a copy of such mortgage with a statement of the special items respecting which the vote is pledged is filed with the respective Court Board, only the vote of the mortgagee or lender shall be recognized in regard to the special matter upon which the vote is so pledged. Amendments to this paragraph shall only be effected upon the written consent of all the voting owners and their respective mortgagees, if any.

Section 1. Composition. The Boards of Directors of the respective COAs shall be composed of five living unit owners. Individual owners, general partners of partnerships, and officers of corporations with ownership interest may be elected to and serve on the Court Boards.

Section 2. Election. At each annual meeting of the respective COAs, subject to the provisions of Section 1 of this Article, the owners shall elect directors to replace those whose terms have expired.

Section 3. Term. Members of the Court Boards shall serve for a term of two years; provided, three of the five members of the first Court Boards elected shall serve for a one year term. The other two shall serve for a two year period. The members of the Court Boards shall serve until their respective successors are elected, or until their death, resignation or removal, provided, that if any member ceases to be an owner, membership on a Court Board shall thereupon terminate.

Section 4. Vacancy. Should a vacancy on a Court Board occur before a director's term expires, the remaining directors shall appoint a director to serve the unexpired term or until the next regular election, except that a vacancy by removal shall follow the procedure as stated in Section 5, following.

Section 5. Removal. Subject to the provisions of Section 4 hereof, any Board member may be removed from membership on a Court Board and a successor may be elected for the unexpired term by a vote of the owners at a special meeting called for such purpose, provided that notice of the entire Board to be removed, or individual members shall not be removed if the number of votes cast at such meeting, against that member's removal exceeds twenty percent of the total voting power at such meeting.

Section 6. Procedure. Three members of the respective Court Boards shall constitute a quorum and if a quorum is present, the adoption of a majority of those present shall be the act of

the Board. From its membership a Court Board shall elect a president or that Board and of the respective COA who shall preside over both its meetings and those of the owners. Each Court Board shall additionally elect a vice president and a secretary. Meetings of the Court Boards may be called, held and conducted in accordance with these bylaws and Declarations and regulations as the Court Boards may adopt. The Court Boards may also act without a meeting by unanimous written consent of its members as evidenced by their signature upon any minutes or resolutions of a Board.

Section 7. Indemnification of Board Members. Each member of the Court Boards shall be indemnified by the owners against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon any board member in connection with any proceeding or involvement by reason of official duties as a member of a Court Board at the time such expenses are incurred, except in such cases wherein the member of the Court Board is adjudged guilty of willful misfeasance or malfeasance in the performance of official duties; provided, that in the event of a settlement and reimbursement as being for the best interests of the respective COA.

Section 8. Limitation of Court Boards and Court Owners' Associations' Liability. The Court Boards shall not be liable for any failure of any utility or other service to be obtained by a Court Board hereunder, or for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may leak, or flow from outside or from any parts of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment or from any other place. No diminution or abatement of common expense 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 order of a governmental authority. This restriction extends to all COAs as well as to Court Boards. This Section shall not be interpreted to

impose any form of liability by any implication upon Court Boards or COAs.

ARTICLE IV

Authority of Court Boards of Directors

Section 1. Enforcement and Management Services. The respective Court Boards, for the benefit of the condominiums and the owners, shall enforce the provisions hereof and shall assume certain management and maintenance services through the Villa Village Recreation and Maintenance Association (VVRMA) to be paid out of the monthly fees assessed by the VVRMA on the basis of an approved budget for services defined below:

- a. Fire and liability insurance on buildings and grounds.
- b. Electric heat (excluding installation, connection, disconnection, appliances or other costs).
- c. Other electric utility services (excluding installation, connection, disconnection, appliances or other costs).
- d. Water utility services (excluding installation, connection, disconnection or other costs).
- e. Garbage removal (one can per week).
- f. Telephones (non-leased phone and/or one phone line per unit, excluding connection, installation, long distance calls, disconnection or costs other than the basic monthly charge)

g. _____ per _____
h. _____ per _____
i. _____ per _____

i. Lawn and landscaping care for the original landscaping. Such care will not include any annuals or rosebushes.

j. Normal and reasonable maintenance of appliances. The VVRMA shall not assume the cost of any parts or replacements necessary for such maintenance and the VVRMA shall, in its sole discretion determine whether such maintenance is normal and/or reasonable.

k. Maintenance of existing common areas, streets, and street lighting.

l. Incidental administration services such as status reports, accounting and collection services related to the billing of condominium owners by the VVRMA, and other general services which may be mutually agreed upon by the COAs.

m. Special services may be rendered to residents for their personal or physical well-being, and costs, if any, may be billed to the resident as pass through charges.

Section 2. Replacements. The above mentioned program of services does not include the replacement of original equipment, building structure members (ie. roof, walls, carpets, interior decorating, interior lighting, or replacements of glass.

Section 3. Owner Liability. No owner may be exempted from liability for assessed monthly charges by waiver of share or enjoyment of any of the common area or by abandonment of a living unit

Section 4. Taxes. Taxes are included in the monthly charges on a pro rata basis against the actual tax assessed for a living unit for the current year.

Section 5. Records. Detailed and accurate records shall be required of the VVRMA of the receipts and expenditures affecting monthly charges for management and services

management and maintenance services referenced in this article are hereby assigned to the Vista Village Recreation and Maintenance Association (VVRMA) for direct delivery and conduct in behalf of all living units in Vista Village.

ARTICLE V

Amendments

These bylaws or any part thereof may be altered or amended by a Court Board after deliberation and consideration by all Court Boards, each with concurrence of two other Court Boards, subject to the power of all owners to change or repeal such bylaws by a majority vote at any general meeting or at any other meeting of all owners called for that purpose.

ARTICLE VI

Common Expenses--Assessments

Section 1. Assessments. Within thirty (30) days prior to the beginning of each fiscal year, the Court Board shall require the VVRMA to estimate the net charges to be paid during such year for the services and common expenses provided for herein (including a reasonable provision for contingencies and replacement). Said "estimated" cash requirement shall be assessed to the owners. If said amount proved inadequate for any reason, including nonpayment of any owner's assessment, the VVRMA may at any time levy a further assessment. Such assessment shall be assessed to the owners in like proportions.

The VVRMA shall not increase the monthly assessed charges for management, services, or common expenses as herein provided for more than a proportional increase in the U.S. Bureau of Labor's Consumer Price Index, calculated as the US average (with the exception that the assessments and charges may be increased for an actual increase in property taxes without reference to the Consumer Price Index) without first receiving an affirmative vote of 60% of the members of the respective

COAs attending a meeting called by the VVRMA for the purpose of approving or rejecting any proposed increase in excess of the Consumer Price Index.

However, recognition is hereby assured that the COAs and the individual owners recognize that the Consumer Price Index control as herein established on management, services, and common expense charges is of primary importance to the members of the COAs and therefore the degree of management, services, or additional amenities to common areas shall be governed by the ability of the VVRMA to pay for such management, services, or amenities from the monthly charge available hereunder. Each owner shall be obligated to pay assessments made pursuant to this article to the VVRMA in equal monthly installments on or before the first of each month during such year, or in such other reasonable manner as the VVRMA shall designate.

Section 2. Fixing Assessments. The rights, duties, and functions connected with the fixing and assessing of common expenses as set forth in this Article are hereby assigned to the VVRMA in its role as defined in Section 6, Article IV, above.

Section 3. Record Keeping. The Boards of the COAs shall require the VVRMA to keep detailed, accurate records, in chronological order, of the receipts and expenditures affecting the common area, specifying and itemizing the maintenance and repair expenses of the common area and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by any owner at convenient hours of week days at the offices of the VVRMA, as established in its bylaws.

ARTICLE VII

Default in Payment of Assessments Collection--Notice of Obligation

Section 1. If any owner fails to pay any assessment or charge due to the VVRMA within the time specified in this article, the VVRMA may, at its option, take any action which it may deem proper to collect such assessment or charge, including the filing of a lawsuit to enforce payment.

for which the same are assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment, whether regular or special, assessed to the owner of any living unit and the unit, plus interest at the highest contractual rate, and costs, including reasonable attorney's fees, shall be a lien upon such living unit. The said lien for payment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except as provided in RCW 64.32.200(2).

Section 2. Certificate of Liability. A certificate executed and acknowledged by the VVRMA stating the indebtedness secured by the lien upon any living unit created hereunder shall be conclusive upon the COAs as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any owner or any encumbrancer or prospective encumbrancer of a living unit within a reasonable time after request not to exceed 90 days, in recordable form, at a reasonable fee, not to exceed Forty Dollars (\$40). Any encumbrancer holding a lien on a living unit may pay any unpaid common expenses payable with respect to such living unit, and upon such payment such encumbrancer shall have a lien on such living unit for the amounts paid of the same rank as the lien of such encumbrance.

Section 3. Foreclosure of Assessment Lien-Without Fees and Costs. The VVRMA is authorized to initiate action to foreclose the lien of any assessment. In any action to foreclose a lien against any living unit for non-payment of delinquent assessment, any judgment rendered against the owner or when in favor of a COA shall include a reasonable sum for attorney's fees and all costs and expenses reasonably incurred in preparation for or in the prosecution of such action, in addition to taxable costs permitted by law.

Section 4. Remedial Actions. The remedies provided are cumulative and the COAs and the VVRMA may pursue them concurrently,

as well as any other remedies which may be available under law although not expressed herein.

ARTICLE VIII

Mortgage Protection

Notwithstanding all other provisions hereof, the liens created hereunder upon any living unit for assessments shall be subject and subordinate to, and shall not affect the rights of the holder of, any indebtedness secured by mortgages or deeds of trust upon the living unit made in good faith, for value and without notice, provided that after the foreclosure of any such mortgage or deed of trust there may be a lien created pursuant to the provisions hereof upon the interest of the purchaser at such sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an owner after the date of such sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein, all as provided in RCW 64.32.200.

ARTICLE IX

Failure of the VVRMA to Insist on Strict Performance--No Waiver

Section 1. Waivers. The failure of the VVRMA to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of the bylaws and the Declarations, or to exercise any right or option herein contained, 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 VVRMA of any assessment from any owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the VVRMA of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the VVRMA.

ARTICLE X

Management

Section 1. Management Liability. The Court Boards shall be represented by the VVRMA through assignment of its management duties, powers, or functions, to the VVRMA. The members of the Court Boards shall not be liable for any omission or improper exercise by the VVRMA of any management duty, power or function so assigned.

ARTICLE XI

Exclusive Ownership and Possession by Owner

Section 1. Ownership and Possession. Each owner shall be entitled to exclusive ownership and possession of his living unit. Each owner shall be entitled to an undivided interest in the common area in the percentage expressed in the Declaration for the respective units. The percentage of the undivided interest of each owner in the common area as expressed in the Declaration shall have a permanent character and shall not be altered without the consent of all owners, expressed in an amended Declaration duly recorded. The percentage of the undivided interest in the common area shall not be separated from the unit to which it appertains and shall be deemed to be conveyed or encumbered or released from lien, with the living unit, even though such interest is not expressly mentioned or included in the conveyance or other instrument. Each owner may use the common area in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other owners.

ARTICLE XII

Owner's Obligation to Repair

Section 1. Owner's Responsibility. Except for those portions which the COAs and the VVRMA are required to maintain and repair hereunder (if any), each owner shall at said

owner's expense bear the liability of such unit and its equipment and appliances, in good order, condition and repaired in a clean and sanitary condition, and nevertheless maintain the good appearance and condition of such living unit. In addition to decorating and keeping the interior of the unit in good repair, the owner shall be responsible for the promptance, repair or replacement of any plumbing fixtures, water heater, furnace, lighting fixtures, ventilators, air conditioning equipment, dishwashers, disposal or ranges that may be in or connected with the living unit, except as otherwise provided herein.

Section 2. Additional Responsibility of Owners. The owner shall also, at the owner's own expense, keep the patio, storage shed and carports which have been assigned to such living unit in a limited common area in a clean and sanitary condition. Whether the COAs or the VVRMA shall be responsible to the owner for loss or damage by theft or otherwise of articles which may be stored by the owner in the patio, storage shed, carports or living unit.

Section 3. Payment of Lien. The owner shall promptly discharge any lien which may hereafter be filed against such condominium living unit and shall not violate by the provisions of D.C.W. of 3-1070 of the Condominium Act.

ARTICLE XIII

Limitation on Use of Living Units and Common Areas

Section 1. Limitations. The living units and common area shall be occupied and used as follows:

a. No owner shall occupy or use a unit, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the owner and the owner's family or the owner's lessee or guest.

b. There shall be no obstruction of the common area.

c. Nothing shall be done or kept in any living unit or in the common area which will increase the rate of insurance on the common area, without the prior written consent of the VVRMA. No owner shall permit anything to be done or kept in such living unit or in the common area which will result in the cancellation of insurance of any living unit or any part of the common area, or which would be in violation of any law. No waste will be committed in the common area.

d. No permanent sign of any kind shall be displayed to the public, away from or from any unit or the common area, without the prior written consent of the VVRMA.

e. No animals, livestock or poultry of any kind shall be raised, bred, or kept in any living unit or in the common area, except that dogs, cats, or other household pets may be kept in living units, subject to rules, regulations, and policies adopted by the VVRMA.

f. No noxious or offensive activity as defined by the VVRMA shall be carried on in any living unit or in the common area, nor shall anything be done therein which may be or become an annoyance or nuisance to other owners.

g. Nothing shall be altered or constructed in or removed from the common area, except upon the written consent of the VVRMA.

h. There shall be no violation of rules for the use of the common area adopted by the VVRMA and furnished in writing to the owners, and the VVRMA is authorized to adopt such rules.

Nothing shall be done or kept in any living unit or in the common area which will increase the rate of insurance on the common area, without the prior written consent of the VVRMA. No owner shall permit anything to be done or kept in such living unit or in the common area which will result in the cancellation of insurance of any living unit or any part of the common area, or which would be in violation of any law. No waste will be committed in the common area.

occurred due to the willful conduct of said owner or owners

ARTICLE XIV

Entry for Repairs

Section 1. Authorization to Enter. The VVRMA or its agent may enter any living unit when necessary in connection with any maintenance, landscaping or construction for which the VVRMA is responsible. Such entry shall be made with as little inconvenience to the owners as practicable, and any damage caused thereby shall be repaired by the VVRMA out of the common expense charges.

ARTICLE XV

Insurance

Section 1. Insurance Required. The Court Boards shall require the VVRMA to obtain and maintain, to the extent obtainable, the following insurance:

a. Fire insurance with extended coverage insuring the buildings containing the living units (including all of the units and the bathroom and kitchen fixtures initially installed therein, but not including drapes, fixtures, furniture, furnishings, or other personal property supplied or installed by living unit owners), and covering the interests of the Condominium, and the respective COAs, all living unit owners and their mortgagees, as their interests may appear, in the amount determined by the VVRMA. Each of the policies shall contain a standard mortgagee clause in favor of each mortgagee of a living unit which shall provide that the loss, if any, thereunder shall be payable to such mortgagee as its interest may appear, subject however to the loss payment provisions in favor of the VVRMA;

at least covering each director of the VVRMA and its manager, board members of the COAs, and each living unit owner and with cross liability endorsement to cover liabilities of the living unit owners as a group to a living unit owner; and,

d. Such other insurance as the VVRMA may determine. All such policies shall provide that adjustment of loss shall be made by the VVRMA and that the net proceeds thereof shall be payable to the VVRMA.

Section 2. Waivers of Subrogation and Pro-rata Liability. All policies of physical damage insurance shall contain waivers of subrogation and waivers of any reduction of pro-rata liability of the insurer as a result of any insurance carried by living unit owners or of invalidity arising from any acts of the insured or any living unit owners, and shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days' prior written notice to all of the insured, including all mortgagees of living units. Duplicate originals of all policies of physical damage insurance and of all renewals thereof, together with proof of payment of premiums, shall be delivered to all mortgagees of living units at least ten (10) days prior to expiration of the then current policies.

Section 3. Personal Property Insurance. Living unit owners should carry insurance for their own benefit insuring their drapes, fixtures, furniture, furnishings, and other personal property provided that all such policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the VVRMA shall not be affected or diminished by reason of any such additional insurance carried by any living unit owner.

ARTICLE XVI

Judicial Partition

Section 1. Judicial Partition. There shall be no judicial partition of the development or any part thereof, nor shall any person

acquiring any interest in the development or any part thereof seek any such judicial partition, until the happening of the conditions set forth in paragraph 3 of the Declaration in the case of damage or destruction or unless the property has been removed from the provisions of the Condominium Act as provided in section RCW 64.32.150 thereof; provided, however, that if any condominium shall be owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants. But such partition shall not affect any other condominium living units.

ARTICLE XVII

Maintaining Adult Status Under Fair Housing Act

Section 1. Adult Community Status. It is the intent of the COAs to maintain an adult community status for its residents by complying with the United States "Fair Housing Act", inasmuch as 80% of the living units are occupied by at least one person 55 years of age or older; and, significant facilities and services have been specifically designed to meet the physical or social needs of older persons. It is the intent of the COAs to preserve its adult community status by maintaining the 80% age requirement described above.

Section 2. Policies and Procedures. Policies and procedures regarding fair housing for older persons shall be promulgated by the COAs and by the VVRMA; and, publication of such policies shall be required to assure owner understanding of and required compliance with the policies.

Section 3. Responsibility at Time of Re-sale. The Declarations, bylaws, and policies-procedures regarding maintenance of Adult Village as an adult-status community for older persons shall be provided immediately to any real estate agency whose "For Sale" sign might be posted to a living unit. Any homeowner acting as a direct seller shall furnish the declarations, bylaws, and policies-procedures to

any buyer no later than closure date of the real estate transaction.

Section 4. Fair Housing. The Fair Housing Act as amended (or any future amendments), effective March 12, 1989 (or any future effective dates), is hereby incorporated into these bylaws by reference thus complementing the original intent of the Declarant to establish the condominiums of Vista Village as housing for older persons.

The End

AMENDED AND RESTATED
 VISTA VILLAGE CONDOMINIUMS
 BYLAWS OF THE COURT OWNERS' ASSOCIATIONS
 including
 ATHENA, BACCHUS, CALYPSO, DIANA, AND ELECTRA
 COURTS

Article I
 Identity

Section 1. These are the Amended and Restated Bylaws of the Court Owners' Associations (COAs), associations organized for the purpose of administering five condominium courts, respectively: (1) Athena Court, (2) Bacchus Court, (3) Calypso Court, (4) Diana Court, and (5) Electra Court, each condominium court subject to that court's and respective Declaration of Covenants, Conditions and Restrictions recorded at the Office of the Thurston County Auditor with dates and references as follows:

<u>COURT NAME</u>	<u>RECORDING NUMBER</u>	<u>DATE FILED</u>
Athena Court	863680	April 7, 1972
Bacchus Court	873169	August 24, 1972
Calypso Court	1004199	July 12, 1977
Diana Court	948931	October 8, 1975
Electra Court	1062790	December 27, 1978

The office of the COAs shall be at 3300 Carpenter Road SE, Lacey, Washington, 98503.

The fiscal year of the COAs shall be May 1 through April 30.

Section 2. Membership. All present and future living-unit condominium owners shall by virtue of such ownership, be members of their respective Court Owners' Association (COA) with all rights, privileges, responsibilities and obligations accorded by these bylaws. Such membership will terminate upon the transfer of property title to another person or organization.

Section 3.

(a) Application. All present and future owners, tenants, licensees, occupants of living units and their employees or any other persons who use the facilities of the condominium in any manner are subject to these bylaws, the declarations, the rules and regulations, and all covenants, agreements, restrictions, assessments and declarations of record (title conditions). The acceptance of a deed or co-tenancy or the entering into of a lease or the act of occupancy of a living unit shall constitute an agreement that these bylaws, the rules, regulations, and

policies, the provisions of the Declarations, as they may be amended from time to time, and the title condition are adopted, ratified and will be complied with.

(b) *Notification* If an Owner rents his/her unit, he/she must give pertinent information to the Manager within 30 days of occupancy.

Article II Court Owners' Associations (COAs)

Section 1. Annual Meetings. There shall be an annual meeting of the living unit owners, at least thirty (30) days but not more than sixty (60) days prior to the end of the fiscal year, to be designated by written notice of the respective Court Board delivered to the owners, not less than ten (10) days prior to the date fixed for said meeting.

Section 2. Special Meetings. Special meetings of a COA may be called at any time for the purpose of considering matters which by the terms of the governing documents require the approval of all or some of the owners, or for any other reasonable purpose. Said special meeting shall be called by written notice from the respective Court Board or by written petition of the owners having one third (1/3) of the total vote and delivered not less than ten (10) days nor more than fifty (50) days before the date fixed for said meeting. Said notice shall specify the date, time and place of the meeting, and the matters to be considered at such meeting.

Section 3. Notices. Any notice permitted or required to be delivered as provided herein may be delivered in a tangible medium or in an electronic transmission. If notice is provided in a tangible medium, it may be transmitted by mail, private carrier, or postal delivery, or telephone wire, or wireless equipment that transmits a facsimile of the notice. If mailed, such notice shall be deemed delivered when deposited in the United States mail postage pre-paid, addressed to the person entitled to such notice at the address given by such person to the respective Court Board in writing for the purpose of notice of such notice. Notice to the owner or owners shall be sufficient if mailed to the address of each person or persons if no other mailing address is known to the Court Board or by any of the persons so entitled. Such address may be changed from time to time by notice in writing to the Court Board. Other forms of notice in a tangible medium included in this section are effective when received. If notice is provided in an electronic transmission, it must satisfy the requirements of RCW 24.03.009.

Section 4. Voting. All of the owners of living units shall vote in person or in the respective courts as provided in the Horizontal Property Regime Act, RCW 64A.02. Natural persons, partnerships, and corporations, trusts, and other legal entities may have ownership interests in living units.

The total voting power of all owners shall be equal to the total number of votes available to the owner or owners of living units and shall be apportioned to the owners of undivided interests in the common areas and building, appurtenant to such living units as

set out in the Declarations. If a person, corporation, or firm owns more than one living unit that entity shall have the votes for each living unit owned. The vote of a majority of the votes entitled to be cast by the owners present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the owners. All votes cast by proxy must be specific proxies.

There shall be one voting owner or agent for each living unit. Each owner shall have the right to vote in person, by mail, or by proxy. The owner or owners of each living unit, or some person designated by such owner or owners to act as proxy (any said person acting as proxy need not be an owner) shall be entitled to cast the votes appurtenant to each living unit at all meetings of the COAs. Designation of any such proxy shall be made in writing to the respective Court Board and shall be revocable at any time by written notice to that Board by the owner or owners so designating. Any or all of such owners may be present at any meeting of a court association and may vote or take any other action as a unit, either in person or by proxy.

As used in these bylaws the term "mortgage" shall include a deed of trust and the term "mortgagee" shall include the beneficiary of a deed of trust. Owners may pledge their vote regarding special matters to a mortgagee of the living unit. In the event the owner or owners have pledged their vote regarding special matters to a mortgagee, or if in addition a copy of such mortgage with a statement of the special items respecting which the vote is pledged is filed with the respective Court Board, only the vote of the mortgagee or its agent will be recognized in regard to the special matter upon which the vote is so pledged. Amendments to this paragraph shall only be effected upon the written consent of all the voting owners and their respective mortgagees, if any.

Section 5. Quorum. The presence at the meeting of living-unit owners entitled to cast, or of proxies entitled to cast, the fifty-five percent (55%) of the votes of the COAs shall constitute a quorum for any action. If, however, such quorum shall not be present or represented at any meeting, the living-unit owners entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as above said shall be present or be represented. If a quorum is present, the affirmative vote of the majority of the votes entitled to be cast by the living-unit owners present or represented by proxy, shall be necessary for the adoption of any matter voted upon by the living-unit owners. All votes cast by proxy must be specific proxies; provided, however, that a General Proxy may be used for the sole purpose of achieving a quorum.

Article III Board of Directors

Section 1. Composition. The Boards of Directors of the respective COAs shall be composed of five (5) living-unit owners, individual owners, general partner of partnership, and others of consequence, with ownership interest may be elected to and serve on the Court Boards.

Section 2. Election. At each annual meeting of the respective COAs, subject to the provisions of Section 1 of this Article, the owners shall elect directors to replace those whose terms have expired.

Section 3. Term. Members of the Court Boards shall serve for a term of two years. The members of the Court Boards shall serve until their respective successors are elected, or until their death, resignation or removal, provided, that if any member ceases to be an owner, membership on a Court Board shall thereupon terminate.

Section 4. Vacancy. Should a vacancy on a Court Board occur before a director's term expires, the remaining directors shall appoint a director to serve the unexpired term or until the next regular election except, that a vacancy by removal shall follow the procedure as stated in Section 5, following.

Section 5. Removal. Subject to the provisions of Section 1 hereof, any board member may be removed from membership on a Court Board and a successor may be elected for the unexpired term by a vote of the owners at a special meeting called for such purpose; provided, that unless the entire Board is removed, an individual member shall not be removed if the number of votes cast, at such meeting, against that member's removal exceeds twenty percent of the total voting power at such meeting.

Section 6. Proceedings. Three members of the respective Court Boards shall constitute a quorum and, if a quorum is present, the decision of a majority of those present shall be the act of the Board. From its membership a Court Board shall elect a president of that Board and of the respective COA who shall preside over both its meetings and those of the owners. Each Court Board shall additionally elect a vice president and a secretary. Meetings of the Court Boards may be called, held and conducted in accordance with these bylaws and Declarations and regulations as the Court Boards may adopt. The Court Boards may also act without a meeting by unanimous written consent of its members as evidenced by their signature upon any minutes or resolutions of a Board.

Section 7. Indemnification of Board Members. No member of a Court Board shall be personally liable for monetary damages for conduct as a member of a Court Board provided that this provision shall not eliminate or limit the liability of a member of a Court Board for acts or omissions that involve intentional misconduct by a member of a Court Board or a knowing violation of law by a member of a Court Board, or for any transfer from which the member of a Court Board will personally receive a benefit in money, property, or services to which the member of a Court Board is not lawfully entitled. Repeal or modification of this section shall not adversely affect any right or protection of a member of a Court Board existing at the time of such repeal or modification for or with respect to an act or omission of such member of a Court Board occurring prior to such repeal or modification. Each person who was, or is threatened to be made a party to or is otherwise involved (including, without limitation, as a witness) in any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact

that he or she is or was a member of a Court Board or, while a member of a Court Board, whether the basis of such proceeding is alleged action in an official capacity as a member of a Court Board, trustee, officer, employee or agent or in any other capacity while serving as a member of a Court Board, trustee, officer, employee or agent, shall be indemnified and held harmless by the owners, to the full extent permitted by applicable law as then in effect, against all expense liability and loss (including attorney's fees, judgments, fines, FFLTA excise taxes or penalties and amounts to be paid in settlement) actually and reasonably incurred or suffered by such person in connection therewith, and such indemnification shall continue as to a person who has ceased to be a member of a Court Board, trustee, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in this section with respect to proceedings relating to enforce rights to indemnification, the owners shall indemnify any such person only to the extent of the indemnification. The right of indemnification conferred in this section shall be a common law right and shall include the right to be paid by the owners the expenses incurred in defending any such proceeding in advance of its final disposition, provided, however, that the payment of such expenses in advance of the final disposition of a proceeding shall be made only upon delivery to the owners of an undertaking, by or on behalf of such member of a Court Board, to repay all amounts so advanced if it shall ultimately be determined that such member of a Court Board is not entitled to be indemnified under this Article or otherwise.

Section 3. *Limitation of Court Boards and COA's Liability.* The Court Boards shall not be liable for any failure of any utility or other service to be obtained by a Court Board hereunder, or for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment or from any other place. No diminution or abatement of common expense 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 order of a governmental authority. This exemption extends to all COAs as well as the Court Boards. This Section shall not be interpreted to impose any form of liability by any implication upon Court Boards or COAs.

Article IV Authority of Court Boards

Section 1. *Common Area Management Services.* The respective Court Boards, for the benefit of the common area, and the owners shall enforce the provisions hereof and shall cause to be provided maintenance and maintenance services through the Vista Village Homeowners Association (VVRMA) to the extent of the monthly fees assessed by the VVRMA on the basis of an annual budget for services defined below:

- a. Fire and liability insurance on buildings and grounds.

- b. Electric heat (excluding installation, connection, disconnection, appliances or other costs).
- c. Other electric utility services (excluding installation, connection, disconnection, appliances or other costs).
- d. Water utility services (excluding installation, connection, disconnection or other costs).
- e. Garbage removal (one 32 gallon can per week).
- f. Telecable (two hookups per unit excluding connection, installation, disconnection or costs other than the basic monthly charge).
- g. Scheduled painting of the exterior walls of any living unit.
- h. Lawn and landscaping care for the original landscaping. Such care will not include any annual or periodic bushes.
- i. Normal and reasonable maintenance of appliances. The VVRMA shall not assume the cost of any parts or replacements necessary for such maintenance and the VVRMA shall, in its sole discretion determine whether such maintenance is normal and/or reasonable.
- j. Maintenance of existing common areas, streets, and street lighting.
- k. Incidental administration services such as status reports, accounting and collection services related to the billing of condominium owners by the VVRMA, and other general services which may be mutually agreed to by the COAs.
- l. Special services may be rendered to residents for their personal or physical well-being, and costs, if any, may be billed to the resident as pass through charges.

Section 2. Replacements. The above mentioned program of services does not include the replacement of original equipment, carpet, interior decorating, interior lighting, or replacement of plumbing, etc. It includes the replacement of any part of the limited common area such as ceiling of a living unit.

Section 3. Owner Liability. No owner may be exempted from liability for assessed monthly charges by waiver of the use or abandonment of any of the common area or by abandonment of a living unit.

Section 4. Taxes. Taxes shall be included in the monthly charges on a pro rata basis against the actual tax assessed for a living unit for the current year, except that when the

... a parcel is pending a tax assessments might be required to be... and...
through a lending/financing institution as a condition for approval of a mortgage
plan, such specific tax assessment may be assigned by the VVRMA to the
lending/financing institution for a period equal to the life time of an approved specific
mortgage plan.

Section 5. Records. Detailed and accurate records shall be required of the
VVRMA of the receipts and expenditures affecting monthly charges for management and
services

Section 6. Management Assignment. As a condition of implementing of this
Article, all management and maintenance services referenced in this article are hereby
assigned to the Vista Village Recreation and Maintenance Association (VVRMA) for
direct delivery and conduct in behalf of all living units in Vista Village. All decision for
delivery of these services shall be made by the VVRMA Manager on behalf of the
VVRMA Board, and not by the unit owner.

Article V Amendments

These Amended and Repealed Bylaws, or any part thereof, may be altered or
amended by a Court Board after referral and consideration by all Court Boards, and with
concurrence of two other Court Boards, subject to the power of all owners to change or
repeal such bylaws by a majority vote at any general meeting or at any other meeting of
all owners called for that purpose.

Article VI Common Expenses – Assessments

Section 1. Assessments. Within thirty (30) days prior to the beginning of each
fiscal year the Court Board shall require the VVRMA to estimate the net charges to be
paid during such year for the services and common expenses provided for herein
(including a reasonable provision for contingencies and replacement). Said estimated
net requirements shall be assessed to the owners. If said gross estimated pro-
vide made prior to any year or including nonpayment of any owner's assessment, the
VVRMA may estimate to be a further assessment. Such net amount shall be assessed
to the owners in like proportions.

The VVRMA shall not increase the listed charges for management
services, and recreation services, and maintenance of facilities to exceed the projected
increase in the City of Vista's General Fund. Taxes calculated as the City's average
(with the exception that the increase in taxes and charges can be increased for any actual
increase in property taxes, water supply, and other expenses that are not covered by the

the Board shall have the right to require the Board to pay for the maintenance and repair of the building, including the roof, in the event of a major repair or replacement of the building.

Notwithstanding the above, the Board shall have the right to require the Board to pay for the maintenance and repair of the building, including the roof, in the event of a major repair or replacement of the building. The Board shall have the right to require the Board to pay for the maintenance and repair of the building, including the roof, in the event of a major repair or replacement of the building.

Notwithstanding the above, the Board shall have the right to require the Board to pay for the maintenance and repair of the building, including the roof, in the event of a major repair or replacement of the building.

Section 3. Record Keeping. The Board shall keep detailed accurate records, in chronological order, of the receipts and expenditures affecting the common area, specifying and itemizing the maintenance and repair expenses of the common area and any other expenses incurred. Records and vouchers authorizing the payment involved shall be available to the Board during the hours of work days at the offices of the VVRMA.

Section 4. Lien on the Property. The Board shall have the right to place a lien on the property of the owners of the common area for the amount of the common area dues and any other expenses incurred by the Board. The Board shall have the right to place a lien on the property of the owners of the common area for the amount of the common area dues and any other expenses incurred by the Board.

Notwithstanding the above, the Board shall have the right to place a lien on the property of the owners of the common area for the amount of the common area dues and any other expenses incurred by the Board.

the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any owner or any encumbrancer or prospective encumbrancer of a living unit within a reasonable time after receipt of notice of the days, in recordable form, at a reasonable time, in accordance with the terms of the living unit map, for any unpaid assessments payable with respect to such living unit and upon such payment such encumbrancers shall have their interests in the unit and the amounts paid of the sum to which the lien of such encumbrance.

Section 3. Enforcement of Assessment Lien – Attorney’s Fees and Costs. The VVRMA is authorized to initiate action to foreclose the lien of any assessment. In any action to foreclose a lien against any living unit for non-payment of delinquent assessments, any judgment rendered against the owners or when in favor of a CVA shall include a reasonable sum for attorney’s fees and all costs and expenses reasonably incurred in preparation for or in the prosecuting of said action, in addition to taxable costs permitted by law.

Section 4. Remedial Actions. The remedies provided are cumulative and the CVA and the VVRMA may pursue them concurrently, as well as any other remedies which may be available under law although not expressed herein.

Article VIII Mortgage Protection

Notwithstanding all other provisions hereof, the liens created hereunder upon any living unit for assessments shall be subject and subordinate to, and shall not affect the rights of the holder of, any indebtedness secured by mortgage or deeds of trust upon the living unit made in good faith for value and without notice, provided that after the foreclosure of any such mortgage or deed of trust there may be a lien created pursuant to the provisions hereof upon the interest of the purchaser at such sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser or its owner after the date of such sale which said lien, if any claims shall have the same effect and be enforced in the same manner as provided herein, all as provided in RCW 64.32.200.

Article IX Failure of the VVRMA to Insist on Strict Performance – No Waiver

The failure of the VVRMA to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Ordinance and the Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the purpose 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 VVRMA of any assessment from any owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the VVRMA of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the VVRMA.

Article X Management

The Court Boards shall be represented by the VVRMA through assignment of its management duties, powers, or functions to the VVRMA. The members of the Court Board shall not be liable for any omission or improper exercise by the VVRMA of any management duty, power or function so assigned.

Article XI Exclusive Ownership and Possession by Owner

Each owner shall be entitled to exclusive ownership and possession of his living unit. Each owner shall be entitled to an undivided interest in the common area in the percentage expressed in the Declaration for the respective Courts. The percentage of the undivided interest of each owner in the common area as expressed in the Declaration shall have a permanent character and shall not be altered without the consent of all owners, expressed in an amended Declaration duly recorded. The percentage of the undivided interest in the common area shall not be separated from the unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the living unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each owner may use the common area in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other owners.

Article XII Owner's Obligation to Maintain, Repair and Replace

Section 1. *Owner's Responsibility.* Except for those portions which the COAs and the VVRMA are required to maintain and repair, hereunder (if any), each owner shall at said owner's expense keep in the interior of such unit and its equipment and appliances in good order, condition and repair and in a clean and sanitary condition, and necessary to maintain the good appearance and condition of such living unit; and b) in accordance with PCWA 61.34.305, the limited common area servicing the unit, including plumbing, siding, electrical, water, sewer, telephone and cable lines in or passing through each limited common area. In addition to decorating and keeping the interior of the unit in good repair, the owner shall be responsible for the maintenance, repair or replacement of the plumbing fixtures, water heater, furnaces, lighting fixtures,

... shall be deemed to have been accepted by the owner of the unit and the owner of the common area, and shall be binding on the owner of the unit and the owner of the common area.

Section 13.1. Payment of Fees. The owner of the unit shall pay the monthly fee for the use of the common area and the limited common area as set forth in the Declaration of Condominium.

Article XIII
Limitation on Use of Living Units,
Common Areas, and Limited Common Areas

The living units and common area shall be occupied and used as follows:

- a. No owner shall occupy or use a unit, or permit the same, or any part thereof to be occupied or used for any purpose other than as a private residence for the owner and the owner's family or the owner's lessees or guests.
- b. There shall be no obstruction of the common area.
- c. Nothing shall be done or kept in any living unit, limited common area or in the common area which will increase the rate of maintenance on the common area, without the prior written consent of the VVRMA. The owner shall permit anything to be done or kept in such living unit, limited common area or in the common area which will result in the cancellation or impairment of any living unit or any part of the common area, or which would be in violation of any law.
- d. No permanent sign of any kind shall be displayed to the public view on or from any unit, from the limited common area or from the common area, without the prior written consent of the VVRMA.
- e. No animals, livestock or poultry of any kind shall be raised, bred, or kept in any living unit or in the common area, except that dogs, cats or other household pets may be kept in living units, subject to rules, regulations, and policies adopted by the VVRMA.
- f. No noxious or offensive activity as defined by the VVRMA shall be carried on in any living unit, limited common area or in the common area, nor shall

anything be done therein which may be or become an annoyance, eyesore, or nuisance to the other owners.

- g. Nothing shall be altered or constructed in or removed from the common area, except upon the written consent of the VVRMA.
- h. There shall be no violation of rules for the use of the common area adopted by the VVRMA and furnished in writing to the owners, and the VVRMA is authorized to adopt such rules.
- i. None of the rights and obligations of the owners created herein, or by the deed creating the condominiums shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; 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 conduct of said owner or owners.

Article XIV Entry for Repairs

The VVRMA or its agent may enter any living unit when necessary in connection with any maintenance, landscaping or construction for which the VVRMA is responsible. Such entry shall be made with as little inconvenience to the owners as practicable, and any damage caused thereby shall be repaired by the VVRMA out of the common expense charges. Should an Owner or Resident refuse to provide VVRMA with a key to the residence, he or she shall be charged with the cost of the repairs due to damage caused by an emergency forced entry.

Article XV Insurance

Section 1. Insurance Required. The Court Board shall require the VVRMA to obtain and maintain, to the extent obtainable, the following insurance, to the extent reasonably available:

- a. Property and fire insurance, including insurance against all risks of direct physical loss commonly insured against, with extended coverage insuring the buildings containing the living units (including all of the units and the bathroom and kitchen fixtures initially installed therein, but not including drapes, fixtures, furniture, furnishings, or other personal property supplied or installed by living unit owners), and covering the interests of the Condominium, and the respective COAs, all living unit owners and their

mortgagees, as their interests may appear, in the amount determined by the VVRMA. Each of the policies shall contain a standard mortgagee clause in favor of each mortgagee of a living unit which shall provide that the loss, if any, thereunder shall be payable to such mortgagee as its interest may appear, subject however, to the loss payment provisions in favor of the VVRMA;

- b. Workmen's compensation insurance to the extent required by applicable laws;
- c. Liability insurance, including medical payments insurance, covering all occurrences commonly insured for death, bodily injury, in such amounts and with such coverage as the VVRMA shall from time to time determine, but at least covering each member of a Court Board of the VVRMA and its manager, board members of the COAs, and each living unit owner and with cross liability endorsement to cover liabilities of the living unit owners as a group to a living unit owner; and
- d. Such other insurance as the VVRMA may determine. All such policies shall provide that adjustment of loss shall be made by the VVRMA and that the net proceeds thereof shall be payable to the VVRMA.

An insurer that has issued an insurance policy under this Article shall issue certificates or memoranda of insurance to VVRMA and, upon written request, to any unit owner or holder of a mortgage. The insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of Chapter 48.18 RCW pertaining to the cancellation or non-renewal of contracts of insurance. The insurer shall not modify the amount or the extent of the coverage of the policy, or cancel or refuse to renew the policy.

Section 2. Waivers of Subrogation and Pro-rata Liability. All policies of physical damage insurance shall contain waivers of subrogation and waivers of any reduction or pro-rata liability of the insurer as a result of any insurance carried by living unit owners or of invalidity arising from any act of the insured or any living unit owner, and shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days' prior written notice to all of the insured, including all mortgagees of living units. Duplicate originals of all policies of physical damage insurance and of all renewals thereof, together with proof of payment of premiums, shall be delivered to all mortgagees of living units at least ten (10) days prior to expiration of the then current policies.

Section 3. Personal Property Insurance. Living unit owners should carry insurance for their own benefit insuring their drapes, fixtures, furniture, furnishings, and other personal property provided that all such policies shall contain waivers of subrogation and liability provided that the liability of the carriers issuing insurance obtained by the VVRMA shall not be affected or diminished by reason of any such additional insurance carried by any living unit owner.

Article XVI Judicial Partition

There shall be no judicial partition of the development or any part thereof, nor shall any person acquiring any interest in the development or any part thereof seek any such judicial partition, until the happening of the condition precedent set forth in the Declaration in the case of damage or destruction or unless the property has been removed from the provisions of the Condominium Act as provided in section RCW 64.32.150 thereof; provided, however, that if any condominium shall be owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants. But such partition shall not affect any other condominium living units.

Article XVII Maintaining Adult Status Under Fair Housing Act

Section 1. Adult Community Status. It is the intent of the COAs to maintain an adult community status for its residents by complying with the United States Housing for Older Persons Act of 1995 (HOPA) (PL 104-76), effective May 3, 1999, inasmuch as at least 80% of the living units must be occupied by at least one person 55 years of age or older and the adult community shall comply with HUD regulations on verification of occupancy. It is the intent of the COAs to preserve its adult community status by maintaining the 80% age requirement described above.

Section 2. Policies and Procedures. Policies and procedures regarding fair housing for older persons shall be promulgated by the COA and by the VMPMA and publication of such policies shall be required to aware owner understanding of and required compliance with the policies.

Section 3. Responsibility at Time of Resale. The Declaration, Policies, and policies procedures regarding maintenance of Vista Village as an adult status community for older persons shall be provided immediately to any real estate agent, broker, or salesperson who shall be posted on a living unit. Any lien counterclaim or other claim shall be filed in the declarations, bylaws, and policies procedures no longer than 90 days after the closure date of the real estate transaction.

Section 4. Fair Housing. The Housing for Older Persons Act of 1995 (HOPA) (PL 104-76) as amended effective May 3, 1999, is hereby incorporated into the Declaration and Policies and procedures, the original intent of the Declaration to establish the community of Vista Village as a housing for older persons.

With the consent of the Association, the Board of Directors has
Approved the following list of Board members for the year 1998
It is the intent of the Board to have the following members for the year 1998

1998
1998

1998
1998

- Robbin Smith* . for Athena Court
- North Christensen* . for Bacchus Court
- Laura J. Miller* . for Calypso Court
- Ramona Smith* . for Diana Court
- Glynneth Henning* for Electra Court

ATTEST:

Laura J. Miller

Secretary of Vista Village Recreation and Maintenance Association

**AMENDED AND RESTATED
VISTA VILLAGE CONDOMINIUMS
BYLAWS OF THE COURT OWNERS' ASSOCIATIONS
including
ATHENA, BACCHUS, CALYPSO, DIANA, AND ELECTRA
COURTS**

**Article I
Identity**

Section 1. These are the Amended and Restated Bylaws of the Court Owners' Associations (COAs), associations organized for the purpose of administering five condominium courts, respectively, (1) Athena Court, (2) Bacchus Court, (3) Calypso Court, (4) Diana Court, and (5) Electra Court, each condominium court subject to that certain and respective Declaration of Covenants, Conditions and Restrictions recorded at the Office of the Thurston County Auditor with dates and references as follows:

<u>COURT NAME</u>	<u>RECORDING NUMBER</u>	<u>DATE RECORDED</u>
Athena Court	863680	April 7, 1972
Bacchus Court	873169	August 24, 1972
Calypso Court	1004199	July 12, 1977
Diana Court	948931	October 8, 1975
Electra Court	1062790	December 27, 1978

The office of the COAs shall be at 3300 Carpenter Road SE, Lacey, Washington, 98503.

The fiscal year of the COAs shall be May 1 through April 30.

Section 2. Membership. All present and future living-unit condominium owners shall by virtue of such ownership, be members of their respective Court Owners' Association (COA) with all rights, privileges, responsibilities and obligations accorded by these bylaws. Such membership will terminate upon the transfer of property title to another person or organization.

Section 3.

(a) *Application.* All present and future owners, mortgagees, lessees and occupants of living units and their employees or any other persons who may use the facilities of the condominium in any manner are subject to these bylaws, the declarations, the rules and regulations, and all covenants, agreements, restrictions, assessments and declarations of record (title conditions). The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a living unit shall constitute an agreement that these bylaws, the rules, regulations, and

policies, the provisions of the Declarations, as they may be amended from time to time, and the title condition are accepted, ratified and will be complied with.

(b) *Notification.* If an Owner rents his/her unit, he/she must give pertinent information to the Manager within 30 days of occupancy.

Article II Court Owners' Associations (COAs)

Section 1. *Annual Meetings.* There shall be an annual meeting of the living-unit owners, at least thirty (30) days but not more than sixty (60) days prior to the end of the fiscal year, as may be designated by written notice of the respective Court Board delivered to the owners not less than ten (10) days prior to the date fixed for said meeting.

Section 2. *Special Meetings.* Special meetings of a COA may be called at any time for the purpose of considering matters which by the terms of the governance documents require the approval of all or some of the owners, or for any other reasonable purpose. Said special meeting shall be called by written notice from the respective Court Board or by written petition of the owners having one-third (1/3) of the total vote and delivered not less than ten (10) days nor more than fifty (50) days before the date fixed for said meeting. Said notice shall specify the date, time and place of the meeting, and the matters to be considered at such meeting.

Section 3. *Notices.* Any notice permitted or required to be delivered as provided herein may be delivered in a tangible medium or in an electronic transmission. If notice is provided in a tangible medium, it may be transmitted by: mail, private carrier, or personal delivery; or telephone, wire, or wireless equipment that transmits a facsimile of the notice. If mailed, such notice shall be deemed delivered when deposited in the United States mail, postage pre-paid, addressed to the person entitled to such notice at the address given by such person to the respective Court Board in writing for the purpose of service of such notice. Notice to the owner or owners shall be sufficient if mailed to the living unit of such person or persons if no other mailing address has been given to the Court Board or by any of the persons so entitled. Such address may be changed from time to time by notice in writing to the Court Board. Other forms of notice in a tangible medium described in this section are effective when received. If notice is provided in an electronic transmission, it must satisfy the requirements of RCW 24.03.009.

Section 4. *Voting.* All of the owners of living units shall constitute the COAs in the respective courts as provided in the Horizontal Property Regimes Act, RCW 64.32. Natural persons, partnerships, and corporations, trusts, or other lawful business entities may own or have ownership interests in living units.

The total voting power of all owners shall be 100% and the total number of votes available to the owner or owners of any one living unit shall be equal to the percentage of undivided interest in the common areas and facilities appertaining to such living unit as

set out in the Declarations. If a person, corporation, or firm owns more than one living unit that entity shall have the votes for each living unit owned. The vote of a majority of the votes entitled to be cast by the owners present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the owners. All votes cast by proxy must be specific proxies.

There shall be one voting owner or agent for each living unit. Each owner shall have the right to vote in person, by mail, or by proxy. The owner or owners of each living unit, or some person designated by such owner or owners to act as proxy (any said party acting as proxy need not be an owner) shall be entitled to cast the votes appurtenant to such living unit at all meetings of the COAs. Designation of any such proxy shall be made in writing to the respective Court Board and shall be revocable at any time by written notice to that Board by the owner or owners so designating. Any or all of such owners may be present at any meeting of a court association and may vote or take any other action as a unit, either in person or by proxy.

As used in these bylaws the term "mortgage" shall include a deed of trust and the term "mortgagee" shall include the beneficiary of a deed of trust. Owners may pledge their vote regarding special matters to a mortgagee of the living unit. In the event the owner or owners have pledged their vote regarding special matters to a mortgagee, or if in addition a copy of such mortgage with a statement of the special items respecting which the vote is pledged is filed with the respective Court Board, only the vote of the mortgagee or its agent will be recognized in regard to the special matter upon which the vote is so pledged. Amendments to this paragraph shall only be effected upon the written consent of all the voting owners and their respective mortgagees, if any.

Section 5. Quorum. The presence at the meeting of living-unit owners entitled to cast, or of proxies entitled to cast twenty-five percent (25%) of the votes of the COAs shall constitute a quorum for any action. If, however, such quorum shall not be present or represented at any meeting, the living-unit owners entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. If a quorum is present, the affirmative vote of the majority of the votes entitled to be cast by the living-unit owners present or represented by proxy, shall be necessary for the adoption of any matter voted upon by the living-unit owners. All votes cast by proxy must be specific proxies; provided, however, that a General Proxy may be used for the sole purpose of achieving a quorum.

Article III Board of Directors

Section 1. Composition. The Boards of Directors of the respective COAs shall be composed of five living-unit owners. Individual owners, general partners of partnerships, and officers of corporations with ownership interest may be elected to and serve on the Court Boards.

Section 2. Election. At each annual meeting of the respective COAs, subject to the provisions of Section 1 of this Article, the owners shall elect directors to replace those whose terms have expired.

Section 3. Term. Members of the Court Boards shall serve for a term of two years. The members of the Court Boards shall serve until their respective successors are elected, or until their death, resignation or removal, provided, that if any member ceases to be an owner, membership on a Court Board shall thereupon terminate.

Section 4. Vacancy. Should a vacancy on a Court Board occur before a director's term expires, the remaining directors shall appoint a director to serve the unexpired term or until the next regular election except, that a vacancy by removal shall follow the procedure as stated in Section 5, following.

Section 5. Removal. Subject to the provisions of Section 1 hereof, any board member may be removed from membership on a Court Board and a successor may be elected for the unexpired term by a vote of the owners at a special meeting called for such purpose; provided, that unless the entire Board is removed, an individual member shall not be removed if the number of votes cast, at such meeting, against that member's removal exceeds twenty percent of the total voting power at such meeting.

Section 6. Proceedings. Three members of the respective Court Boards shall constitute a quorum and, if a quorum is present, the decision of a majority of those present shall be the act of the Board. From its membership a Court Board shall elect a president of that Board and of the respective COA who shall preside over both its meetings and those of the owners. Each Court Board shall additionally elect a vice president and a secretary. Meetings of the Court Boards may be called, held and conducted in accordance with these bylaws and Declarations and regulations as the Court Boards may adopt. The Court Boards may also act without a meeting by unanimous written consent of its members as evidenced by their signature upon any minutes or resolutions of a Board.

Section 7. Indemnification of Board Members. No member of a Court Board shall be personally liable for monetary damages for conduct as a member of a Court Board, provided that this provision shall not eliminate or limit the liability of a member of a Court Board for acts or omissions that involve intentional misconduct by a member of a Court Board or a knowing violation of law by a member of a Court Board, or for any transfer from which the member of a Court Board will personally receive a benefit in money, property, or services to which the member of a Court Board is not legally entitled. Any repeal or modification of this section shall not adversely affect any right or protection of a member of a Court Board existing at the time of such repeal or modification for or with respect to an act or omission of such member of a Court Board occurring prior to such repeal or modification. Each person who was, or is threatened to be made a party to or is otherwise involved (including, without limitation, as a witness) in any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact

that he or she is or was a member of a Court Board or, while a member of a Court Board, whether the basis of such proceeding is alleged action in an official capacity as a member of a Court Board, trustee, officer, employee or agent or in any other capacity while serving as a member of a Court Board, trustee, officer, employee or agent, shall be indemnified and held harmless by the owners, to the full extent permitted by applicable law as then in effect, against all expense liability and loss (including attorney's fees, judgments, fines, ERISA excise taxes or penalties and amounts to be paid in settlement) actually and reasonably incurred or suffered by such person in connection therewith, and such indemnification shall continue as to a person who has ceased to be a member of a Court Board, trustee, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in this section with respect to proceedings seeking to enforce rights to indemnification, the owners shall indemnify any such person seeking indemnification. The right to indemnification conferred in this section shall be a contract right and shall include the right to be paid by the owners the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that the payment of such expenses in advance of the final disposition of a proceeding shall be made only upon delivery to the owners of an undertaking, by or on behalf of such member of a Court Board, to repay all amounts so advanced if it shall ultimately be determined that such member of a Court Board is not entitled to be indemnified under this Article or otherwise.

Section 8. *Limitation of Court Boards and COAs Liability.* The Court Boards shall not be liable for any failure of any utility or other service to be obtained by a Court Board hereunder, or for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment or from any other place. No diminution or abatement of common expense 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 order of a governmental authority. This exemption extends to all COAs as well as the Court Boards. This Section shall not be interpreted to impose any form of liability by any implication upon Court Boards or COAs.

Article IV

Authority of Court Boards

Section 1. *Enforcement and Management Services.* The respective Court Boards, for the benefit of the condominiums and the owners shall enforce the provisions hereof and shall acquire certain management and maintenance services through the Vista Village Recreation and Maintenance Association (VVRMA) to be paid out of the monthly fees assessed by the VVRMA on the basis of an approved budget for services defined below:

- a. Fire and liability insurance on buildings and grounds.

- b. Common area electricity services, both metered and estimated.
- c. Water utility services (excluding installation, connection, disconnection or other costs).
- d. Garbage/recycle services. (Reference: VVRMA Policies, Garbage)
- e. Television cable (two hookups per unit excluding connection, installation, disconnection or costs other than the basic monthly charge).
- f. Scheduled painting of the exterior walls of any living and garage unit.
- g. Lawn and landscaping care for the common area landscaping. (Reference VVRMA Policies, Landscaping)
- h. Normal and reasonable maintenance of appliances. The VVRMA shall not assume the cost of any parts or replacements necessary for such maintenance and the VVRMA shall, in its sole discretion determine whether such maintenance is normal and/or reasonable.
- i. Maintenance of existing common areas, streets, and street lighting.
- j. Incidental administration services such as status reports, accounting and collection services related to the billing of condominium owners by the VVRMA, and other general services which may be mutually agreed upon by the COAs.
- k. Special services may be rendered to residents for their personal or physical well-being, and costs, if any, may be billed to the resident as pass through charges.

Section 2. Replacements. The above mentioned program of services does not include the replacement of original equipment, carpets, interior decorating, interior lighting, or replacements of glass nor does it include the replacement of any part of the limited common area such as siding on a living unit.

Section 3. Owner Liability. No owner may be exempted from liability for assessed monthly charges by waiver of the use or enjoyment of any of the common area or by abandonment of a living unit.

Section 4. Taxes. Taxes are included in the monthly charges on a pro rata basis against the actual tax assessed for a living unit for the current year, except that when the sale of a parcel is pending and tax assessments might be required to be collected and paid through a lending/financing institution as a condition for approval of a needed mortgage plan, such specific tax assessment may be assigned by the VVRMA to the

lending/financing institution for a period equal to the life time of an approved specific mortgage plan.

Section 5. *Records.* Detailed and accurate records shall be required of the VVRMA of the receipts and expenditures affecting monthly charges for management and services.

Section 6. *Management Assignment.* As a condition of implementing of this Article, all management and maintenance services referenced in this article are hereby assigned to the Vista Village Recreation and Maintenance Association (VVRMA) for direct delivery and conduct in behalf of all living units in Vista Village. All decisions for delivery of these services shall be made by the VVRMA Manager on behalf of the VVRMA Board, and not by the unit owner.

Article V Amendments

These Amended and Restated Bylaws, or any part thereof, may be amended by the approval of three out of the five COAs after one COA has voted its approval and made recommendations to the other COAs. Each COA shall vote within 30 days according to Section 11 of its Declarations of Covenants, Conditions and Restrictions as identified in Article 1, Section 1 above. This is subject to the power of all owners to approve, change or repeal such bylaws by a majority vote at any general meeting or at any other meeting of all owners called for that purpose.

Article VI Common Expenses – Assessments

Section 1. *Assessments.* Within thirty (30) days prior to the beginning of each fiscal year, the Court Boards shall require the VVRMA to estimate the net charges to be paid during such year for the services and common expenses provided for herein (including a reasonable provision for contingencies and replacements). Said "estimated cash requirement" shall be assessed to the owners. If said sum estimated proves inadequate for any reason including nonpayment of any owner's assessment, the VVRMA may at any time levy a further assessment. Such assessment shall be assessed to the owners in like proportions.

The VVRMA shall not increase the initial estimated charges for management, services, and common expenses, as herein provided for so as to exceed the proportional increase in the US Bureau of Labor's Consumer Price Index calculated as the US average (with the exception that the assessments and charges can be increased for any actual increase in property taxes, water and storm water expenses, sewer expenses, garbage expenses, and electricity expenses without reference to the Consumer Price Index)

without first receiving an affirmative vote of 60% of the members of the respective COAs attending a meeting called by the VVRMA for the purpose of approving or rejecting any proposed increase in excess of the Consumer Price Index.

However, recognition is hereby assured that the COAs and the individual owners recognize that the Consumer Price Index control as herein established on management, services, and common expense charges is of primary importance to the members of the COAs and therefore the degree of management, services, or additional amenities to common areas shall be governed by the ability of the VVRMA to pay for such management, services, or amenities from the monthly charge available hereunder. Each owner shall be obligated to pay assessments made pursuant to this article to the VVRMA in equal monthly installments on or before the first of each month during such year, or in such other reasonable manner as the VVRMA shall designate.

Section 2. Fixing Assessments. The rights, duties, and functions connected with the fixing and assessing of common expenses as set forth in this Article are hereby assigned to the VVRMA in its role as defined in Section 6, Article IV, above.

Section 3. Record Keeping. The Boards of the COAs shall require the VVRMA to keep detailed accurate records, in chronological order, of the receipts and expenditures affecting the common area, specifying and itemizing the maintenance and repair expenses of the common area and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by any owner at convenient hours of week days at the offices of the VVRMA, as established in its bylaws.

Article VII

Default in Payment of Assessments Collection- Notice of Obligation

Section 1. Obligation for Assessment. Each monthly assessment and each special assessment shall be a joint and several obligation of the owner or owners of living units for which the same are assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment whether regular or special, assessed to the owner of any living unit and the unit, plus interest at the highest contractual rate, and costs, including reasonable attorney's fees, shall be a lien upon such living unit. The said lien for payment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except as provided in RCW 64.32.200(2) and except as provided in RCW 64.34.364.

Section 2. Certificate of Liability. A certificate executed and acknowledged by the VVRMA stating the indebtedness secured by the lien upon any living unit created hereunder shall be conclusive upon the COAs as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such

certificate shall be furnished to any owner or any encumbrancer or prospective encumbrancer of a living unit within a reasonable time after request not to exceed 90 days, in recordable form, at a reasonable fee. Any encumbrancer holding a lien on a living unit may pay any unpaid common expenses payable with respect to such living unit and upon such payment such encumbrancers shall have a lien on such living unit for the amounts paid of the same rank as the lien of such encumbrance.

Section 4. Foreclosure of Assessment Lien – Attorney's Fees and Costs. The VVRMA is authorized to initiate action to foreclose the lien of any assessment. In any action to foreclose a lien against any living unit for non-payment of delinquent assessments, any judgment rendered against the owners or when in favor of a COA shall include a reasonable sum for attorney's fees and all costs and expenses reasonably incurred in preparation for or in the prosecuting of said action, in addition to taxable costs permitted by law.

Section 5. Remedial Actions. The remedies provided are cumulative and the COAs and the VVRMA may pursue them concurrently, as well as any other remedies which may be available under law although not expressed herein.

Article VIII Mortgage Protection

Notwithstanding all other provisions hereof, the liens created hereunder upon any living unit for assessments shall be subject and subordinate to, and shall not affect the rights of the holder of, any indebtedness secured by mortgages or deeds of trust upon the living unit made in good faith for value and without notice, provided that after the foreclosure of any such mortgage or deed of trust there may be a lien created pursuant to the provisions hereof upon the interest of the purchaser at such sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an owner after the date of such sale which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein, all as provided in RCW 64.32.200.

Article IX Failure of the VVRMA to Insist on Strict Performance – No Waiver

The failure of the VVRMA to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of these bylaws and the Declarations, or to exercise any right or option herein contained, 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 VVRMA

of any assessment from any owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the VVRMA of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the VVRMA.

Article X Management

The Court Boards shall be represented by the VVRMA through assignment of its management duties, powers, or functions, to the VVRMA. The members of the Court Boards shall not be liable for any omission or improper exercise by the VVRMA of any management duty, power or function so assigned.

Article XI Exclusive Ownership and Possession by Owner

Each owner shall be entitled to exclusive ownership and possession of his living unit. Each owner shall be entitled to an undivided interest in the common area in the percentage expressed in the Declaration for the respective Courts. The percentage of the undivided interest of each owner in the common area as expressed in the Declarations shall have a permanent character and shall not be altered without the consent of all owners expressed in an amended Declaration duly recorded. The percentage of the undivided interest in the common area shall not be separated from the unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the living unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each owner may use the common area in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other owners.

Article XII Owner's Obligation to Maintain, Repair and Replace

Section 1. Owner's Responsibility. Except for those portions which the COAs and the VVRMA are required to maintain and repair hereunder (if any), each owner shall at said owner's expense keep a) the interior of such unit and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, and necessary to maintain the good appearance and condition of such living unit; and b) in accordance with RCW 64.34.360, the limited common area servicing the unit, including plumbing, siding, electrical, water, sewer, telephone and/or cable lines in or passing through such limited common area. In addition to decorating and keeping the interior of the unit in good repair, the owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, furnaces, lighting fixtures,

refrigerators, air conditioning equipment, dishwashers, disposal or ranges that may be in, or connected with the living unit, except as otherwise provided herein.

Section 2. Additional Responsibility of Owners. The owner shall also at the owner's own expense, keep the patio, storage shed and carports which have been assigned to such living unit as limited common area in a clean and sanitary condition. Neither the COAs nor the VVRMA shall be responsible to the owner for loss or damage by theft or otherwise of articles which may be stored by the owner in the patio, storage shed, carports or living unit.

Section 3. Payment of Lien. The owner shall promptly discharge any lien which may hereafter be filed against such condominium living unit and shall otherwise abide by the provisions of RCW 64.32.070 of the Condominium Act.

Article XIII

Limitation on Use of Living Units, Common Areas, and Limited Common Areas

The living units and common area shall be occupied and used as follows:

- a. No owner shall occupy or use a unit, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the owner and the owner's family or the owner's lessees or guests.
- b. There shall be no obstruction of the common area.
- c. Nothing shall be done or kept in any living unit, limited common area or in the common area which will increase the rate of insurance on the common area, without the prior written consent of the VVRMA. No owner shall permit anything to be done or kept in such living unit, limited common area or in the common area which will result in the cancellation of insurance of any living unit or any part of the common area, or which would be in violation of any law.
- d. No permanent sign of any kind shall be displayed to the public view on or from any unit, from the limited common area or from the common area, without the prior written consent of the VVRMA.
- e. No animals, livestock or poultry of any kind shall be raised, bred, or kept in any living unit or in the common area, except that dogs, cats or other household pets may be kept in living units, subject to rules, regulations, and policies adopted by the VVRMA.
- f. No noxious or offensive activity as defined by the VVRMA shall be carried on in any living unit, limited common area or in the common area, nor shall

anything be done therein which may be or become an annoyance, eyesore, or nuisance to the other owners.

- g. Nothing shall be altered or constructed in or removed from the common area, except upon the written consent of the VVRMA.
- h. There shall be no violation of rules for the use of the common area adopted by the VVRMA and furnished in writing to the owners, and the VVRMA is authorized to adopt such rules.
- i. None of the rights and obligations of the owners created herein, or by the deed creating the condominiums shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; 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 conduct of said owner or owners.

Article XIV Entry for Repairs

The VVRMA or its agent may enter any living unit when necessary in connection with any maintenance, landscaping or construction for which the VVRMA is responsible. Such entry shall be made with as little inconvenience to the owners as practicable, and any damage caused thereby shall be repaired by the VVRMA out of the common expense charges. Should an Owner or Resident refuse to provide VVRMA with a key to the residence, he or she shall be charged with the cost of the repairs due to damage caused by an emergency forced entry.

Article XV Insurance

Section 1. *Insurance Required.* The Court Boards shall require the VVRMA to obtain and maintain, to the extent obtainable, the following insurance, to the extent reasonably available:

- a. Property and fire insurance, including insurance against all risks of direct physical loss commonly insured against, with extended coverage insuring the buildings containing the living units (including all of the units and the bathroom and kitchen fixtures initially installed therein, but not including drapes, fixtures, furniture, furnishings, or other personal property supplied or installed by living unit owners), and covering the interests of the Condominium, and the respective COAs, all living unit owners and their

mortgagees, as their interests may appear, in the amount determined by the VVRMA. Each of the policies shall contain a standard mortgagee clause in favor of each mortgagee of a living unit which shall provide that the loss, if any, thereunder shall be payable to such mortgagee as its interest may appear, subject however, to the loss payment provisions in favor of the VVRMA;

- b. Workmen's compensation insurance to the extent required by applicable laws;
- c. Liability insurance, including medical payments insurance, covering all occurrences commonly insured for death, bodily injury, in such amounts and with such coverage as the VVRMA shall from time to time determine, but at least covering each member of a Court Board of the VVRMA and its manager, board members of the COAs, and each living unit owner and with cross liability endorsement to cover liabilities of the living unit owners as a group to a living unit owner; and
- d. Such other insurance as the VVRMA may determine. All such policies shall provide that adjustment of loss shall be made by the VVRMA and that the net proceeds thereof shall be payable to the VVRMA.

An insurer that has issued an insurance policy under this Article shall issue certificates or memoranda of insurance to VVRMA and, upon written request, to any unit owner or holder of a mortgage. The insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of Chapter 48.18 RCW pertaining to the cancellation or non-renewal of contracts of insurance. The insurer shall not modify the amount or the extent of the coverage of the policy, or cancel or refuse to renew the policy.

Section 2. Waivers of Subrogation and Pro-rata Liability. All policies of physical damage insurance shall contain waivers of subrogation and waivers of any reduction of pro-rata liability of the insurer as a result of any insurance carried by living unit owners or of invalidity arising from any acts of the insured or any living unit owners, and shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days' prior written notice to all of the insured, including all mortgagees of living units. Duplicate originals of all policies of physical damage insurance and of all renewals thereof, together with proof of payment of premiums, shall be delivered to all mortgagees of living units at least ten (10) days prior to expiration of the then current policies.

Section 3. Personal Property Insurance. Living unit owners should carry insurance for their own benefit insuring their drapes, fixtures, furniture, furnishings, and other personal property provided that all such policies shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the VVRMA shall not be affected or diminished by reason of any such additional insurance carried by any living unit owner.

Article XVI Judicial Partition

There shall be no judicial partition of the development or any part thereof, nor shall any person acquiring any interest in the development or any part thereof seek any such judicial partition, until the happening of the conditions set forth in paragraph 8 of the Declaration in the case of damage or destruction or unless the property has been removed from the provisions of the Condominium Act as provided in section RCW 64.32.150 thereof; provided, however, that if any condominium shall be owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants. But such partition shall not affect any other condominium living units.

Article XVII Maintaining Adult Status Under Fair Housing Act

Section 1. Adult Community Status. It is the intent of the COAs to maintain an adult community status for its residents by complying with the United States Housing for Older Persons Act of 1995 (HOPA) (PL 104-76), effective May 3, 1999, inasmuch as at least 80% of the living units must be occupied by at least one person 55 years of age or older; and, the adult community shall comply with HUD regulations on verification of occupancy. It is the intent of the COAs to preserve its adult community status by maintaining the 80% age requirement described above.

Section 2. Policies and Procedures. Policies and procedures regarding fair housing for older persons shall be promulgated by the COAs and by the VVRMA; and, publication of such policies shall be required to assure owner understanding of and required compliance with the policies.

Section 3. Responsibility at Time of Re-Sale. The Declarations, bylaws, and policies-procedures regarding maintenance of Vista Village as an adult-status community for older persons shall be provided immediately to any real estate agency whose "for sale" sign might be posted to a living unit. Any homeowner acting as a direct seller shall furnish the declarations, bylaws, and policies-procedures to any buyer no later than closure date of the real estate transaction.

Section 4. Fair Housing. The Housing for Older Persons Act of 1995 (HOPA_ (PL 104-76), as amended, effective May 3, 1999, is hereby incorporated into these bylaws by reference thus complementing the original intent of the Declarant to establish the condominiums of Vista Village as housing for older persons.

THE END

CERTIFICATION OF ADOPTION

We hereby certify that the foregoing are the Amended and Restated Bylaws of the COAs representing Athena, Bacchus, Calypso, Diana, and Electra Courts, adopted by the respective COAs at meetings called for that purpose in the month of October, 2015.

IN WITNESS WHEREOF, we have hereunto affixed our official signatures on this 20 day of October, 2015.

President of Athena Court: _____
President of Bacchus Court: _____
President of Calypso Court: _____
President of Diana Court: _____
President of Electra Court: _____

ATTEST:

Secretary of Vista Village Recreation and Maintenance Association

Limited Common and Common Areas repairs paid by owners 2011-2016

Shirey-Yager-Pryor	Replace	Gutters	Split 3 Ways amount	Rep. 15-16	15 Board Meeting
			\$624.00		
Robert Cook	Replace Roof		507.41	Owners	Jul 17, 2013 Board Meeting
Pam Jorgensen	Replace Roof		2951.21	Owner	Jul 17, 2013 Board Meeting
Absentee Owner	Replace Roof	unknown		Owner	Jul 17, 2013
Sharon Shearer	Replace Roof		3165.34	Owner	Jul 17, 2013 Board Meeting
Wilma Johnson	Replace Roof		2275	Owner	Jul 17, 2013
Romer Orr	Replace Roof		5385	Owner	Jul 17, 2013 Board Meeting
	Replace Roof		\$4,891.72	Owner	Jul 17, 2013 Board Meeting
	Replace Roof		\$4,881.72	Owner	Jul 17, 2013 Board Meeting
	Replace Roof		36,182	Owner	Jul 17, 2013 Board Meeting
	Replace Roof		50,182	Owner	Jul 17, 2013 Board Meeting
	Replace Roof	unknown		Owner	Jul 17, 2013 Board Meeting

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FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

16 SEP 23 AM 11:50

Linda Myhre Enlow
Thurston County Clerk

16-2-00490-34
ORDYMT
Order Denying Motion/Petition
639182



Hon. Mary Sue Wilson

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

DONALD LEO,

Plaintiff,

vs.

DIANA COURT OWNERS ASSOCIATION,
an unincorporated association; and VISTA
VILLAGE RECREATION AND
MAINTENANCE ASSOCIATION, a not-for-
profit corporation,

Defendants.

No. 16-2-00490-34

ORDER DENYING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT

~~PROPOSED~~

MSW

THIS MATTER, having come before the Court on Plaintiff's Motion for Partial Summary Judgment, the Court having reviewed the records and files herein, and specifically:

1. Plaintiff's Motion for Partial Summary Judgment;
2. Declaration of Donald Leo in support of Plaintiff's Motion for Partial Summary Judgment;
3. VVRMA's Opposition to Plaintiff's Motion for Partial Summary Judgment;
4. Declaration of Kyle J. Rekofke in support of VVRMA's Opposition to Plaintiff's Motion for Summary Judgment;
5. Diana Court's Opposition to Plaintiff's Motion for Partial Summary Judgment;
6. Donald Leo's Reply Brief in Support of Motion for Partial Summary Judgment,;
7. _____

ORDER DENYING PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT - 1
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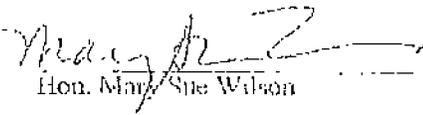
LEE SMART
P.S., Inc. - Pacific Northwest Law Offices
1800 One Convention Place - 701 Pike Street - Seattle - WA - 98101-3929
Tel. 206.624.7990 - Toll Free 877.624.7990 - Fax 206.624.5944

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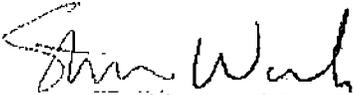
and the Court being fully advised in the premises, now, therefore, it is HEREBY ORDERED
that

1. Plaintiff's Motion for Partial Summary Judgment is hereby DENIED,
ENTERED this 23rd day of September, 2016.



Hon. Mary Sue Wilson

Presented by:
LEE SMART. P.S., INC.

By: 
Steven G. Wraith, WSBA No. 17364
Kyle J. Rekolke, WSBA No. 49327
Of Attorneys for Defendant Vista Village
Recreation and Maintenance Association

Approved as to form; Notice of Presentation Waived:

RODGERS KEE & CARD, P.S.

By: 

C. Scott Kee, WSBA No. 28173
Attorney for Defendant Diana Court
Owners Association

1 OWENS DAVIES, P.S.

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By: Matthew P. Edwards, WABA No. 18332
Attorney for Plaintiff Donald Leo

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ORDER DENYING PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT - 3
5906281.doc

LEE SMART

P.S., Inc. - Pacific Northwest Law Offices

809 One Convention Place - 701 Pike Street - Seattle - WA - 98101-3929
Tel. 206.624.7990 - Toll Free 877.624.7990 - Fax 206.624.5944

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

23rd OCT -7 AM 10:56

Linda N. McNeil
Thurston County Clerk

16-2-00490-34
ORDYMIT
Order Denying Motion/Petition
677484

Hon. Mary Sue Wilson



SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

DONALD LEO,

Plaintiff,

No. 16-2-00490-34

vs.

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION

DIANA COURT OWNERS ASSOCIATION,
an unincorporated association; and VISTA
VILLAGE RECREATION AND
MAINTENANCE ASSOCIATION,
a not-for-profit corporation,

Defendants.

~~(PROPOSED)~~

M/S

THIS MATTER, having come before the Court on Plaintiff's Motion for Reconsideration, the Court having reviewed the records and files herein, and specifically:

1. Plaintiff's Motion for Reconsideration;
2. Declaration of Matthew B. Edwards in Support of Motion for Reconsideration;
3. Defendant Vista Village Recreation and Maintenance Association's Opposition

to Plaintiff's Motion for Reconsideration;

~~4. Plaintiff's Reply, if any;~~

5. _____ ; and

6. _____

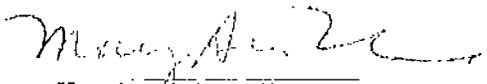
and the Court being fully advised in the premises, now, therefore, it is HEREBY ORDERED that Plaintiff's Motion for Reconsideration is hereby DENIED.

ORDER DENYING PLAINTIFF'S MOTION FOR
RECONSIDERATION - 1
5977134.doc

LEE SMART
P.S., Inc. • Pacific Northwest Law Offices
1830 One Convention Place • 701 Pike Street • Seattle, WA • 98101-3979
Tel. 206.624.7990 • Toll Free 877.624.7990 • Fax 206.624.5944

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ENTERED this 7th day of October, 2016.


Hon. Mary Sue Wilson

Presented by:

LEE SMART, P.S., INC

By: 
Steven R. Wraith, WSBA No. 17364
Kyle R. Kekofke, WSBA No. 49327
Of Attorneys for Defendant
Vista Village Recreation and Maintenance
Association

Approved per to form:

WSBA 183372


WSB 28173

ORDER DENYING PLAINTIFF'S MOTION FOR
RECONSIDERATION - 2
5977134.doc

LEE-SMART
P.S., Inc. - Pacific Northwest Law Offices
1800 One Convention Plaza - 701 Fifth Street - Seattle, WA - 98101-3729
Tel. 206.624.7990 • Toll Free 877.624.7990 • Fax 206.624.5944

2

SUPERIOR COURT
THURSTON COUNTY, WA

2016 OCT -7 AM 10:57

1115 WEST BAY DRIVE
OLYMPIA, WASHINGTON 98502

16-2-00490-84
JD
Judgment
880243



EXPEDITE
 Hearing is set:
Date: 10/07/16
Time: 9:00 a.m.
Judge/Clerk: Hon. Mary Sue Wilson
 No Hearing is set

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

DONALD LEO,

Plaintiff,

NO. 16-2-00490-34

v.

FINAL JUDGMENT

DIANA COURT OWNERS ASSOCIATION,
an unincorporated association and VISTA
VILLAGE RECREATION AND
MAINTENANCE ASSOCIATION, a not-for-
profit corporation,

Defendant.

This matter came on regularly for hearing on Friday, October 7, 2016. The Court considered the Motion for the Entry of a Final Judgment. In addition, the Court considered the oral argument of counsel.

Based on the foregoing, the Court ORDERS as follows:

1. On Friday, September 23, 2016, the Court entered an Order Denying Motion for Partial Summary Judgment. That document constitutes an Order only. It did not purport to dispose of all claims asserted in this matter, and therefore does not constitute a Final Judgment.

2. However, in ruling on the entry of the Motion for Partial Summary Judgment, the Court in fact practically disposed of the issues presented by this case. It effectively denied, on the merits, the claims pled by Mr. Leo in his Complaint.

3. Therefore, the Court should enter a final Judgment for the purposes of making the fact that it has entered Judgment clear to the parties, to establish that the parties are no longer obligated to prepare for or proceed to trial, and to remove this matter from the Court's docket of pending cases.

OWENS DAVIES, P.S.
1115 West Bay Drive, Suite 302
Olympia, Washington 98502
Phone: (360) 943-8329
Facsimile: (360) 943-6150

FINAL JUDGMENT (PROPOSED) - 1 -

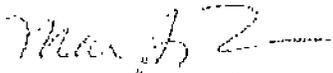
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4. Based on the foregoing, the Court ENTERS JUDGMENT as follows:

1. The claims asserted by the Plaintiff in his Complaint, and each of them, are hereby DENIED WITH PREJUDICE;

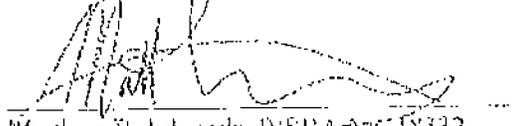
2. Inasmuch as it disposes of all issues raised by the pleadings in this case, this constitutes the Court's Final Judgment.

DATED this 7th day of October 2016.


Judge Mark Sue Wilson

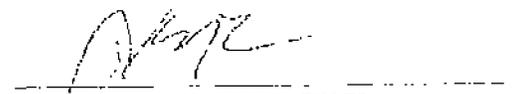
PRESENTED BY; RIGHT TO APPEAL
RESERVED

OWENS DAVIES, P.S.

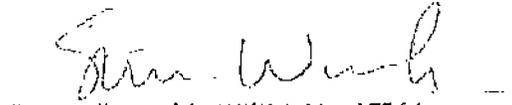


Matthew J. Edwards, WSBA No. 18332
Attorney for Plaintiff Donald Leo

APPROVED FOR ENTRY:



C. Scott Kee, WSBA No. 28173
Attorney for Defendant Diana Court
Owners' Association



Steven G. Wraith, WSBA No. 17364
Attorney for Defendant Visla Village
Recreation and Maintenance Association

OWENS DAVIES, P.S.
1115 West Bay Drive, Suite 302
Olympia, Washington 98502
Phone: (360) 943-8320
Facsimile: (360) 943-6150



CLERK OF COURT
SUPERIOR COURT
THURSTON COUNTY, WA

2016 OCT 24 PM 4:22

Linda Myra Zinsow
Thurston County Clerk

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EXPEDITE
 Hearing is set:
 Date: _____
 Time: _____
 Judge/Calendar Number: _____
 No Hearing is set

SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

DONALD LEO,
 Plaintiff,
 v.
 DIANA COURT OWNERS ASSOCIATION,
 an unincorporated association and VISA
 VILLAGE RECREATION AND
 MAINTENANCE ASSOCIATION, not for-
 profit corporation,
 Defendant.

NO. 16-2-00490-34
 NOTICE OF APPEAL TO COURT OF
 APPEALS, DIVISION II

Donald Leo, Petitioner herein, seeks review by the designated appellate court of the Order Denying Plaintiff's Motion for Summary Judgment--September 23, 2016, and the denial of Plaintiff's Motion for Reconsideration on October 7, 2016, and the entry of a Final Judgment on October 7, 2016.

A copy of these Decisions are attached to this Notice.
 DATED this 24th day of October, 2016.

OWENS DAVIES, P.S.

 Matthew B. Owens, WASHINGTON
 Attorneys for Plaintiff, Donald Leo

OWENS DAVIES, P.S.
 1115 West Bay Drive, Suite 302
 Olympia, Washington 98502
 Phone: (360) 41-4020
 Facsimile: (360) 949-6150

DECLARATION OF SERVICE

I, Julie Thomas, certify and declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

That on October 2016, I caused service of the foregoing document to the following individuals in the manner described below:

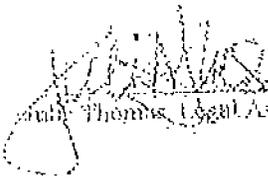
Steven G. Wraith
Kyle J. Rekofke
Lee Smart, P.S.
701 Pike Street
Seattle, WA 98101
Attorneys for Vista Village Recreation and Maintenance Association

C. Scott Kee
Rodger Kee & Co., P.S.
324 West Bay Drive NW, Suite 201
Olympia, WA 98502
Attorneys for Diana Court Owens Association

Via Regular U.S. Mail

Via Regular U.S. Mail

DATED this 24th day of October, 2016, at Olympia, Washington.


Julie Thomas, Legal Assistant

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FILED
SUPERIOR COURT
THURSTON COUNTY, WASH

16 SEP 23 AM 11:50

Linda Myhre Enlow
Thurston County Clerk

16-2-00490-34
ORDER
Order Denying Motion/Petition
830152



Hon. Mary Sue Wilson

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

DONALD LEO,

Plaintiff,

vs.

DIANA COURT OWNERS ASSOCIATION,
an unincorporated association and VISTA
VILLAGE RECREATION AND
MAINTENANCE ASSOCIATION, a not-for-
profit corporation,

Defendants.

No. 16-2-00490-34

ORDER DENYING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT

[REDACTED]

ALW

THIS MATTER, having come before the Court on Plaintiff's Motion for Partial Summary Judgment, the Court having reviewed the records and files herein, and specifically:

1. Plaintiff's Motion for Partial Summary Judgment;
2. Declaration of Donald Leo in support of Plaintiff's Motion for Partial Summary Judgment;
3. VVRMA's Opposition to Plaintiff's Motion for Partial Summary Judgment;
4. Declaration of Kyle J. Rekojke in support of VVRMA's Opposition to Plaintiff's Motion for Summary Judgment;
5. Diana Court's Opposition to Plaintiff's Motion for Partial Summary Judgment;
6. Donald Leo's Reply Brief in Support of Motion for Partial Summary Judgment;
7. _____

ORDER DENYING PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT - 1
3966281.doc

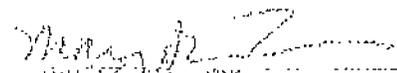
LEE SMART
P.S. Inc. - Pacific Northwest Law Offices
1891 One Corporation Place • 701 Pico Street • Seaside, WA • 98131-3929
Tel. 360.624.7990 • Toll Free 877.624.7990 • Fax 360.624.5944

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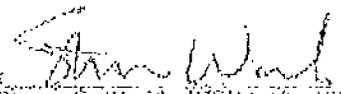
8. _____
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and the Court being fully advised in the premises, now, therefore, it is ~~HEREBY ORDERED~~
that

1. Plaintiff's Motion for Partial Summary Judgment is hereby DENIED.
ENTERED this 2nd day of September, 2016.


Doris M. Kelly, Judge

Presented by:
LEE SMART, P.S., INC.


By: Steven C. Wright, WSBA No. 17361
Kyle J. Rebocke, WSBA No. 49327
Of Attorneys for Defendant Vista Village
Recreation and Maintenance Association

Approved as to form; Notice of Presentation Waived:
RODGERS KEE & CARD, P.S.


By: C. Scott Ross, WSBA No. 78177
Attorney for Defendant Diara Court
Owners Association

ORDER DENYING PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT - 2
596C281.doc

LEE SMART
P.S., Inc. - Pacific Northwest Law Offices
1800 One Convention Place • 701 First Street • Seattle • WA • 98101-3929
Tel. 206 624-7990 • Toll Free 877-624-7990 • Fax 206 624-5944

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OWENS DAVIES, P.S

By: 
Matthew B. Edwards, ASBPA No. 16317
Attorney for Plaintiff Donald Leo

ORDER DENYING PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT - 3
2960281.doc

LEE & MARTY
P.S., Inc. - Pacific Northwest Law Offices
1600 One Convention Place • 701 Fifth Street • Seattle, WA • 98101-3929
Tel. 206.624.7950 • Toll Free 877.624.7498 • Fax 206.424.5944

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FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2016 OCT -7 AM 10:55

Link to Case File at
Thurston County Clerk

16-2-00490-34
ORDYMT
Order Denying Motion/Paid
077464

Hon. Mary Sue Wilson



SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

DONALD LEO,

Plaintiff,

vs.

DIANA COURT OWNERS ASSOCIATION,
an unincorporated association; and VISTA
VILLAGE RECREATION AND
MAINTENANCE ASSOCIATION,
a not-for-profit corporation,

Defendants.

No. 16-2-00490-34

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION

~~HERBIE ORDER~~

THIS MATTER, having come before the Court on Plaintiff's Motion for Reconsideration, the Court having reviewed the records and files herein, and specifically:

1. Plaintiff's Motion for Reconsideration;
2. Declaration of Matthew B. Edwards in Support of Motion for Reconsideration;
3. Defendant Vista Village Recreation and Maintenance Association's Opposition to Plaintiff's Motion for Reconsideration;

~~1. Plaintiff's Motion for Reconsideration;~~

5. _____; and

6. _____

the Court being fully advised in the premises, now, therefore, it is HEREBY ORDERED that Plaintiff's Motion for Reconsideration is hereby DENIED.

ORDER DENYING PLAINTIFF'S MOTION FOR
RECONSIDERATION - 1
3977134.doc

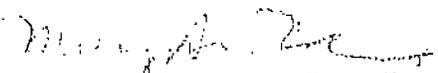
LEE-SMART

P.S. & Pacific Northwest Law Offices

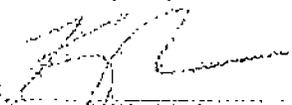
1832 One Convention Plaza • 201 Pike Street • Seattle, WA • 98101-3929
Tel: 206.424.7590 • Toll Free: 877.624.7990 • Fax: 206.434.3744

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ENTERED this 7th day of October, 2016.


Hon. Judge Tom Wilson

Presented by
LEH SMANT, P.S., INC

By: 
Steven G. Weath, WSBA No. 19307
Kyle E. Rehotlae, WSBA No. 19317
Of Attorneys for Defendant
Vista Village Recreation and Maintenance
Association

Approved as to form:

WSBA 163371


WSB 25173

ORDER DENYING PLAINTIFF'S MOTION FOR
RECONSIDERATION - 2
577124.doc

LEH SMANT
P.S., Inc. - Pacific Northwest Law Offices
1800 Oaks Convention Place - 201 Pike Street - Seattle - WA - 98101-1929
Tel. 206.624.7990 - Toll Free 877.624.7990 - Fax 206.624.1941

FILED
CLERK OF COURT
CLERK'S OFFICE

28 OCT -7 AM 10:57

Linda Hyde Egan
Therapist/Case Manager

EXPEDITE
 Hearing is set:
 Date: 10/07/16
 Time: 10:00 AM
 Judge/Clerk: Hon. Michelle Webster
 No Hearing is set

16-2-00490-54
JU
Judgment
ORDER



SUPERIOR COURT OF WASHINGTON
COUNTY OF THURSTON

DONALD LEO,
 Plaintiff
 v.
 DIANA COURT OWNERS ASSOCIATION,
 an unincorporated association and VISTA
 VILLAGE RECREATION AND
 MAINTENANCE ASSOCIATION, a not-for-
 profit corporation,
 Defendant.

NO. 16-2-00490-54

FINAL JUDGMENT

This matter came on regularly for hearing on Friday, October 7, 2016. The Court considered the Motion for the Entry of a Final Judgment. In addition, the Court considered the oral argument of counsel.

Based on the foregoing, the Court ORDERS as follows:

1. On Friday, September 23, 2016, the Court entered an Order Denying Motion for Partial Summary Judgment. That document constitutes an Order only. It did not purport to dispose of all claims asserted in this matter, and therefore does not constitute a Final Judgment.
2. However, in ruling on the entry of the Motion for Partial Summary Judgment, the Court in fact practically disposed of the issues presented by this case. It effectively denied, on the merits, the claims pled by Mr. Leo in his Complaint.
3. Therefore, the Court should enter a Final Judgment for the purposes of making the fact that it has entered Judgment clear to the parties, to establish that the parties are no longer obligated to prepare for or proceed to trial, and to remove this matter from the Court's docket of pending cases.

OWEN S DAVES, P.C.
1315 West May Drive, Suite 302
Olympia, Washington 98502
Phone: (360) 943-5529
Facsimile: (360) 943-6150

FINAL JUDGMENT (PROPOSED) - 1 -

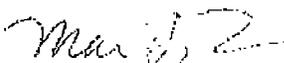
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4. Based on the foregoing, the Court ENTERS JUDGMENT as follows:

1. The claims asserted by the Plaintiff in his Complaint, and each of them, are hereby DENIED WITH PREJUDICE;

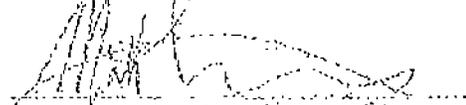
2. Inasmuch as it disposes of all issues raised by the pleadings in this case, this constitutes the Court's Final Judgment.

DATED this 1st day of October, 2016.


Judge Mary Sue Wilson

PRESENTED BY RIGHT TO APPEAL
RESERVED

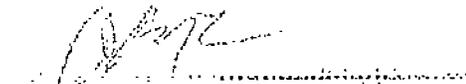
OWENS DAVIES P.S.



Stephen G. Wright, WSBA No. 17164

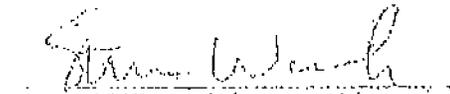
Attorney for Plaintiff Donald Lee

APPROVED FOR ENTRY:



C. Scott Lee, WSBA No. 28173

Attorney for Defendant Diana Court
Owners' Association



Steven G. Wright, WSBA No. 17164

Attorney for Defendant Vista Village
Recreation and Maintenance Association

OWENS DAVIES, P.S.
1115 West Bay Drive, Suite 300
Olympia, Washington 98502
Phone: (360) 943-8326
Facsimile: (360) 943-6190

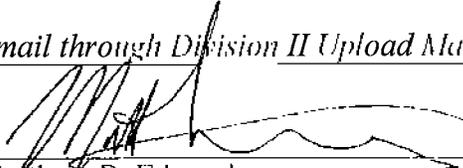
I certify that on the 16th day of November, 2016, I caused a true and correct copy of Appellant Donald Leo's Opening Brief to be served on the following in the manner indicated below:

*C. Scott Kee
Rodgers Kee & Card
224 West Bay Dr NW Suite 201
Olympia WA 98502-4926
scottkee@buddbaylaw.com*

*Steven G. Wraith and Kyle Rekofke
Lee Smart P.S., Inc.
701 Pike St Suite 1800
Seattle WA 98101-3929
sgw@leesmart.com
krekofke@gmail.com*

via Email through Division II Upload Manager

By:


Matthew B. Edwards

OWENS DAVIES PS

November 16, 2016 - 5:02 PM

Transmittal Letter

Document Uploaded: 1-495741-Appellant's Brief.pdf

Case Name: Leo v. Diana Court Owners Association et al

Court of Appeals Case Number: 49574-1

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

Includes appendix and proof of service

Sender Name: Matt Edwards - Email: medwards@owensdavies.com

A copy of this document has been emailed to the following addresses:

scottkee@buddbaylaw.com

SGW@Leesmart.com

krekofke@gmail.com