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NO. 51544-0-II

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

TERRY HOY, an individual,

Appellant,

v.

THE 400 CONDOMINIUM ASSOCIATION, a Washington nonprofit corporation,

Respondent.

ON APPEAL FROM KITSAP COUNTY SUPERIOR COURT
(Hon. Jeffrey P. Bassett – Cause No. 17-2-00867-4)

BRIEF OF RESPONDENT

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I. INTRODUCTION

In 2014, Appellant Terry Hoy ("Hoy") requested permission from the 400, A Condominium (the "Association") to install a heat pump ("HVAC Unit") in his condominium unit. This HVAC Unit had to be installed through and over Common and Limited Common Elements to function. This was the first request to install a heat pump that the Association received from an owner. Hoy installed the HVAC Unit while the Association investigated appropriate conditions of use to impose on such owner-installed HVAC systems. Through the investigation, the Association kept Hoy, who was a member of the Board of Directors (the "Board"), apprised of the Association's findings.

Ultimately, after consulting with numerous engineers and counsel, interviewing homeowners, and examining published materials, the Association determined that, to best protect everyone, owners who wanted to install HVAC systems would need to agree to maintain such systems in good repair, employ licensed contractors in the installation, comply with noise requirements, indemnify and defend the Association against claims arising from such systems, and agree that these duties and obligations would bind future owners.

The Association told Hoy that he would need to execute such an agreement, which was in the form of a covenant, as a condition of his

continued use of the HVAC Unit. Hoy refused to do so. Particularly, Hoy refused to agree to any condition that would be recorded against his condominium unit to bind future owners.

The Association warned Hoy that it would have to remove the HVAC Unit from Common and Limited Common Elements unless Hoy agreed to such a condition. In response, Hoy filed a lawsuit against the Association claiming that the Board breached its duty of care under RCW 64.34.308 and that the Association should be estopped from removing the HVAC Unit because the Association did not tell Hoy that it would require Hoy to execute a covenant running with the land when Hoy installed his HVAC Unit, even though Hoy knew that this use would be subject to conditions the Association had not yet determined.

Hoy's claims must fail because he cannot show that the Association breached any duty owed to him, that the Association somehow acted in bad faith, or that he suffered damages resulting from the Association's alleged breach. Moreover, at all times, the Association had the power to withdraw permission for Hoy to use Common and Limited Common Elements if Hoy refused to abide by conditions of use the Association deemed to be in all owners' best interests. Hoy refused to comply with such conditions, and Hoy cannot use promissory estoppel as a means of preventing the Association from asserting its powers to protect itself and taking Association

owned Common Elements and Limited Common Elements. Further, Hoy's claims of disparate treatment are unsupported and baseless.

Hoy also argues for the first time on appeal, using a Connecticut line of cases, that there is an issue of fact whether the Association's decision to require Hoy to execute a covenant for the HVAC Unit's continued use was reasonable. The Court should decline to consider this new argument because Hoy never presented it to the trial court and because it is not the law in Washington. But, if the Court considers it, the Court should still affirm the trial court's ruling because, as a matter of law, the Association's decision was reasonable.

The trial court properly dismissed Hoy's claims at summary judgment. Accordingly, this Court should affirm the trial court's grant of summary judgment in favor of the Association.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Did the trial court properly grant summary judgment dismissing Hoy's breach of duty of care claim against the Association when Hoy cannot identify any provision of RCW 64.34 et seq. or of the governing documents the Association allegedly breached, the Association undeniably had a reasonable basis for its decisions, Hoy was the first owner to install an HVAC unit, and Hoy has not sustained damage?

B. Did the trial court properly grant summary judgment dismissing Hoy's claims when Hoy never presented his "reasonableness" arguments to the trial court, Washington applies the business judgment rule and not the "reasonableness" standard, and the Association's decision was reasonable as a matter of law?

C. Did the trial court properly grant summary judgment dismissing Hoy's promissory estoppel claim against the Association when Hoy is improperly claiming irrevocable rights to certain Common and Limited Common Elements and, at best, Hoy only had a license to use the HVAC Unit that the Association could revoke at any time?

D. Is the Association entitled to an award of its attorneys' fees and costs on appeal?

III. STATEMENT OF THE CASE

Background Facts

A. The Parties.

The Association was created on April 9, 2007.[1] It is a Washington non-profit business comprised of 70 condominium units located at 400 Washington Avenue in Bremerton, Washington (the "Property").[2] It is governed in part by covenants contained in its Condominium Declaration, which is recorded under Kitsap County Recorder's File Number 200704090180, with amendments thereto (the "Declaration").[3]

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[1] Appendix A, CP 171, Declaration of Tim Sheppard in Support of Defendant's Motion for Summary Judgment (hereinafter, "Sheppard Decl."), Exhibit A, Declaration, pg. 1.
[2] *Id.*, CP 227-29.
[3] *Id.*, CP 171.

Hoy is the owner of Unit 107 (the "Unit") at the Property.[4]

B. The Dispute: Hoy's HVAC Unit.

In June 2014, Hoy requested that the Board approve his request to install an HVAC Unit through the wall of his Unit and on to the deck.[5] Hoy needed Board approval because, to install the HVAC Unit, Hoy needed to cut through the interior wall of his Unit, cut through an exterior wall (a Common Element), and run the HVAC Unit through those openings onto an exterior deck (a Limited Common Element).[6] This was the first owner request to install such an HVAC Unit that the Association had ever received.[7]

The Board initially denied Hoy's request because of concerns about water drainage from the condenser, and the possible vibration and noise disturbances to adjoining owners.[8]

Hoy resubmitted his request the very next month.[9] Over the next several months, the Board engaged in a lengthy, arduous process of hiring

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[4] Appendix I, CP 312, May 15, 2017 Declaration of Terry Hoy in Support of Motion for Preliminary Injunction (hereinafter, "Hoy Decl."), ¶2.
[5] Appendix H, CP 308, May 26, 2017 Declaration of Richard Symms ("Symms Decl."), ¶3.
[6] *Id.*, CP 309, ¶8.
[7] *Id.*, CP 308, ¶¶3-4; Appendix I, CP 316, Hoy Decl., Exhibit 1, HVAC Proposal, ¶6; Appendix B, CP 249-50, Declaration of Rob Woutat ("Woutat Decl."), ¶¶3-4; Appendix C, Declaration of Bob Johnson ("Johnson Decl."), CP 252, ¶¶3-4.
[8] Appendix H, CP 308, Symms Decl., ¶3.

acoustical engineers, interviewing homeowners, inspecting proposed units, and reviewing published material to determine a procedure by which the Association could approve Hoy's or any other owner-installed HVAC Unit.[10]

Throughout this process Hoy made it clear to the Board that, if the Board allowed Hoy to install the HVAC Unit, Hoy would agree to conditions the Board imposed.[11]

During this time, not only did Hoy become a member of the Board, but he also started construction to install his HVAC Unit without the Board's permission.[12]

At the June 2015 Board meeting, Hoy proposed that the Board come up with a "Memorandum of Understanding," which would be an agreement between Hoy and the Association setting forth conditions and

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[9] Appendix G, CP 303, May 30, 2017 Declaration of Tim Sheppard (hereinafter, "May 30 Sheppard Decl."), Exhibit C, July 18, 2014 meeting minutes.
[10] *See* Appendix F, CP 273-74, Declaration of Dale Lindamood ("Lindamood Decl."), ¶¶8-11; Appendix B, CP 250, Woutat Decl., ¶¶4-6; Appendix H, CP 308-09, Symms Decl., ¶¶4-7; Appendix C, CP 252-53, Johnson Decl., ¶¶3-4; Appendix D, CP 255-56, Declaration of Roberta Cooper ("Cooper Decl."), ¶¶3-5.
[11] Appendix F, CP 272, Lindamood Decl., ¶¶5-6; *See also,* Appendix D, CP 255, Cooper Decl., ¶3; Appendix H, CP 310, Symms Decl., ¶¶11, 13; Appendix B, CP 250, Woutat Decl., ¶5.
[12] Appendix F, CP 272, Lindamood Decl., ¶7; Appendix H, CP 309, Symms Decl., ¶8.

terms of the HVAC Unit's use.[13] The actual title and content of the agreement was to be determined by the Board at a later date.[14]

The Board voted in favor of allowing Hoy to continue with the installation of his HVAC Unit (that he had started without permission), based on Hoy's repeated promises that he would sign "any document" the Board proposed.[15]

The Board's secretary did not record the entire discussion in the meeting minutes as the discussion of the requisite document the Board would ultimately require Hoy to sign was ongoing and not yet final.[16]

Over the next several months, the Board, including Hoy, debated the form and contents of necessary documents any homeowner, including Hoy, must execute to be granted permission to install an HVAC unit through Common Elements and onto Limited Common Elements.[17]

Hoy argued in favor of the document under consideration being in the form of a Memorandum of Understanding instead of a Covenant.[18]

Ultimately, a version of a Memorandum of Understanding and a Covenant were simultaneously adopted by the Board to be reviewed by

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[13] Appendix C, CP 252-53, Johnson Decl., ¶¶3-4.
[14] Appendix G, CP 305-06, May Sheppard Decl., Exhibit D, July 2015 Board Meeting; Appendix D, CP 256, Cooper Decl., ¶5.
[15] Appendix D, CP 256, Cooper Decl., ¶6; Appendix C, CP 253, Johnson Decl., ¶4.
[16] Appendix B, CP 250, Woutat Decl., ¶6.
[17] Appendix F, CP 253, Lindamood Decl., ¶9.
[18] *Id.*

the Association's legal counsel (once hired) — who (when hired) informed the Board that a Covenant more fully protected the Association.[19] The Board sought a second opinion, from a second attorney, who concurred that a Covenant would better protect the Association.[20]

In 2016, the HVAC Covenant and Hold Harmless document was presented to Hoy for signature, but Hoy refused to sign it.[21] When it became clear that, despite Hoy's prior assurances, Hoy would only sign a document that met his sole understanding of his responsibilities and which met his definition of a "Memorandum of Understanding," the Board moved forward with a hearing on whether Hoy was in violation of the Association's governing documents. Several weeks after the hearing the Board continued to attempt to negotiate a resolution with Hoy and presented a Memorandum of Understanding that contained the Covenant language. Hoy rejected this document.[22]

The Board ultimately concluded Hoy's refusal to sign the required Covenant and Hold Harmless Agreement or, alternatively, to remove the HVAC Unit from the Common and Limited Common Elements left him in

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[19] *Id.*
[20] *Id.*
[21] *Id.*, CP 274, at ¶11.
[22] Appendix E, CP 258, 260-64, Declaration of John Burleigh (hereinafter, "Burleigh Decl."), ¶2, Exhibit A, Proposed Memorandum of Understanding.

violation of the Association's governing documents. Accordingly, the Board notified Hoy that it intended to move forward with its right to remove the HVAC Unit pursuant to its authority in Declaration.[23]

Hoy filed this lawsuit on or about May 16, 2017. In it, Hoy claimed the Board breached its duty of care to Hoy by approving Hoy's installation of the HVAC Unit without requiring Hoy to execute a covenant, and by then threatening to remove the HVAC Unit unless Hoy executed such a covenant.[24] Moreover, Hoy claimed that, under the facts of this case, the Association should be estopped from removing the HVAC Unit.[25]

IV. SUMMARY OF ARGUMENT

This case involves the interpretation of various Association governing documents, including the Association's Declaration, and the Association's powers to modify and control Common and Limited Common Elements. The Board allowed Hoy's permissive use of the HVAC Unit, but only subject to terms the Board determined appropriate after a thorough investigation. Hoy ultimately refused to abide by those terms and seeks to elevate his interests over those of the community.

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[23] Appendix F, CP 274-75, 277-78, Lindamood Decl., ¶14, Exhibit A, April 19, 2017 Email to Hoy.
[24] CP 4, Hoy's Complaint, ¶4.3.
[25] CP 4, Hoy's Complaint, ¶¶5.2-5.6.

Even under the facts as Hoys alleges them, the Board's authority to regulate the use and modification of any Common or Limited Common Elements is sufficient to force the removal of the HVAC Unit if Hoy refused to abide by the Association's conditions of use. In his brief, Hoy claims that three "issues of fact" prevent the Court from ruling in the Association's favor. First, Hoy asserts that a covenant was never a condition prerequisite to Hoy's installation and use of the HVAC Unit.[26] Second, Hoy claims that he did not start installing the HVAC Unit before the Association gave its approval.[27] Third, Hoy claims that the Association is imposing conditions on him that the Association has not imposed on other owners who have original construction, roof-installed HVAC systems.[28] Hoy's claimed "issues of fact" have no bearing on the outcome of this appeal because they are either irrelevant or not supported by the record.

The undisputed evidence shows that the Board never violated any duty owed to Hoy by permitting use of the HVAC Unit while the Association investigated, and then threatening its removal when Hoy refused to abide by the Association's conditions of use. The Board performed all

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[26] Hoy's Appellate Brief, pp. 11-12.
[27] *Id.*, pp. 12-13.
[28] *Id.*, pp. 28-29.

disputed actions in accordance with its powers under the governing documents and RCW 64.34 *et seq*.

Even if the Association permitted the installation of the HVAC Unit without requiring a covenant, and Hoy began installation only after receiving permission, RCW 64.34.304 and the Declaration allowed the Association to alter terms of the HVAC Unit's use if the Association believed doing so would be in the best interests of the Association. The provisions of RCW 64.34 et seq. "may not be varied by agreement and rights conferred by [RCW 64.34 et seq.] may not be waived."[29] The Declaration reiterates that the Association's powers and rights are not waivable.[30] This means that the Association's express powers to regulate the use and modification of Common and Limited Common Elements cannot be waived or varied by agreement.

Whatever conditions the Association may have imposed before allowing Hoy's installation of the HVAC Unit through Common and Limited Common Elements, the Association had full discretion to later alter those conditions if the Association determined, based on its investigation, that doing so would be in the best interest of all owners.

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[29] RCW 64.34.030

[30] Appendix A, CP 205-06, Sheppard Decl., Exhibit 1, Declaration, Article 18.2 "Failure of the Board to Insist on Strict Performance No Waiver."

Moreover, Hoy has suffered no damages arising from this permitted use and threatened removal.

To preclude the Association from exerting these powers, Hoy would have to have something akin to full ownership interest in Common and Limited Common Elements. Only then could Hoy acquire irrevocable rights to use Common or Limited Common Elements for the HVAC Unit, exclude all other owners from those Elements, and avoid the Association's nonwaivable and unvarying powers to control those Elements. Under the facts of this case, it was impossible for Hoy to acquire such irrevocable rights. However, this is exactly what Hoy is asking the Court to find. Hoy's promissory estoppel claim is a thinly veiled claim for an easement or full ownership interest in Common or Limited Common Elements, which the irrefutable facts do not support. Hoy's promissory estoppel claim cannot overcome the Board's nonwaivable authority to restrict Hoy's use of Common and Limited Common Elements when doing so is indisputably in the Association's best interests. Hoy does not dispute that the Association never granted him such an ownership or easement interest by deed or otherwise. Therefore, at best, Hoy can only have a license that the Association can revoke at any time, and Hoy cannot prevent the Association from changing the conditions of use of the Common and Limited Common Elements through which his HVAC Unit runs.

Relying on a Connecticut line of cases, Hoy now argues for the first time that the Association's decision to require Hoy to execute a covenant for the HVAC Unit's continued use was a "discretionary decision" that the Association did not make in a reasonable manner, and that the trial court's ruling should be overturned on this basis. Hoy never raised this argument with the trial court and should not be able to raise it now.

Even if the Court chooses to consider Hoy's new argument, the Court should affirm the trial court's ruling. Hoy relies on case law that is not the law in Washington, and that applies to *design-control* decisions on an owner's individual property. This case law does not apply when the Association's decision involved the power to manage and regulate Common and Limited Common Elements.

Further, even if this case law does apply, the Association's decision to require Hoy to execute a covenant as a condition of his continued use of the HVAC Unit was reasonable as a matter of law. The undisputed facts show that Hoy knew he would be the first owner to install an HVAC Unit, that his use of the HVAC Unit would be subject to conditions the Association would determine after its investigation, and that the Association conducted a thorough investigation. Only after all this did the Association determine that owners who installed their own HVAC units would need to execute a covenant protecting the Association and imposing duties and

obligations on future owners.[31] Hoy does not dispute that such a covenant is, in fact, in the Association's best interests.

None of Hoy's alleged facts can prevent the Association from exercising its powers to regulate the use of Common and Limited Common Elements, and so the Court must affirm the trial court's grant of the Association's motion for summary judgment.

The Association is entitled to recover its attorneys' fees and costs for responding to this appeal.

V. ARGUMENT

A. Standard of Review

An appellate court reviews a summary judgment order de novo, engaging in the same inquiry as the trial court. Under CR 56(c), summary judgment is properly granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A moving defendant may satisfy the initial burden by showing that there is an absence of evidence to support an element essential to plaintiff's claim.[32]

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[31] *See, e.g.,* Appendix F, CP 273-74, Lindamood Decl., ¶¶8-12.
[32] *Las v. Yellow Front Stores, Inc.,* 66 Wn. App. 196, 198 (1992).

To overcome summary judgment, the nonmoving party may not rely on the allegations in the pleadings but must set forth specific facts by affidavit or otherwise that show a genuine issue exists.[33] Summary judgment is proper if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[34]

B. Hoy Cannot Prove His Breach of Duty Claim.

By virtue of being tasked with managing the non-profit corporation, the Board availed itself of the business judgment rule.[35] The business judgment rule "cautions against courts substituting their judgment for that of the board of directors, absent evidence of fraud, dishonesty, or incompetence."[36] "Under the 'business judgment rule,' corporate management is immunized from liability in a corporate transaction where (1) the decision to undertake the transaction is within the power of the corporation and the authority of management, and (2) there is a reasonable basis to indicate that the transaction was made in good faith."[37]

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[33] *Id.,* at 198.
[34] CR 56(c).
[35] *Davis v. Cox,* 180 Wn. App. 514, 535, 325 P.3d 255, 267, *review granted,* 182 Wn.2d 1008 (2014), *rev'd on other grounds,* 183 Wn.2d 269 (2015); *See also Schwarzmann v. Ass'n of Apartment Owners*, 33 Wn. App. 397 (1982).
[36] *Id.*
[37] *Scott v. Trans–Sys., Inc.,* 148 Wn.2d 701, 709 (2003) (quoting *Nursing Home Bldg. Corp. v. DeHart,* 13 Wn. App. 489, 498 (1975)).

The duty imposed on the Board by RCW 64.34.308(1) is minimal - it only requires the Board to exercise "ordinary and reasonable care."

Therefore, to prove his breach of duty claim against the Board, Hoy must show that (1) by conditioning Hoy's continued use of the HVAC Unit on Hoy's execution of a covenant protecting the Association, the Board breached a duty owed to Hoy under the governing documents or relevant statutes, or (2) there is no reasonable basis to indicate that the Board's decision to permit and then threaten removal of the HVAC Unit was made in good faith. Hoy will also have to show that he suffered tangible harm from the Board's decisions. Hoy cannot show any of these things, and therefore the trial court's dismissal of Hoy's breach of duty claim should be affirmed.

1. The Board Did Not Violate Any Provision of the Governing Documents or Relevant RCWs by Requiring Hoy to Execute a Covenant as a Condition of Use.

Hoy incorrectly asserts that the Association breached its duty by conditioning Hoy's continued use of the HVAC Unit on Hoy's execution of a covenant. Hoy claims that "[a]ttempting to force an association member to execute a covenant recordable against the member's unit as a condition for that member to be able to continue his use of a Board of Directors-approved

modification to the member's unit is not ordinary and reasonable care."[38] There are a number of problems with Hoy's argument.

a. Hoy has not identified, and cannot identify, any provision of the governing documents or relevant statutes that the Board's decisions supposedly violated.

Hoy cannot identify any such provision because the governing documents and relevant statutes grant the Board vast authority and power to regulate and control Common and Limited Common Elements. The governing documents' terms show that the Board had complete authority to permit Hoy to install the HVAC Unit pending the outcome of the Board investigation into conditions of use, and then threaten its removal when Hoy refused to agree those conditions the Board deemed appropriate.

A condominium declaration is not a contract, but rather it is a document that unilaterally creates a type of real property.[39] A condominium declaration is like a deed, and a court's review of it is a mixed question of law and fact.[40] The factual issue is the declarant's intent, which are discerned from the face of the declaration.[41] The legal issue is the declaration's legal consequences.[42]

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[38] Hoy's Appellate Brief, pg. 13.
[39] *See Bellevue Pac. Ctr. Condo. Owners Ass'n v. Bellevue Pac. Tower Condo. Ass'n,* 124 Wn. App. 178, 188 (2004).
[40] *Lake v. Woodcreek Homeowners Ass'n,* 169 Wn.2d 516, 526 (2010).
[41] *Id.*
[42] *Id.*

The Declaration defines Common Elements as "all portions of the [Property] other than Units."[43] A "unit" is a physical portion of the [Property] designated for separate ownership.[44] A Limited Common Element is "a portion of the Common Elements allocated in Article 8 for the exclusive use of one or more but fewer than all of the Units."[45]

The Declaration states that "the Board may exercise all powers of the Association, except as otherwise provided in the Condominium Act, Declaration, or the Bylaws."[46] The Association has the power to adopt and amend rules and regulations for the Association;[47] regulate the use, maintenance, repair, replacement, and modification of Common Elements and Limited Common Elements;[48] grant easements, leases, licenses, and concessions through or over the Common Elements;[49] exercise all other powers that may be exercised in this state by the same type of corporation as the Association;[50] and exercise any other powers necessary and proper for the governance and operation of the Association.[51] The powers RCW 64.34

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[43] Appendix A, CP 177, Sheppard Decl., Exhibit A, Declaration, Article 1.1.7, "Common Elements."
[44] *Id.*, CP 180, Exhibit A, Declaration, Article 1.1.34, "Unit."
[45] *Id.*, CP 179, Exhibit A, Declaration, Article 1.1.23, "Limited Common Element."
[46] *Id.*, CP 199, Exhibit A, Declaration, Article 15.2, "Powers of the Board."
[47] *Id.*, CP 192, Exhibit A, Declaration, Article 13.4.1.
[48] *Id.*, CP 193, Exhibit A, Declaration, Article 13.4.6.
[49] *Id.*, CP 194, Exhibit A, Declaration, Article 13.4.9.
[50] *Id.*, CP 194, Exhibit A, Declaration, Article 13.4.18.
[51] *Id.*, CP 194, Exhibit A, Declaration, Article 13.4.19.

et seq. granted to the Board are virtually identical to those in the Declaration.[52] More importantly, these powers are not waivable.[53]

These powers provide the Board with ample authority to dictate whether Hoy can install and continuously maintain his HVAC Unit through the Common and Limited Common Elements, including the space between the Unit's interior wall and the Association's exterior wall, on the deck outside the Unit, and through the exterior wall at that deck. The Board did not violate any duty owed to Hoy because the Board was authorized to permit Hoy to install the HVAC Unit (the Board may grant licenses and concessions through or over Common Elements), and the Board was likewise authorized to force the removal of the HVAC Unit from portions of Association owned property when Hoy refused to abide by the Association's conditions (the Board may regulate the use, maintenance, replacement, and modification of Common Elements).

b. There is no provision in the governing documents or RCW 64.34 et seq. *that precludes the Board from terminating a certain permissive use of Common Elements even if the Board previously allowed that use.*

Hoy claims that he had permission to install the HVAC Unit, and that he did not violate any rules or regulations by installing the HVAC Unit.

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[52] *See* RCW 64.34.304.

[53] RCW 64.34.030; Appendix A, CP 205-06, Sheppard Decl., Exhibit A, Declaration, Article 18.2, "Failure of the Board to Insist on Strict Performance No Waiver."

However, whether Hoy violated a rule or regulation when he installed the HVAC Unit is not the issue. The issue is whether the Association could alter terms of use if, in the Association's opinion, doing so was in the best interests of the Association. Hoy's HVAC Unit was only an "approved modification" until the Association determined, based on advice of numerous counsel, that the execution of a covenant would be in all owners' best interests. Hoy's refusal to agree to such a condition or remove the HVAC Unit violated rules the Association established pursuant to its powers under RCW 64.34.304, Article 13.4 of the Declaration, and Article 10.8 of the Declaration, which states that "[u]ses of the Common Elements and Limited Common Elements shall be subject to the provisions of this Declaration and the rules and regulations of the Board."[54]

Without citing any authority, Hoy claims the Association does not have the power to adopt and enforce new rules restricting prior permitted uses.[55] This claim also makes little sense. Any rule necessarily limits or restricts a prior permitted use. If prior permitted uses could not be subject to future restrictions, then condominium associations could never make new rules, which would render an association's power to adopt new rules obsolete. So, Hoy's claim that his prior permitted use of the HVAC Unit

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[54] Appendix A, CP 188, Sheppard Decl., Exhibit 1, Declaration, Article 10.8.
[55] *See* Hoy's Appellate Brief, pg. 15.

cannot be restricted by future rules has no merit, and Hoy cannot prevent the Association from enacting rules altering conditions of continued use of Common and Limited Common Elements, especially when doing so is indisputably in the Association's best interests.

c. The Board requiring that Hoy executes a covenant is part of Association's power to regulate use of Common and Limited Common Elements.

Hoy also argues that requiring Hoy to execute a covenant as a condition of his continued use of the HVAC Unit is not part of the Association's power to regulate use of Common and Limited Common Elements. Hoy's argument is not supported by the plain language of RCW 64.34 *et seq.* or the governing documents.

Statutory interpretation is a question of law.[56] Courts "construe statutory language according to its plan and ordinary meaning."[57]The Association's powers are expansive. The Association has the power to regulate the use of Common and Limited Common Elements, exercise all powers that may be exercised by the same type of corporation as the Association, and exercise any other powers necessary and proper for the governance and operation of the Association.[58] These provisions mean that

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[56] *State v. Bright*, 129 Wn.2d 257, 265 (1996).
[57] *Tobin v. Department of Labor and Industries*, 145 Wn. App. 607, 615 (2008).
[58] RCW 64.34.304; Appendix A, CP 192-94, Sheppard Decl., Exhibit 1, Declaration, Article 13.4, "Powers of the Association." (emphasis added).

the Association has the power to take any action unless there is a specific statute or provision to the contrary. Hoy wants to the Court to adopt an opposite interpretation – that, despite these provisions, the Association has no power unless specifically enumerated. The plain language of RCW 64.34 *et seq*. and the Declaration contradict Hoy's interpretation, and so the Court should decline to adopt it.

Hoy argues that the HVAC Unit is not a "use" subject to the Association's regulatory powers. Hoy is again wrong. "Use" means "the application or employment of something."[59] Hoy admits that his HVAC Unit runs through and across Common Elements.[60] Therefore, it is indisputable that Hoy's HVAC Unit's continued operation uses Common Elements. Because the Association has the power to regulate the use of Common Elements, the Association has the power to prevent Hoy's HVAC Unit from using the Common Elements through which it runs if Hoy refuses to abide by the Association's conditions.

Hoy is trying to claim that the Association somehow breached a duty of care by exercising its lawful powers. This is contrary to common sense, the provisions of RCW 64.34 *et seq*., and the governing documents. Hoy's claims were properly dismissed.

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[59] USE, Black's Law Dictionary (10th ed. 2014).
[60] Appendix I, CP 312-13, Hoy Decl., ¶3.

2. There were Reasonable Bases for the Board's Decision to Require Hoy to Execute a Covenant as a Condition of Use.

Hoy claims that the Board acted in bad faith because the Board changed the conditions of Plaintiff's use of the HVAC Unit after Plaintiff installed it, the Board is requiring a covenant as a condition of use, and the Board treated him differently than other HVAC "owners" at the Association. Hoy's claims are wrong.

However, the Board had reasonable bases for its decision to threaten removal of the HVAC Unit, and there is no evidence of bad faith. Hoy does not dispute that, when he installed the HVAC Unit, the Board was still determining the appropriate terms of its use. Rather than force Hoy to tear out the HVAC Unit while the Board investigated, the Board got Hoy's promise that he would bind himself to terms the Board found appropriate once the Board finished its investigation. The Board conducted a thorough investigation, talked with engineers, interviewed homeowners, reviewed written materials, consulted multiple attorneys, and determined that Hoy needed to execute a covenant so that the obligations and liabilities associated with the HVAC Unit ran with the land and bound future owners.[61] Hoy refused to execute such a covenant, and so the Board had no choice but to tell Hoy that the Board would

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[61] *See, e.g.,* Appendix F, CP 273-74, Lindamood Decl., ¶¶8-11.

remove the HVAC Unit unless Hoy complied. The Board's decisions are not indicative of bad faith. On the contrary, the Board tried to appease Hoy by allowing him the beneficial use the HVAC Unit before finalizing conditions of use. The Board then tried to impose conditions that would be in the best interests of all owners. But, Hoy refused, elevated his interests above other owners' interests, and decided to force this lawsuit.

Moreover, Hoy cannot now claim that the Association's exercise of its authority was somehow unfair, improper, or was in bad faith because he had constructive, if not actual, notice of the Association's power to completely regulate Common and Limited Common Elements. The Declaration was recorded when Hoy purchased his Unit. When an association's governing documents are recorded, purchasers have constructive, if not actual, notice of those documents' restrictions.[62] Hoy knew or should have known that the Association could change the terms of use for Common and Limited Common Elements if the Association determined that doing so would be in the best interests of all owners.

Hoy also does not dispute that a covenant requiring Hoy's conditions of use to run with the land would in fact be in the best interests of the Association. The whole purpose of this type of covenant is to make sure that

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[62] *See Bilanko v. Barclay Court Owners Ass'n*, 185 Wn.2d 443, 452 (2016) (condominium owner was on constructive, if not actual, notice at the time of purchase that her condominium unit was subject to certain restrictions).

Hoy's duties and obligations relating to the HVAC Unit bind his Unit's future owners. Binding future owners to Hoy's repair, maintenance, indemnification, and hold harmless duties and obligations is clearly in the best interests of the Association. The fact that the Board determined a covenant was in the best interests of the Association only after consulting engineers, multiple attorneys, and a thorough investigation; and that a covenant would indeed be in the best interests of the Association, are reasonable, good faith bases supporting the Board's decisions.

3. Hoy was not treated differently than other similarly situated HVAC owners as there were no other similarly situated HVAC owners.

Hoy claims that the Board treated him differently than other similarly situated HVAC owners as evidence of bad faith,[63] but Hoy failed to disclose to the trial court and this Court that his position is, in fact, substantially different from other owners with access to HVAC systems. Hoy claims that there are "3 or 4" other HVAC units at the Association and that the Board did not require those owners to execute covenants as a condition of the HVAC units' use.[64] What Hoy fails to disclose is that these "3 or 4" other HVAC units are *original construction* HVAC units the developer installed

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[63] Hoy's Appellate Brief, pg. 26.
[64] *Id.*

on the Property's roof.[65] Hoy's HVAC Unit, on the other hand, was the first privately installed HVAC Unit at the Property since the Association's creation.[66] And Hoy recognized this before he installed the HVAC Unit:

> **6. As I understand it this will be the first add-on HAVAC for the 400 Condominiums. This will be this would be a great pilot to show case how to do this kind of project for other Condominiums in the 400 Condominiums. The installation is expected to take one day.** [67]

Hoy's unit was different from these units, and Hoy knew that his installation of the HVAC Unit would be the trial run of something the Association had never done before – permit an owner to privately install his or her own HVAC unit through and over Common and Limited Common Elements. Hoy's allegations of different treatment are insufficient to provide any evidence of bad faith or create an issue of fact because he acknowledges that his situation was, in fact, different – he was the first owner to install an HVAC Unit at the Association and the Association needed to determine the necessary conditions and restrictions accompanying any such installations.

The Association only has to show that *a* reasonable basis exists for its decisions. This is the whole purpose of the business judgment rule. If a board acted pursuant to its authority and there is a reason to believe the board's decision was made in good faith, that board must receive the

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[65] Appendix B, CP 249-50, Woutat Decl., ¶¶3-4; Appendix I, CP 316, Hoy Decl., Exhibit 1, HVAC Proposal, ¶6; Appendix F, CP 271, 273-74, Lindamood Decl., ¶¶4, 8-10.
[66] *Id.*
[67] Appendix I, CP 316, Hoy Decl., Exhibit 1, HVAC Proposal, ¶6.

protection of the business judgment rule, which would insulate it from any breach of duty of care claims. Because multiple good faith bases indisputably exist, the business judgment rule protects the Board, and Hoy's claims must be dismissed.

4. Hoy Cannot Prove Damages.

A claim for violation of the Board's duty to act with ordinary and reasonable care under RCW 64.34.308(1) is analogous to a negligence claim. Hoy must prove (1) the existence of a duty, (2) a breach of that duty, (3) Hoy suffered harm, and (4) that this breach was the proximate cause of Hoy's harm.[68] "The mere danger of future harm, unaccompanied by present damage, will not support a negligence action."[69] "Until a plaintiff suffers appreciable harm as a consequence of negligence, he cannot establish a cause of action."[70]

> One of the essential elements of a good cause of action, whether based on an alleged breach of contract or on a tortious act, is a consequential injury or damage to the plaintiff, and in the absence of injury or damage to a plaintiff or his or her property, he or she has no cause of action, and no right of action can accrue to the plaintiff. Indeed, the mere existence of a wrong, without some identifiable damage, provides no basis for a cause of action. Although negligence may endanger the person or property of another, no actionable wrong is committed if the danger is averted without damage.[71]

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[68] *See Schwartz v. Elerding*, 166 Wn. App. 608, 615-16 (2012).
[69] *Gazjia v. Nicholas Jerns Co.*, 86 Wn. 2d 215, 219 (1975).
[70] *Id.*
[71] 1 Am. Jur. 2d Actions § 48.

Here, Hoy cannot prove that he suffered any damages arising from the Board's permission to install the HVAC Unit and later threat to remove it when Hoy refused to agree to the Association's conditions. Hoy does not even argue damages on appeal and appears to have abandoned this argument completely. A mere threat without action is insufficient to damage Hoy. Hoy cannot bring a claim for a breach of a duty of care based on threats alone. Hoy must prove actual and appreciable damages resulting from the Board's decisions. Hoy cannot do so. On the contrary, Hoy has only benefited from the Board's decisions. Hoy took advantage of the Board's trust, completed installation of the HVAC Unit, and then refused to agree to the Board's reasonable terms.

Because Hoy cannot prove he has been damaged by the Board's threatened removal of the HVAC Unit, the Court must dismiss Hoy's breach of duty claim.

C. Hoy's New Argument Based on Connecticut Case Law is Unavailing.

Hoy argues that the Association's decision to impose a covenant requirement as a condition of Hoy's continued use of the HVAC Unit was a "discretionary decision," and whether the Association reasonably exercised its discretion is a question of fact. First, Hoy raised this argument for the first time on appeal, and so this Court should disregard it.

Second, the case law on which Hoy relies is inapplicable because it is not the law in Washington. Further, it pertains to "design-control" decisions, and the Association's covenant requirement was not a "design-control" decision. Finally, even if the foreign law Hoy cited applies to this case, there would still not be any issues of fact because the Association reasonably exercised its discretion as a matter of law.

1. Hoy Cannot Raise this New Argument for the First Time on Appeal.

Relying on a recent court of appeals case from Connecticut,[72] Hoy claims that the Association's decision to impose a covenant as a condition of Hoy's continued use of the HVAC Unit was a "discretionary decision" that needed to be made in a reasonable manner, and that whether such a decision is reasonable is a question of fact. However, Hoy never pleaded this argument, and never briefed or argued it to the trial court. So, Hoy cannot raise this argument for the first time on appeal and this Court should disregard it.[73]

2. The Case Law on Which Hoy Relies is Inapplicable.

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[72] *Grovenburg v. Rustle Meadow Associates, LLC*, 174 Conn.App. 18 (2017).

[73] *Washington Federal Sav. v. Klein*, 177 Wn. App. 22 (2013) (As a general matter, an argument neither pleaded nor argued to the trial court cannot be raised for the first time on appeal).

In Washington, the business judgment rule governs review of condominium Board decisions.[74] Hoy does not dispute this.[75] However, the "reasonableness" case law on which Hoy relies is a *competing* rule. The case Hoy cites states that the "reasonableness" standard it applies is the majority view.[76] This "reasonableness" standard would supplant the business judgment rule. The very case Hoy cites explicitly states this:

> A minority of jurisdictions have adopted the business judgment rule to govern review of discretionary association action (citations omitted)...The business judgment rule is even *more* deferential to association action than the reasonableness standard, which itself is a deferential one (citations omitted)... as the business judgment rule requires proof of 'the presence of fraud or lack of good faith in the conduct of a corporation's internal affairs before the decisions of a board of directors can be questioned.'(citation omitted).[77]

Hoy does not attempt to explain how this "reasonableness" standard would apply alongside Washington's business judgment rule, or why this Court should adopt an entirely new standard and abandon the business judgment rule altogether.

The authority on which Hoy relies also deals with discretionary design-control decisions, which involve broad discretion and vague

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[74] *See Schwarzmann*, 33 Wn. App. at 401.
[75] Hoy's Appellate Brief, at pg. 16 ("The Business Judgment Rule says that the law will not hold directors liable for honest errors or for mistakes of judgment when the directors act without corrupt motive and in good faith.").
[76] *Grovenburg*, 174 Conn.App. at 47-48.
[77] *Id.*, at fn. 24.

standards such as whether a proposed installation complies with an association's preferred aesthetics.[78] Here, the Association's decision to require a covenant as a condition of Hoy's continued use of the HVAC Unit was not a discretionary design control decision – it did not pertain to the HVAC Unit's design or aesthetics. Instead, it was a requirement intended to ensure that all future owners would be bound by the conditions of use that would bind Hoy, and this requirement would apply to all owners who wanted to install their own HVAC units.[79] The "reasonableness" standard on which Hoy relies is not applicable to this case.

3. Even if a Reasonableness Standard Applies, the Association's Decision was Reasonable as a Matter of Law.

If a "reasonableness" standard applies under the Connecticut line of cases Hoy cites, or under the business judgment rule, the Association's decision to impose a covenant as a condition of Hoy's continued use of the HVAC Unit was reasonable as a matter of law.

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[78] *Id.*, at 49-50 (Discussing how the Restatement imposes a reasonableness standard on the exercise of discretionary design control powers).
[79] Appendix I, CP 326, Hoy Decl., Exhibit 5, September 21, 2016 Meeting Minutes, pg. 3.

Courts may dismiss claims on summary judgment if the parties fail to raise an issue of material fact concerning reasonableness.[80] The Association put forth evidence showing that its decision requiring Hoy to execute a covenant arose from a thorough investigation and consultations with numerous counsel. The Association also received advice from engineers, interviewed homeowners, examined potential units, and reviewed available written materials. Only after all this did the Association decide to require that <u>any</u> owner intending to install an HVAC unit would need to execute a covenant.

Again, Hoy does not dispute that a covenant would, in fact, better protect the interests of all the Association's owners. Hoy only claims that imposing such a covenant after Hoy already installed his HVAC Unit is an "unreasonable" decision. Merely claiming that such a decision is unreasonable does not raise an issue of fact. As stated, the Board had complete authority to regulate the use of the Common and Limited Common Elements through which Hoy installed his HVAC Unit. Hoy also knew that his use of the HVAC Unit would be subject to conditions

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[80] *See, e.g., Cascade Auto Glass, Inc., v. Progressive Cas. Ins. Co.,* 135 Wn. App. 760, 767–771 (2006) (holding that Cascade failed to raise an issue of material fact concerning the reasonableness of Progressive's termination notice); *Rizzuti v. Basin Travel Serv. of Othello, Inc.,* 125 Wn. App. 602, 617 (2005) (holding that Rizzuti failed to raise an issue of material fact regarding the reasonableness of the insurer's denial of coverage).

the Association had yet to determine.[81] There was nothing unreasonable about the Association's decision. Hoy cannot turn his permissive use of the Association's Common and Limited Common Elements into an irrevocable right just because he opposes the Association's conditions of use.

D. Hoy's Promissory Estoppel Claim Must Fail.

Hoy claims that, in the interest of justice, the Court must enforce the Board's grant of permission and make that grant *permanent*. In other words, Hoy wants this Court to hold that, whenever a board grants permission to use Common Elements, and someone acts on that permission, this use cannot be restricted or altered contrary to the wishes of the user. This would amount to an irrevocable right to use Common and Limited Common Elements and would usurp the Association's ownership of the Common and Limited Common Elements. In this case, the governing documents and relevant RCWs strictly precluded Hoy from acquiring such a heightened interest in Common and Limited Common Elements. Therefore, the trial court properly dismissed Hoy's promissory estoppel claim.

1. Hoy Does Not, and Cannot, Have Irrevocable Rights to Certain Common and Limited Common Elements.

Hoy claims the Board granted him permission to install the HVAC

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[81] Appellant's Brief, pg. 3; Appendix C, CP 252-53, Johnson Decl., ¶¶3-4.

Unit through and on Common and Limited Common Elements and that the Board cannot now revoke that permission because Hoy relied on it. In essence, Hoy is claiming that he has a right to keep his HVAC Unit installed through Common and Limited Common Elements despite the Board's absolute authority to regulate the use of those Elements. For Hoy's claim to succeed, Hoy must have either an easement or ownership interest in the Common and Limited Common Elements through which the HVAC Unit passes. Without such an interest, Hoy would have no right or ability to preclude the Board from exercising its powers to regulate the use and control of the applicable Common and Limited Common Elements.

Here, the governing documents and RCW 64.34 *et seq*. prohibit Hoy from acquiring such an interest. At best, Hoy only acquired a license to pass the HVAC Unit through Common and Limited Common Elements, which the Board was free to revoke at any time.

> An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners.[82]
>
> The association, on behalf of the unit owners, may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (1) and (2) of [RCW 64.34.348].[83]

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[82] RCW 64.34.348(2).
[83] RCW 64.34.348(3).

> **Any purported conveyance, encumbrance, or other voluntary transfer of common elements, unless made pursuant to this section, is void.**[84]

An easement is an encumbrance on and interest in land.[85] An easement's express creation requires conveyance by deed.[86]

The provisions of RCW 64.34 *et seq.* "may not be varied by agreement, and rights conferred by [RCW 64.34. et seq.] may not be waived."[87] This includes the Association's ability to regulate the use and modification of Common and Limited Common Elements under RCW 64.34.304.[88] The Declaration also contains a non-waiver provision, which precludes the Board from waiving any its rights under the governing documents unless such a waiver is in writing and signed by the Board.[89] Moreover, as stated, *supra*, Hoy had constructive, if not actual, notice of the governing documents' provisions when he purchased his Unit.

It is indisputable that Hoy did not receive permission to install the HVAC Unit by recorded deed or any other written document conveying any interest in Common or Limited Common Elements.[90] At the very least, RCW

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[84] RCW 64.34.348(4) (emphasis added).
[85] *Berg v. Ting*, 125 Wn.2d 544, 551 (1995).
[86] *Id.*, RCW 64.04.010, .020.
[87] RCW 64.34.030 (emphasis added).
[88] *See* RCW 64.34.304(1).
[89] Appendix A, CP 205-06, Sheppard Decl., Exhibit A, Declaration, Article 18.2, "Failure of Board to Insist on Strict Performance No Waiver."
[90] Appendix I, CP 313, Hoy Decl., ¶4. Hoy claims he received verbal permission (subject to conditions) to install the HVAC Unit at a Board meeting.

64.34.348 and RCW 64.04.010 required a recorded deed to convey an ownership interest or easement to Hoy. Without an ownership interest or easement, Hoy would have no right to use or control Common or Limited Common Elements to use the HVAC Unit. Because there was no deed, any purported conveyance of ownership interest in or easement through Common or Limited Common Elements to Hoy was **void** under RCW 64.34.348(4).

Because Hoy's interest in the Common and Limited Common Elements cannot be an easement or ownership interest, Hoy, at best, holds only a license to use the Common and Limited Common Elements through which the HVAC Unit passes. Hoy does not even state the type of interest he believes he has in the Common and Limited Commit Elements that would allow him to preclude the Association from asserting its powers over those Elements, or any legal theory that could provide him with such an interest under the facts of this case.

2. The Board's Permission for Hoy to Install the HVAC Unit was a License that the Board May Revoke at Any Time.

An easement is a right and a license is a privilege.[91]

> The practical distinction [between a license and an easement] is that a license exists at the will of the landowner; it is permissive use, and therefore not wrongful, but it is revocable at will. An easement, on the other hand, is not revocable at will, though it may have a life that is

[91] 17 William B. Stoebuck and John W. Weaver, Washington Practice: Real Estate § 2.1, at 82 (2d ed.2004)).

> limited to a stated time or to the duration of some purpose it serves.[92]

A license, unlike an easement, does not convey an interest in land, but authorizes the doing of acts on the land of another and justifies the doing of an act which would otherwise be considered trespass.[93] "A license differs from an easement in that it is revocable and nonassignable, and does not exclude possession, either wholly or partially by the owner of the servient tenement."[94]

As stated, *supra*, Hoy cannot have an easement or ownership interest in the Common and Limited Common Elements that would give Hoy any right to prevent the Board from exerting its power to regulate the use of those Elements. Any such right would be void because the alleged conveyance of this right did not comport with RCW 64.34.348's requirements. Thus, the permission the Board gave Hoy to install his HVAC Unit through Common and Limited Common Elements can only be a license. The Board may revoke such a license at any time. Therefore, as a matter of law, the Board had complete discretion to revoke Hoy's use of the Common and Limited Common Elements in connection with the HVAC Unit. The Board exercised this discretion, and Hoy's promissory estoppel claim must fail.

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[92] *Id.*
[93] *Bakke v. Columbia Valley Lumber Co.*, 49 Wn.2d 165, 170 (1956).
[94] *Id.*

To allow Hoy's promissory estoppel claim to be heard at trial, this Court would have to find that Hoy's promissory estoppel claim (a claim in equity) could somehow overcome the statutory mandate of RCW 64.34.348(4) (noncompliant conveyances are void), the Board's power to regulate Common and Limited Common Elements under RCW 64.34.304, the non-waiver provisions in RCW 64.34.030, and the non-waiver provisions in the Declaration. It is simply impossible for a promissory estoppel claim to overcome any, let alone all, of these legislative and governing document prohibitions.

As shown above, the Board's conditioning of the HVAC's Unit's use on Hoy's execution of a covenant was, and is, completely within the Board's powers. Regardless of the conditions Hoy thought he agreed to when he installed the HVAC Unit, Hoy cannot prevent the Association from changing those conditions.

Hoy claims he already has ownership to the Common Elements, but Hoy's ownership interest in Common Elements is shared with all other owners and is still subject to rules and terms of use the Association adopts. Hoy is attempting to expand his ownership interest into something more – an ownership interest where he owns the Common Elements through which his HVAC Unit runs to the exclusion of other owners, and where Hoy's use of those Common Elements is no longer subject to the Association's rules

and regulations. Hoy's interpretation of his rights and ownership interests are not supported by the statutes or governing documents. The Association cannot be estopped from exercising its duly authorized powers, especially when the governing statute explicitly precludes waiver of those powers or varying them by agreement. Therefore, the trial court properly dismissed Hoy's promissory estoppel claim.

E. The Association is Entitled to Recover Its Attorneys' Fees and Costs.

RCW 64.34.455 states that

> If a declarant or any other 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, Hoy installed the HVAC Unit without permission, which violated Declaration Articles 10.5 (Hoy cannot alter exterior of the building without Board approval) and 10.8 (nothing shall be altered or constructed in or removed from Common Elements without prior written consent of the Board). Hoy thereafter refused to remove the HVAC Unit and brought this lawsuit to prevent the Association from doing so. Hoy's refusal continued to violate Declaration Articles 10.5 and 10.8, 7.2 (use of Common Elements shall be governed by RCW 64.34 et seq., the Declaration, and other governing documents), 8.2 (the Board may adopt rules governing the use of

Limited Common Elements), and 13.4 (powers of the Board). Hoy's refusal to abide by the Board's decisions also violated RCW 64.34.348, 64.34.304, and other provisions of RCW 64.34 enumerated above. Hoy's lawsuit was a baseless attempt to prevent the Association from exerting those powers.

The trial court granted the Association an award of fees. Hoy never disputed the propriety of the trial court's award of fees and costs, and so, if the Association prevails, it is entitled to such an award on appeal.

VI. CONCLUSION

As shown above, there is no question of fact that the Board exercised its authority under the governing documents and RCW 64.34 *et. seq*. by permitting Hoy's installation of the HVAC Unit through Common and Limited Common Elements, and then threatening its removal when Hoy refused to abide by the Board's conditions. Hoy cannot show that the Board violated any duty owed to Hoy by taking these actions and making these decisions. The business judgment rule insulates the Board's decisions, and so there can be no breach of RCW 64.34.304 as a matter of law. Further, even if Hoy could show the Board violated a duty owed to Hoy, Hoy cannot show any damage flowing therefrom, and Hoy's claim of disparate treatment is unsupported by the facts. Thus, the Court must affirm the trial court's dismissal Hoy's claim that the Board breached its duty of care under RCW 64.34.304.

In addition, Hoy's arguments in reliance on the *Grovenburg* line of cases are new arguments on appeal, and this Court should disregard them. Also, these cases are not Washington law and are inapposite to the issues in this case. Regardless, the Association's decisions were reasonable as a matter of law, and the trial court's summary judgment ruling should not be overturned on this basis.

Finally, this Court should affirm the dismissal of Hoy's promissory estoppel claim because the Board has absolute authority to regulate the use and modification of Common and Limited Common Elements. These powers cannot be waived, and for Hoy to obtain any irrevocable right to Common and Limited Common Elements through which the HVAC Unit passes, the statutes required Hoy to receive such an easement or ownership interest by recorded deed. Hoy did not receive such a deed, and so Hoy only had a license to use those Elements that the Board could revoke at any time. Therefore, Hoy's promissory estoppel claim must fail.

DATED this 20th day of June, 2018.

LEVY | VON BECK | COMSTOCK, P.S.

Seth E. Chastain, WSBA No. 43066
Attorney for The 400 Condominium Association

NO. 51544-0-II

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

TERRY HOY, an individual,

Appellant,

v.

THE 400 CONDOMINIUM ASSOCIATION, a Washington nonprofit corporation,

Respondent.

ON APPEAL FROM KITSAP COUNTY SUPERIOR COURT
(Hon. Jeffrey P. Bassett – Cause No. 17-2-00867-4)

PROOF OF SERVICE

Seth E. Chastain
WSBA No. 43066
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The undersigned declares under penalty of perjury under the laws of the State of Washington that on this date I filed and caused to be served in the manner indicated a copy of the within and foregoing document upon the following persons:

DATED this 20th of June, 2018.

Attorneys for Appellant:

Brandt Law Group Michael D. Brandt 1200 Fifth Ave., Suite 1950 Seattle, WA 98101	() (X) (X)	U.S. Mail Personal Service Email/E-Service

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Melissa Caracol

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APPENDIX

Appendix A	Declaration of Tim Sheppard in Support of Defendant's Motion for Summary Judgment with Exhibits A - D	CP 168 - 248
Appendix B	Declaration of Rob Woutat	CP 249 - 251
Appendix C	Declaration of Bob Johnson	CP 252 - 254
Appendix D	Declaration of Roberta Cooper	CP 255 - 257
Appendix E	Declaration of John Burley with Exhibit 1	CP 258 - 270
Appendix F	Declaration of Dale Lindamood with Exhibit A	CP 271 - 279
Appendix G	Declaration of Tim Sheppard with Exhibits A - D	CP 280 - 307
Appendix H	Declaration of Richard Simms	CP 308 - 311
Appendix I	Declaration of Terry Hoy in Support of Motion for Preliminary Injunction with Exhibits 1 - 8	CP 312 - 345

Appendix A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP

TERRY HOY, an individual, Plaintiff, vs. THE 400 CONDOMINIUM ASSOCIATION, a Washington nonprofit corporation, Defendant.	NO. 17-2-00867-4 DECLARATION OF TIM SHEPPARD IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I, TIM SHEPPARD, hereby declare:

1. I am over the age of eighteen and otherwise competent to make this Declaration. I have firsthand knowledge of the facts contained in this Declaration.

2. I am a property manager with Bradley Scott, Inc. At all relevant times to this dispute, Bradley Scott, Inc. has been the property manager for The 400 Condominium Association ("Association").

3. I am a duly authorized custodian of all records of the Association. The below referenced exhibits are true copies of records I maintain for the Association.

4. Attached as **Exhibit A** is a true and correct copy of the Condominium Declaration for the Association.

5. Attached as **Exhibit B** is a true and correct copy of the Articles of Incorporation for the Association.

LEVY | VON BECK | COMSTOCK | P.S.
1200 Fifth Ave., Suite 1850
Seattle, Washington 98101
Main/Fax: 206-626-5444

6. Attached as **Exhibit C** is a true and correct copy of the First Amendment to the Declaration.

7. Attached as **Exhibit D** is a true and correct copy of the Second Amendment to the Declaration.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 14 day of December, 2017 at Bremerton, Washington.

Tim Sheppard

LEVY | VON BECK | COMSTOCK | P.S.
1200 Fifth Ave., Suite 1850
Seattle, Washington 98101
Main/Fax: 206-626-5444

EXHIBIT A

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HILLIS CLARK MARTIN & PETERSON, P.S.
Attention: Steven R. Rovig
500 Galland Building
1221 Second Avenue
Seattle, WA 98101-2925

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CONDOMINIUM DECLARATION
FOR
THE 400, A CONDOMINIUM

Grantor:	**BREMERTON PARTNERS, L.L.C.**
Grantee:	**THE 400, A CONDOMINIUM**
Legal Description (abbreviated):	PTNS LOTS 1 – 9, BLK 4, TOWN OF BREMERTON
☑ Additional on:	SCHEDULE A & PTN GOV LOT 3, S13, T24N, R1E
Assessor's Tax Parcel ID #:	3714-004-001-0008, 3718-004-005-0004 3718-004-007-0002, 3718-004-008-0001
Reference Nos. of Documents Released or Assigned:	N/A

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CONDOMINIUM DECLARATION
FOR
THE 400, A CONDOMINIUM

THIS DECLARATION is made by **BREMERTON PARTNERS, L.L.C.**, a Washington limited liability company ("Declarant").

ARTICLE 1.

DEFINITIONS

1.1. WORDS DEFINED. For the purposes of this Declaration and any amendments hereto, the following definitions shall apply.

1.1.1. ***"Allocated Interests"*** means the allocation of Common Expense Liability, interest in Common Elements and voting for each of the Units in the Condominium determined in accordance with the formulas set forth in Section 6.4 and as listed in SCHEDULE B.

1.1.2. ***"Articles"*** means the articles of incorporation for the Association.

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

1.1.4. ***"Association"*** means the owners association identified in Article 13.

1.1.5. ***"Board"*** means the board of directors of the Association, as described in Article 15.

1.1.6. ***"Bylaws"*** means the bylaws of the Association as they may from time to time be amended.

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

1.1.8. ***"Common Expenses"*** means expenditures made by or financial liabilities of the Association including those expenses related to the maintenance, repair,

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and replacement of the Common Elements, including, except as otherwise provided herein, the Limited Common Elements, including allocations to reserves.

1.1.9. ***"Common Expense Liability"*** means the liability for Common Expenses allocated to each Unit, as set forth in SCHEDULE B.

1.1.10. ***"Condominium"*** means The 400, A Condominium, created under the Declaration and the Survey Map and Plans.

1.1.11. ***"Condominium Act"*** means the Washington Condominium Act, codified at RCW ch. 64.34, as it may be from time to time amended.

1.1.12. ***"Conveyance"*** means any transfer of the ownership of a Unit, including a transfer by deed or by real estate contract.

1.1.13. ***"Declarant"*** means Bremerton Partners, L.L.C., a Washington limited liability company, and its successors and assigns.

1.1.14. ***"Declarant Control"*** means the right of the Declarant or persons designated by the Declarant to appoint and remove officers and members of the Board pursuant to Article 14.

1.1.15. ***"Declaration"*** means this Condominium Declaration for The 400, A Condominium, as it may from time to time be amended.

1.1.16. ***"Development Rights"*** means the rights of the Declarant as specified in Section 11.1 below.

1.1.17. ***"Eligible Mortgagee"*** means the Mortgagee that has filed with the secretary of the Association a written request that it be given copies of notices of any action by the Association that requires the consent of Mortgagees and shall also mean the Project Mortgagee with respect to Units owned by the Declarant upon which it has a Mortgage.

1.1.18. ***"FHLMC"*** means the Federal Home Loan Mortgage Corporation.

1.1.19. ***"FNMA"*** means the Federal National Mortgage Association.

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

1.1.21. ***"HUD"*** means the Department of Housing and Urban Development.

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1.1.22. ***"Identifying Number"*** means the number on the Survey Map and Plans and as listed in EXHIBIT C, which identifies each Unit in the Condominium.

1.1.23. ***"Limited Common Element"*** means a portion of the Common Elements allocated in Article 8 for the exclusive use of one or more but fewer than all of the Units.

1.1.24. ***"Managing Agent"*** means the person designated by the Board under Section 15.3.

1.1.25. ***"Mortgage"*** means a mortgage, deed of trust, or real estate contract.

1.1.26. ***"Mortgagee"*** means any holder, insurer, or guarantor of a Mortgage on a Unit.

1.1.27. ***"Notice and Opportunity to Be Heard"*** means the procedure described in Section 15.5.

1.1.28. ***"Owner"*** or ***"Unit Owner"*** means the Declarant or other person who owns a Unit, but does not include any person who has an interest in a Unit solely as security for an obligation.

1.1.29. ***"Person"*** means a natural person, corporation, partnership, limited partnership, limited liability company, trust, governmental subdivision or agency, or other legal entity.

1.1.30. ***"Project Mortgagee"*** means Declarant's lender for construction of the Condominium, and its successors and assigns, as long as it is the holder of a Mortgage secured by Declarant's interest in the Condominium, including any Units owned by the Declarant or any Special Declarant Rights held by the Declarant.

1.1.31. ***"Special Declarant Rights"*** means rights reserved for the benefit of the Declarant as specified in Section 11.2 below.

1.1.32. ***"Survey Map and Plans"*** means the survey map and plans filed simultaneously with the recording of this Declaration and any amendments, corrections, and addenda thereto subsequently filed.

1.1.33. ***"Transition Date"*** means the date upon which the period of Declarant Control terminates as determined in Article 14.

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1.1.34. ***"Unit"*** means a physical portion of the Condominium designated for separate ownership, the boundaries of which are described in Section 6.2 and shown on the Survey Map and Plans.

1.1.35. ***"VA"*** means the Veterans Administration.

1.2. FORM OF WORDS. The singular form of words shall include the plural and the plural shall include the singular. Masculine, feminine, and gender-neutral pronouns shall be used interchangeably.

1.3. STATUTORY DEFINITIONS. Some of the terms defined above are also defined in the Condominium Act. The definitions in the Declaration are not intended to limit or contradict the definitions in the Condominium Act. If there is any inconsistency or conflict, the definition in the Condominium Act will prevail.

ARTICLE 2.

CREATION OF CONDOMINIUM

The Declaration and the Condominium Act provide the framework by which the Condominium is created and operated. In the event of a conflict between the provisions of the Declaration and the Condominium Act, the Condominium Act shall prevail. In the event of a conflict between the provisions of this Declaration and the Bylaws, the Declaration shall prevail except to the extent the Declaration is inconsistent with the Condominium Act. The creation of the Condominium shall not be impaired, and title to a Unit and its interest in the Common Elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of this Declaration, the Survey Map and Plans, or any amendment thereto to comply with the Condominium Act.

ARTICLE 3.

NAME OF CONDOMINIUM

The name of the Condominium created by this Declaration and the Survey Map and Plans is The 400, A Condominium.

ARTICLE 4.

DESCRIPTION OF REAL PROPERTY

The real property initially included in the Condominium and submitted to the Condominium Act is described in SCHEDULE A.

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ARTICLE 5.

DESCRIPTION OF BUILDING

The Condominium is comprised of one four-story building of steel and concrete construction comprised of flats and two-story loft Units.

ARTICLE 6.

DESCRIPTION OF UNITS; ALLOCATED INTERESTS

6.1. NUMBER AND IDENTIFICATION OF UNITS. The Condominium has 70 Units. The Identifying Number of each Unit is set forth in SCHEDULE B. The locations of the Units are shown on the Survey Map and Plans.

6.2. UNIT BOUNDARIES. The boundaries of the Units are the perimeter walls, floors, and ceilings of the Units, and shall include within the Unit all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof, provided that the Unit boundaries shall not include those Common Elements specified in Article 7. All spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

6.3. UNIT DATA. SCHEDULE B sets forth the following data for each Unit.

6.3.1. The approximate square footage;

6.3.2. The number of bathrooms, whole or partial;

6.3.3. The number of rooms designated primarily as bedrooms;

6.3.4. The level or levels of the Unit;

6.3.5. Whether the Unit has a fireplace; and

6.3.6. The Allocated Interest.

The location and configuration of each Unit are shown in the Survey Map and Plans.

6.4. ALLOCATED INTEREST. As set forth in SCHEDULE B, the Allocated Interest of each Unit in the Condominium, for purposes of Common Expense Liability, interest in the Common Elements and voting, is determined by dividing the area for each Unit as shown on SCHEDULE B by the total of all such areas.

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ARTICLE 7.

COMMON ELEMENTS

7.1. DESCRIPTION. The Common Elements are all portions of the Condominium other than the Units, including all portions of the walls, floors or ceilings which are not a part of or within the Unit boundaries provided in Section 6.2. The Common Elements also include the entrance lobby, elevators, stairs, corridors, parking circulation areas, amenity spaces, plaza areas, walkways and similar facilities within the Condominium. The Common Elements also include any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture which lies partially within and partially outside the designated boundaries of a Unit which serves more than one Unit or any portion of a Common Element.

7.2. USE. Each Owner shall have the right to use the Common Elements in common with all other Owners and a right of access from the Owner's Unit across the Common Elements to the public streets. The right to use the Common Elements extends not only to each Owner, but also to his agents, servants, tenants, family members, invitees, and licensees. The right to use the Common Elements, including the Limited Common Elements, shall be governed by the provisions of the Condominium Act, this Declaration, the Bylaws, and the rules and regulations of the Association.

7.3. CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS. Portions of the Common Elements not necessary for the habitability of a Unit may be conveyed or subjected to a security interest by the Association if approved by the Owners having at least 80% of the votes in the Association, including 80% of the votes excluding votes held by the Declarant or an affiliate of Declarant (as defined in the Condominium Act) and the consent of Eligible Mortgagees of Units to which are allocated at least 51% of the votes of Units subject to Mortgages held by Eligible Mortgagees. All of the Owners of Units to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a security interest. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.

ARTICLE 8.

LIMITED COMMON ELEMENTS

8.1. DESCRIPTION. The Limited Common Elements allocated to each Unit or to certain Units are described in SCHEDULE C and are shown on the Survey Map and Plans.

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8.2. USE. Each Owner shall have the exclusive right to use the Limited Common Elements allocated or assigned solely to the Owner's Unit. Notwithstanding the foregoing, however, the Owners of Units 113 and 114 may use the Unit 115 Deck LCE and adjacent exterior stairway, and the Owner of Unit 113 may use the Unit 114 Deck LCE, in each case for the purpose of accessing Units 113 and 114 via their exterior entryways. The right to use the Limited Common Elements extends not only to each Owner of a Unit, but also to the Owner's servants, tenants, family members and guests, and, in the case of Units 113 through 117, inclusive, their customers and/or clients. The Board may adopt rules and regulations governing the use of the Limited Common Elements.

8.3. REALLOCATION. A Limited Common Element may be reallocated between Units only with the approval of the Board and by an amendment to the Declaration executed by the Owners and Eligible Mortgagees of the Units to which the Limited Common Element was and will be allocated. The Board shall approve the request of the Owner or Owners under this Section within 30 days, or within such other period provided by this Declaration, unless the proposed reallocation does not comply with the Condominium Act or the Declaration. The failure of the Board to act upon a request within such period shall be deemed approval thereof. The amendment shall be recorded in the names of the parties and of the Condominium. A Common Element may be reallocated as a Limited Common Element, or a Limited Common Element may be incorporated into an existing Unit with the approval of 67% of the Owners, including the Owner of the Unit to which the Limited Common Element was allocated and the Owner of the Unit to which the Limited Common Element will be allocated or incorporated. Such reallocation or incorporation shall be reflected in an amendment to the Declaration and the Survey Map and Plans.

ARTICLE 9.

PARKING AND STORAGE

9.1. GARAGE AND STORAGE IN UNITS. Each Unit shall be allocated one or more Limited Common Element parking spaces and one storage unit as set forth on the attached SCHEDULE B.

9.2. USE OF PARKING SPACES. Parking spaces within the Condominium are to be used for the parking of operable passenger motor vehicles and may not be used for parking commercial vehicles, trailers, or recreational vehicles, or for other purposes except to the extent expressly allowed by rules and regulations adopted by the Board. The Board may direct that any vehicle or other thing improperly parked or kept in a parking space or any vehicle lacking or displaying a parking permit be removed, and if it is not removed the Board may cause it to be removed at the risk and cost of the owner thereof.

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ARTICLE 10.

PERMITTED USES, MAINTENANCE OF UNITS; CONVEYANCES

10.1. USE; TIMESHARING PROHIBITED. Except as otherwise provided in Section 10.2 below, the Units are intended for and restricted to residential use only on an ownership, rental, or lease basis, and for social, recreational, or other reasonable activities normally incident to such use, which may include use as a home office not involving use of the Unit by nonresident employees or regular visits to the Unit by customers or clients. Timesharing of Units, as defined in RCW ch. 64.36, is prohibited.

10.2. COMMERCIAL USES. Units 113, 114, 115, 116 and 117 on the first level of the Condominium may be used for retail or office uses by the Owners of such Units. Any such commercial use is to the extent permissible under applicable City of Bremerton ordinances and subject to the following:

10.2.1. Such commercial uses must have a low impact on other Unit Owners as determined by the Board in the exercise of its reasonable discretion. Customers or clients of any business operating from such a Unit must use the exterior entry of the Unit exclusively; provided, however, that any such customers or clients who are persons with disabilities or who are otherwise incapable of accessing such Units due to physical limitations and/or the layout of the stairways and entrances to such Units may access such Units through the common area corridors adjacent to such Units.

10.2.2. A sign may be placed on the exterior subject to the Signage Policy initially adopted by the Board, which policy shall not be changed so as to materially and adversely affect the business of the Owner of any such Unit.

10.2.3. No such Unit shall be used for conducting: manufacturing activities; wholesale or retail sales of pornographic literature, photographs or movies; card room; video arcade, dance hall, pool hall or other similar form of amusement center; musical school or studio; adult motion picture theater; massage parlor; laundry; dry-cleaning, dyeing or rug cleaning plant; jail; hotel, apartment hotel and motel; package liquor store; taxidermy shop; retail pet shop or small animal clinic; work release center, drug rehabilitation center or social service agency.

10.2.4. The delivery or shipment of merchandise, supplies, and fixtures to and from any such Unit shall be accomplished in a manner that shall not unreasonably interfere with the quiet enjoyment or the security of the other Units.

10.2.5. The Owner of any such Unit shall not allow or permit any continuing vibration or any offensive or obnoxious and continuing noise or any offensive or obnoxious and continuing odor to emanate from the Unit into any other Unit, nor shall the Owner allow or permit any machine or other installation therein to constitute a

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nuisance or otherwise to unreasonably interfere with the safety or comfort of any of the Owners of other Units.

10.2.6. The Owner of any such Unit shall not use nor occupy the Unit nor do or permit anything to be done thereon in any manner which shall make it impossible for the Association to carry any required insurance, or which will invalidate or unreasonably increase the cost thereof or which will cause structural injury to the building, or which would constitute a public or private nuisance or which will violate any laws, regulations, ordinances or requirements of the federal, state or local governments or of any other governmental authorities having jurisdictions over the property.

10.2.7. The Owner of any such Unit shall bear the expenses relating to any changes in utility services necessitated by the use of the Unit.

10.2.8. The cost of any trash disposal for any such Unit in excess of the average cost of trash disposal for a comparable Unit used solely for residential purposes shall be directly assessed to the Unit in the Board's reasonable discretion.

So long as the Owner of any such Unit complies with the provisions of this Declaration and of applicable law, such Owner's right to conduct business in, and to quiet enjoyment of, such Unit shall not be denied or unreasonably conditioned.

10.3. LEASING. No lease or rental of a Unit may be less than the entire Unit. All leases or rental agreements for the Units shall provide that its terms shall be subject in all respects to the provisions of this Declaration and the Bylaws and rules and regulations of the Association and that any failure by the tenant to comply with the terms of such documents, rules, and regulations shall be a default under the lease or rental agreement. If any lease under this Section does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be part of the lease and binding upon the Owner and the tenant by reason of their being stated in this Declaration. All leases and rental agreements shall be in writing. Copies of all leases and rental agreements shall be delivered to the Association before the tenancy commences. If any lessee or occupant of a Unit violates or permits the violation by his guests and invitees of any provisions hereof or of the Bylaws or of the rules and regulations of the Association, and the Board determines that such violations have been repeated and that a prior notice to cease has been given, the Board may give notice to the lessee or occupant of the Unit and Owner thereof to forthwith cease such violations, and if the violation is thereafter repeated, the Board shall have the authority, on behalf and at the expense of Owner, to evict the tenant or occupant if Owner fails to do so after Notice from the Board and an Opportunity to be Heard. The Board shall have no liability to an Owner or tenant for any eviction made in good faith. The Association shall have a lien against the Owner's Unit for any costs incurred by it in connection with such eviction, including reasonable attorneys' fees, which may be

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collected and foreclosed by the Association in the same manner as Assessments are collected and foreclosed under Article 17. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise rent his Unit.

10.4. MAINTENANCE OF UNITS, COMMON ELEMENTS, AND LIMITED COMMON ELEMENTS, RECORDS. Except as provided below, the Association is responsible for maintenance, repair, and replacement of the Common Elements and the Limited Common Elements, and each Owner is responsible for maintenance, repair and replacement of the Owner's Unit. Each Owner shall, at Owner's sole expense, keep the interior of the Unit and its equipment, appliances, and appurtenances in a clean and sanitary condition, free of rodents and pests, and in good order, condition, and repair and shall do all redecorating and painting at any time necessary to maintain the good appearance and condition of the Unit.

10.4.1. Each Owner shall be responsible for the maintenance, repair, or replacement of any plumbing fixtures, water heaters, air conditioning units, fans, and heating equipment which serve only that Unit, whether or not located in the Unit. In addition, each Owner shall be responsible for the maintenance, repair or replacement of any windows or doors which serve only that Unit, whether or not located in the Unit; provided, however, that such maintenance, repair and replacement shall be subject to oversight by the Association and shall be consistent with the quality, materials and finish standard to the Condominium. Notwithstanding the foregoing, the Association shall be responsible for periodic washing of the exterior of the windows.

10.4.2. Each Owner shall keep their respective Limited Common Elements in a neat, clean and orderly condition and in accordance with any rules and regulations of the Association.

10.4.3. The Association may, as a Common Expense, provide for the inspection of any portion of a Unit or Limited Common Element, the failure of which to maintain properly may cause damage to the Common Elements, Limited Common Elements or another Unit or cause unnecessary Common Expenses, including, but not limited to, deck drains, fireplace and flue, bathtubs, sinks, toilets, hot water tank and plumbing and electrical fixtures. The Association shall provide at least three days' notice to the occupant of the Unit and shall specify in the notice what items are to be inspected and a time for the inspection. If the inspection discloses the need for repair or replacement, the Association may either require the responsible Owner to make the repair or replacement or to make the repair or replacement itself and allocate the cost thereof to Owner. The Association shall maintain complete records of all inspections, maintenance, repairs and replacements done by it or its agents or contractors with respect to the Common Elements, Limited Common Elements or Units.

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10.5. EXTERIOR APPEARANCE. In order to preserve a uniform exterior appearance for the Condominium, the Board shall provide for the maintenance, repair, and replacement of the exterior of the building. No Owner may modify or decorate the exterior of the building, or screens, doors, awnings, or other portions of any Unit visible from outside the Unit without the prior written consent of the Board or in accordance with rules or regulations of the Association. No solar panels, radio or television antennas, satellite dishes or other appliances may be installed on the exterior of the building without the prior written consent of the Board.

10.6. PROTECTED ANTENNAS. An Owner may not install an antenna, dish or other receiving device in or on any portion of the Common Elements or Limited Common Elements, except as provided in this Section. Each Owner shall have the right to install a Protected Antenna (as defined by the provisions of 47 C.F.R. § 1.4000 ("FCC Rule") as it now exists or is hereafter amended or replaced, or any other federal, state or local law, code, rule or regulation that pre-empts, prohibits or limits restrictions on, or conditions to, the installation, maintenance or repair of telecommunications equipment desired by an Owner) (but no other kind of antenna, dish or receiving device) within Limited Common Element area allocated to the Owner's Unit, subject to the conditions and limitations set forth in this Section; provided, however, the Association may prohibit the installation of a Protected Antennae by Owners if the Association provides a central antenna system that complies with the FCC Rule or any other law, ordinance, rule or regulation that permits such prohibition. If the provisions of this Section conflict with any applicable federal, state or local law, ordinance, rule or regulation, the terms of such law, ordinance, rule or regulation shall prevail, but the conditions and limitations set forth in this Section shall be enforced to the maximum extent permitted by law.

10.6.1. Owner proposing to install a Protected Antenna shall be deemed to warrant to the Association and agree that the Protected Antenna for Owner's Unit will be installed and maintained, at Owner's sole cost and expense, in a diligent and workmanlike manner and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. The Protected Antenna shall be installed by a qualified, licensed and bonded contractor to install any Protected Antenna under a contract with Owner in which the contractor acknowledges and agrees that the contractor shall have no lien rights with respect to any property other than the Unit of Owner. Owner shall deliver a copy of such contract to the Association.

10.6.2. Prior to installing any Protected Antenna, Owner proposing the installation shall deliver reasonable evidence to the Board that any applicable warranty will not be voided as a result of the installation or presence of the Protected Antenna. Owner shall deliver to the Board a copy of any plans and specifications for the installation of the Protected Antenna. Such plans and the installation shall conform with good engineering and construction practices and shall demonstrate that the installation or maintenance will not adversely affect the building or any Unit. In particular, the

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installation shall not, without the consent of the Board, which it may withhold in its sole discretion, penetrate the exterior of the building. The Board may have the installation inspected by a member of the Board, the Managing Agent or its consulting engineer or architect at such stages as the Board deems prudent, provided such inspections do not materially delay the installation.

10.6.3. Owner of the Unit benefited by the Protected Antenna shall indemnify, defend, and hold the Association and each other Owner harmless from any liability, cost or expense arising out of or in connection with the Protected Antenna, including the cost of repairing any damage to the Building caused by the installation, presence, use, maintenance, repair or replacement of any Protected Antenna. The Protected Antenna shall be deemed to be a part of the Unit served by such Protected Antenna and shall not be deemed a Common Element.

10.6.4. Owner shall install the Protected Antenna entirely within its Unit or a Limited Common Element deck or terrace. The Protected Antenna may not extend into any Common Element or into any Unit owned by another Owner. The Protected Antenna shall not to interfere with any Protected Antenna or other telecommunications equipment previously installed by another Unit Owner or the Association.

10.6.5. The Board may require the Protected Antenna to be painted so it blends in with its surroundings or located in a particular place or screened to minimize adverse aesthetic effects, provided that the cost of painting or screen is not unreasonably expensive in relationship to the cost of the Protected Antenna and the painting, location or screening does not interfere with reception.

10.7. EFFECT ON INSURANCE. Nothing shall be done or kept in any Unit or in any Common Element or Limited Common Element that will increase the rate of insurance on the property without the prior written consent of the Board. Nothing shall be done or kept in any Unit or in any Common Element or Limited Common Element that will result in the cancellation of insurance on any part of the property, or that would be in violation of any laws.

10.8. USE OR ALTERATION OF COMMON AND LIMITED COMMON ELEMENTS. Use of the Common Elements and Limited Common Elements shall be subject to the provisions of this Declaration and the rules and regulations of the Board. Nothing shall be altered or constructed in or removed from any Common Element or Limited Common Element without the prior written consent of the Board.

10.9. SIGNS. Except as set forth in Section 10.2, no sign of any kind shall be displayed to the public view on or from any Unit, Limited Common Element or Common Element without the prior consent of the Board. The Board may erect, in the Common Elements, a master directory listing Units that are for sale or lease or may regulate the size and location of signs advertising Units for sale or lease. This Section shall not apply

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to the Declarant who may post such signs on the property as it deems necessary or appropriate for the sale of Units in the Condominium as long as the Declarant has a Unit for sale.

10.10. PETS. Domesticated animals or birds (herein referred to as "pets" may be kept in Units subject to rules and regulations adopted by the Board, provided that Owners shall not keep more than (i) two dogs or (ii) two cats or (iii) one dog and one cat in a Unit. Pets are not allowed on any Common Elements unless they are on a leash under a person's control or in a carrier. The Board may, after Notice and Opportunity to be Heard, at any time require the removal of any pet which it finds is disturbing other Owners unreasonably, and may exercise this authority for specific pets even though other pets are permitted to remain.

10.11. QUIET ENJOYMENT, OFFENSIVE ACTIVITY. No Owner shall permit anything to be done or kept in the Owner's Unit, Limited Common Elements, or Common Elements which would interfere with the right of quiet enjoyment of the other residents of the Condominium. In particular, loudspeakers for sound systems shall not be rigidly attached to a party wall with another Unit or attached to the ceilings, walls, shelves, or cabinets in a Unit in a manner that will induce vibrations into the structure of the building.

10.12. OFFENSIVE ACTIVITY. No noxious or offensive activity shall be carried on in any Unit, Limited Common Element, or Common Element, nor shall anything be done therein that may be or become an annoyance or nuisance to other Owners. Owners shall not permit any condition to exist that will induce, breed, or harbor infectious plant diseases or noxious insects or vermin

10.13. TRASH REMOVAL. Each Owner shall be responsible for removing all trash or garbage from the Unit and depositing it in proper receptacles.

10.14. HAZARDOUS SUBSTANCES. The Owner of each Unit shall not permit any Hazardous Substance to be generated, processed, stored, transported, handled, or disposed of on, under, in, or through the Owner's Unit or the Condominium. Each Owner shall indemnify, defend, and hold harmless the other Owners and the Association from all fines, suits, procedures, claims, and actions of any kind arising out of or in any way connected with any spills or discharges of Hazardous Substances or wastes arising from the operation or use of the Unit or the Property by the Owner, tenants, or invitees of the Unit. As used herein, the term "Hazardous Substance" means any hazardous, toxic, or dangerous substance, waste, or material that is or becomes regulated under any federal, state, or local statute, ordinance, rule, regulation, or other law now or hereafter in effect pertaining to environmental protection, contamination, or cleanup, including without limitation any substance, waste, or material that now or hereafter is designated as a "Hazardous Substance" under the Comprehensive Environmental Response,

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Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*), or under any local or state rule or regulation. Without limiting the foregoing, Hazardous Substances shall include, but not be limited to, any substance which after being released into the environment and upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, and/or genetic abnormalities.

10.15. CONVEYANCE BY OWNERS, NOTICE REQUIRED. The right of an Owner to convey the Unit shall not be subject to any right of approval, disapproval, first refusal, or similar restriction by the Association or the Board, or anyone acting on their behalf. An Owner intending to convey a Unit shall deliver a written notice to the Board, at least two weeks before closing, specifying (a) the Unit being sold, (b) the name and address of the purchaser, of the closing agent, and of the title insurance company insuring the purchaser's interest, and (c) the estimated closing date. The Board shall have the right to notify the purchaser, the title insurance company, and the closing agent of the amount of unpaid Assessments and charges outstanding against the Unit, whether or not such information is requested. Promptly upon the conveyance of a Unit, the new Unit Owner shall notify the Association of the date of the conveyance and the Unit Owner's name and address. The Association shall notify each insurance company that has issued an insurance policy under Article 21 of the name and address of the new Owner and request that the new Owner be made a named insured under such policy. At the time of the first conveyance of each Unit, every Mortgage, lien, or other encumbrance affecting that Unit and any other Unit or Units or real property, other than the percentage of undivided interest of that Unit in the Common Elements, shall be paid and satisfied of record or the Unit being conveyed and its undivided interest in the Common Elements shall be released therefrom by partial release duly recorded or the purchaser of that Unit shall receive title insurance from a licensed title insurance company against such Mortgage, lien, or other encumbrance.

ARTICLE 11.

DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

11.1. DEVELOPMENT RIGHTS. Declarant reserves the Development Right to (a) create up to a total of 70 Units within the Condominium, (b) create Limited Common Elements appurtenant to those Units and (c) allocate parking spaces and storage areas to Units as Limited Common Elements pursuant to Article 9.

11.2. SPECIAL DECLARANT RIGHTS. Declarant reserves the following Special Declarant Rights so long as Declarant owns a Unit: (a) to complete any improvements shown on the Survey Maps and Plans, (b) to maintain sales offices, management offices, interior and exterior signs advertising the Condominium, and models in Units that are not occupied and are for sale by Declarant, in Units owned by Declarant, and in the Common

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Elements of the Condominium, (c) to conduct sales events and other activities relating to the marketing of Units in the Common Elements of the Condominium; (d) to use easements through the Common Elements for the purpose of making improvements within the Condominium, and (e) to elect, appoint, or remove any officer of the Association or any member of the Board during the period of Declarant Control as provided by Article 14.

11.3. DECLARANT INSPECTIONS. Declarant shall have the right, but not the obligation, to conduct inspections and tests from time to time of all or any parts of the Condominium in order to ascertain the physical condition of the improvements in the Condominium and to determine whether maintenance, repairs or replacements of any such improvements are indicated. Declarant shall pay all costs of such inspections and tests made pursuant to this Section, shall restore the affected portion of the property to its condition immediately prior thereto, and shall indemnify the Association and Owners of any affected Units from any damage resulting therefrom. Declarant shall have such rights of entry on, over, under, across and through the property as may be reasonably necessary to exercise the rights described in this Section.

11.4. DECLARANT RIGHT TO ATTEND ASSOCIATION MEETINGS AND RECEIVE MINUTES AND NOTICES. Until December 31, 2010, (a) Declarant shall have the right to attend all meetings of the Board and the Association; (b) the Association shall send Declarant notices of such meetings at the same time notices are given to the members of the Board or the Association, as the case may be, and copies of minutes of all meetings of the Board and the Association; and (c) Declarant shall have the right to inspect the books and records of the Association as further provided in Section 13.7. Notices and minutes shall be given to Declarant in writing to Declarant at the address specified in Section 13.5 or in such other manner as Declarant shall specify.

11.5. TRANSFER. The rights described in this Article shall not be transferred except by instrument evidencing the transfer executed by Declarant or Declarant's successor and the transferee, and recorded in Kitsap County. The rights and liabilities of the parties involved in such a transfer, and of all persons who succeed to any Development Right or Special Declarant Right, are set out in RCW 64.34.316.

ARTICLE 12.

ENTRY FOR REPAIR OR MAINTENANCE

The Association and its agents or employees may enter any Unit and the Limited Common Elements allocated thereto to effect repairs, improvements, replacements, maintenance, or sanitation work deemed by the Board to be necessary in the performance of its duties, to do necessary work that Owner has failed to perform, or to prevent damage to the Common Elements or to another Unit. Except in cases of great emergency that

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preclude advance notice, the Board shall cause the Unit occupant to be given Notice and an Opportunity to be Heard as far in advance of entry as is reasonably practicable. Such entry shall be made with as little inconvenience to Owners and occupants as practicable. The Board may levy a special Assessment against Owner of the Unit for all or part of the cost of work that Owner has failed to perform which may be collected and foreclosed by the Association in the same manner as Assessments are collected and foreclosed under Article 17. The Board may require Owners and tenants to furnish duplicate keys to their Units to the Board or the Board's designated agent.

ARTICLE 13.

OWNERS ASSOCIATION

13.1. FORM OF ASSOCIATION. The Owners of Units shall constitute an owners association to be known as The 400 Condominium Association. The Association shall be organized as a nonprofit corporation, no later than the date the first Unit in the Condominium is conveyed. The number of Board members and qualifications and procedures for election to the Board shall be provided in the Bylaws. The rights and duties of the Board and of the Association shall be governed by the provisions of the Condominium Act, the Declaration, and the Bylaws.

13.2. BYLAWS. The Board will adopt Bylaws to supplement the Declaration, provide for the administration of the Association and the property, and for other purposes not inconsistent with the Condominium Act or the Declaration.

13.3. QUALIFICATION AND TRANSFER. Each Owner of a Unit (including the Declarant) shall be a member of the Association and shall be entitled to one membership for each Unit owned, which membership shall be considered appurtenant to that member's Unit. Ownership of a Unit shall be the sole qualification for membership in the Association. A membership shall not be transferred in any way except upon the transfer of title to the Unit and then only to the transferee of title to the Unit, provided that if a Unit has been sold on contract, the contract purchaser shall exercise the rights of Owner for purposes of the Association, this Declaration, and the Bylaws, except as hereinafter limited, and shall be the voting representative unless otherwise specified. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Unit shall operate automatically to transfer the membership in the Association to the new Owner.

13.4. POWERS OF THE ASSOCIATION. In addition to those actions authorized elsewhere in the Declaration, the Association shall have the power to:

13.4.1. Adopt and amend the Bylaws and the rules and regulations for the Condominium;

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13.4.2. Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect Common Expenses and special Assessments from Owners;

13.4.3. Hire and discharge or contract with Managing Agents and other employees, agents, and independent contractors;

13.4.4. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Condominium, provided, however, that the approval of Owners holding at least 67% of the votes in the Association shall be required before the Association may institute, commence or intervene in any litigation or administrative proceeding, including arbitration, other than litigation or other proceedings against Owners for collection of delinquent Assessments or for enforcement of the Declaration or rules and regulations of the Association; but Owner approval shall not be required for settlement of such litigation or administrative proceedings;

13.4.5. Make contracts, borrow money and incur liabilities;

13.4.6. Regulate the use, maintenance, repair, replacement, and modification of Common Elements and Limited Common Elements;

13.4.7. Cause additional improvements to be made as a part of the Common Elements;

13.4.8. Acquire, hold, encumber, convey, and dispose of, in the Association's name, right, title, or interest to real or tangible and intangible personal property, and arrange for and supervise any addition or improvement to the Condominium, provided that:

13.4.8.1. If the estimated cost of any separate property acquisition, addition, or improvement to the Condominium exceeds $5,000, the approval of the Owners holding a majority of the votes in the Association shall be required;

13.4.8.2. No structural change shall be made to a Unit without the approval of the Owner of that Unit; and

13.4.8.3. The beneficial interest in any property acquired by the Association pursuant to this Section shall be owned by the Owners in the same proportion as their respective interests in the Common Elements and shall thereafter be held, sold, leased, mortgaged, or otherwise dealt with as the Board shall determine.

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13.4.9. Grant easements, leases, licenses, and concessions through or over the Common Elements and petition for or consent to the vacation of streets and alleys;

13.4.10. Impose and collect any payments, fees, or charges for the use, rental, or operation of the Common Elements and for services provided to Owners;

13.4.11. Acquire and pay for all goods and services reasonably necessary or convenient for the efficient and orderly functioning of the Condominium;

13.4.12. Impose and collect charges for late payment of Assessments as further provided in Article 17 and, after Notice and an Opportunity to be Heard by the Board or by such representative designated by the Board and in accordance with such procedures as provided in this Declaration, the Bylaws, or rules and regulations adopted by the Board, levy reasonable fines in accordance with a previously established schedule thereof adopted by the Board and furnished to the Owners for violations of this Declaration, the Bylaws, and rules and regulations of the Association;

13.4.13. Impose and collect reasonable charges for the preparation and recording of amendments to this Declaration, resale certificates required by RCW 64.34.425, and statements of unpaid Assessments;

13.4.14. Provide for the indemnification of its officers and Board, and maintain directors' and officers' liability insurance;

13.4.15. Assign its right to future income, including the right to receive Assessments;

13.4.16. Provide or pay, as part of the Common Expenses, utility services to the Unit Owners as reasonably determined by the Board;

13.4.17. Exercise any other powers conferred, by this Declaration or the Bylaws;

13.4.18. Exercise all other powers that may be exercised in this state by the same type of corporation as the Association; and

13.4.19. Exercise any other powers necessary and proper for the governance and operation of the Association.

13.5. ASSOCIATION ANNUAL INSPECTIONS. At least annually, the Association shall have the Condominium inspected by a qualified engineer, architect or other qualified professional ("Inspector") in order to ascertain the physical condition of the improvements in the Condominium and to determine whether maintenance, repairs or

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replacements of any such improvements are indicated. The inspection shall cover, at a minimum, the building envelope, including the roof, balconies, terraces, windows and doors, plumbing lines, storm and sanitary sewer lines and other building systems. Promptly after completion of the inspection, the Inspector shall prepare a written report of the inspection to the Board (the "Annual Inspection Report"). Until December 31, 2010, the Board shall promptly send a copy of each Annual Inspection Report to Declarant at the following address:

Bremerton Partners, L.L.C.
4739 University Way N.E., Suite 1607
Seattle, WA 98105

or to such other address as the Declarant may by notice to the Association designate. If the Board fails to furnish an Annual Inspection Report to Declarant, as required above, or if the Annual Inspection Report is deemed insufficient by Declarant, Declarant shall have the right, upon ten days' notice to the Association, to have the Condominium inspected by an inspector selected by Declarant at the cost of the Association; in which event, Declarant shall furnish a copy of the report to the Board.

The Association shall cause any necessary maintenance described in each Annual Inspection Report to be completed in a timely manner. The Association and the Owners shall be deemed to have waived any claim against Declarant or Declarant's architect or contractor for any damage to the Condominium as a direct result of the Association's failure to cause any such repairs or maintenance to be performed.

13.6. FINANCIAL STATEMENTS AND RECORDS. The Association shall keep financial records in accordance with generally accepted accounting principles and in sufficient detail to enable the Association to comply with the resale certificate requirements set forth in RCW 64.34.425. All financial and other records shall be made reasonably available for examination by any Unit Owner and the Owner's authorized agents. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association in accordance with generally accepted accounting principles. The annual financial statement shall be audited at least annually by a certified public accountant who is not a member of the Board or an Owner. The financial statement shall be completed in time for the Association's annual meeting and in any event within 120 days following the end of the fiscal year and a copy of such financial statement shall be sent to Declarant for each year through 2010. Any Mortgagee will, upon request, be entitled to receive the annual financial statement within 120 days following the end of the fiscal year. The Board, or persons having 35% of the voting power of the Association, may require that an audit of the Association and management books be presented at any special meeting. An Owner, at his expense, may at any reasonable time conduct an audit of the books of the Board and Association. Upon written request of FHLMC, FNMA, HUD or VA, if it is a Mortgagee, the Association

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shall provide such Mortgagee within a reasonable time the financial statement of the Association for the preceding fiscal year.

13.7. INSPECTION OF CONDOMINIUM DOCUMENTS, BOOKS, AND RECORDS. The Association shall make available to Owners, Mortgagees, prospective purchasers and their prospective Mortgagees, and the agents or attorneys of any of them, current copies of this Declaration, the Articles, the Bylaws, the rules and regulations of the Association, and other books, records, and financial statements of the Association. "Available" shall mean available for inspection upon request, during normal business hours or under other reasonable circumstances. The Association may require the requesting party to pay a reasonable charge to cover the cost of making the copies.

ARTICLE 14.

DECLARANT CONTROL PERIOD

14.1. DECLARANT CONTROL UNTIL TRANSITION DATE. Until the Transition Date, Declarant shall have the right to appoint and remove all members of the Board, provided that (a) not later than 60 days after conveyance of 25% of the Units that may be created to Owners other than Declarant, at least one member and not less than 25% of the members of the Board must be elected by Owners other than Declarant and (b) not later than 60 days after conveyance of 50% of the Units that may be created to Owners other than Declarant, not less than one-third of the members of the Board must be elected by Owners other than Declarant.

14.2. TRANSITION DATE. Declarant Control of the Association shall terminate on the Transition Date. The Transition Date shall be no later than the earlier of (a) 60 days after conveyance of 75% of the Units that may be created to Owners other than Declarant, (b) five years after the date of recording of this Declaration, (c) two years after the last conveyance of a Unit or the last exercise of a Development Right to create a Unit, or (d) the date on which Declarant records an amendment to this Declaration signed by Declarant and the Project Mortgagee pursuant to which Declarant voluntarily surrenders the right to further appoint and remove officers and members of the Board. If Declarant voluntarily surrenders control pursuant to (d) above, Declarant may require that for the duration of the period of Declarant Control, specified actions of the Association or the Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

14.3. DECLARANT'S TRANSFER OF ASSOCIATION CONTROL. Within 60 days after the Transition Date, Declarant shall deliver to the Association or to the Managing Agent all property of the Owners and of the Association held or controlled by Declarant including, but not limited to, the following:

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14.3.1. The original or a photocopy of the recorded Declaration and each amendment to the Declaration;

14.3.2. The certificate of incorporation and a copy of the Articles as filed with the Secretary of State;

14.3.3. The Bylaws;

14.3.4. The minute books, including all minutes and other books and records of the Association;

14.3.5. Any rules and regulations that have been adopted;

14.3.6. Resignations of officers and members of the Board who are required to resign because Declarant is required to relinquish control of the Association;

14.3.7. The financial records, including cancelled checks, bank statements, and financial statements of the Association, and source documents from the time of incorporation of the Association through the date of transfer or control to Owners;

14.3.8. Association funds or the control of the funds of the Association;

14.3.9. All tangible personal property of the Association, represented by Declarant to be the property of the Association and inventory of the property;

14.3.10. Except for alterations to a Unit done by a Unit Owner other than Declarant, the copy of Declarant's plans and specifications utilized in the construction or remodeling of the Condominium, with a certificate of Declarant or a licensed architect or engineer that the plans and specifications represent, to the best of such Person's knowledge and belief, the actual plans and specifications utilized by Declarant in the construction or remodeling of the Condominium;

14.3.11. Insurance policies or copies thereof for the Condominium and the Association;

14.3.12. Copies of any certificates of occupancy that may have been issued for the Condominium;

14.3.13. Any other permits issued by governmental bodies applicable to the Condominium in force on the Transition Date;

14.3.14. All original warranties that are still in effect for the Common Elements, or any other areas or facilities that the Association has a responsibility to maintain and repair, from the contractor, subcontractors, suppliers, and manufacturers and

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all owners' manuals or instructions furnished to Declarant with respect to installed equipment or building systems;

14.3.15. A roster of Unit Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on Declarant's records and the date of closing of the first sale of each Unit sold by Declarant;

14.3.16. Any leases of the Common Elements or areas and other leases to which the Association is a party;

14.3.17. Any employment contracts or service contracts in which the Association is one of the contracting parties or service contracts in which the Association or the Unit Owners have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge of the Person performing the services; and

14.3.18. All other contracts to which the Association is a party.

14.4. AUDIT OF RECORDS UPON TRANSFER. Upon termination of the period of Declarant Control, the records of the Association shall be audited as of the date of transfer by an independent certified public accountant in accordance with generally accepted auditing standards unless the Owners, other than Declarant, by two-thirds vote, elect to waive the audit. The costs of the audit shall be a Common Expense.

14.5. TERMINATION OF CONTRACTS AND LEASES MADE BY DECLARANT. If entered into before the Board elected pursuant to Section 15.1 takes office, (a) any management contract, employment contract, or lease of recreational or parking areas or facilities or (b) any other contract or lease between the Association and Declarant or an affiliate of Declarant, as defined by RCW 64.34.020(1), may be terminated without penalty by the Association at any time after the Board elected pursuant to Section 15.1 takes office upon not less than 90 days' notice to the other party or within such less notice period provided for without penalty in the contract or lease. This Section does not apply to any lease, the termination of which would terminate the Condominium or reduce its size, unless the real property subject to that lease was included in the Condominium for the purpose of avoiding the right of the Association to terminate a lease under this Section.

ARTICLE 15.

THE BOARD

15.1. SELECTION OF THE BOARD AND OFFICERS. Prior to the Transition Date, election or appointment of members of the Board shall be governed by Section 14.1. Within 30 days after the Transition Date, Owners shall elect a Board, a majority of whom

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must be Unit Owners. The number of Board members and their terms of services shall be specified in the Bylaws. The Board shall elect officers in accordance with the procedures provided in the Bylaws. The members of the Board and officers shall take office upon election. Removal of Board members, and their terms of service shall be as provided in the Bylaws.

15.2. POWERS OF THE BOARD. Except as provided in this Declaration, the Bylaws or the Condominium Act, the Board shall at all times act on behalf of the Association. The Board may exercise all powers of the Association, except as otherwise provided in the Condominium Act, Declaration, or the Bylaws.

15.3. MANAGING AGENT. The Board may contract with an experienced professional Managing Agent to assist the Board in the management and operation of the Condominium, and may delegate such of its powers and duties to the Managing Agent as it deems to be appropriate, except as limited herein. Termination of professional management and assumption of self-management by the Association shall be subject to the provisions of Article 26. Any contract with a Managing Agent shall have a term no longer than one year (but may be renewable by agreement of the parties for successive one-year periods) and shall be terminable by the Board without payment of a termination fee, either (a) for cause, on 30 days' written notice or (b) without cause, on not more than 90 days' written notice.

15.4. LIMITATIONS ON BOARD AUTHORITY. The Board shall not act on behalf of the Association to amend this Declaration in any manner that requires the vote or approval of the Unit Owners or Eligible Mortgagees pursuant to Article 26, to terminate the Condominium pursuant to Article 27, or to elect members of the Board or determine the qualifications, powers, and duties, or terms of office of members of the Board. The Board may, in accordance with the Bylaws, fill vacancies in its membership for the unexpired portion of any term.

15.5. RIGHT TO NOTICE AND OPPORTUNITY TO BE HEARD. Whenever this Declaration requires that an action of the Board be taken after "Notice and Opportunity to be Heard," the following procedure shall be observed: The Board shall give written notice of the proposed action to all Owners, Eligible Mortgagees, tenants, or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time, and place of the hearing, which shall not be less than five days from the date notice is delivered by the Board. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing, or both (as specified in the notice), subject to reasonable rules of procedure established by the Board to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the Board. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

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ARTICLE 16.

BUDGET AND ASSESSMENTS

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

16.2. Preparation of Budget. Not less than 30 days before the end of the fiscal year the Board shall prepare a budget for the Association for the coming year. In preparing its budget the Board shall estimate the Common Expenses of the Association to be paid during the year, make suitable provision for accumulation of reserves, including amounts reasonably anticipated to be required for operation, maintenance, repair, and replacement of the Common Elements and the Limited Common Elements, and shall take into account any surplus or deficit carried over from the preceding year, and any expected income to the Association.

16.3. Ratification of Budget. Within 30 days after adoption of any proposed budget for the Condominium after the Transition Date, the Board shall provide a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than 14 nor more than 60 days after mailing of the summary. Unless at that meeting the Owners to which a majority of the votes in the Association are allocated reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board.

16.4. Supplemental Budget. If during the year the budget proves to be inadequate for any reason, including nonpayment of any Owner's Assessment, the Board may prepare a supplemental budget for the remainder of the year. A supplemental budget that results in an increase in an Owner's Assessments shall be subject to ratification pursuant to Section 16.3.

16.5. Monthly Assessments. The amounts required by the Association for Common Expenses as reflected by the annual budget and any supplemental budgets shall be divided into installments to be paid each month over the period of time covered by the budget or supplemental budget. The monthly Assessment for each Unit is the total of the Common Expense Liability of that Unit times the total monthly installment for Common Expenses for all Units. Monthly Assessments begin accruing for all Units upon the closing of the sale of the first Unit by the Declarant, provided that the Declarant may delay the commencement of Assessments for Common Expenses and pay all actual Common Expenses (but no allocations to reserves).

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16.6. COMMON EXPENSES. Common Expenses shall include the cost of operation, maintenance, repair and replacement of the Common Elements and the Limited Common Elements, the general expenses of the Association, including management and professional fees and costs, insurance, and any other costs that the Board determines benefits the Units. Common Expenses shall be allocated to all Unit Owners in accordance with their Common Expense Liability.

16.7. CONTRIBUTION TO INITIAL WORKING CAPITAL. In connection with the closing of the sale of the first Unit and of the sale of each additional Unit, the initial purchaser shall pay to the Association as a nonrefundable contribution to an initial working capital fund in an amount equal to two times the estimated monthly Assessment against the Unit, which amount shall not be considered as an advance payment of regular Assessments. On the Transition Date, Declarant shall make such contribution for any Units remaining unsold on that date and shall be entitled to be reimbursed the amount so paid as each such Unit is conveyed. Declarant shall not use any of the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits prior to the Transition Date.

16.8. SPECIAL ASSESSMENTS. For those Common Expenses which cannot reasonably be calculated and paid on a monthly basis, the Board may levy special Assessments for such expenses against the Units, subject to ratification by Owners pursuant to Section 16.3. To the extent that any Common Expense is caused by the misconduct of an Owner or tenant of any Unit, the Association may, after Notice and Opportunity to Be Heard, levy a special Assessment for the expense against the Owner of that Unit.

16.9. CREATION OF RESERVES, ASSESSMENTS. The Board shall create reserve accounts for anticipated expenses for repair or replacement of the Common Elements and Limited Common Elements which will occur in the future in order to accumulate sufficient funds to pay such expenses when they occur. The operation of reserve accounts and Assessments for reserve accounts shall be further governed by the Bylaws.

16.10. NOTICE OF ASSESSMENTS. The Board shall notify each Owner in writing of the amount of the monthly general and special Assessments to be paid for the Owner's Unit and shall furnish copies of all budgets on which the general and special Assessments are based. The Board shall furnish the same information to an Owner's Mortgagee if so requested.

16.11. PAYMENT OF MONTHLY ASSESSMENTS. On or before the first day of each calendar month each Owner shall pay or cause to be paid to the treasurer or designated agent of the Association all Assessments against the Unit for that month. Any Assessment not paid by the fifth day of the calendar month for which it is due shall be

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delinquent and subject to late charges, interest charges and collection procedures as provided in Article 17.

16.12. Reconciliation of Assessments to Actual Expenses. The Association shall establish and maintain its accounts and records in such a manner that will enable it to deposit the Assessments for Common Expenses, including allocations to reserves, and income to the Association to the account of the appropriate Units and make its expenditures from the appropriate accounts. In order that Unit Owners are correctly assessed for the actual expenses of the Association, the accounts of the Association shall be reconciled at least annually; and any surpluses (or deficits) in the accounts shall be credited to the benefit of or paid to (or charged to the account of or assessed against) Owners of the Units who paid the surplus (or owe the deficit).

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

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

16.15. Certificate of Unpaid Assessments. Upon the request of any Owner or Mortgagee of a Unit, the Board will furnish a certificate stating the amount, if any, of unpaid Assessments charged to the Unit. The certificate 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 purchasers and Mortgagees of the Unit who rely on the certificate in good faith. The Board may establish a reasonable fee to be charged to reimburse it for the cost of preparing the certificate.

16.16. Recalculation of Assessments. If Common Expense Liabilities are reallocated, Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated liabilities.

ARTICLE 17.

LIEN AND COLLECTION OF ASSESSMENTS

17.1. Assessments Are a Lien; Priority. The Association has a lien on a Unit for any unpaid Assessment levied against a Unit from the time the Assessment is due. A lien under this Article shall be prior to all other liens and encumbrances on a Unit

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except (a) liens and encumbrances recorded before the recording of this Declaration; (b) a Mortgage on the Unit recorded before the date on which the Assessment sought to be enforced became delinquent, EXCEPT to the extent of Assessments for Common Expenses, excluding any amounts for capital improvements, based on the periodic budgets adopted by the Association pursuant to Article 16 which would have become due during the six months immediately preceding the date of a sheriffs sale in an action for judicial foreclosure by either the Association or a Mortgagee, the date of trustee's sale in a nonjudicial foreclosure of a Mortgage, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract, provided that the priority of the Association's lien against Units encumbered by a Mortgage held by an Eligible Mortgagee or by a Mortgagee which has given the Association a written request for a notice of delinquent Assessments shall be reduced by up to three months if and to the extent that such lien priority includes any delinquencies which relate to a period after such Mortgagee becomes an Eligible Mortgagee or has given such notice and before the Association gives such Mortgagee a written notice of the delinquency, and (c) liens for real property taxes and other governmental assessments or charges against the Unit. Recording of this Declaration constitutes record notice and perfection of the lien for Assessments; however, the Association may record a notice of claim of lien for Assessments in the real property records of Kitsap County. Such recording shall not constitute the written notice of delinquency to a Mortgagee referred to above.

17.2. LIEN MAY BE FORECLOSED; JUDICIAL FORECLOSURE. The lien arising under this Article may be enforced judicially by the Association or its authorized representative in the manner set forth in RCW ch. 61.12, or nonjudicially in the manner set forth in Section 17.3. The Association or its authorized representative shall have the power to purchase the Unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this Section shall prohibit the Association from taking a deed in lieu of foreclosure. Except as provided in the exception to (b) in Section 17.1, the holder of a Mortgage or other purchaser of a Unit who obtains the right of possession of a Unit through foreclosure or deed in lieu of foreclosure shall not be liable for any Assessments or installments thereof that became due prior to such right of possession. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Owners, including such Mortgagee or other purchaser of the Unit. Foreclosure of a Mortgage does not relieve the prior Owner of personal liability for Assessments accruing against the Unit prior to the date of such sale.

17.3. NONJUDICIAL FORECLOSURE. A lien arising under this Article may be foreclosed nonjudicially in the manner set forth in RCW ch. 61.24 for nonjudicial foreclosure deeds of trust. For the purpose of preserving the Association's nonjudicial foreclosure option, this Declaration shall be considered to create a grant of each Unit in trust to Pacific Northwest Title Insurance Company, or its successors or assigns

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("Trustee"), to secure the obligations of each Unit Owner ("Grantor") to the Association ("Beneficiary") for the payment of Assessments. Grantor shall retain the right to possession of Grantor's Unit so long as Grantor is not in default of an obligation to pay Assessments. Trustee shall have a power of sale with respect to each Unit, which becomes operative in the case of a default in a Grantor's obligation to pay Assessments. The Units are not used principally for agricultural or farming purposes. If the Association forecloses its lien nonjudicially pursuant to this Section, it shall not be entitled to the lien priority over Mortgages provided in exception (b) of Section 17.1.

17.4. RECEIVER DURING FORECLOSURE. From the time of commencement of an action by the Association to foreclose a lien for nonpayment of delinquent Assessments against a Unit that is not occupied by Owner thereof, the Association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the Unit as and when due. If the rent is not paid, the receiver may obtain possession of the Unit, refurbish it for rental up to a reasonable standard for rental Units in this type of Condominium, rent the Unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorney fees thereof, then to the cost of refurbishing the Unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent Assessments. Only a receiver may take possession and collect rents under this Section, and a receiver shall not be appointed less than 90 days after the delinquency. The exercise by the Association of the foregoing rights shall not affect the priority of preexisting liens on the Unit.

17.5. ASSESSMENTS ARE PERSONAL OBLIGATION. In addition to constituting a lien on the Unit, all sums assessed by the Association chargeable to any Unit, including all charges provided in this Article, shall be the personal obligation of Owner of the Unit when the Assessment is made. Suit to recover personal judgment for any delinquent Assessments shall be maintainable without foreclosing or waiving the liens securing them.

17.6. EXTINGUISHMENT OF LIEN AND PERSONAL LIABILITY. A lien for unpaid Assessments and the personal liability for payment of Assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the Assessments sought to be recovered becomes due.

17.7. JOINT AND SEVERAL LIABILITY. In addition to constituting a lien on the Unit and except as provided in Section 17.2 for a deed in lieu of foreclosure, each Assessment shall be the joint and several obligation of Owner or Owners of the Unit to which the same are assessed as of the time the Assessment is due. In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Suit to recover a personal judgment for any delinquent Assessment

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shall be maintainable in any court of competent jurisdiction without foreclosing or waving the lien securing such sums.

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

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

17.10. Security Deposit. An Owner who has been delinquent in paying his monthly Assessments for three of the five preceding months may be required by the Board, from time to time, to make and maintain a security deposit not in excess of three months' estimated monthly Assessments, which shall be collected and shall be subject to penalties for nonpayment as are other Assessments. The deposit shall be held in a separate fund, credited to such Owner, and may be resorted to at any time when such Owner is 10 days or more delinquent in paying Assessments.

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

ARTICLE 18.
ENFORCEMENT OF DECLARATION, BYLAWS, AND RULES AND REGULATIONS

18.1. Rights of Action. Each Owner, the Board, and the Association shall comply strictly with this Declaration, the Bylaws, and the Rules and Regulations adopted pursuant thereto, as they may be lawfully amended from time to time, and the decisions of the Board. Failure to comply with any of the foregoing shall be grounds for an action to recover sums due, damages, and for injunctive relief, or any or all of them, maintainable by the Board on behalf of the Association or by an Owner.

18.2. Failure of Board to Insist on Strict Performance No Waiver. The failure of the Board in any instance to insist upon the strict compliance with this Declaration or the Bylaws or the Rules and Regulations, or to exercise any right contained

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in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of any term, covenant, condition, or restriction. The receipt by the Board of payment of an Assessment from an Owner, with knowledge of a breach by Owner, shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless expressed in writing and signed for the Board. This Article also extends to Declarant.

18.3. BOARD ENFORCEMENT. The Board has the authority to enforce the Declaration, the Bylaws, and the Rules and Regulations by imposing the remedies provided herein. After repeated violations of the Declaration, Bylaws, or Rules and Regulations by an Owner and after an Owner's Right to Notice and Opportunity to be Heard, the Board shall have the authority to file an action for damages and for injunctive relief, including in a proper case, removal of the Owner from the Owner's Unit and the authority to pursue any and all remedies available in law or equity.

ARTICLE 19.
TORT AND CONTRACT LIABILITY

19.1. DECLARANT LIABILITY. Neither the Association nor any Owner except Declarant is liable for Declarant's torts in connection with any part of the Condominium which Declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the Association must be brought against the Association and not against any Owner or any officer or director of the Association. If the wrong by the Association occurred during any period of Declarant Control and the Association gives Declarant reasonable notice of and an opportunity to defend against the action, Declarant who then controlled the Association is liable to the Association or to any Owner (a) for all tort losses not covered by insurance suffered by the Association or that Owner and (b) for all costs that the Association would not have incurred but for a breach of contract, other wrongful act, or omission by the Association. If Declarant does not defend the action and is determined to be liable to the Association under this Section, Declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the Association in such defense. Any statute of limitations affecting the Association's right of action under this Section is tolled until the period of Declarant Control terminates. An Owner is not precluded from bringing an action contemplated by this Section because he or she is a Unit Owner or a member or officer of the Association.

19.2. LIMITATION OF LIABILITY FOR UTILITY FAILURE, ETC. Except to the extent covered by insurance obtained by the Board, neither the Association, the Board, Managing Agent, nor Declarant shall be liable for: the failure of any utility or other service to be obtained and paid for by the Board; or for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust, or sand that may leak or flow from outside or from any parts of the buildings, or from any of their pipes, drains, conduits, appliances, or equipment, or from any other place; or for

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inconvenience or discomfort resulting from any action taken to comply with any law, ordinance, or orders of a governmental authority. No diminution or abatement of Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

19.3. NO PERSONAL LIABILITY. So long as a Board member, Association committee member, Association officer, Declarant, or Managing Agent has acted in good faith, without willful or intentional misconduct, upon the basis of such information as is then possessed by such person, no such person shall be personally liable to any Owner, or to any other person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of such person, provided that this Section shall not apply where the consequences of such act, omission, error, or negligence is covered by insurance obtained by the Board.

ARTICLE 20.

INDEMNIFICATION

Each Board member, Association committee member, Association officer, Declarant, and Managing Agent shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which such person may be a party, or in which such person may become involved, by reason of holding or having held such position, or any settlement thereof, whether or not such person holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by any type of insurance and except in such cases wherein such person is adjudged guilty of willful misfeasance in the performance of such person's 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.

ARTICLE 21.

INSURANCE

21.1. GENERAL REQUIREMENTS. Commencing not later than the time of the first conveyance of a Unit to a person other than Declarant, the Association shall maintain, to the extent reasonably available, a policy or policies and bonds necessary to provide (a) property insurance, (b) commercial general liability insurance, (c) fidelity insurance, (d) workers' compensation insurance to the extent required by applicable laws, (e) directors' and officers' liability insurance, and (f) such other insurance as the Board deems advisable. The Board shall review at least annually the adequacy of the

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Association's insurance coverage. All insurance shall be obtained from insurance carriers that are generally acceptable for similar projects, authorized to do business in the state of Washington, and meet the specific requirements of FNMA, HUD, VA, and FHLMC regarding the qualifications of insurance carriers. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect property, liability, and fidelity insurance that meet the insurance requirements for condominium projects established by FNMA, HUD, FHLMC, and VA so long as any of them is a holder of a Mortgage or Owner of a Unit, except to the extent such coverage is not available or has been waived in writing by them. All such insurance policies shall provide that coverage may not be cancelled or substantially reduced without at least 45 days' prior written notice (10 days for cancellation for nonpayment of premium) to the Association as the first named insured therein.

21.2. PROPERTY INSURANCE; DEDUCTIBLE. The property insurance shall, at the minimum and subject to such reasonable deductible as the Board may determine, provide all risk or special cause of loss coverage in an amount equal to the full replacement cost of the Common Elements, the Limited Common Elements, the Units, the interior partitions, equipment, fixtures, betterments and improvements in or serving the Units installed by Declarant or by Unit Owners intended as a permanent part of the Unit and the equipment, fixtures, improvements to the Units installed by Declarant, and personal property of the Association with an "Agreed Amount Endorsement" and, of required by FNMA, FHLMC, HUD or VA, construction code endorsements, such as a "Demolition Cost Endorsement," a "Contingent Liability from Operation of Building Laws Endorsement," an "Increased Cost of Construction Endorsement," and such other endorsements as FNMA or FHLMC deems necessary and are available. The policy shall be written on an "all in" basis. The policy shall provide a separate loss payable endorsement in favor of the Mortgagee of each Unit. In the discretion of the Board, the policy may include loss due to earthquake (difference in conditions) coverage and coverage for improvements or betterments installed by the Unit Owners. The Association or insurance trustee, if any, shall hold insurance proceeds in trust for Owners and their Mortgagees, as their interests may appear. Each Owner and the Owner's Mortgagee, if any, shall be beneficiaries of the policy in accordance with the interest in the Common Elements appertaining to the Owner's Unit. Certificates of insurance shall be issued to each Owner and Mortgagee upon request. Unit Owner shall be responsible for damage or loss within Owner's Unit up to the amount of the deductible under the Association's policy. Each Owner of a Unit shall promptly advise the Association in writing of any betterment or improvement intended as a permanent part of the Unit costing $5,000 or more.

21.3. COMMERCIAL GENERAL LIABILITY INSURANCE. The liability insurance coverage shall insure the Board, the Association, Owners, Declarant, and Managing Agent, and cover all of the Common Elements in the Condominium with a "Severability of Interest Endorsement" or equivalent coverage that would preclude the insurer from

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denying the claim of an Owner because of the negligent acts of the Association or of another Owner, and shall cover liability of the insureds for property damage, bodily injury, and death of persons arising out of the operation, maintenance, and use of the Common Elements, host liquor liability, employers' liability insurance, automobile liability insurance, and such other risks as are customarily covered with respect to residential condominium projects of similar construction, location, and use. The limits of liability shall be in amounts generally required by Mortgagees for projects of similar construction, location and use, but shall be at least $2,000,000 combined single limit for bodily injury and property damage per occurrence and $4,000,000 general aggregate.

21.4. INSURANCE TRUSTEE, POWER OF ATTORNEY. The named insured under the policies referred to in Section 21.2 and Section 21.3 shall be the Association, as trustee for each of the Owners in accordance with their respective interests in the Common Elements, except as provided in Section 22.2. The insurance proceeds may be made payable to any trustee with which the Association enters into an insurance trust agreement, or any successor trustee, who shall have exclusive authority to negotiate losses under the policies. Subject to the provisions of Section 21.8, the proceeds must be disbursed first for the repair or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Condominium is terminated. Each Owner appoints the Association, any insurance, trustee or successor trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to accomplish such purposes.

21.5. ADDITIONAL POLICY PROVISIONS. The insurance obtained pursuant to Section 21.2 and Section 21.3 shall contain the following provisions and limitations:

21.5.1. Each Unit Owner is an insured person under the policy with respect to liability arising out of Owner's interest in the Common Elements or membership in the Association.

21.5.2. Such policies shall not provide for contribution by or assessment against Mortgagees or become a lien on the property superior to the lien of a first Mortgage.

21.5.3. If, at the time of the loss under the policy, there is other insurance in the name of Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

21.5.4. Coverage shall not be prejudiced by (a) any act, omission, or neglect of the Owners of Units when such act or neglect is not within the scope of

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Owner's authority on behalf of the Association, or (b) failure of the Association to comply with any warranty or condition with regard to any portion of the premises over which the Association has no control.

21.5.5. Such policies shall include a waiver of subrogation by the insurer as to any and all claims against the Association, the Owner of any Unit, and/or their respective agents, members of Owner's household, employees, or lessees, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

21.5.6. A standard mortgagee clause that shall:

21.5.6.1. Provide that any reference to a mortgagee in the policy shall mean and include all Mortgagees of any Unit or Unit lease or sublease in their respective order of preference, whether or not named therein;

21.5.6.2. Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or Owners or any persons under any of them;

21.5.6.3. Waive any provision invalidating such mortgage clause by reason of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the Mortgagee pay any premium thereon, and any contribution clause; and

21.5.6.4. Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to the Association or the insurance trustee.

21.6. FIDELITY INSURANCE. The required fidelity insurance shall afford coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all other persons who handle or are responsible for handling funds of, or administered by, the Association. The Managing Agent shall maintain fidelity insurance for its officers, employees, and agents who handle or who are responsible for handling funds of, or administered by, the Association. All such fidelity insurance shall name the Association as an obligee and shall be not less than the estimated maximum of funds, including reserve funds, in custody of the Association at any time during the term of each policy, but, in no event shall the aggregate amount of insurance be less than three months' aggregate Assessments. The policy shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

21.7. OWNERS' INDIVIDUAL INSURANCE. An insurance policy issued to the Association does not prevent an Owner from obtaining insurance for the Owner's own benefit and Owner is encouraged to do so. Regardless of whether an Owner has obtained

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such insurance, the Owner shall be responsible for any damage or loss to the Owner's Unit up to the amount of the deductible of the Association's property insurance.

21.8. USE OF INSURANCE PROCEEDS. Any portion of the Condominium for which insurance is required under this Article which is damaged or destroyed shall be repaired or replaced promptly by the Association pursuant to Article 22 unless (a) the Condominium is terminated, (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (c) 80% of the Unit Owners, including every Owner of a Unit or Limited Common Element which will not be rebuilt and Declarant if it is the Owner of a Unit or has the right to create Units pursuant to Article 4, vote not to rebuild. The cost of repair or replacement in excess of the deductible, insurance proceeds and available reserves is a Common Expense for costs related to Common Elements. The Unit Owner shall be responsible for the amount of the deductible applicable to damage or loss within the Owner's Unit. If all of the damaged or destroyed portions of the Condominium are not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium; (ii) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the Unit Owners or lienholders, as their interests may appear, in proportion to the interest in Common Elements appertaining to the Owner's Unit, except as provided in Section 22.2. If the Unit Owners vote not to rebuild any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote as if the Unit had been condemned under Article 23, and the Association promptly shall prepare, execute, and record an amendment to this Declaration reflecting the reallocations. Notwithstanding the provisions of this Section, Article 27 governs the distribution of insurance proceeds if the Condominium is terminated.

ARTICLE 22.

DAMAGE AND REPAIR OF DAMAGE TO PROPERTY

22.1. INITIAL BOARD DETERMINATION. In the event of damage to any Common Element, or to any portion of a Unit or its Limited Common Elements, equipment, or appliances covered by the Association's insurance policy, the Board shall promptly, and in all events within 60 days after the date of damage, make the following determinations with respect thereto, employing such advice as the Board deems advisable:

22.1.1. The nature and extent of the damage, together with an inventory of the improvements and property directly affected thereby;

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22.1.2. A reasonably reliable estimate of the cost to repair the damage, which estimate shall, if reasonably practicable, be based upon two or more firm bids obtained from licensed contractors;

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

22.1.4. The amount of the deductible to be paid by a Unit Owner with respect to damage or loss within Owner's Unit;

22.1.5. The amount of available reserves or other Association funds, although the Board is not required to use any reserves or other Association funds; and

22.1.6. The amount, if any, by which the estimated cost of repair exceeds the portion of the deductible to be paid by a Unit Owner, expected insurance proceeds and available reserves or other Association funds, and the amount of the Assessments that would have to be made against each Unit if the excess cost were to be paid as a Common Expense and assessed against all the Units in proportion to their Common Expense Liabilities.

22.2. NOTICE OF DAMAGE. The Board shall promptly, and in all events within 60 days after the date of damage, file a proof of loss statement with the insurance company if the loss is covered by insurance, and abide by all terms and conditions of its insurance policies, unless the Board determines it would not be in the best interest of the Association to file a proof of loss. The Board shall then provide each Owner with a written notice describing the damage and summarizing the initial Board determinations made under Section 22.1. If the damage affects a material portion of the Condominium, the Board shall also send the notice to each Mortgagee, and if the damage affects a Unit, the Board shall send the notice to the Mortgagee of that Unit. If the Board fails to do so within the 60-day period, any Owner or Mortgagee may make the determinations required under Section 22.1 and give the notice required under this Section.

22.3. DEFINITIONS: DAMAGE, SUBSTANTIAL DAMAGE, REPAIR, EMERGENCY WORK. As used in this Article:

22.3.1. Damage shall mean all kinds of damage, whether of slight degree or total destruction.

22.3.2. Substantial Damage shall mean that, in the judgment of the Board, the estimated Assessment determined under Subsection 22.1.4 for any one Unit exceeds 10% of the full fair market value of the Unit before the damage occurred, as determined by the then current assessment for the purpose of real estate taxation.

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22.3.3. Repair shall mean restoring the improvements to substantially the condition they were in before they were damaged, with each Unit, Common Element and Limited Common Element having substantially the same boundaries as before. Modifications to conform to applicable governmental rules and regulations or available means of construction may be made.

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

22.4. EXECUTION OF REPAIRS.

22.4.1. The Board shall promptly repair the damage and use the available insurance proceeds therefor as provided in Section 21.8. If the cost of repair exceeds the amount of the deductible to be paid by a Unit Owner, expected insurance proceeds and available reserves or other Association funds, the Board shall impose Assessments against all Units in proportion to their Common Expense Liabilities for repairs to the Common Elements in an aggregate amount sufficient to pay the excess costs.

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

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

22.5. DAMAGE NOT SUBSTANTIAL. If the damage as determined under Subsection 22.3.2 is not substantial, the provisions of this Section shall apply.

22.5.1. Either the Board or the requisite number of Owners, within 15 days after the notice required under Section 22.2 has been given, may but shall not be required to call a special Owners' meeting in accordance with Section 13.4 and the Bylaws to decide whether to repair the damage.

22.5.2. Except for emergency work, no repairs shall be commenced until after the 15-day period and until after the conclusion of the special meeting if such a special meeting is called within the 15 days.

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22.5.3. A decision to not repair or rebuild may be made in accordance with Section 21.8.

22.6. SUBSTANTIAL DAMAGE. If the damage determined under Subsection 22.3.2 is substantial, the provisions of this Section shall apply.

22.6.1. The Board shall promptly, and in all events within 60 days after the date of damage, call a special Owners' meeting to consider repairing the damage. If the Board fails to do so within the 60-day period, then notwithstanding the provisions of Section 13.4 and the Bylaws, any Owner or first Mortgagee of a Unit may call and conduct the meeting.

22.6.2. Except for emergency work, no repairs shall be commenced until the conclusion of the special Owners' meeting.

22.6.3. At the special meeting, the following consent requirements will apply:

22.6.3.1. Owners shall be deemed to have elected to repair the damage in accordance with the original plan unless Owners of at least 80% of the total voting power of the Condominium other than that held by Declarant, including every Owner of a Unit which will not be rebuilt and every Owner of a Unit to which a Limited Common Element which will not be rebuilt is allocated, have given their written consent not to repair the damage.

22.6.3.2. The unanimous consent of all Owners will be required to elect to rebuild in accordance with a plan that is different from the original plan.

22.6.3.3. In addition to the consent by Owners specified above, any election not to repair the damage or not to rebuild substantially in accordance with the original plan will require the approval of Eligible Mortgages on Units that have at least 51% of the votes subject to Mortgages held by Eligible Mortgagees.

22.6.3.4. Failure to conduct the special meeting provided for under Subsection 22.6.1 within 90 days after the date of damage shall be deemed a unanimous decision to repair the damage in accordance with the original plan.

22.7. EFFECT OF DECISION NOT TO REPAIR. In the event of a decision under either Subsection 22.5.3 or 22.6.3 not to repair the damage, the Board may nevertheless expend so much of the insurance proceeds and common funds as the Board deems reasonably necessary for emergency work (which emergency work may include but is not necessarily limited to removal of the damaged improvements and clearing, filling, and

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grading the real property), and the remaining funds, if any, and the property shall thereafter be held and distributed as provided in Section 21.8.

ARTICLE 23.

CONDEMNATION

23.1. CONSEQUENCES OF CONDEMNATION; NOTICES. If any Unit or portion thereof or the Common Elements or Limited Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, notice of the proceeding or proposed acquisition shall promptly be given to each Owner and to each holder of a first Mortgage and the provisions of this Article shall apply.

23.2. POWER OF ATTORNEY. Each Owner appoints the Association as attorney-in-fact for the purpose of representing Owners in condemnation proceedings and negotiations, settlements, and agreements with the condemning authority for acquisition of Common Elements or any part thereof from the condemning authority. The Board may appoint a trustee to act on behalf of the Owners in carrying out the foregoing functions in lieu of the Association. Should the Association not act, based on their right to act pursuant to this Section, the affected Owners may individually or jointly act on their own behalf.

23.3. CONDEMNATION OF A UNIT. If a Unit is acquired by condemnation, or if part of a Unit is acquired by condemnation, leaving the Unit Owner with a remnant of a Unit that may not practically or lawfully be used for any purpose permitted by this Declaration, the award must compensate Owner for the Owner's Unit and its appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. The proceeds from the condemnation of a Unit shall be paid to Owner or lienholder of the Unit as their interests may appear. Upon acquisition, unless the decree otherwise provides, that Unit's Allocated Interests are automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, and the Association shall promptly prepare, execute, and record an amendment to this Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this Section is thereafter a Common Element.

23.4. CONDEMNATION OF PART OF A UNIT. Except as provided in Section 23.3, if part of a Unit is acquired by condemnation, the award must compensate the Unit Owner for the reduction in value of the Unit and its appurtenant interest in the Common Elements, whether or not any Common Elements are acquired. The proceeds from the condemnation awarded to the Unit Owner shall be paid to Owner or lienholders of the Unit, as their interests may appear. Upon acquisition, unless the decree otherwise provides (a) that the Unit's Allocated Interests are reduced in proportion to the reduction

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in the size of the Unit and (b) the portion of the Allocated Interests divested from the partially acquired Unit are automatically reallocated to that Unit and the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests.

23.5. CONDEMNATION OF COMMON ELEMENT OR LIMITED COMMON ELEMENT. If part of the Common Elements is acquired by condemnation, the portion of the award attributable to the Common Elements taken shall be paid to Owners based on their respective interests in the Common Elements, or to lienholders, as their interests may appear. Any portion of the award attributable to the acquisition of a Limited Common Element must be equally divided among the Owners of the Units to which that Limited Common Element was allocated at the time of the acquisition, or to lienholders, as their interests may appear. If the Board determines that a particular Owner's interest in the Common Elements diminished with respect to other Owners, by the acquisition of a Common Element, the Declaration may be amended to adjust that Owner's Common Expense Liability allocation, or to remove the allocation of a Limited Common Element to that Owner's Unit, as the case may be.

23.6. RECONSTRUCTION AND REPAIR. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article 22.

ARTICLE 24.

EASEMENTS

24.1. IN GENERAL. Each Unit has an easement in and through each other Unit and the Common Elements and Limited Common Elements for all support elements and utility, wiring, heat, and service elements, and for reasonable access thereto, as required to effectuate and continue proper operation of the Condominium.

24.2. ENCROACHMENTS. To the extent not provided by the definition of "Unit" in the Declaration and in the Condominium Act, each Unit and all Common Elements and Limited Common Elements are hereby declared to have an easement over all adjoining Units and Common and Limited Common Elements for the purpose of accommodating any present or future encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting, or movement of any portion of the property, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of the encroaching Units and Common Elements and Limited Common Elements so long as the encroachments shall exist, and the rights and obligations of Owners shall not be altered in any way by the encroachment; provided, however, that in no event shall a valid easement for encroachment be created in favor of a Unit if the encroachment was caused by the willful

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act with full knowledge of Owner. The encroachments described in this Section shall not be construed to be encumbrances affecting the marketability of title to any Unit.

24.3. EASEMENTS RESERVED BY DECLARANT. Declarant reserves an easement over, across, and through the Common Elements and Limited Common Elements of the Condominium for the purposes of completing any unfinished Units or other improvements, exhibiting and preparing Units for sale, making repairs required pursuant to any contract of sale, and discharging Declarant's obligations or exercising Development Rights or Special Declarant Rights. This Section 24.3 may not be altered or amended without the written consent of the Declarant.

24.4. UTILITY EASEMENTS GRANTED BY DECLARANT. Declarant grants to each company or municipality providing utility services to the Condominium or to Owners of Units in the Condominium an easement for the installation, construction, maintenance, repair, and reconstruction of all utilities serving the Condominium or Owners, including, without limitation, such utility services as gas, water, sanitary sewer, storm sewer, electricity, cable television, and telephone, and an easement for access over and under the Common Elements of the Condominium to the utility service facilities.

ARTICLE 25.

PROCEDURES FOR SUBDIVIDING OR ALTERING UNITS

25.1. SUBDIVISION OF UNITS. No Unit shall be subdivided either by agreement or legal proceedings, except as provided in this Article.

25.1.1. An Owner may propose subdividing a Unit by submitting the proposal in writing to the Board and to all other Owners and Mortgagees of Units to be subdivided or combined. Such proposal to subdivide must also be given to every first Mortgagee of any Unit in the Condominium. The proposal must include complete plans and specifications for accomplishing the subdivision and proposed amendments of this Declaration and the Survey Map and Plans which amendments shall be executed by Owner of the Unit to be subdivided upon approval pursuant to Subsection 25.1.2, and which amendments assign an identifying number to each Unit created, and reallocate the Allocated Interests and liabilities formerly allocated to the subdivided Unit to the new Units in any reasonable manner prescribed by Owner of the subdivided Unit. Owner of the Unit to be subdivided shall bear all costs of the subdivision.

25.1.2. A proposal that contemplates subdivision of a Unit will be accepted only if approved in writing by all Owners and Mortgagees of the Unit to be subdivided, the Board and 51% of Eligible Mortgagees

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25.2. MINOR ALTERATIONS; HARD SURFACE FLOORING. No Unit may be altered in any way except in accordance with this Article. An Owner may make any improvements or alterations to the Owner's Unit that do not affect the structural integrity or acoustical properties of the building or the plumbing, mechanical or electrical systems serving another Unit or the Common Elements, or lessen the support of any portion of the Condominium, but an Owner may not change the flooring in any portion of the Unit that is directly above another Unit from carpeting to hard surface flooring without the prior written approval of the Board. In connection with change from carpet to hard surface flooring, the Board may condition its approval upon the installation of an acoustical subflooring material and/or coverage of certain floor areas with carpet. An Owner may not change the appearance of the Common Elements or the exterior appearance of a Unit without permission of the Association pursuant to the procedures of Section 25.4.

25.3. ADJOINING UNITS. After acquiring an adjoining Unit or an adjoining part of any adjoining Unit, an Owner may, with approval of the Board pursuant to Section 25.4, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not adversely affect the structural integrity or acoustical properties of the building or the plumbing, mechanical or electrical systems serving another Unit or the Common Elements or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this subsection is not a relocation of boundaries. Owner's proposal to act under this Section shall be submitted to the Board and shall include the plans and specifications for the proposed removal or alteration.

25.4. SUBSTANTIAL ALTERATION. A proposal that contemplates substantial alteration of one or more Units is subject to approval by the Board. The Board shall approve an Owner's request under this Section within 30 days of receipt of plans and specifications, unless the proposed alteration does not comply with Section 25.3 or impairs the structural integrity or acoustical properties of the building or the plumbing, mechanical or electrical systems serving another Unit or the Common Elements or lessens the support of any portion of the Condominium. The Board may require, at Owner's expense, a certification by an architect or engineer prior to giving its approval. The failure of the Board to act upon a request within such period shall be deemed approval thereof. The Board may establish reasonable hours and conditions for performance of work within Units.

25.5. PROCEDURE AFTER APPROVAL. Upon approval of a proposal under this Article, the Owner making it may proceed according to the proposed plans and specifications, provided that the Board may in its discretion require that the Board administer the work or that provisions for the protection of other Units or Common Elements or that reasonable deadlines for completion of the work be inserted in the contracts for the work. The changes in the Survey Map Plans and Declaration shall be placed of record as amendments thereto.

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25.6. RELOCATION OF BOUNDARIES—ADJOINING UNITS. The boundaries between adjoining Units may only be relocated by an amendment to the Declaration, pursuant to Article 26, upon application to the Board by Owners of those Units. If Owners of the adjoining Units have specified a reallocation between their Units of their Allocated Interests, the application must state the proposed reallocations. Unless the Board determines within 30 days that the reallocations are unreasonable, the Association shall prepare an amendment that identifies the Units involved, states the reallocations, is executed by the Unit Owners, contains words of conveyance between them, and is recorded in the name of the grantor and the grantee. The Association shall obtain and record survey maps or plans complying with the requirements of RCW 64.34.232(4) necessary to show the altered boundaries between adjoining Units and their dimensions and identifying numbers. Owner or Owners benefited by a reallocation of Unit boundaries shall bear all costs associated therewith in proportion to the relative benefits to each such Unit as determined by the Board or as Owners of such Units agree.

ARTICLE 26.

AMENDMENT OF DECLARATION, SURVEY MAP AND PLANS, ARTICLES, OR BYLAWS

26.1. PROCEDURES. Except in cases of amendments that may be executed by Declarant under the Declaration or the Condominium Act, the Declaration, the Survey Map and Plans, the Articles, and the Bylaws may be amended only by vote or agreement of Owners, as specified in this Article. An Owner may propose amendments to this Declaration or the Survey Map and Plans, the Articles, or the Bylaws to the Board. A majority of the members of the Board may cause a proposed amendment to be submitted to the members of the Association for their consideration. If an amendment is proposed by Owners with 20% or more of the votes in the Association, then, irrespective of whether the Board concurs to the proposed amendment, it shall be submitted to the members of the Association for their consideration at their next regular or special meeting for which timely notice must be given. Notice of a meeting at which an amendment is to be considered shall include the text of the proposed amendment. Amendments may be adopted at a meeting of the Association or by written consent of the requisite number of persons entitled to vote, after notice has been given to all persons (including Eligible Mortgagees) entitled to receive notices. Upon the adoption of an amendment and the obtaining of any necessary consents of Eligible Mortgagees as provided below, amendment to the Declaration or the Survey Map and Plans will become effective when it is recorded or filed in the real property records of Kitsap County. The amendment shall be indexed in the name of the Condominium and shall contain a cross-reference by recording number to the Declaration and each previously recorded amendment thereto. Such amendments shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the

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absence of designation, by the president of the Association. No action to challenge the validity of an amendment adopted by the Association pursuant to this Article may be brought more than one year after the amendment is recorded. An amendment to the Articles shall be effective upon filing the amendment with the Secretary of State. An amendment to the Bylaws shall be effective upon adoption.

26.2. PERCENTAGES OF CONSENT REQUIRED. Except as provided in Article 4 in connection with the exercise of Development Rights by Declarant or in Article 22 and Article 23 in the case of damage or condemnation of the property, the percentages of consent of Owners and Mortgagees required for adoption of amendments to the Declaration, the Survey Map and Plans, the Articles, and the Bylaws are as follows:

26.2.1. The consent of Owners holding at least 67% of the votes in the Association and the consent of Eligible Mortgagees of Units to which at least 51% of the votes of Units subject to Mortgages held by Eligible Mortgagees are allocated shall be required to materially amend any provisions of the Declaration, the Survey Map and Plans, the Articles, or the Bylaws, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following (a) voting rights; (b) Assessments, Assessment liens, or subordination of such liens; (c) reserves for maintenance, repair, or replacement of the Common Elements; (d) responsibility for maintenance and repair of any portion of the Condominium; (e) rights to use Common Elements and Limited Common Elements; (f) reallocation of interests in Common Elements or Limited Common Elements or rights to their use; (g) redefinition of any Unit boundaries; (h) convertibility of Units into Common Elements or Limited Common Elements, Common Elements or Limited Common Elements into Units or Common Elements into Limited Common Elements; (i) expansion or contraction of the Condominium or the addition, annexation, or withdrawal of property to or from the Condominium; (j) hazard or fidelity insurance requirements; (k) imposition of any restrictions on leasing of Units; (l) imposition of any restriction on the right of an Owner to sell or transfer a Unit; (m) establishment of self-management of the Condominium after professional management has been required by HUD, FNMA, VA, FHLMC, or other similar agency or corporation or by an Eligible Mortgagee; (n) restoration or repair (after damage or partial condemnation) in a manner other than specified in the Declaration or the Survey Map and Plans; or (o) any provisions that are for the express benefit of holders of first Mortgages.

26.2.2. An amendment that creates or increases Development Rights or Special Declarant Rights, increases the number of Units, or the uses to which any Unit is restricted shall require the vote or agreement of the Owner of each Unit particularly affected, Declarant (if Declarant owns a Unit or has the rights to exercise any Development Rights or Special Declarant Rights) and Owners having at least 90% of the votes in the Association other than Declarant, and Project Mortgagee.

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26.2.3. In addition to the foregoing requirements, the consent of Declarant and the Project Mortgagee shall be required for any amendment to Section 11.4, Section 13.5, Section 13.7, Section 14.1, Section 14.2, Section 15.2, Section 19.2, Section 19.3 or Article 20 relating to Declarant.

26.2.4. All other amendments shall be adopted if consented to by 67% of Owners.

26.2.5. An Eligible Mortgagee who receives a written request to consent to an amendment who does not deliver or post to the requesting party a negative response within 30 days shall be deemed to have consented to such request.

26.2.6. If the Condominium has received a project approval from the VA, the approval of the VA will be required for any amendment to the Declaration, Articles, Bylaws, or Survey Map and Plans adopted prior to the Transition Date.

26.3. LIMITATIONS ON AMENDMENTS. No amendment may restrict, eliminate, or otherwise modify any Development Right or Special Declarant Right provided in this Declaration without the consent of Declarant and Project Mortgagee and no amendment may restrict, eliminate, or otherwise modify any right granted to Project Mortgagee without the consent of Project Mortgagee.

ARTICLE 27.

TERMINATION OF CONDOMINIUM

27.1. ACTION REQUIRED. Except as provided in Article 22 and Article 23, the Condominium may be terminated only by agreement of Owners of Units to which at least 80% of the votes in the Association are allocated and with the consent of Eligible Mortgagees of Units to which at least 51% of the votes of Units subject to Mortgages held by Eligible Mortgagees are allocated and in accordance with the Condominium Act. An Eligible Mortgagee who receives a written request to consent to termination who does not deliver or post to the requesting party a negative response within 30 days shall be deemed to have consented to such request, provided the request was delivered by certified or registered mail, return receipt requested.

27.2. CONDOMINIUM ACT GOVERNS. The provisions of the Condominium Act relating to termination of a condominium contained in RCW 64.34.268, as it may be amended, shall govern the termination of the Condominium, including, but not limited to, the disposition of the real property in the Condominium and the distribution of proceeds from the sale of that real property.

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ARTICLE 28.
NOTICES

28.1. Form and Delivery of Notice. Unless provided otherwise in this Declaration, all notices given under the provisions of this Declaration or the Bylaws or rules or regulations of the Association shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, the notice shall be deemed to have been delivered upon being deposited in the United States mail, first class, postage prepaid, addressed to the person entitled to such notice at the most recent address known to the Board. Notice to Owner of any Unit shall be sufficient if mailed to the Unit if no other mailing address has been given to the Board. Mailing addresses may be changed by notice in writing to the Board. Notices to the Board shall be given to Declarant until the Transition Date, and thereafter shall be given to the president or secretary of the Association.

28.2. Notices to Eligible Mortgagees. An Eligible Mortgagee is a Mortgagee that has filed with the secretary of the Board a written request that it be given copies of the notices listed below and shall also mean the Project Mortgagees with respect to Units owned by Declarant upon which it has a Mortgage. The request must state the name and address of the Eligible Mortgagee and the Identifying Number or address of the Unit on which it has (or insures or guarantees) a Mortgage. Until such time thereafter that the Eligible Mortgagee withdraws the request or the Mortgage held, insured, or guaranteed by the Eligible Mortgagee is satisfied, the Board shall send to the Eligible Mortgagee timely written notice of (a) any proposed amendment of this Declaration or Survey Map and Plans effecting a change in (1) the boundaries of any Unit and (2) the exclusive easement rights, if any, appertaining to any Unit, (3) the interest in the Common Elements or the liability for Common Expenses of any Unit, (4) the number of votes in the Association allocated to any Unit, or (5) the purposes to which a Unit or the Common Elements are restricted; (b) any proposed termination of condominium status, transfer or mortgage of any part of the Common Elements, or termination of professional management of the Condominium; (c) any condemnation loss or casualty loss that affects a material portion of the Condominium or that affects any Unit on which an Eligible Mortgagee has a first Mortgage; (d) any delinquency that has continued for 60 days in the payment of Assessments or charges owed by an Owner of a Unit on which an Eligible Mortgagee had a Mortgage; (e) any lapse, cancellation, or material modification of any insurance policy maintained by the Association pursuant to Article 21; (f) any proposed action that would require the consent of a specified percentage of Eligible Mortgagees pursuant to this Declaration, the Articles or Bylaws; and (g) any proposed special Assessment or supplemental budget.

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ARTICLE 29.

SEVERABILITY

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

ARTICLE 30.

EFFECTIVE DATE

This Declaration shall take effect upon recording.

ARTICLE 31.

REFERENCE TO SURVEY MAP AND PLANS

The Survey Map and Plans were filed with the Recorder of Kitsap County, Washington, simultaneously with the recording of this Declaration under Recording No. 200704090181, in Volume 8 of Condominiums, pages 43 through 55.

ARTICLE 32.

ASSIGNMENT BY DECLARANT

Declarant reserves the right to assign, transfer, sell, lease, or rent all or a portion of the property then owned by it and reserves the right to assign all or any of its rights, duties, and obligations created under this Declaration.

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IN WITNESS WHEREOF, Declarant herein, hereby executes this instrument under its seal by and through its duly authorized officers, this 9th day of April, 2007.

DECLARANT:

BREMERTON PARTNERS, L.L.C.,
a Washington limited liability company

By Chris Raftery
Name: Chris Raftery
Its: Representative

STATE OF WASHINGTON }
COUNTY OF KITSAP } ss.

On this day personally appeared before me CHRIS RAFFERTY, to me known to be the REPRESENTATIVE of **BREMERTON PARTNERS, L.L.C.,** the Washington limited liability company that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 9th day of APRIL, 2007.

KIMBERLY K. AXTMAN
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
DECEMBER 19, 2008

Kimberly K. Axtman
Printed Name KIMBERLY K. AXTMAN
NOTARY PUBLIC in and for the State of WASHINGTON,
residing at SILVERDALE, WA.
My Commission Expires 12-19-2008

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SCHEDULE A

DESCRIPTION OF REAL PROPERTY IN CONDOMINIUM

PARCEL 1

Parcel A:

LOTS 1, 2 AND 3, BLOCK 4, TOWN OF BREMERTON, ACCORDING TO PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 30, IN KITSAP COUNTY, WASHINGTON;

TOGETHER WITH VACATED ALLEY ADJOINING;

ALSO

THAT PORTION OF UPLAND AND TIDELANDS ABUTTING ON THE EAST SIDE OF ALLEY IN FRONT OF SAID LOTS 1, 2 AND 3, BLOCK 4, SAID TIDELANDS BEING A PORTION OF BREMERTON TIDE LANDS, AS PER PLAT THEREOF.

Parcel B:

LOTS 4 AND THE SOUTH HALF OF LOT 5, BLOCK 4, TOWN OF BREMERTON, ACCORDING TO PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 30, IN KITSAP COUNTY, WASHINGTON; TOGETHER WITH VACATED ALLEY ADJOINING;

ALSO

THAT PORTION OF GOVERNMENT LOT 3, SECTION 13, TOWNSHIP 24 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, LYING EASTERLY OF THE EASTERLY LINE OF VACATED ALLEY AND BETWEEN THE SOUTHERLY LINE OF LOT 4 EXTENDED AND THE NORTHERLY LINE OF THE SOUTH HALF OF LOT 5 EXTENDED, BLOCK 4, TOWN OF BREMERTON;

TOGETHER WITH FIRST CLASS TIDELANDS ADJOINING.

PARCEL 2

THE NORTH HALF OF LOT 5, ALL OF LOT 6, BLOCK 4, TOWN OF BREMERTON, ACCORDING TO PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 30, IN KITSAP COUNTY, WASHINGTON; TOGETHER WITH VACATED ALLEY ADJOINING;

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ALSO THAT PORTION OF GOVERNMENT LOT 3, SECTION 13, TOWNSHIP 24 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON, LYING EASTERLY OF THE EASTERLY LINE OF VACATED ALLEY AND BETWEEN THE SOUTHERLY LINE OF THE NORTH HALF OF LOT 5, EXTENDED, AND THE NORTHERLY LINE OF LOT 6, EXTENDED, BLOCK 4, TOWN OF BREMERTON;

TOGETHER WITH FIRST CLASS TIDELANDS ADJOINING.

PARCEL 3

LOT 7 AND THE SOUTH ONE-HALF OF LOT 8, BLOCK 4, TOWN OF BREMERTON, ACCORDING TO PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 30, IN KITSAP COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF VACATED ALLEY ADJOINING;

AND THAT PORTION OF GOVERNMENT LOT 3, SECTION 13, TOWNSHIP 24 NORTH, RANGE 1 EAST, W.M., IN KITSAP COUNTY, WASHINGTON;

AND TOGETHER WITH FIRST CLASS TIDELANDS ADJOINING, LYING EASTERLY OF THE EAST LINE OF THE VACATED ALLEY IN BLOCK 4, TOWN OF BREMERTON, ACCORDING TO PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 30, IN KITSAP COUNTY, WASHINGTON, AND WESTERLY OF THE INNER HARBOR LINE AND BETWEEN THE NORTH LINE OF LOT 9 AND THE SOUTH LINE OF LOT 7, BLOCK 4, SAID ADDITION, EXTENDED EASTERLY TO THE INNER HARBOR LINE.

PARCEL 4

THE NORTH HALF OF LOT 8 AND ALL OF LOT 9, BLOCK 4, TOWN OF BREMERTON, ACCORDING TO PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 30, IN KITSAP COUNTY, WASHINGTON; TOGETHER WITH PORTION OF THE VACATED ALLEY ADJOINING, LYING BETWEEN THE NORTH AND SOUTH LINES THEREOF, EXTENDED, WHICH UPON VACATION ATTACHED BY OPERATION OF LAW.

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SCHEDULE B

UNIT DATA, ALLOCATED INTERESTS, PARKING AND STORAGE

Unit	Unit Data[1]	Level	Unit Area (Sq. Ft.)[2]	Allocated Interests[3]	Parking Space	Storage Unit
101	3BR, 2BA, 0FP	1	1,401	1.97%	219/220	20
102	1BR, 1BA, 0FP	1	792	1.12%	108	26
103	2BR, 2BA, 1FP	1	1,298	1.83%	147/148	46
104	2BR, 2BA, 1FP	1	1,729	2.44%	113/114	39
105	2BR, 2BA, 0FP	1	1,159	1.64%	145/146	16
106	1BR, 1BA, 0FP	1	870	1.23%	106/123	34
107	2BR, 2BA, 0FP	1	1,159	1.64%	237/119H	1
108	2BR, 2BA, 1FP	1	1,729	2.44%	121/122	38
109	2BR, 2BA, 1FP	1	1,298	1.83%	149/150	15
110	1BR, 1BA, 0FP	1	792	1.12%	107	23
111	1BR, 1BA, 0FP	1	792	1.12%	105	27
112	2BR, 2BA, 0FP	1	1,322	1.87%	110/158	19
113	1BR, 2BA, 0FP	1,2	1,140	1.60%	213	22
114	1BR, 2BA, 0FP	1,2	1,140	1.60%	214	21
115	1BR, 2BA, 0FP	1,2	1,140	1.60%	215	28
116	1BR, 2BA, 0FP	1,2	1,140	1.60%	235	29
117	1BR, 2BA, 0FP	1,2	1,140	1.60%	236	30
200A	1BR, 1BA, 0FP	2	659	.93%	221	n/a
200	1BR, 1BA, 0FP	2	534	.75%	222	n/a
201	1BR, 1BA, 0FP	2	792	1.12%	234	24
202	1BR, 1BA, 0FP	2	792	1.12%	134	35
203	2BR, 2BA, 1FP	2	1,298	1.83%	151/152	7
204	2BR, 2BA, 1FP	2	1,729	2.44%	128/129	2
205	2BR, 2BA, 0FP	2	1,159	1.64%	153/154	9

[1] Legend:

BR - bedroom
BA - bathroom
FP - fireplace

There is no moorage within the Condominium.

[2] Square footages are as set forth in the Survey Map and Plans. Actual square footages may vary from square footages used in advertising materials which are based on good-faith architectural estimates.

[3] *See* Section 6.4 for method of calculation. Applies to voting, Common Expense Liability and interest in Common Elements. Some percentages may be rounded so that the total is 100%.

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Unit	Unit Data[1]	Level	Unit Area (Sq. Ft.)[2]	Allocated Interests[3]	Parking Space	Storage Unit
206	1BR, 1BA, 0FP	2	870	1.23%	135	33
207	2BR, 2BA, 0FP	2	1,159	1.64%	229/230	10
208	2BR, 2BA, 1FP	2	1,729	2.44%	212/211	53
209	2BR, 2BA, 1FP	2	1,298	1.83%	132/133	8
210	1BR, 1BA, 0FP	2	792	1.12%	228	36
211	1BR, 1BA, 0FP	2	792	1.12%	233	37
212A	1BR, 1BA, 0FP	2	659	.93%	225	n/a
212	1BR, 1BA, 0FP	2	534	.75%	226	n/a
300A	1BR, 1BA, 0FP	3	659	.93%	109	n/a
300	1BR, 1BA, 0FP	3	534	.75%	103	n/a
301	1BR, 1BA, 0FP	3	792	1.12%	157H	43
302	1BR, 1BA, 0FP	3	792	1.12%	102	44
303	2BR, 2BA, 1FP	3	1,298	1.83%	125/126	5
304	2BR, 2BA, 1FP	3	1,729	2.44%	155/156	41
305	2BR, 2BA, 0FP	3	1,159	1.64%	142/143	11
306	1BR, 1BA, 0FP	3	870	1.23%	136	32
307	2BR, 2BA, 0FP	3	1,159	1.64%	207/208	12
308	2BR, 2BA, 1FP	3	1,729	2.44%	115/116	40
309	2BR, 2BA, 1FP	3	1,298	1.83%	124/216H	6
310	1BR, 1BA, 0FP	3	792	1.12%	201	47
311	1BR, 1BA, 0FP	3	792	1.12%	144	48
312A	1BR, 1BA, 0FP	3	659	.93%	223/224	25
312	1BR, 1BA, 0FP	3	534	.75%	218	n/a
313	1BR, 1BA, 0FP	3	613	.87%	137	n/a
314	1BR, 1BA, 0FP	3	613	.87%	238	n/a
315	1BR, 1BA, 0FP	3	613	.87%	139	n/a
316	1BR, 1BA, 0FP	3	613	.87%	138	n/a
317	1BR, 1BA, 0FP	3	613	.87%	101	54
400	2BR, 2BA, 0FP	4	1,322	1.87%	227/217H	18
401	1BR, 1BA, 0FP	4	792	1.12%	104	49
402	1BR, 1BA, 0FP	4	792	1.12%	202	50
403	2BR, 2BA, 1FP	4	1,298	1.83%	111/112	3
404	2BR, 2BA, 1FP	4	1,729	2.44%	120/127	43
405	2BR, 2BA, 0FP	4	1,159	1.64%	231/232	13
406	1BR, 1BA, 0FP	4	870	1.23%	203	31
407	2BR, 2BA, 0FP	4	1,159	1.64%	209/210	14
408	2BR, 2BA, 1FP	4	1,729	2.44%	117/118	42
409	2BR, 2BA, 1FP	4	1,298	1.83%	130/131	4
410	1BR, 1BA, 0FP	4	792	1.12%	140	51
411	1BR, 1BA, 0FP	4	792	1.12%	141	52

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Unit	Unit Data[1]	Level	Unit Area (Sq. Ft.)[2]	Allocated Interests[3]	Parking Space	Storage Unit
412	2BR, 2BA, 0FP	4	1,322	1.87%	205/206	17
413	1BR, 1BA, 0FP	4	613	.87%	239	n/a
414	1BR, 1BA, 0FP	4	613	.87%	240	n/a
415	1BR, 1BA, 0FP	4	613	.87%	204	n/a
416	1BR, 1BA, 0FP	4	613	.87%	241	n/a
417	1BR, 1BA, 0FP	4	613	.87%	242	55
TOTAL:			70,817	100.00%		

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SCHEDULE C

LIMITED COMMON ELEMENTS

1. Patio or deck adjacent to the Unit as shown on the Survey Map and Plans.
2. Parking space(s) allocated on SCHEDULE B and shown on the Survey Map and Plans
3. Storage unit allocated on SCHEDULE B and shown on the Survey Map and Plans.
4. Any fixtures or equipment serving only one Unit.
5. East plaza at R1 level for the benefit of Units 104-108 only.

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EXHIBIT B

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FILED
SECRETARY OF STATE
SAM REED

April 4, 2007

STATE OF WASHINGTON

ARTICLES OF INCORPORATION
OF
THE 400 CONDOMINIUM ASSOCIATION

The undersigned, acting as incorporator of a corporation under the Washington Nonprofit Corporation Act (RCW ch. 24.03), adopts the following Articles of Incorporation for the corporation.

ARTICLE 1.
NAME

The name of this corporation is The 400 Condominium Association.

ARTICLE 2.
DURATION

The duration of this corporation is perpetual.

ARTICLE 3.
PURPOSES

This corporation is organized to provide an entity pursuant to the Washington Condominium Act (RCW ch. 64.34), hereinafter called the "Condominium Act," for the operation of The 400, A Condominium located in Bremerton, Washington, and to engage in all such activities as are incidental or conducive to the attainment of the objectives of the corporation and all activities which are permitted to be done by a nonprofit corporation under any laws that may now or hereafter be applicable or available to this corporation. The powers of this corporation shall be subject to and shall be exercised in accordance with the Condominium Act and the provisions of the Condominium Declaration for The 400, A Condominium, as it may from time to time be amended, hereinafter referred to as the "Declaration."

ARTICLE 4.
DISSOLUTION

Upon dissolution or final liquidation of the corporation, the assets of the corporation shall be distributed among the members of the corporation in accordance with the Condominium Act and the Declaration.

ARTICLE 5.
MEMBERS

The corporation shall have one class of members, which shall consist of the owners of the units at The 400, A Condominium. The rights, privileges, and obligations

of the members are set forth in the Condominium Act, the Declaration, and the Bylaws of the corporation.

ARTICLE 6.
REGISTERED OFFICE AND AGENT

The name of the initial registered agent of the corporation is Mark Goldberg. The address of the initial registered office of the corporation is 1702 N. 45th Street, Seattle, Washington 98103.

ARTICLE 7.
DIRECTORS

The number of directors of this corporation shall be fixed by the Bylaws and may be increased or decreased from time to time in the manner specified therein. The initial Board of Directors shall consist of three directors. The names and addresses of the persons who shall serve as directors until the first meeting of the members, and until their successors are elected and qualify unless they resign or are removed are Mark Goldberg, Tziviah Goldberg and Chris Raftery. Their address is 1702 N. 45th Street, Seattle, Washington 98103.

ARTICLE 8.
LIMITATION OF LIABILITY

A director of the corporation shall not be personally liable to the corporation or its members for monetary damages for conduct as a director, except for liability of the director (a) for acts or omissions which involve intentional misconduct by the director or a knowing violation of law by the director, (b) for any transaction from which the director will personally receive a benefit in money, property or services to which the director is not legally entitled, or (c) for conduct violating RCW 23B.08.310.

Any repeal or modification of this Article by the directors or members of the corporation shall not adversely affect any right or protection of any individual who is or was a director of the corporation which existed at the time of such repeal or modification.

ARTICLE 9.
INDEMNIFICATION

The corporation shall indemnify any individual made a party to a proceeding because that individual is or was a director of the corporation and shall advance or reimburse the reasonable expenses incurred by such individual in advance of final disposition of the proceeding, without regard to the limitations in RCW 23B.08.510 through 23B.08.550 of the Washington Business Corporation Act, or any other limitation which may hereafter be enacted to the extent such limitation may be disregarded if authorized by the Articles of Incorporation, to the full extent and under all circumstances permitted by applicable law.

Any indemnification provided under this Article shall, unless limited by the terms of the undertaking to indemnify, continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of his or her heirs, executors, and administrators.

Any repeal or modification of this Article by the directors or members of the corporation shall not adversely affect any right or protection of any individual who is or was a director or officer of the corporation existing at the time of such repeal or modification.

ARTICLE 10.
AMENDMENT

Any amendment to these Articles of Incorporation shall require the approval of not less than sixty-seven percent (67%) of the votes of the members of the corporation and such other approvals as may be required in the Declaration.

ARTICLE 11.
INCORPORATOR

The name of the incorporator is Mark Goldberg. His address is 1702 N. 45th Street, Seattle, Washington 98103.

EXECUTED March 30, 2007.

Mark Goldberg
Incorporator

CONSENT TO APPOINTMENT AS REGISTERED AGENT
OF
THE 400 CONDOMINIUM ASSOCIATION

Mark Goldberg hereby consents to serve as Registered Agent in the State of Washington for The 400 Condominium Association. Mark Goldberg understands that as agent for the corporation, it will be his responsibility to receive service of process in the name of the corporation; to forward all mail to the corporation; and to immediately notify the office of the Secretary of State in the event of his resignation, or of any changes in the registered office address of the corporation for which he is agent.

DATED as of March 30, 2007.

Mark Goldberg

Mark Goldberg

Address of Registered Agent: 1702 N. 45th Street
Seattle, Washington 98103

EXHIBIT C

When Recorded, Return to:

HILLIS CLARK MARTIN & PETERSON, P.S.
Attention: Steven R. Rovig
500 Galland Building
1221 Second Avenue
Seattle, WA 98101-2925

PACIFIC NW TITLE 200706120453
Amended Declaration Rec Fee: $ 37.00
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FIRST AMENDMENT TO CONDOMINIUM DECLARATION FOR THE 400, A CONDOMINIUM

Grantor:	**BREMERTON PARTNERS, L.L.C.**
Grantee:	**THE 400, A CONDOMINIUM**
Legal Description:	PTNS LOTS 1 – 9, BLK 4, AND PTN GOV LOT 3, S13, T24N, R1E, TOWN OF BREMERTON, KITSAP COUNTY
Assessor's Tax Parcel ID #:	3714-004-001-0008, 3718-004-005-0004 3718-004-007-0002, 3718-004-008-0001
Reference Nos. of Documents Released or Assigned:	200704090180

THIS FIRST AMENDMENT to Condominium Declaration is dated for reference purposes May 23, 2007 and is made by **BREMERTON PARTNERS, L.L.C.**, a Washington limited liability company ("Declarant").

RECITALS

A. Declarant executed a Condominium Declaration for The 400, A Condominium ("Declaration") dated and recorded April 9, 2007 under Kitsap County Recording Number 200704090180 and a Survey Map and Plans recorded simultaneously

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under Recording Number 200704090181 in Volume 8 of Condominiums, pages 43 through 55 ("Survey Map and Plans").

B. Pursuant to Section 26.1 of the Declaration, Declarant now desires to amend the Declaration for purposes of amending and restating Schedule B in accordance with the corrections shown on the revised Survey Map and Plans recorded concurrently herewith and for other purposes as set forth herein.

AMENDMENT

Declarant hereby publishes and declares this First Amendment as follows:

1. **Unit Data and Allocated Interests.** In order to correct the Unit Data and Allocated Interests pursuant to the revised Survey Map and Plans filed with the Recorder of Kitsap County, Washington, concurrently with the recording of this First Amendment, under Recording Number 200706120452, in Volume ____ of Condominium, pages ____ through _____, Declarant hereby amends and restates in its entirety Schedule B to the Declaration as set forth on the attached **AMENDED AND RESTATED SCHEDULE B**.

2. **Effective Date.** This First Amendment shall take effect upon recording.

3. **Other Provisions.** Except as specifically modified herein, all other provisions of the Declaration shall remain in full force and effect.

EXECUTED as of the day and year first set forth above.

DECLARANT:

BREMERTON PARTNERS, L.L.C.,
a Washington limited liability company

By Mark Goldberg
Name: Mark Goldberg
Its: Rep

PACIFIC NW TITLE 200706120453
Amended Declaration Rec Fee: $ 37.00
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Karen Flynn, Kitsap Co Auditor
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STATE OF WASHINGTON }
COUNTY OF King } ss.

On this day personally appeared before me Mark Goldberg, to me known to be the representative of **BREMERTON PARTNERS, L.L.C.**, the Washington limited liability company that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 8th day of June, 2007.

Jennifer E. Caron
Printed Name Jennifer E. Caron
NOTARY PUBLIC in and for the State of Washington,
residing at King county
My Commission Expires April 21, 2009

Notary Public
State of Washington
JENNIFER E CARON
My Appointment Expires Apr 21, 2009

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PACIFIC NW TITLE 200706120453
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Karen Flynn, Kitsap Co Auditor
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AMENDED AND RESTATED SCHEDULE B

UNIT DATA, ALLOCATED INTERESTS, PARKING AND STORAGE

Unit	Unit Data[1]	Level	Unit Area (Sq. Ft.)[2]	Allocated Interests[3]	Parking Space	Storage Unit
101	3BR, 2BA, 0FP	1	1,401	1.97%	219/220	20
102	1BR, 1BA, 0FP	1	792	1.11%	108	26
103	2BR, 2BA, 1FP	1	1,298	1.82%	147/148	46
104	2BR, 2BA, 1FP	1	1,729	2.43%	113/114	39
105	2BR, 2BA, 0FP	1	1,159	1.63%	145/146	16
106	1BR, 1BA, 0FP	1	870	1.22%	106/123	34
107	2BR, 2BA, 0FP	1	1,159	1.63%	237/119H	1
108	2BR, 2BA, 1FP	1	1,729	2.43%	121/122	38
109	2BR, 2BA, 1FP	1	1,298	1.82%	149/150	15
110	1BR, 1BA, 0FP	1	792	1.11%	107	23
111	1BR, 1BA, 0FP	1	792	1.11%	105	27
112	2BR, 2BA, 0FP	1	1,322	1.86%	110/158	19
113	1BR, 2BA, 0FP	1,2	1,140	1.60%	213	22
114	1BR, 2BA, 0FP	1,2	1,140	1.60%	214	21
115	1BR, 2BA, 0FP	1,2	1,140	1.60%	215	28
116	1BR, 2BA, 0FP	1,2	1,140	1.60%	235	29
117	1BR, 2BA, 0FP	1,2	1,140	1.60%	236	30
200A	1BR, 1BA, 0FP	2	711	1.00%	221	n/a
200	1BR, 1BA, 0FP	2	592	.83%	222	n/a
201	1BR, 1BA, 0FP	2	792	1.11%	234	24
202	1BR, 1BA, 0FP	2	792	1.11%	134	35
203	2BR, 2BA, 1FP	2	1,298	1.82%	151/152	7
204	2BR, 2BA, 1FP	2	1,729	2.43%	128/129	2
205	2BR, 2BA, 0FP	2	1,159	1.63%	153/154	9

[1] Legend:
BR - bedroom
BA - bathroom
FP - fireplace

There is no moorage within the Condominium.

[2] Square footages are as set forth in the Survey Map and Plans, as may be amended. Actual square footages may vary from square footages used in advertising materials which are based on good-faith architectural estimates.

[3] *See* Section 6.4 for method of calculation. Applies to voting, Common Expense Liability and interest in Common Elements. Some percentages may be rounded so that the total is 100%.

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Karen Flynn, Kitsap Co Auditor
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Unit	Unit Data[1]	Level	Unit Area (Sq. Ft.)[2]	Allocated Interests[3]	Parking Space	Storage Unit
206	1BR, 1BA, 0FP	2	870	1.22%	135	33
207	2BR, 2BA, 0FP	2	1,159	1.63%	229/230	10
208	2BR, 2BA, 1FP	2	1,729	2.43%	212/211	53
209	2BR, 2BA, 1FP	2	1,298	1.82%	132/133	8
210	1BR, 1BA, 0FP	2	792	1.11%	228	36
211	1BR, 1BA, 0FP	2	792	1.11%	233	37
212A	1BR, 1BA, 0FP	2	711	1.00%	225	n/a
212	1BR, 1BA, 0FP	2	577	.81%	226	n/a
300A	1BR, 1BA, 0FP	3	711	1.00%	109	n/a
300	1BR, 1BA, 0FP	3	592	.83%	103	n/a
301	1BR, 1BA, 0FP	3	792	1.11%	157H	45
302	1BR, 1BA, 0FP	3	792	1.11%	102	44
303	2BR, 2BA, 1FP	3	1,298	1.82%	125/126	5
304	2BR, 2BA, 1FP	3	1,729	2.43%	155/156	41
305	2BR, 2BA, 0FP	3	1,159	1.63%	142/143	11
306	1BR, 1BA, 0FP	3	870	1.22%	136	32
307	2BR, 2BA, 0FP	3	1,159	1.63%	207/208	12
308	2BR, 2BA, 1FP	3	1,729	2.43%	115/116	40
309	2BR, 2BA, 1FP	3	1,298	1.82%	124/216H	6
310	1BR, 1BA, 0FP	3	792	1.11%	201	47
311	1BR, 1BA, 0FP	3	792	1.11%	144	48
312A	1BR, 1BA, 0FP	3	711	1.00%	223/224	25
312	1BR, 1BA, 0FP	3	577	.81%	218	n/a
313	1BR, 1BA, 0FP	3	613	.86%	137	n/a
314	1BR, 1BA, 0FP	3	613	.86%	238	n/a
315	1BR, 1BA, 0FP	3	613	.86%	139	n/a
316	1BR, 1BA, 0FP	3	613	.86%	138	n/a
317	1BR, 1BA, 0FP	3	613	.86%	101	54
400	2BR, 2BA, 0FP	4	1,322	1.86%	227/217H	18
401	1BR, 1BA, 0FP	4	792	1.11%	104	49
402	1BR, 1BA, 0FP	4	792	1.11%	202	50
403	2BR, 2BA, 1FP	4	1,298	1.82%	111/112	3
404	2BR, 2BA, 1FP	4	1,729	2.43%	120/127	43
405	2BR, 2BA, 0FP	4	1,159	1.63%	231/232	13
406	1BR, 1BA, 0FP	4	870	1.22%	203	31
407	2BR, 2BA, 0FP	4	1,159	1.63%	209/210	14
408	2BR, 2BA, 1FP	4	1,729	2.43%	117/118	42
409	2BR, 2BA, 1FP	4	1,298	1.82%	130/131	4
410	1BR, 1BA, 0FP	4	792	1.11%	140	51
411	1BR, 1BA, 0FP	4	792	1.11%	141	52
412	2BR, 2BA, 0FP	4	1,322	1.86%	205/206	17

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PACIFIC NW TITLE 200706120453
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Karen Flynn, Kitsap Co Auditor

Unit	Unit Data[1]	Level	Unit Area (Sq. Ft.)[2]	Allocated Interests[3]	Parking Space	Storage Unit
413	1BR, 1BA, 0FP	4	613	.86%	239	n/a
414	1BR, 1BA, 0FP	4	613	.86%	240	n/a
415	1BR, 1BA, 0FP	4	613	.86%	204	n/a
416	1BR, 1BA, 0FP	4	613	.86%	241	n/a
417	1BR, 1BA, 0FP	4	613	.86%	242	55
TOTAL:			71,227	100.00%		

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Karen Flynn, Kitsap Co Auditor

EXHIBIT D

BURLEIGH LAW 201703290082
Amended Declaration Rec Fee: $ 76.00
03/29/2017 09:46 AM
Dolores Gilmore, Kitsap Co Auditor
Page: 1 of 4

After recording, please return to:
BURLEIGH LAW, PLLC
3202 Harborview Drive, Ste 201
Gig Harbor, WA 98335

Document Title:	**SECOND AMENDMENT TO THE CONDOMINIUM DECLARATION FOR THE 400, A CONDOMINIUM**
Reference Numbers of Related Documents:	Survey Map and Plans: 200704090181, 200706120452; Condominium Declaration and Amendments Thereto: 200704090180, 200706120453
Grantor(s:)	The 400 Condominium Association
Grantee(s):	The 400 Condominium Association
Legal Description (abbreviated):	PTNS LOTS 1 – 9, BLK 4, AND PTN GOV LOT 3, S13, T24N, R1E, TOWN OF BREMERTON, KITSAP COUNTY
Assessor's Tax Parcel No.	8179-000-000-0008

SECOND AMENDMENT TO CONDOMINIUM DECLARATION FOR THE 400, A CONDOMINIUM

Whereas a certain Declaration submitting real estate to the Washington Condominium Act, Laws of 1989, Chapter 43, (RCW 64.34, *et seq.*), as amended, entitled CONDOMINIUM DECLARATION FOR THE 400, A CONDOMINIUM, (the "Declaration"), was recorded on April 9, 2007, under Recorder's File No. 200704090180, records of Kitsap County, Washington, and subsequently amended, together with a Survey Map and Plans recorded under Recorder's File No. 200704090181, and subsequently amended. And whereas under the provisions of Article 26 of the Declaration it may be amended, and

Whereas, pursuant to Article 26 of the Declaration and the Washington Condominium Act, owners of units allocated at least sixty-seven percent (67%) of the votes in the Association have approved or consented to the amendment of the Declaration as hereinafter set forth; and

Whereas, Eligible Mortgagees, if any, have been notified and expressly or impliedly consented to the amendment of the Declaration as hereinafter set forth;

Now, therefore, the undersigned do hereby certify that the Declaration has been amended as follows:

A. Section 16.6, entitled Common Expenses, is hereby deleted and a new Section 16.6 inserted in its place as follows:

16.6. COMMON EXPENSES. Common Expenses shall include the cost of operation, maintenance, repair and replacement of the Common Elements and the Limited Common Elements, the general expenses of the Association, including management and professional fees and costs, insurance, and any other costs that the Board determines benefits the Units. Common Expenses shall be allocated to all Unit Owners in accordance with their Common Expense Liability except where those expenses are specially allocated pursuant to Section 16.17 below.

B. Section 16.12, entitled Reconciliation of Assessments to Actual Expenses, is hereby deleted and a new Section 16.12 inserted in its place as follows:

16.12 RECONCILIATION OF ASSESSMENTS TO ACTUAL EXPENSES. The Association shall establish and maintain its accounts and records in such a manner that will enable it to deposit the Assessments for Common Expenses and Specially Allocated Expenses, including allocations to reserves, and income to the Association to the account of the appropriate Units and make its expenditures from the appropriate accounts. In order that Unit Owners are correctly assessed for the actual expenses of the Association, the accounts of the Association shall be reconciled at least annually; and any surpluses (or deficits) in the accounts shall be credited to the benefit of or paid to (or charged to the account of or assessed against) Owners of the Units who paid the surplus (or owe the deficit).

C. Section 16.17, entitled Specially Allocated Expenses, is hereby added as follows:

16.17. SPECIALLY ALLOCATED EXPENSES. The cost of water, sewer and gas services for the individual Units shall be specially allocated to the Units based upon usage as determined by submeters maintained by the Association. The Association may require Unit Owners to make and maintain security deposits and shall establish billing and collection procedures for such charges, which may include the use of a third-party agent. If a Unit Owner fails to make such payment, the Association may, in addition to pursuing any of the other remedies provided in this Declaration or at law for collection of Assessments, use the Owner's deposit to pay the utility charges for the Owner's Unit.

D. This Amendment to the Declaration shall take effect upon recording. The terms of this Amendment to the Declaration shall control over and implicitly amend any inconsistent provision of the Declaration or the Bylaws or Rules and Regulations of the Association. Except as amended by this instrument, the Declaration shall remain in full force and effect.

Dated this 15th day of March, 2017.

By: DRLindamood
President

ATTEST: The above amendment was properly adopted.

By: [illegible]
Secretary

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Dale Lindamood is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledge it as the **President of THE 400 CONDOMINIUM ASSOCIATION** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 3-15-17

BARBARA R PAGE
COMMISSION EXPIRES
NOTARY
PUBLIC
12-29-20
STATE OF WASHINGTON

Barbara R. Page
(Signature)

Barbara R. Page
(Print name)
Notary Public residing at Kitsap County, WA

My appointment expires: 12-29-20

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Lief Bentsen is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledge it as the **Secretary of THE 400 CONDOMINIUM ASSOCIATION** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 3-16-17

BARBARA R PAGE
COMMISSION EXPIRES
NOTARY
PUBLIC
12-29-20
STATE OF WASHINGTON

Barbara R. Page
(Signature)

Barbara R. Page
(Print name)
Notary Public residing at Kitsap County, WA
My appointment expires: 12-29-20

Appendix B

faxed 5-30-17 11:47 am

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP

TERRY HOY, an individual, Plaintiff, vs. THE 400 CONDOMINIUM ASSOCIATION, a Washington nonprofit corporation, Defendant.	NO. 17-2-00867-4 DECLARATION OF ROB WOUTAT

I, ROB WOUTAT, hereby declare:

1. I am over the age of eighteen and otherwise competent to make this Declaration. I have firsthand knowledge of the facts contained in this Declaration.

2. I was the Secretary of The 400 Condominium Association (the "Association") Board of Directors from February 2013 to February 2015, and also served on the Board from June 2016 through March 2017.

3. While I was Secretary of Board of the 400 Condo Association, a relatively new owner, Terry Hoy, approached the Board at a regular meeting to request permission to install HVAC equipment in his unit. The Board was skeptical about the practice of adding such equipment after the building was constructed, but Mr. Hoy was determined to get the equipment installed and took it upon himself to research HVAC equipment and reported to the board a lot of technical information about noise levels. It was clear to Mr. Hoy when he bought his unit that

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1200 Fifth Ave., Suite 1850
Seattle, Washington 98101
Main/Fax: 206-626-5444

the Association disallowed adding additional HVAC units beyond those that were part of the original construction.

4. Concerned about Mr. Hoy's proposal and the ramifications if additional owners also wanted to install such equipment, and the potential effect on the appearance of the building, the Board formulated guidelines regulating additional requests like Mr. Hoy's, as well as steps the Board would take if those guidelines were disregarded, which included removal of the equipment at the owner's expense.

5. The Board drafted such a document and discussed whether it should be considered a Memorandum of Understanding or a Covenant. During one such discussion, Mr. Hoy preferred the term Memorandum of Understanding but also said he would sign any document that would permit him to proceed, which he had already done without the Board's prior written approval and without signing a binding document.

6. I did not indicate Mr. Hoy's readiness to sign either document in the June 2015 meeting minutes as what the document would be titled and what would be contained in the document was a fluid discussion and not part of the pending motion to allow the HVAC unit to be installed prior to formal documentation being prepared.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 30 day of May, 2017 at Bremerton WA.

Rob Woutat

Rob Woutat

LEVY VON BECK COMSTOCK P.S.
1200 Fifth Ave., Suite 1850
Seattle, Washington 98101
Main/Fax: 206-626-5444

Appendix C

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP

TERRY HOY, an individual, Plaintiff, vs. THE 400 CONDOMINIUM ASSOCIATION, a Washington nonprofit corporation, Defendant.	NO. 17-2-00867-4 DECLARATION OF BOB JOHNSON

I, BOB JOHNSON, hereby declare:

1. I am over the age of eighteen and otherwise competent to make this Declaration. I have firsthand knowledge of the facts contained in this Declaration.

2. I was the President of the The 400 Condominium Association (the "Association") Board of Directors from February 2015 to February 2016.

3. After Mr. Hoy came to the Board with his request to install an HVAC system, not knowing if it was a good idea or not, and wanting to protect the Association, the Board commenced in-depth research and education on the issue. At some point, it was determined by the Board that any installation approval would first require an Agreement (referred to at the time as a Memorandum of Understanding) between the owner and the HOA in which the owner would assume all responsibility to mitigate any adverse issues caused by the installation.

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HOA in which the owner would assume all responsibility to mitigate any adverse issues caused by the installation. Additionally, a Rule (2.13) was drafted and adopted stating in part "An Agreement must be entered into..."

4. Throughout the long, arduous process, Hoy was very impatient and aggressive in his attempts to gain approval for installation of his system. At the June 17, 2015 meeting, by which time Hoy was a Board Member, a vote was called for and taken on whether to approve his request for installation prior to the completion of the aforementioned Agreement. Throughout the entire process, Hoy always maintained and gave his assurance that he would agree to and sign anything required by the Board. The vote was three-to-one (Hoy abstained) to allow him to install his unit, the Board members voting in favor taking Hoy at his word that he would honor his commitment to sign any Agreement when it was finalized.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 30 day of May, 2017 at Kitsap County, Washington.

Bob Johnson

Bob Johnson

LEVY | VON BECK | COMSTOCK | P.S.
1200 Fifth Ave., Suite 1850
Seattle, Washington 98101
Main/Fax: 206-626-5444

Appendix D

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP

TERRY HOY, an individual, Plaintiff, vs. THE 400 CONDOMINIUM ASSOCIATION, a Washington nonprofit corporation, Defendant.	NO. 17-2-00867-4 DECLARATION OF ROBERTA COOPER

I, ROBERTA COOPER, hereby declare:

1. I am over the age of eighteen and otherwise competent to make this Declaration. I have firsthand knowledge of the facts contained in this Declaration.

2. At all relevant times to this dispute, I have been the Treasurer of the The 400 Condominium Association (the "Association") Board of Directors.

3. At the August 20, 2014 board meeting, Terry Hoy addressed the Board, attempting to persuade us to approve his request for permission to install a heat pump in his condominium. Mr. Hoy volunteered to pay for half of the sound study so the board would be willing to pay the other half. Mr. Hoy did say he would sign any document the board wanted him to sign.

4. Mr. Hoy said he would sign any document the Board would like signed in

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1200 Fifth Ave., Suite 1850
Seattle, Washington 98101
Main/Fax: 206-626-5444

exchange for allowing him to alter the common areas (the wall), and the limited common area (deck) in installing his heat pump.

5. At the June 2015 meeting Board Meeting, Mr. Hoy proposed that the Board come up with a "Memorandum of Understanding," but the actual title and content of the agreement was to be determined by the Board at a later date.

6. I voted in favor of allowing Mr. Hoy to install the unit in large part based on his repeated statement that he would sign any document we as a board agreed upon and would subsequently put in front of him.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 24 day of May, 2017 at Bremerton WA.

Roberta Cooper

Roberta Cooper

LEVY VON BECK COMSTOCK P.S.
1200 Fifth Ave., Suite 1850
Seattle, Washington 98101
Main/Fax: 206-626-5444

Appendix E

SUPERIOR COURT OF WASHINGTON FOR KITSAP COUNTY

TERRY HOY, an individual, Plaintiff, vs. THE 400 CONDOMINIUM ASSOCIATION, a Washington nonprofit corporation, Defendant.	NO. 17-2-00867-4 **DECLARATION OF JOHN D. BURLEIGH**

I, JOHN D. BURLEIGH, declare as follows:

1. I am an attorney of record for The 400 Condominium Association in the above-captioned matter and do hereby declare under the penalty of perjury of the laws of the State of Washington that the following information is based upon personal knowledge and belief and is true and correct:

2. Attached hereto and incorporated herein as **Exhibit 1** is a true and correct copy of the "Memorandum of Understanding By and Between The 400 Condominium Association and Terry Hoy, Owner of Unit 107" which I transmitted to Plaintiff's counsel, Michael D. Brandt, on behalf of The 400 Condominium Association via electronic mail on Monday, April 17, 2017.

BURLEIGH LAW, PLLC
3202 Harborview Drive, Ste. 201
Gig Harbor, WA 98335
Telephone and Fax (253) 203-3844

Through counsel Plaintiff rejected the proposed document the same day it was sent without identifying any specific provisions which were a concern to him.

Dated this 31st day of May, 2017.

John D. Burleigh

BURLEIGH LAW, PLLC
3202 Harborview Drive, Ste. 201
Gig Harbor, WA 98335
Telephone and Fax (253) 203-2844

EXHIBIT 1

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN

THE 400 CONDOMINIUM ASSOCIATION and TERRY HOY, OWNER OF UNIT 107

TERRY HOY, (hereinafter referred to as the "OWNER"), for and on his own behalf and that of his heirs, executors, personal representatives, successors, tenants, agents, employees, contractors, subcontractors, invitees, licensees, administrators and assigns, jointly and severally covenant with THE 400 CONDOMINIUM ASSOCIATION, (hereinafter referred to as the "ASSOCIATION"), a Washington non-profit corporation, and its members, successors and assigns, as follows:

This Covenant shall bind and burden the following real property, which is owned by OWNER, is commonly known as Unit 107 at The 400 Condominium, (hereinafter referred to as the "Unit"), and legally described as:

> UNIT 107, THE 400, A CONDOMINIUM, AS RECORDED IN VOLUME 8 OF CONDOMINIUMS, PAGES 43-55, INCLUSIVE, UNDER AUDITOR'S FILE NO. 200704090181, AND AS AMENDED IN VOLUME 8 OF CONDOMINUMS, PAGES 80 – 84, INCLUSIVE, UNDER AUDITOR'S FILE NO. 200706120452, ACCORDING TO THE DECLARATION THEREOF RECORDED UNDER AUDITOR'S FILE NO. 200704090180, AND AMENDED UNDER AUDITOR'S FILE NO. 200706120453, RECORDS OF KITSAP COUNTY, WASHINGTON.

This Covenant shall benefit the real property commonly described as The 400, A Condominium (hereinafter referred to as the "Condominium"), a condominium intended for residential and commercial use according to the Survey Map and Plans recorded in Volume 8 of Condominiums, pages 43 through 55, inclusive, records of Kitsap County, Washington, under Auditor's No. 200704090181, and according to the Condominium Declaration recorded on April 9, 2007, under Kitsap County Auditor's No. 200704090180, and amendments thereto recorded in the records of Kitsap County, State of Washington (hereinafter referred to as the "Declaration").

OWNER shall have the right to perform certain work and make certain modifications to the Condominium (hereinafter referred to as the "Work"), as described and limited on Exhibit A which is attached hereto and incorporated herein by reference.

OWNER, at his sole expense, shall maintain and keep in good repair and renew from time to time all components of the Work. OWNER shall also pay any increased maintenance and/or insurance costs chargeable to the ASSOCIATION attributed to the Work.

In performing the Work, OWNER shall employ contractors who, prior to commencing work, shall waive all lien rights they may otherwise have against the ASSOCIATION, and who shall provide to the ASSOCIATION satisfactory evidence that they are contractors licensed by the State of Washington, that they carry the necessary bond and insurance required by the State of Washington, and that their workers are covered by workers' compensation.

Notwithstanding the improvements by OWNER allowed under this Covenant, any Common Element affected by the Work shall not be considered to be a part of the Unit or of the Limited Common Element appurtenant thereto, but shall be used and occupied solely by virtue of a license granted by the

Board of Directors of the ASSOCIATION. OWNER shall be responsible for any and all damages which may be done to the Common Elements or any other part of the Condominium by OWNER or his agents and contractors in connection with, or which might otherwise result from, the Work.

If OWNER fails to perform promptly and fully any obligations imposed by this Covenant, including the requirements for noise and vibration levels, the ASSOCIATION may, after it obtains an acoustic engineer's investigation and written report documenting the noise and/or vibration levels emanating from the Work, either revoke this license, demand that OWNER immediately perform OWNER's obligations, or perform OWNER's obligations, at the ASSOCIATION's sole discretion. Any and all amounts expended by the ASSOCIATION to investigate and document noise and/or vibration levels, and/or perform any Covenant-imposed obligations, and/or revoke this Covenant, shall be the full cost responsibility of the OWNER, shall constitute a lien on the Unit payable by OWNER, and shall be collectible by the ASSOCIATION in the same manner as an assessment pursuant to Article 17 of the Declaration and any amendments thereto.

Nothing herein shall be construed as an alteration to or amendment of the Common Elements or Limited Common Elements described in the Declaration. Nor shall anything herein be construed to preclude the ASSOCIATION's right to demand that OWNER remove, at OWNER's sole cost and expense, the Work, if deemed necessary in the ASSOCIATION's sole discretion in order for the ASSOCIATION to carry out any of its covenanted Common Element maintenance, repair, or replacement duties including deck resurfacing. This Covenant is intended only to set forth the rights and responsibilities of the parties hereto in relation to this specific Work.

To the fullest extent permitted by law, OWNER shall indemnify and hold harmless the ASSOCIATION from and against all claims, damages, liability, losses and expenses (including but not limited to attorney's fees, expended by the ASSOCIATION to defend against any claim and/or to prove its right to indemnity under this Covenant), arising directly or indirectly out of or incident to the construction, existence, use, maintenance or condition of the Work. This indemnity obligation shall apply regardless of whether or not such liability is caused in part by the ASSOCIATION, its agents or employees or another ASSOCIATION member, but shall not apply in cases where the liability is caused by the sole negligence or willful misconduct of the ASSOCIATION.

The burden and benefit of this Covenant are intended to attach and become appurtenant to the real property described in this Covenant and to be binding upon each party to this Covenant and their respective successors, heirs and assigns. This Covenant shall run with the land and shall be enforceable by the ASSOCIATION on behalf of its members, or by any member particularly aggrieved.

If either of the parties to this Covenant infringe or omit to perform any of the covenants, conditions or restrictions contained in this Covenant, and legal action is necessary to enforce this Covenant or any of its terms, then the party or parties taking such action and prevailing therein, including their heirs, successors, administrators, executors or assigns, shall be entitled to their costs and actual and reasonable attorney's fees to enforce this Covenant or its terms, whether such fees and costs are incurred before litigation, during litigation and trial, or on appeal.

DATED this_____day of_____, 20____.

THE 400 CONDOMINIUM ASSOCIATION

_____[Signed]
_____[Print Name]
_____[Title]

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

I hereby certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, and on oath stated that he/she is authorized to execute the instrument and acknowledged it as the **President of The 400 Condominium Association** to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated this_____day of_____, 20___.

_____[Signed]
_____[Print Name]
Notary Public in and for the State of
Washington, residing at _____
My appointment expires _____

TERRY HOY, UNIT 107

_____[Signed]
_____[Print Name]
Owner of Unit 107

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

I hereby certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

Dated this_____day of_____, 20___.

_____[Signed]
_____[Print Name]
Notary Public in and for the State of
Washington, residing at _____
My appointment expires _____

EXHIBIT A
Description of Work

The "Work" is the installation of a heating, ventilating and air conditioning ("HVAC") unit, pursuant to the following requirements:

1. The Owner's installation proposal, attached to this covenant, which shall meet the guidelines set forth in SSA Acoustics' "Noise Measurements & Potential Requirements for Future Split System Installations" report dated March 11, 2015, attached herein as Exhibit B, and which shall include the following:

   a) HVAC unit's operating specifications, measurements, weight, make, model, dB(A) rating, and BTU;

   b) Written drawings indicating exactly how and where the Unit will be mounted, indicating the location and size of proposed exterior penetrations and explaining how the penetrations will be sealed, indicating that all condensation shall be directed to an existing plumbing drain; and indicating that the unit shall be placed on a sound absorbing pad that is not permanently affixed to the Limited Common Area.

   c) Confirmation that installation of the HVAC system, when operating at 100%, (i) shall not produce noise levels exceeding 45dB(A) at any adjacent Unit's deck, and (ii) shall not produce vibration levels in the structure that average greater than 72 VdB (re: 1 micro- in/s) in any adjacent Unit's floor or wall;

2. Installation of the HVAC unit shall comply with all applicable permits, code requirements, and laws;

3. The entire HVAC unit's installation shall be performed by licensed, bonded, insured contractor(s).

4. All components of the HVAC unit's installation shall be located in the most discrete (in the sole discretion and opinion of the Association) location possible.

EXHIBIT B

MEMO

SSA acoustics
Stewart • Ait Allaoua • Burt • Miller-Klein
222 Etruria St, Suite 100
Seattle, WA 98109
(206) 839-0819 – P

TO: Tim Sheppard, Bradley Scott Inc.

FROM: Josh Thede & Erik Miller-Klein, SSA Acoustics

DATE: March 11, 2015

SUBJECT: The 400 Condominiums Bremerton – Noise Measurements & Potential Requirements for Future Split System Installations

---

This memorandum is a summary of our noise measurements, site observations, and suggestions for language associated with the rules for the installation of future split system type Heating, Ventilation, and Air Conditioning (HVAC) units to ensure these installations maintain the quiet current enjoyed at The 400 Condominiums.

Based on our evaluation and experience with these types of systems we have outlined suggested language for the *Homeowner Association Rules & Installation Standards*, and best practices to achieve those standards.

Environmental Noise and Vibration Criteria

These systems should not be a noise or vibration impact to any adjacent unit or degrade the current acoustical character of the community. The City of Bremerton noise code and the Federal Transit Administration (FTA) handbook standards for vibration provide a good basis of design for the community standards. To ensure these standards would maintain the acoustic quality of the community, SSA Acoustics measured the background noise levels for 72 hours on the street side and water side of the building, these results were used to compare the City of Bremerton noise code standards to the existing ambient noise levels.

City of Bremerton Municipal Code

The City of Bremerton Municipal Code chapter 6.32.040, Environmental sound – maximum permissible level limits states that noise from one residential property to an adjacent residential property cannot exceed 45 dB(A) between 10 PM and 7 AM on weekdays and 10 PM and 9 AM on weekends.

Federal Transit Administration (FTA) Noise and Vibration Manual

Vibration perceived at residences cannot exceed an average of 72 VdB (Velocity decibels; re: 1 micro-in/sec) per the Vibration Impact Criteria for frequent events.

Evaluation & Observations

We measured the noise levels with environmental noise monitors on the outside decks of units 300 and 407. These measurements began on February 12 at 4:00 P.M. and were concluded on February 16 at 4:00 P.M. Unit 300 is on the street side where noise sources included car traffic, pedestrian traffic, and parking garage noises. Unit 407 is on the water side where noise sources included boat traffic, and people on adjacent decks.

Location	Sound Pressure Levels, dB(A) Nighttime	Sound Pressure Level, dB(A) Daytime
Unit 300: Outside Deck Street Side	51 to 60 dB(A)	63 to 68 dB(A)
Unit 407: Outside Deck Water Side	41 to 45 dB(A)	44 to 47 dB(A)

The noise goal for future installations is that the outdoor units of split systems mounted on decks are not a noise or vibration impact to any adjacent residences. The recessed deck design of the building provides a partial noise barrier between units; we predicted the noise reduction from this barrier for both vertical and horizontal adjacencies.

Suggested Language: Homeowner Association Rules & Installation Standards

1. **NOISE:** New and existing exterior heat pumps and/or condensing units cannot produce noise levels that exceed 45 dB(A) at any adjacent resident's deck.

2. **VIBRATION:** New and existing exterior heat pumps and/or condensing units cannot produce vibration levels in the structure that average greater than 72 VdB (re: 1 micro-in/s) at any adjacent residence floor or wall with the system operating at 100%.

In our experience, if the HOA defines installation methods they can be held partially responsible if the installation exceeds the performance requirements. We suggest having rules and standards that outline maximum noise and vibration levels, which ensure the new equipment is not an impact to any adjacent residence. We have provided some best practices that provide options for potential installations that should satisfy the performance requirement.

Best Practices for Installation:
These best practices are based on our on-site evaluation, noise and vibration calculations, and previous experience. They do not guarantee the proposed installation will satisfy the noise and vibration criteria.

1. Outdoor Heat Pumps/ Condensing Units – select a unit that has a quiet sound rating.
    a. Maximum Sound Level Rating:
        i. Sound Pressure Level (SPL) of **58 dB(A) at 1-meter** (3.3-feet)
            1. Most common rating for split system condensing units
        ii. Equivalent to Sound Power Level (Lw) of 66 LwA, and
        iii. Equivalent to Sound Pressure Level of 54 dB(A) at 5-feet

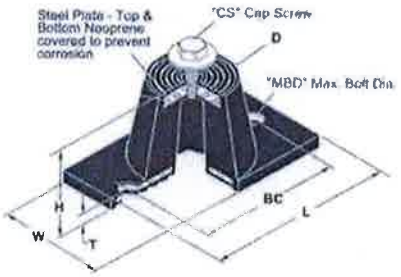
There are several different metrics that define sound levels. Sound pressure is the perceived sound level which can be measured with a microphone at a specific distance. Sound pressure is effected by distance and environment (e.g. sound reflecting or absorbing surfaces). Sound power is the total sound energy emitted by a sound producing device, it is the potential sound energy of a piece of equipment.

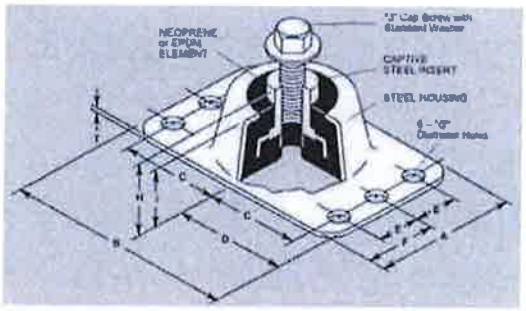
We did not designate between nighttime and daytime noise limits because equipment that meets the nighttime limits will satisfy the daytime limits. Multiple manufactures make units for your heating and cooling load requirements that can achieve the noted sound rating above with the unit operating in normal mode. Therefore, the best practices we set forth should allow these units to meet the HOA rules without the addition of a "night-time quiet mode" feature.

    b. Location:
        i. Install the unit no closer than 18" from the edge of the deck

    c. Vibration Isolation:
        i. Install the condensing unit on vibration isolation.
            1. Best: Mason Industries ND

            2. Better: Mason Industries RBA, or BR, or similar





            3. Acceptable: Neoprene waffle, or neoprene/cork pads mounted to deck with adhesive, but bolts cannot be

extended through the mounting bracket and the deck surface, available from Mason Industries as Super W or Super K pads.

ii. Use flexible braided metal condensing line from unit to wall penetration.
   1. Best: Use braided metal connection for refrigerant line into wall of unit, such as Mason Industries ULCPS-braided SS for refrigerant.

Based on our calculations a system that satisfies the sound rating and is installed as noted would produce a sound level of 42 dB(A) or less at the nearest adjacent windows or decks. This would be approximately equal to the lowest measured current background noise level on the water side of the building (41 dB(A)), and be 45% quieter than the quietest hour on the street side of the building (51 dB(A)). Note that 42 dB(A) cannot be measured at locations with ambient noise levels above 45 dB(A) (i.e. decks facing the road).

2. Indoor Units:
   a. Vibration Isolation: Wall mounted units need neoprene isolators between the unit and the wall, and neoprene tape around the perimeter to minimize vibration transfer into demising wall or structure.
      i. Neoprene isolators, such as Mason Industries HG or HMIB neoprene washer/bushings
      ii. Neoprene tape, such as Gaska V1500 medium density tape

Please review this document in detail. We are prepared to answer any questions the condominium board may have, and to review a second draft of your standards document when it is available.

Please contact us with any questions or concerns.

All the best,
SSA Acoustics, LLP

Josh Thede
Acoustical Consultant/Technician
josh@ssaacoustics.com

Erik Miller-Klein, P.E.
Associate Partner
Acoustical Consultant
erik@ssaacoustics.com

SSA Acoustics, LLP
222 Etruria St, Suite 100
Seattle, WA 98109
(206) 839-0819 – P

Appendix F

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP

TERRY HOY, an individual, Plaintiff, vs. THE 400 CONDOMINIUM ASSOCIATION, a Washington nonprofit corporation, Defendant.	NO. 17-2-00867-4 DECLARATION OF DALE LINDAMOOD

I, DALE LINDAMOOD, hereby declare:

1. I am over the age of eighteen and otherwise competent to make this Declaration. I have firsthand knowledge of the facts contained in this Declaration.

2. I am the current President of the The 400 Condominium Association (the "Association") Board of Directors.

3. I became a member of the Association when I purchased my unit at the end of July, 2014.

4. I attended my first Board of Directors meeting the following month, on August 20, 2014, during which Terry Hoy addressed the Board, attempting to persuade

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1200 Fifth Ave., Suite 185
Seattle, Washington 9810
Main/Fax: 206-626-544

them to approve his request for permission to install a post-construction air conditioning unit or heat pump in his condominium.

5. Mr. Hoy was standing just a couple of feet in front of me and a little to the side when he stated in closing, right before 'Thank you very much' and sitting down: 'And I am willing to sign a Memorandum of Understanding [mumble mumble mumble] or ANY OTHER DOCUMENT the Board puts before me to sign if I am granted permission.'

6. Mr. Hoy did not express any limitations on his willingness to sign "ANY OTHER DOCUMENT."

7. Six months later, at the annual owners meeting of February, 2015, I was nominated for Board membership. I indicated a willingness to serve, but since I traveled a great deal internationally, I opined I was hardly the best candidate. When it was pointed out that a board position might be split, Mr. Hoy agreed to share a co-directorship position with me, and to be the voting director, since I would be expected to be absent more than he, although I would be the voting member if he were unavailable or otherwise prevented from voting. We subsequently became full directors when another director resigned. I had nominated Mr. Hoy as Vice President, which he accepted, but he was unwilling to step up to the Presidency when then President Johnson declined to continue after expiration of his term. I became President at that time. Mr. Hoy continues as Vice President under my Presidency.

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8. At the time Mr. Hoy and I joined the Board in 2015, the Board had begun the arduous task of marshaling facts and figures relevant to making an informed decision, pursuant to Mr. Hoy's petition, whether to allow post-construction HVAC or air conditioning in the building and, if so, under what circumstances, and with what policies and protocols in place to fully protect the Association — the protection of the Association being the purpose of the Board, and of each Director.

9. The Board, including Mr. Hoy, debated the form and contents of necessary documents for any homeowner, including Mr. Hoy, who installed a separate HVAC unit. Mr. Hoy argued in favor of the document under consideration being in the form of a Memorandum of Understanding instead of a Covenant. Ultimately, a version of a Memorandum of Understanding AND a Covenant were simultaneously adopted by the Board to be reviewed by the Association's legal counsel (once hired) — who (when hired) informed the Board that a Covenant more fully protects the Association. This same question — Covenant versus a Memorandum of Understanding — was again put to the Association's subsequent (and current) legal counsel, who agreed with the attorney who had drafted it initially. This second attorney recommended no changes to the Covenant as written, persuasively explained the rationale in support of his conclusion, and why a Memorandum of Understanding was inadequate.

10. At different times during this process, Mr. Hoy argued that NO separate Agreement was needed, since there were existing Declaration provisions and Rules and

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Seattle, Washington 98101
Main/Fax: 206-626-5444

Regulations which addressed AC Units at The 400. However, it was the Board's conclusion these provisions only addressed those air conditioning units installed by the developer during original construction and did not address AC units which a unit owner would seek to install on a limited common element pursuant to the approval of the Board.

11. In 2016, The 400 Condominium Association HVAC Covenant and Hold Harmless document was brought to fruition. Mr. Hoy was still on the Board when it was presented to him for signature, which he declined and refused to provide, and also refused to remove the HVAC unit from his patio.

12. The Board was sympathetic to Mr. Hoy's arguments. It was summer, it was hot, Mr. Hoy seemed genuinely to suffer with the heat; he was accepted as and presumed to be a man of his word, and with an affirmative duty toward the Association; the interior work had already been done, and he was under pressure to allow the workers to complete the job.

13. Installation of the exterior HVAC was probably completed the day following that June, 2015 Board meeting, in an unfortunate location that cannot be aligned with units on higher elevations.

14. On March 30, 2017, the Board conducted a hearing on whether the Board would enter Mr. Hoy's unit to remove the HVAC unit. Mr. Hoy was provided notice, and opportunity to be heard prior to the Board's hearing. Ultimately, the Board decided to take steps to remove Mr. Hoy's unit. Attached as **Exhibit A** is a true and correct copy

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Seattle, Washington 98101
Main/Fax: 206-626-5444

of my e-mail dated April 19, 2017, to Mr. Hoy detailing the Board's findings at this hearing.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 30th day of May, 2017 at Bremerton, Washington

D Lindamood

Dale Lindamood

LEVY VON BECK COMSTOCK P
1200 Fifth Ave., Suite 18
Seattle, Washington 981
Main/Fax: 206-626-54

EXHIBIT A

Katie Comstock

From:	Dale Lindamood <dlindamood2002@yahoo.com>
Sent:	Wednesday, April 19, 2017 6:04 PM
To:	Terry Hoy
Cc:	John Burleigh; Tim Sheppard; Roberta Cooper; Leif Bentsen
Subject:	04-19-2017 The 400 HVAC / Post-Hearing BOARD DECISION

Mr. Hoy:

Article 12 of The 400 Association Condominium Declaration authorizes the Association and its agents or employees to enter any Unit and the Limited Common Elements allocated thereto to perform necessary work that an Owner has failed to perform, or to prevent damage to the Common elements or to another Unit, after giving Notice and an Opportunity to be Heard in advance of such entry as is reasonably practicable; to require such Owner to furnish duplicate keys to their Units to the Board or the Board's designated agent; to levy a special Assessment against the Owner of the Unit for all costs of work that Owner has failed to perform; and to collect and foreclose such Assessment by the Association in the same manner as Assessments are collected and foreclosed under Article 17.

Article 15.5 of the Declaration sets out the procedure to be observed on any occasion when the Declaration requires an action of the Board be taken after 'Notice and Opportunity to be Heard, including written notice of the proposed action to all persons whose interest would be significantly affected; a general statement of the proposed action; the date, time, and place of the hearing (not less than five days from the date notice is delivered by the Board) and affording the affected person the right, personally or by a representative, to give testimony orally, in writing, or both (as specified in the notice), subject to reasonable rules of procedure established by the Board to assure a prompt and orderly resolution of the issues; and to provide timely Notification of the Board's determination thereafter. All evidence presented at the hearing is to be considered by the Board in making its decision, but shall not bind the Board.

In the present matter, pursuant to the requisite Notice under Articles 12 and 15.5 of the Declaration, a closed Article 15.5 Opportunity to be Heard was held, convening at 6:00 PM on March 30, 2017, in the Lounge of The 400 Condominium. The subject of the hearing was the Board's intention to effect an Article 12 Entry to remove an HVAC exterior unit from the Limited Common Element allocated to Unit # 107, as had been previously ordered for refusal to sign the Association's now completed HVAC Covenant and Hold Harmless Agreement. At the Hearing, you were represented by your attorney, Michael Brandt, who spoke for you, and his legal assistant.

The time previously established by which the Board's Decision must be delivered to you is April 19, 2017.

Accordingly:

THE BOARD OF DIRECTORS OF THE 400 ASSOCIATION has determined, after due consideration of the presentation of your attorney at the March 30, 2017 Article 15.5 Hearing, that the prior decision of the Board finding you in violation of the Declaration of Condominium is justified based on your failure to

execute the Covenant and Hold Harmless Agreement or, alternatively, to remove the HVAC external unit from the Limited Common Element allocated to Unit 107-and, therefore, an Article 12 Entry Action is to ensue as soon as is practicable.

Article 12 further provides that such entry be made with as little inconvenience to Owners and occupants as practicable, except in cases of great emergency that preclude advance notice. Accordingly, please promptly provide duplicate keys to the Property Manager or Facilities Manager's office, as may be needed to effect the peaceable entry and removal of the HVAC external unit from your Limited Common Area, and a list of dates and times when it will be most convenient to you and any other occupants of Unit 107 for entry by the Association to perform this work.

Very truly yours,

BOARD OF DIRECTORS, THE 400 CONDOMINIUM ASSOCIATION

Appendix G

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP

TERRY HOY, an individual, Plaintiff, vs. THE 400 CONDOMINIUM ASSOCIATION, a Washington nonprofit corporation, Defendant.	NO. 17-2-00867-4 DECLARATION OF TIM SHEPPARD

I, TIM SHEPPARD, hereby declare:

1. I am over the age of eighteen and otherwise competent to make this Declaration. I have firsthand knowledge of the facts contained in this Declaration.

2. I am a property manager with Bradley Scott, Inc. At all relevant times to this dispute, Bradley Scott, Inc. has been the property manager for The 400 Condominium Association ("Association").

3. I am a duly authorized custodian of all records of the Association. The below referenced exhibits are true copies of records I maintain for the Association.

4. Attached as **Exhibit A** is a true and correct copy of the referenced pages of the Condominium Declaration for the Association.

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Seattle, Washington 98101
Main/Fax: 206-626-5444

5. The below referenced records were prepared by the Board of Directors for the Association in the ordinary course of business of the Association and at or near the time of the act, condition, or event recorded.

a. Attached as Exhibit B is a true and correct copy of the meeting minutes for the June 18, 2014 board meeting.

b. Attached as Exhibit C is a true and correct copy of the meeting minutes for the July 18, 2014 board meeting.

c. Attached as Exhibit D is a true and correct copy of the meeting minutes for the June 17, 2015 board meeting.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 30th day of May, 2017 at Bremerton, Washington

Tim Sheppard

LEVY VON BECK COMSTOCK P.S.
1200 Fifth Ave., Suite 1850
Seattle, Washington 98101
Main/Fax: 206-626-5444

EXHIBIT A

PACIFIC NW TITLE
Declaration Rec Fee: $ 91.00
04/09/2007 02:35 PM
Karen Flynn, Kitsap Co Auditor
200704090180
Page: 1 of 60

When Recorded, Return to:

HILLIS CLARK MARTIN & PETERSON, P.S.
Attention: Steven R. Rovig
500 Galland Building
1221 Second Avenue
Seattle, WA 98101-2925

Unofficial Copy

CONDOMINIUM DECLARATION
FOR
THE 400, A CONDOMINIUM

Grantor:	**BREMERTON PARTNERS, L.L.C.**
Grantee:	**THE 400, A CONDOMINIUM**
Legal Description (abbreviated):	PTNS LOTS 1 – 9, BLK 4, TOWN OF BREMERTON
☑ Additional on:	SCHEDULE A & PTN GOV LOT 3, S13, T24N, R1E
Assessor's Tax Parcel ID #:	3714-004-001-0008, 3718-004-005-0004 3718-004-007-0002, 3718-004-008-0001
Reference Nos. of Documents Released or Assigned:	N/A

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Karen Flynn, Kitsap Co Auditor
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CONDOMINIUM DECLARATION
FOR
THE 400, A CONDOMINIUM

THIS DECLARATION is made by **BREMERTON PARTNERS, L.L.C.**, a Washington limited liability company ("Declarant").

ARTICLE 1.

DEFINITIONS

1.1. WORDS DEFINED. For the purposes of this Declaration and any amendments hereto, the following definitions shall apply.

1.1.1. ***"Allocated Interests"*** means the allocation of Common Expense Liability, interest in Common Elements and voting for each of the Units in the Condominium determined in accordance with the formulas set forth in Section 6.4 and as listed in SCHEDULE B.

1.1.2. ***"Articles"*** means the articles of incorporation for the Association.

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

1.1.4. ***"Association"*** means the owners association identified in Article 13.

1.1.5. ***"Board"*** means the board of directors of the Association, as described in Article 15.

1.1.6. ***"Bylaws"*** means the bylaws of the Association as they may from time to time be amended.

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

1.1.8. ***"Common Expenses"*** means expenditures made by or financial liabilities of the Association including those expenses related to the maintenance, repair,

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Declaration Rec Fee: $ 91.00
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200704090180
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CP285
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1.1.22. ***"Identifying Number"*** means the number on the Survey Map and Plans and as listed in EXHIBIT C, which identifies each Unit in the Condominium.

1.1.23. ***"Limited Common Element"*** means a portion of the Common Elements allocated in Article 8 for the exclusive use of one or more but fewer than all of the Units.

1.1.24. ***"Managing Agent"*** means the person designated by the Board under Section 15.3.

1.1.25. ***"Mortgage"*** means a mortgage, deed of trust, or real estate contract.

1.1.26. ***"Mortgagee"*** means any holder, insurer, or guarantor of a Mortgage on a Unit.

1.1.27. ***"Notice and Opportunity to Be Heard"*** means the procedure described in Section 15.5.

1.1.28. ***"Owner"*** or ***"Unit Owner"*** means the Declarant or other person who owns a Unit, but does not include any person who has an interest in a Unit solely as security for an obligation.

1.1.29. ***"Person"*** means a natural person, corporation, partnership, limited partnership, limited liability company, trust, governmental subdivision or agency, or other legal entity.

1.1.30. ***"Project Mortgagee"*** means Declarant's lender for construction of the Condominium, and its successors and assigns, as long as it is the holder of a Mortgage secured by Declarant's interest in the Condominium, including any Units owned by the Declarant or any Special Declarant Rights held by the Declarant.

1.1.31. ***"Special Declarant Rights"*** means rights reserved for the benefit of the Declarant as specified in Section 11.2 below.

1.1.32. ***"Survey Map and Plans"*** means the survey map and plans filed simultaneously with the recording of this Declaration and any amendments, corrections, and addenda thereto subsequently filed.

1.1.33. ***"Transition Date"*** means the date upon which the period of Declarant Control terminates as determined in Article 14.

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1.1.34. ***"Unit"*** means a physical portion of the Condominium designated for separate ownership, the boundaries of which are described in Section 6.2 and shown on the Survey Map and Plans.

1.1.35. ***"VA"*** means the Veterans Administration.

1.2. FORM OF WORDS. The singular form of words shall include the plural and the plural shall include the singular. Masculine, feminine, and gender-neutral pronouns shall be used interchangeably.

1.3. STATUTORY DEFINITIONS. Some of the terms defined above are also defined in the Condominium Act. The definitions in the Declaration are not intended to limit or contradict the definitions in the Condominium Act. If there is any inconsistency or conflict, the definition in the Condominium Act will prevail.

ARTICLE 2.

CREATION OF CONDOMINIUM

The Declaration and the Condominium Act provide the framework by which the Condominium is created and operated. In the event of a conflict between the provisions of the Declaration and the Condominium Act, the Condominium Act shall prevail. In the event of a conflict between the provisions of this Declaration and the Bylaws, the Declaration shall prevail except to the extent the Declaration is inconsistent with the Condominium Act. The creation of the Condominium shall not be impaired, and title to a Unit and its interest in the Common Elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of this Declaration, the Survey Map and Plans, or any amendment thereto to comply with the Condominium Act.

ARTICLE 3.

NAME OF CONDOMINIUM

The name of the Condominium created by this Declaration and the Survey Map and Plans is The 400, A Condominium.

ARTICLE 4.

DESCRIPTION OF REAL PROPERTY

The real property initially included in the Condominium and submitted to the Condominium Act is described in SCHEDULE A.

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ARTICLE 5.

DESCRIPTION OF BUILDING

The Condominium is comprised of one four-story building of steel and concrete construction comprised of flats and two-story loft Units.

ARTICLE 6.

DESCRIPTION OF UNITS; ALLOCATED INTERESTS

6.1. NUMBER AND IDENTIFICATION OF UNITS. The Condominium has 70 Units. The Identifying Number of each Unit is set forth in SCHEDULE B. The locations of the Units are shown on the Survey Map and Plans.

6.2. UNIT BOUNDARIES. The boundaries of the Units are the perimeter walls, floors, and ceilings of the Units, and shall include within the Unit all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof, provided that the Unit boundaries shall not include those Common Elements specified in Article 7. All spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

6.3. UNIT DATA. SCHEDULE B sets forth the following data for each Unit.

6.3.1. The approximate square footage;

6.3.2. The number of bathrooms, whole or partial;

6.3.3. The number of rooms designated primarily as bedrooms;

6.3.4. The level or levels of the Unit;

6.3.5. Whether the Unit has a fireplace; and

6.3.6. The Allocated Interest.

The location and configuration of each Unit are shown in the Survey Map and Plans.

6.4. ALLOCATED INTEREST. As set forth in SCHEDULE B, the Allocated Interest of each Unit in the Condominium, for purposes of Common Expense Liability, interest in the Common Elements and voting, is determined by dividing the area for each Unit as shown on SCHEDULE B by the total of all such areas.

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ARTICLE 7.

COMMON ELEMENTS

7.1. DESCRIPTION. The Common Elements are all portions of the Condominium other than the Units, including all portions of the walls, floors or ceilings which are not a part of or within the Unit boundaries provided in Section 6.2. The Common Elements also include the entrance lobby, elevators, stairs, corridors, parking circulation areas, amenity spaces, plaza areas, walkways and similar facilities within the Condominium. The Common Elements also include any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture which lies partially within and partially outside the designated boundaries of a Unit which serves more than one Unit or any portion of a Common Element.

7.2. USE. Each Owner shall have the right to use the Common Elements in common with all other Owners and a right of access from the Owner's Unit across the Common Elements to the public streets. The right to use the Common Elements extends not only to each Owner, but also to his agents, servants, tenants, family members, invitees, and licensees. The right to use the Common Elements, including the Limited Common Elements, shall be governed by the provisions of the Condominium Act, this Declaration, the Bylaws, and the rules and regulations of the Association.

7.3. CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS. Portions of the Common Elements not necessary for the habitability of a Unit may be conveyed or subjected to a security interest by the Association if approved by the Owners having at least 80% of the votes in the Association, including 80% of the votes excluding votes held by the Declarant or an affiliate of Declarant (as defined in the Condominium Act) and the consent of Eligible Mortgagees of Units to which are allocated at least 51% of the votes of Units subject to Mortgages held by Eligible Mortgagees. All of the Owners of Units to which any Limited Common Element is allocated must agree in order to convey that Limited Common Element or subject it to a security interest. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.

ARTICLE 8.

LIMITED COMMON ELEMENTS

8.1. DESCRIPTION. The Limited Common Elements allocated to each Unit or to certain Units are described in SCHEDULE C and are shown on the Survey Map and Plans.

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8.2. USE. Each Owner shall have the exclusive right to use the Limited Common Elements allocated or assigned solely to the Owner's Unit. Notwithstanding the foregoing, however, the Owners of Units 113 and 114 may use the Unit 115 Deck LCE and adjacent exterior stairway, and the Owner of Unit 113 may use the Unit 114 Deck LCE, in each case for the purpose of accessing Units 113 and 114 via their exterior entryways. The right to use the Limited Common Elements extends not only to each Owner of a Unit, but also to the Owner's servants, tenants, family members and guests, and, in the case of Units 113 through 117, inclusive, their customers and/or clients. The Board may adopt rules and regulations governing the use of the Limited Common Elements.

8.3. REALLOCATION. A Limited Common Element may be reallocated between Units only with the approval of the Board and by an amendment to the Declaration executed by the Owners and Eligible Mortgagees of the Units to which the Limited Common Element was and will be allocated. The Board shall approve the request of the Owner or Owners under this Section within 30 days, or within such other period provided by this Declaration, unless the proposed reallocation does not comply with the Condominium Act or the Declaration. The failure of the Board to act upon a request within such period shall be deemed approval thereof. The amendment shall be recorded in the names of the parties and of the Condominium. A Common Element may be reallocated as a Limited Common Element, or a Limited Common Element may be incorporated into an existing Unit with the approval of 67% of the Owners, including the Owner of the Unit to which the Limited Common Element was allocated and the Owner of the Unit to which the Limited Common Element will be allocated or incorporated. Such reallocation or incorporation shall be reflected in an amendment to the Declaration and the Survey Map and Plans.

ARTICLE 9.

PARKING AND STORAGE

9.1. GARAGE AND STORAGE IN UNITS. Each Unit shall be allocated one or more Limited Common Element parking spaces and one storage unit as set forth on the attached SCHEDULE B.

9.2. USE OF PARKING SPACES. Parking spaces within the Condominium are to be used for the parking of operable passenger motor vehicles and may not be used for parking commercial vehicles, trailers, or recreational vehicles, or for other purposes except to the extent expressly allowed by rules and regulations adopted by the Board. The Board may direct that any vehicle or other thing improperly parked or kept in a parking space or any vehicle lacking or displaying a parking permit be removed, and if it is not removed the Board may cause it to be removed at the risk and cost of the owner thereof.

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installation shall not, without the consent of the Board, which it may withhold in its sole discretion, penetrate the exterior of the building. The Board may have the installation inspected by a member of the Board, the Managing Agent or its consulting engineer or architect at such stages as the Board deems prudent, provided such inspections do not materially delay the installation.

10.6.3. Owner of the Unit benefited by the Protected Antenna shall indemnify, defend, and hold the Association and each other Owner harmless from any liability, cost or expense arising out of or in connection with the Protected Antenna, including the cost of repairing any damage to the Building caused by the installation, presence, use, maintenance, repair or replacement of any Protected Antenna. The Protected Antenna shall be deemed to be a part of the Unit served by such Protected Antenna and shall not be deemed a Common Element.

10.6.4. Owner shall install the Protected Antenna entirely within its Unit or a Limited Common Element deck or terrace. The Protected Antenna may not extend into any Common Element or into any Unit owned by another Owner. The Protected Antenna shall not to interfere with any Protected Antenna or other telecommunications equipment previously installed by another Unit Owner or the Association.

10.6.5. The Board may require the Protected Antenna to be painted so it blends in with its surroundings or located in a particular place or screened to minimize adverse aesthetic effects, provided that the cost of painting or screen is not unreasonably expensive in relationship to the cost of the Protected Antenna and the painting, location or screening does not interfere with reception.

10.7. EFFECT ON INSURANCE. Nothing shall be done or kept in any Unit or in any Common Element or Limited Common Element that will increase the rate of insurance on the property without the prior written consent of the Board. Nothing shall be done or kept in any Unit or in any Common Element or Limited Common Element that will result in the cancellation of insurance on any part of the property, or that would be in violation of any laws.

10.8. USE OR ALTERATION OF COMMON AND LIMITED COMMON ELEMENTS. Use of the Common Elements and Limited Common Elements shall be subject to the provisions of this Declaration and the rules and regulations of the Board. Nothing shall be altered or constructed in or removed from any Common Element or Limited Common Element without the prior written consent of the Board.

10.9. SIGNS. Except as set forth in Section 10.2, no sign of any kind shall be displayed to the public view on or from any Unit, Limited Common Element or Common Element without the prior consent of the Board. The Board may erect, in the Common Elements, a master directory listing Units that are for sale or lease or may regulate the size and location of signs advertising Units for sale or lease. This Section shall not apply

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preclude advance notice, the Board shall cause the Unit occupant to be given Notice and an Opportunity to be Heard as far in advance of entry as is reasonably practicable. Such entry shall be made with as little inconvenience to Owners and occupants as practicable. The Board may levy a special Assessment against Owner of the Unit for all or part of the cost of work that Owner has failed to perform which may be collected and foreclosed by the Association in the same manner as Assessments are collected and foreclosed under Article 17. The Board may require Owners and tenants to furnish duplicate keys to their Units to the Board or the Board's designated agent.

ARTICLE 13.

OWNERS ASSOCIATION

13.1. FORM OF ASSOCIATION. The Owners of Units shall constitute an owners association to be known as The 400 Condominium Association. The Association shall be organized as a nonprofit corporation, no later than the date the first Unit in the Condominium is conveyed. The number of Board members and qualifications and procedures for election to the Board shall be provided in the Bylaws. The rights and duties of the Board and of the Association shall be governed by the provisions of the Condominium Act, the Declaration, and the Bylaws.

13.2. BYLAWS. The Board will adopt Bylaws to supplement the Declaration, provide for the administration of the Association and the property, and for other purposes not inconsistent with the Condominium Act or the Declaration.

13.3. QUALIFICATION AND TRANSFER. Each Owner of a Unit (including the Declarant) shall be a member of the Association and shall be entitled to one membership for each Unit owned, which membership shall be considered appurtenant to that member's Unit. Ownership of a Unit shall be the sole qualification for membership in the Association. A membership shall not be transferred in any way except upon the transfer of title to the Unit and then only to the transferee of title to the Unit, provided that if a Unit has been sold on contract, the contract purchaser shall exercise the rights of Owner for purposes of the Association, this Declaration, and the Bylaws, except as hereinafter limited, and shall be the voting representative unless otherwise specified. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Unit shall operate automatically to transfer the membership in the Association to the new Owner.

13.4. POWERS OF THE ASSOCIATION. In addition to those actions authorized elsewhere in the Declaration, the Association shall have the power to:

13.4.1. Adopt and amend the Bylaws and the rules and regulations for the Condominium;

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13.4.2. Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect Common Expenses and special Assessments from Owners;

13.4.3. Hire and discharge or contract with Managing Agents and other employees, agents, and independent contractors;

13.4.4. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Condominium, provided, however, that the approval of Owners holding at least 67% of the votes in the Association shall be required before the Association may institute, commence or intervene in any litigation or administrative proceeding, including arbitration, other than litigation or other proceedings against Owners for collection of delinquent Assessments or for enforcement of the Declaration or rules and regulations of the Association; but Owner approval shall not be required for settlement of such litigation or administrative proceedings;

13.4.5. Make contracts, borrow money and incur liabilities;

13.4.6. Regulate the use, maintenance, repair, replacement, and modification of Common Elements and Limited Common Elements;

13.4.7. Cause additional improvements to be made as a part of the Common Elements;

13.4.8. Acquire, hold, encumber, convey, and dispose of, in the Association's name, right, title, or interest to real or tangible and intangible personal property, and arrange for and supervise any addition or improvement to the Condominium, provided that:

13.4.8.1. If the estimated cost of any separate property acquisition, addition, or improvement to the Condominium exceeds $5,000, the approval of the Owners holding a majority of the votes in the Association shall be required;

13.4.8.2. No structural change shall be made to a Unit without the approval of the Owner of that Unit; and

13.4.8.3. The beneficial interest in any property acquired by the Association pursuant to this Section shall be owned by the Owners in the same proportion as their respective interests in the Common Elements and shall thereafter be held, sold, leased, mortgaged, or otherwise dealt with as the Board shall determine.

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act with full knowledge of Owner. The encroachments described in this Section shall not be construed to be encumbrances affecting the marketability of title to any Unit.

24.3. EASEMENTS RESERVED BY DECLARANT. Declarant reserves an easement over, across, and through the Common Elements and Limited Common Elements of the Condominium for the purposes of completing any unfinished Units or other improvements, exhibiting and preparing Units for sale, making repairs required pursuant to any contract of sale, and discharging Declarant's obligations or exercising Development Rights or Special Declarant Rights. This Section 24.3 may not be altered or amended without the written consent of the Declarant.

24.4. UTILITY EASEMENTS GRANTED BY DECLARANT. Declarant grants to each company or municipality providing utility services to the Condominium or to Owners of Units in the Condominium an easement for the installation, construction, maintenance, repair, and reconstruction of all utilities serving the Condominium or Owners, including, without limitation, such utility services as gas, water, sanitary sewer, storm sewer, electricity, cable television, and telephone, and an easement for access over and under the Common Elements of the Condominium to the utility service facilities.

ARTICLE 25.

PROCEDURES FOR SUBDIVIDING OR ALTERING UNITS

25.1. SUBDIVISION OF UNITS. No Unit shall be subdivided either by agreement or legal proceedings, except as provided in this Article.

25.1.1. An Owner may propose subdividing a Unit by submitting the proposal in writing to the Board and to all other Owners and Mortgagees of Units to be subdivided or combined. Such proposal to subdivide must also be given to every first Mortgagee of any Unit in the Condominium. The proposal must include complete plans and specifications for accomplishing the subdivision and proposed amendments of this Declaration and the Survey Map and Plans which amendments shall be executed by Owner of the Unit to be subdivided upon approval pursuant to Subsection 25.1.2, and which amendments assign an identifying number to each Unit created, and reallocate the Allocated Interests and liabilities formerly allocated to the subdivided Unit to the new Units in any reasonable manner prescribed by Owner of the subdivided Unit. Owner of the Unit to be subdivided shall bear all costs of the subdivision.

25.1.2. A proposal that contemplates subdivision of a Unit will be accepted only if approved in writing by all Owners and Mortgagees of the Unit to be subdivided, the Board and 51% of Eligible Mortgagees

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25.2. MINOR ALTERATIONS; HARD SURFACE FLOORING. No Unit may be altered in any way except in accordance with this Article. An Owner may make any improvements or alterations to the Owner's Unit that do not affect the structural integrity or acoustical properties of the building or the plumbing, mechanical or electrical systems serving another Unit or the Common Elements, or lessen the support of any portion of the Condominium, but an Owner may not change the flooring in any portion of the Unit that is directly above another Unit from carpeting to hard surface flooring without the prior written approval of the Board. In connection with change from carpet to hard surface flooring, the Board may condition its approval upon the installation of an acoustical subflooring material and/or coverage of certain floor areas with carpet. An Owner may not change the appearance of the Common Elements or the exterior appearance of a Unit without permission of the Association pursuant to the procedures of Section 25.4.

25.3. ADJOINING UNITS. After acquiring an adjoining Unit or an adjoining part of any adjoining Unit, an Owner may, with approval of the Board pursuant to Section 25.4, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not adversely affect the structural integrity or acoustical properties of the building or the plumbing, mechanical or electrical systems serving another Unit or the Common Elements or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this subsection is not a relocation of boundaries. Owner's proposal to act under this Section shall be submitted to the Board and shall include the plans and specifications for the proposed removal or alteration.

25.4. SUBSTANTIAL ALTERATION. A proposal that contemplates substantial alteration of one or more Units is subject to approval by the Board. The Board shall approve an Owner's request under this Section within 30 days of receipt of plans and specifications, unless the proposed alteration does not comply with Section 25.3 or impairs the structural integrity or acoustical properties of the building or the plumbing, mechanical or electrical systems serving another Unit or the Common Elements or lessens the support of any portion of the Condominium. The Board may require, at Owner's expense, a certification by an architect or engineer prior to giving its approval. The failure of the Board to act upon a request within such period shall be deemed approval thereof. The Board may establish reasonable hours and conditions for performance of work within Units.

25.5. PROCEDURE AFTER APPROVAL. Upon approval of a proposal under this Article, the Owner making it may proceed according to the proposed plans and specifications, provided that the Board may in its discretion require that the Board administer the work or that provisions for the protection of other Units or Common Elements or that reasonable deadlines for completion of the work be inserted in the contracts for the work. The changes in the Survey Map Plans and Declaration shall be placed of record as amendments thereto.

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IN WITNESS WHEREOF, Declarant herein, hereby executes this instrument under its seal by and through its duly authorized officers, this 9th day of April, 2007.

DECLARANT:

BREMERTON PARTNERS, L.L.C.,
a Washington limited liability company

By Chris Raftery
Name: Chris Raftery
Its: Representative

STATE OF WASHINGTON }
COUNTY OF KITSAP } ss.

On this day personally appeared before me CHRIS RAFTERY, to me known to be the REPRESENTATIVE of **BREMERTON PARTNERS, L.L.C.**, the Washington limited liability company that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 9th day of APRIL, 2007.

KIMBERLY K. AXTMAN
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
DECEMBER 19, 2008

Kimberly K. Axtman
Printed Name KIMBERLY K. AXTMAN
NOTARY PUBLIC in and for the State of WASHINGTON,
residing at SILVERDALE, WA.
My Commission Expires 12-19-2008

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SCHEDULE C

LIMITED COMMON ELEMENTS

1. Patio or deck adjacent to the Unit as shown on the Survey Map and Plans.
2. Parking space(s) allocated on SCHEDULE B and shown on the Survey Map and Plans
3. Storage unit allocated on SCHEDULE B and shown on the Survey Map and Plans.
4. Any fixtures or equipment serving only one Unit.
5. East plaza at R1 level for the benefit of Units 104-108 only.

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EXHIBIT B

The 400 Board of Directors Meeting
MINUTES
Wednesday, June 15, 2016, 6:00 PM |The 400 Lounge

Directors: Dale Lindamood, President; Terry Hoy, Vice-President; Roberta Cooper, Treasurer; Leif Bentsen, Secretary; Rob Woutat

Property Manager: Tim Sheppard **Facilities Manager(s):** Gary Yoder, Karen Yoder

1) **CALL TO ORDER** – Dale Lindamood called the meeting to order at 6:00 pm

2) **REPORT OF THE SECRETARY** Leif Bentsen
   Corrected minutes from April meeting have been posted to the web site
   Hard copy correspondence with legal counsel has been printed
   Minutes from previous meeting were approved online and posted to web site

3) **REPORT OF THE TREASURER** Roberta Cooper
   Reviewed financial report
   Annual expenses: Tim will arrange to show expenses to date compared to total expenses budgeted for year.

4) **REPORT OF THE PROPERTY MANAGER** Tim Sheppard
   Missing Leif's signature page form for bank accounts. Leif will complete form and return it to Tim as quickly as possible. Once that's done, Dale, Roberta, Leif and Tim will meet at banks to sign documents.
   Reviewed TJ Designs proposal for refurbishing common areas. Tim will follow-up with suggested changes.
   Insurance – Leif moved to renew insurance as presented by Tim. Tim will follow-up with earthquake option for presentation at the HOA special meeting.

5) **REPORT OF THE FACILITIES MANAGER(S)** Gary & Karen Yoder
   Spray system for cleaning garbage chute works well
   Fire department did an unannounced inspection and found some problems, which are being corrected
   Sunrise Pest Services is going to survey building and come up with some options to corral pesky critters
   Permission given to get rid of large model of The 400 building to free up storage space

6) **OLD BUSINESS**
   Banking Forms - see property manager report
   Scratched Exterior Windows
      Window washing company met with homeowner and will buff-out scratches. If that doesn't work, will replace window if necessary
   Paint/Carpet Replacement / Designer Assistance - see property manager report
   Water Heater Replacement Project
      Discussion about installation and reinforced hoses for washing machine. Leif moved that HOA purchase hoses as needed. Motion passed
      Cole Plumbing will be contacted to set up installation schedule. Letter will be included with July billing statement forewarning homeowners on how process will work.
   Landscape Service
      Board dissatisfied with current landscaper. Roberta moved that current landscaper be given 30-day notice as stated in contract, cease operations immediately and be paid off. Motion passed.
      Board approved 2nd bidder, Black Lotus, be hired immediately. Tim will contact.
      Leif moved that Roberta be the chair of a landscaping committee and have full authority to recruit committee members, work with facility managers and new landscaper to develop 'flower' program. Motion passed. Flower budget had been approved at previous meeting.
   Pressure Washing
      Start next week

Exterior Security Cameras

To be installed by end of the month

Theater Screen Replacement

Gary Yoder has found a television with heightened gizmo capabilities and more knock-your-socks-off theater potential than the previous approved TV purchase. He will bring specifications and price to July meeting.

Rodent Control - see facilities managers report

Other Trespass Issues

Homeless folks have been sleeping in alcove directly under 400 Lounge. Tim will inquire about getting a merchant security service to drop by two or three times late at night and early morning. Leif will inquire with the city about posting no loitering, camping, trespassing, or sleeping, signs.

Hoarder / Holes in Ceiling / Assessment (?)

Discussion about gas canisters observed in unit during survey of water heaters. Roberta moved to send notice to owner to have them removed. Motion passed.

Tim will send a kind and gentle notice to homeowner in re declaration prohibiting the storage of hazardous materials inside unit and please remove gas containers.

In-Unit Smoke Detector

Yoders found detector with 10-year battery. Will distribute information to owners on why and where to purchase.

Missing Registration Forms / Fee Assessment?

Still missing 11 registration forms from owners. One homeowner is still behind 60-days, but has made effort to catch-up

Lawsuit re: Motorcycle Parking

Dale recapped board's decision to withdraw from settlement negotiation.

7) NEW BUSINESS

Collection Policy Language

Tabled until new counsel selected

Ad Hoc Legal Committee

Leif moved to confirm Rob Woutat's appointment to committee. Motion passed.

Loose Board on Steps

Discussed issue. Apparently board [wooden, not HOA] shrinks during dry weather. Will call in a contractor, Matthew Hamilton Construction, to address the stair repair.

Fire Safety & Keys / Fee Assessment for Violation?

One homeowner reluctant to provide spare key to facilities. Has been advised that should an emergency incident happen within unit while owners are gone, fire dept. will break down the door.

P2 Storage Violation Space #206

Violation notice has been sent. Situation took care of itself.

Special Meeting Owners Association: Schedule Date (within 10 - 60 Days of Sending Notice),

Tim and Leif will put together a package with the following agenda items to be discussed a special HOA meeting. Date to be announced after the package is assembled.

Agenda Items:

- Gas/Water Issue: To Sub-Meter or Not
- HVAC Covenant Approval
- New Motorcycle Parking Rule
- Earthquake Insurance (Individual & Building)
- Water Heater Replacement Advisory
- Postponement of Deck Re-Surfacing Advisory

Keyless Door Lock

Leif moved to approve keyless door lock for Unit 303 and for Roberta's unit 300, should she want to install one, providing the finish on keyless boxes matches others in residential areas. Motion passed.

MEETING ADJOURNED AT: 9:31 PM

EXHIBIT C

The 400
A Great Place to Live in Bremerton, WA

The 400 Board of Directors Meeting Minutes July 18, 2014

Board Members Attending: Richard Symms, Bob Johnson, and Rob Woutat
Also Attending: Tim Shepard, Gary Yoder, Karen Yoder, Lucas Yoder, and owner Roberta Cooper

The minutes of the June 18 meeting were approved.

Treasury Report As of June 30,

- We have an Operating Account Sub-total of $51,293.
- The Maintenance Reserve Account Sub-total is $200,419 for a total of $251,703
- Expenses: For the month, the Association has a positive variance of $7,627
- For the year to date, the association shows a positive variance of $25,796.
- Maintenance Reserve Account for the month shows a positive variance of $177.87.
- Total Maintenance Reserve Account Expense for the year: Transferred $25,887.67 on a budget of $24, 850.02 for a positive variance of $ 1,037.24.
- Total Maintenance Reserve Expense for the year is $499.50. (To City of Bremerton: permit for roof top anchors.)
- June 30, 2014 Delinquencies: No current owners are seriously delinquent.
- Owner/Tenant Ratio as of July 23, 2014: Owners 47.14%, tenants 52.86%

Facilities Manager Report

- Carpet in P1 lobby will be re-cleaned, as will the 4th floor carpet when the installation of roof anchors is completed.
- Some of the cost for the P1 lobby and damage to the elevator will be charged to the move-out of unit 304.
- Owner Roberta Cooper commented on the noise caused during the move-out of 304 until 11:30 PM despite the rule about quiet after 8:00 PM. In the future, such problems should be reported to 911.

Old Business

- The new garage door on P1 will be installed on August 7 between 8:00 AM and 5:00 PM. Residents who use P1 will be given instructions for the day.
- Yellow brass: We have enough units to take samples, but before proceeding, the board requested a legal opinion on the question of opting out of the settlement.
- The question of a fence sealing off the overhang on the east side of the building was tabled.
- The installation of 16 roof anchors has begun and should be concluded by August 1, after which the windows will be cleaned.
- Insurance: The board examined competing proposals from our current carrier Philadelphia and another from The Partners Group and voted to accept the one from The Partners Group, which offered comparable coverage for approximately $12,000 less. The Property Manager will inquire about the cost of increasing coverage on the sewer and drain backup.
- Motor Cycle Parking: Bob Johnson will draft of rule clarifying that a resident's motorcycle parking space can be cancelled on the Board's discretion after a 30-day notice.
- Displaying the Flag: Property Manager Tim Shepard will draft a rule for the Board's approval.

New Business

- The Property Manager will seek a legal opinion on the question of whether the Board can act on its own in responding to the settlement of the Viega yellow brass lawsuit or whether the members of the HOA must be included.
- The dumpster problem: The Property Manager will check with the City to see about anchoring the dumpster so it can't be released down the hill.
- Fires on balconies: The Board saw no need to change the rule about acceptable activities on balconies, a rule that by implicating disallows open fires, both wood and gas, and meat smokers.
- Request for modifications to unit 107: The Board delayed a response to the prospective owner's request to install air conditioning until Donna Park reports on her research. Regarding the questions about interior modifications, the Property Manager will clarify for the prospective owner what is permissible and what isn't.

The Board tabled discussion on a proposal for reviewing grievances by owners and another about notices to owners about rule changes.

The meeting adjourned at 8:15 PM.

The next meeting will be 6:00 PM, August 20, 2014.

Rob Woutat, Secretary
The 400 Board of Directors

EXHIBIT D

The 400
A Great Place to Live in Bremerton, WA

The 400 Board of Directors
Meeting Minutes June 17, 2015

Board Members in Attendance: Bob Johnson, President, Terry Hoy, Co-Director Robert Rabe, Secretary, Roberta Cooper, Treasurer, Karen Osborn, Vice-President,
Also Attending: Karen Yoder, Gary Yoder, Lucas Yoder, Facilities Managers; Tim Sheppard, Property Manager, Tenants: Tim McCarthy, Sue Gordon. Not in attendance: Dale Lindamood, Co-Director

The meeting was called to order at 6:04 p.m.

Treasurers Report

- (Attached); read and approved.

Property Manager's Report

- Workman's pass key has been made, allowing access to common area for contractors.

Facilities Manager's Report

- Flyers posted asking residents to refrain from slamming doors.
- Construction work on Washington Ave has affected the building. We have a liaison between the construction company and the city to assist with any problems arising as a result of the construction.
- Welcome packets. 15 owners, one renter and one management company have not turned in packets. Tim Sheppard will send letters and fines to these individuals.
- The security camera computer has been purchased and is running. Facilities Managers are working with the security company to get the security updates into the computer.
- The installation of the lighting on the north end stairs is complete.
- The gym treadmill rollers replacement has been completed and the treadmill no longer squeaks.
- External doors will be professionally adjusted since some are not closing correctly.
- The HOA needs a policy in place for the Facilities Managers for call-outs by tenants and owners when it's not HOA business. The board decided that unless it's a life or safety issue, the tenant/owner must deal with the issue. A fee will be assessed for other calls in the amount of $50 per call. For example, an owner/tenant not having their key. Fee will be paid to the Facilities Managers.
- Facilities Managers submitted recycling guidelines to be posted at the recycle bins. Approved.
- Carpeting in P1 and P2 lobbies has been scheduled for July, 2015. Bob Johnson asked that the replacement of the carpets for the entire first floor be completed, as well as the painting of the base boards, and refurbishing of the doors. Tim Sheppard will contact the vendors who have previously given us bids so that this can be completed.

Old Business

- Tim Sheppard reported that, based on the recent testing, (see attached report) the yellow brass fixtures in The 400 have high zinc content. The higher the zinc content, the faster the potential exists that the brass fitting will degrade. In a separate test of the fixtures last year, the fittings showed some signs of physical degradation, but no indication of failure or potential failure. Tim will pursue having our water tested for hardness.
- Head Pump/AC Installation Owner Feedback/Final Vote
    - Bob Johnson summarized the history of the issue. (See previous months' HOA meeting minutes.) Tim will draft a Memo of Understanding (MOU) for any tenant who wishes to install a unit. A motion was made to have Terry Hoy sign the MOU before his scheduled installation on June 26, if available was approved. If not yet available, Terry has agreed to sign the MOU when available. A Motion was made to approve Mr. Hoy's request for installation of the HVAC system

even if the MOU has not been completed. Bob Johnson offered an amendment to the Motion, authorizing approval of the request contingent upon the completion of the MOU. The amendment failed for lack of a second. The vote to approve the installation was 3 for and 1 against.

- Extension of security fence on south end of building to be installed in mid-July.
- Installation of charging stations in garage tabled.
- Water heater replacement.
    - Heaters are at the end of their warranty. Per Facilities Managers a free audit can be conducted of the water heaters by Ecova, contracted by PSE. A rebate can be had if we do the audit. 50% of the owners have to agree to the replacement in order to get the rebate. Motion to proceed with the audit passed.
- **Motorcycle Parking**
    - Tim Sheppard was asked to consult an attorney regarding this issue. Report is attached. Tim McCarthy's attorney disagrees with the attached report. A motorcycle parking area can't reasonably interfere with a tenant's ability to egress to his parking space(s). The matter is not closed in his mind. Can a common element area be used day after day as long as the owner of the vehicle resides here?
    - Bob Johnson asked whether we should restripe the angle of the motorcycle area stripes on P1 since it is a common element area.
    - Motion to have Tim Sheppard check with some striping contractors for options for three spaces that don't impede the circulation of traffic on P1.

- **New Business.**
    - Motion to retain Law Firm for Condo Business passed. Tim Sheppard will pursue this.
    - Smoking Violation Letter. A draft of the letter was submitted by Tim Sheppard. (attached) Motion to send letter passed.
    - Facebook Page for the 400. Karen Osborn will maintain the page. Posts to the page will be locked out. Motion to start the page passed.
    - Dryer Vent Billing Issue - Venting system is working well. The contractor suggested we check the system again next year to assess annual dust/lint build-up. At that point, we can determine the future frequency of cleaning. There are 70 individual ducts (One for each unit) that must be cleaned and as previously motioned and passed, each owner will pay for the cleaning.
    - Landscaping Contractor Issues. The planting of begonias in the heat in the sun on Washington Ave. by the landscaper was a bad idea. They are dying and require shade and cool. The plants in the Narrows Lounge are also not being water regularly and are looking droopy. Tim will talk to the landscaper. Tim will send the landscaper's contract to the board members for review for possible change of landscaper. Lucas Yoder feels that the current landscaper is not doing a good job.

Next meeting, July 15, at 6 p.m.
Meeting adjourned at 8:55 p.m.

Robert Rabe, Secretary

Appendix H

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP

TERRY HOY, an individual, Plaintiff, vs. THE 400 CONDOMINIUM ASSOCIATION, a Washington nonprofit corporation, Defendant.	NO. 17-2-00867-4 DECLARATION OF RICHARD SYMMS

I, RICHARD SYMMS, hereby declare:

1. I am over the age of eighteen and otherwise competent to make this Declaration. I have firsthand knowledge of the facts contained in this Declaration.

2. I was the President of The 400 Condominium Association (the "Association") Board of Directors from February 2014 to February, 2015.

3. On June 18th 2014, Mr. Hoy attended a board meeting to request that we allow him to install an HVAC system in and outside of his condo unit #107. After some discussion, the board told him we would not allow him to install an HVAC system.

4. Mr. Hoy persisted by attending later meetings with assurances the system he planned would meet our concerns regarding noise, aesthetics, and water condensation. The board members decided that if we could come up with protections for the owners, we would allow the HVAC installation that met our criteria.

LEVY VON BECK COMSTOCK P.S.
1200 Fifth Ave., Suite 1850
Seattle, Washington 98101
Main/Fax: 206-626-5444

RR 5-26-17

5. We then began to learn there was a lot of information we needed in order to proceed. As an example, I visited the vendor Mr. Hoy had chosen to see for myself what the equipment looked and sounded like.

6. As a board we contacted an acoustics consultant to make an on-site study, and we began formulating rules and regulations to assure other owners would not be negatively impacted by such installations. Mr. Hoy was present at many meetings where we discussed the foregoing and he suggested some ideas of his own. He said he would agree to the regulations but we should allow him to proceed. He expressed his frustration that we were taking so long. The board members had found the task of writing rules and regulations for HVAC installations at the Association a bit daunting as every time we thought we were finished another concern would be raised and so completion of the work was slow.

7. In addition, we wrote a letter to all owners including Mr. Hoy explaining the board's study and asked for their input or concerns. There seemed to be little opposition to the HVAC installations if we had ways to assure there was not going to be too much noise etc.

8. One day I was in the condominium lobby and saw a man hauling an HVAC unit to Mr. Hoy's unit. I immediately confronted him and he invited me in to see what was going on. He had opened walls to accommodate the system and penetrated the exterior wall and installed an electrical panel for the system on his outside wall. I was upset and he assured me that if he did not get permission for the system, he would remove it all. He said he agreed with the rules and regulations we had come up with so far. I believed him and told the board I thought Mr. Hoy was sincere.

9. Mr. Hoy further stated that in the event we received any complaints he would attempt to mitigate the situation and if he could not, he would remove the AC unit. I told him I

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5-26-17

was totally amazed that he would install this system and then would simply remove it if we had a problem with the noise or the look of the unit.

10. If I had thought Mr. Hoy would not sign the agreement after he had his equipment installed, we would have taken quick and effective action to have his HVAC removed and the premises restored. We let him proceed based on his statements and the fact it was taking so long to complete our agreement for HVAC installation the 400 Condominiums.

11. Throughout the entire process, Mr. Hoy expressed his agreement to conform to our future rules and regulations regarding HVAC installations and the fact he fully understood our need to "do it right."

12. It seems to me Mr. Hoy had many opportunities to object to the written agreement for owners to sign when they want to install an HVAC system and he never indicated otherwise. In fact, quite the contrary. And further, he took blatant action to install the system without any notice to anyone.

13. I heard Mr. Hoy say on several occasions that he would agree to sign any document the Board required if he was given approval to install his heat pump. Unfortunately, I was off the board before all the documents were finished and presented to Mr. Hoy.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 26th day of May, 2017 at Bremerton, Washington.

Richard Symms

LEVY VON BECK COMSTOCK P.S.
1200 Fifth Ave., Suite 1850
Seattle, Washington 98101
Main/Fax: 206-626-5444

Appendix I

Hearing Date/Time: May 26, 2017/9:00 a.m.
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

TERRY HOY, an individual, **Plaintiff,** **vs.** **THE 400 CONDOMINIUM ASSOCIATION, a Washington nonprofit corporation,** **Defendant.**	**NO:** **DECLARATION OF TERRY HOY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

I, Terry Hoy, declare as follows:

1. I am the Plaintiff in this action, know the contents of this Declaration to be true based on my personal knowledge, and make this Declaration for the purpose of obtaining a Preliminary Injunction against defendant The 400 Condominium Association (the "Association").

2. I am the owner of the property commonly known as 400 Washington Ave., Unit 107, Bremerton, WA 98337 (the "Hoy Unit") located within The 400 condominium complex.

3. On or around July 20, 2014, in accordance with the Condominium Declaration for The 400, A Condominium ("Declaration"), I submitted a request to the

BRANDT LAW GROUP
1200 FIFTH AVE. SUITE 1950
SEATTLE, WASHINGTON 98101
Tel: (206) 441-5739 Fax: (206) 299-9115

Association's Board of Directors seeking approval for the installation of a heat pump ("HVAC Unit") in the Hoy Unit that would require access and alteration to the Common Element wall adjacent to the Hoy Unit, with an outside HVAC unit installed on the Limited Common Element patio designated for the exclusive use of the Hoy Unit. A true and correct copy of the July 14, 2014 HVAC installation request (without the noted enclosures) is attached to this declaration as *Exhibit 1.*

4. On June 17, 2015, at an Association Board of Directors Meeting, I was provided with authorization by the Association's Board of Directors to install the HVAC Unit, with the understanding that the Board would draft a Memorandum of Understanding ("MOU") that would be signed at a later date. A true and correct copy of the June 17, 2015 Board meeting minutes is attached to this declaration as *Exhibit 2.*

5. The HVAC Unit was installed by my contractors shortly thereafter.

6. Over many months, the MOU was revised and discussed with me. Contrary to the agreement that I had made with the Association's Board of Directors, the Association presented me with a covenant to execute. No reasonable explanation was provided to me for the Association's decision to change the form of the agreement from a MOU to a covenant. True and correct copies of board meeting minutes dated July 15, 2015, September 16, 2015, September 21, 2016, and October 19, 2016 that detail the discussions related to the MOU and covenant are attached to this declaration as *Exhibits 3, 4, 5, and 6,* respectively. In addition, three (3) draft versions of the MOU and a letter from the Association to me, dated December 14, 2016, with the attached covenant, are attached to this declaration as *Exhibits 7 and 8,* respectively.

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SEATTLE, WASHINGTON 98101
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7. The Association's Board of Directors is now threatening the immediate removal of my approved HVAC Unit unless I sign the covenant to be recorded against the Hoy Unit regarding the installation of the HVAC Unit.

8. There is no writing that required me to sign a covenant in order to install my HVAC Unit, and no discussion regarding the execution of a covenant was ever had prior to the Association's approval of my HVAC Unit installation request.

9. If the Association is allowed to remove the HVAC Unit, I will be without the heat pump/air conditioner that I paid for and without the comfort that it provides me in my condominium unit.

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

Dated: May 15, 2017 in Bremerton, Washington.

Terry Hoy

Terry Hoy

BRANDT LAW GROUP
1200 FIFTH AVE. SUITE 1950
SEATTLE, WASHINGTON 98101
Tel: (206) 441-5739 Fax: (206) 299-9115

145 Bloomington Ave, Apt 212
Bremerton, WA 98312-4004
July 14, 2014

HOA Board/Property Manager
400 Washington Ave, Unit 100
Bremerton, WA 98337

Dear HOA Board//Property Manager,

I will be the new owner of Condominium 107. I would like to make a few modifications to Condominium 107.

It has no Air Conditioning. With temperatures in the high 80's and 90's, I request the HOA permission and authorization for me to install a Daikin Ductless Heat Pump (or equivalent) in Condominium 107. Most of the work will be inside the Condominium. The scope of the project is:

1. It will use the 240 volt living room heater power (heater will be removed). The wire will run in a conduit along the Ceiling molding of the interior wall.

2. The exterior heat pump unit (Daikin 3MXS24) will be mounted on the outside Patio next to the living room window that opens. This is farthest from any bedroom of my neighbors. Maximum decibel is 52 which is the noise level of an average home (see attachment Daikin Quiet Rating). In quiet mode it is about 49 decibel (normal library noise level). Neighboring Condominiums should not be able to hear its operation with their windows closed (normal on hot days for units with air conditioning). With their windows open, the sound they will hear (right next to the open window) is that of a quite fan (maybe 40 decibels). HVAC technology has gone a long ways in super quiet operation. A larger unit was installed on the floor at my place of work. With the windows open I had to listen right next to the window nearest the outdoor unit before I could hear it working.

3. Tubs from the heat pump will run along the bottom of the patio and a hole will be cut to allow it to enter the interior of the Condominium (see diagram and installation attachments).

4. Interior units (Daikin FTXS9LVJ) will be installed in the bedrooms and living room along the exterior facing wall. The maximum decibel is 35 which is considered very quiet (whisper level talking).

EXHIBIT 1

5. All modifications should not adversely affect the noise deadening properties of exterior walls, interior walls, or ceilings. The improvement should enhance the value of the condominium which in turns enhance the value of the surrounding condominiums and enhance the value of the 400 Condominiums as a whole.

6. As I understand it this will be the first add-on HAVAC for the 400 Condominiums. This will be this would be a great pilot to show case how to do this kind of project for other Condominiums in the 400 Condominiums. The installation is expected to take one day.

I would also like to remove some of the handicap alterations made by Mr. Anderson. All modifications should not adversely affect the noise deadening properties of exterior walls, interior walls, or ceilings. This will involve:

1. Moving electric switches higher to standard level of reach.

2. Install interior doors.

3. Remove handicap hand hold in bath rooms.
   a. Guest Bathroom – Replace tub surround
   b. Master Bathroom:
      1) Replace Shower Basin
      2) Replace Shower surround
      3) Install Sliding Shower Doors

4. Restore 2nd Bedroom Closet

5. Remove ceiling chair track. Repair ceiling.

6. Repaint the condominium.

Sincerely,

Terry Hoy

Terry Hoy

6 Enclosures
1 – Quiet Rating
2 – Unit 107 HVAC Placement Diagram
3 – 3MXS24JVJU Installation Manual
4 – 3MXS24JVJU - NON-DUCTED – SDS
5 – Proposal
6 – Dankin Submital

The 400

A Great Place to Live in Bremerton, WA

The 400 Board of Directors
Meeting Minutes June 17, 2015

Board Members in Attendance: Bob Johnson, President, Terry Hoy, Co-Director Robert Rabe, Secretary, Roberta Cooper, Treasurer, Karen Osborn, Vice-President,
Also Attending: Karen Yoder, Gary Yoder, Lucas Yoder, Facilities Managers; Tim Sheppard, Property Manager, Tenants: Tim McCarthy, Sue Gordon. Not in attendance: Dale Lindamood, Co-Director

The meeting was called to order at 6:04 p.m.

Treasurers Report

- (Attached); read and approved.

Property Manager's Report

- Workman's pass key has been made, allowing access to common area for contractors.

Facilities Manager's Report

- Flyers posted asking residents to refrain from slamming doors.
- Construction work on Washington Ave has affected the building. We have a liaison between the construction company and the city to assist with any problems arising as a result of the construction.
- Welcome packets. 15 owners, one renter and one management company have not turned in packets. Tim Sheppard will send letters and fines to these individuals.
- The security camera computer has been purchased and is running. Facilities Managers are working with the security company to get the security updates into the computer.
- The installation of the lighting on the north end stairs is complete.
- The gym treadmill rollers replacement has been completed and the treadmill no longer squeaks.
- External doors will be professionally adjusted since some are not closing correctly.
- The HOA needs a policy in place for the Facilities Managers for call-outs by tenants and owners when it's not HOA business. The board decided that unless it's a life or safety issue, the tenant/owner must deal with the issue. A fee will be assessed for other calls in the amount of $50 per call. For example, an owner/tenant not having their key. Fee will be paid to the Facilities Managers.
- Facilities Managers submitted recycling guidelines to be posted at the recycle bins. Approved.
- Carpeting in P1 and P2 lobbies has been scheduled for July, 2015. Bob Johnson asked that the replacement of the carpets for the entire first floor be completed, as well as the painting of the base boards, and refurbishing of the doors. Tim Sheppard will contact the vendors who have previously given us bids so that this can be completed.

Old Business

- Tim Sheppard reported that, based on the recent testing, (see attached report) the yellow brass fixtures in The 400 have high zinc content. The higher the zinc content, the faster the potential exists that the brass fitting will degrade. In a separate test of the fixtures last year, the fittings showed some signs of physical degradation, but no indication of failure or potential failure. Tim will pursue having our water tested for hardness.
- Head Pump/AC Installation Owner Feedback/Final Vote
    - Bob Johnson summarized the history of the issue. (See previous months' HOA meeting minutes.) Tim will draft a Memo of Understanding (MOU) for any tenant who wishes to install a unit. A motion was made to have Terry Hoy sign the MOU before his scheduled installation on June 26, if available was approved. If not yet available, Terry has agreed to sign the MOU when available. A Motion was made to approve Mr. Hoy's request for installation of the HVAC system

EXHIBIT 2

even if the MOU has not been completed. Bob Johnson offered an amendment to the Motion, authorizing approval of the request contingent upon the completion of the MOU. The amendment failed for lack of a second. The vote to approve the installation was 3 for and 1 against.

- Extension of security fence on south end of building to be installed in mid-July.
- Installation of charging stations in garage tabled.
- Water heater replacement.
    - Heaters are at the end of their warranty. Per Facilities Managers a free audit can be conducted of the water heaters by Ecova, contracted by PSE. A rebate can be had if we do the audit. 50% of the owners have to agree to the replacement in order to get the rebate. Motion to proceed with the audit passed.
- **Motorcycle Parking**
    - Tim Sheppard was asked to consult an attorney regarding this issue. Report is attached. Tim McCarthy's attorney disagrees with the attached report. A motorcycle parking area can't reasonably interfere with a tenant's ability to egress to his parking space(s). The matter is not closed in his mind. Can a common element area be used day after day as long as the owner of the vehicle resides here?
    - Bob Johnson asked whether we should restripe the angle of the motorcycle area stripes on P1 since it is a common element area.
    - Motion to have Tim Sheppard check with some striping contractors for options for three spaces that don't impede the circulation of traffic on P1.

- **New Business.**
    - Motion to retain Law Firm for Condo Business passed. Tim Sheppard will pursue this.
    - Smoking Violation Letter. A draft of the letter was submitted by Tim Sheppard. (attached) Motion to send letter passed.
    - Facebook Page for the 400. Karen Osborn will maintain the page. Posts to the page will be locked out. Motion to start the page passed.
    - Dryer Vent Billing Issue - Venting system is working well. The contractor suggested we check the system again next year to assess annual dust/lint build-up. At that point, we can determine the future frequency of cleaning. There are 70 individual ducts (One for each unit) that must be cleaned and as previously motioned and passed, each owner will pay for the cleaning.
    - Landscaping Contractor Issues. The planting of begonias in the heat in the sun on Washington Ave. by the landscaper was a bad idea. They are dying and require shade and cool. The plants in the Narrows Lounge are also not being water regularly and are looking droopy. Tim will talk to the landscaper. Tim will send the landscaper's contract to the board members for review for possible change of landscaper. Lucas Yoder feels that the current landscaper is not doing a good job.

Next meeting, July 15, at 6 p.m.
Meeting adjourned at 8:55 p.m.

Robert Rabe, Secretary

The 400
A Great Place to Live in Bremerton, WA

The 400 Board of Directors Meeting Minutes July 15, 2015

Board Members in Attendance: Bob Johnson - President, Terry Hoy - Co-Director, Roberta Cooper - Treasurer, Karen Osborn - Vice-President, Dale Lindamood – Co-Director.
Also Attending: Karen Yoder, Gary Yoder, Lucas Yoder, Facilities Managers; Tim Sheppard, Property Manager, Resident – Tom Golinski

The meeting was called to order at 6:00 p.m.

BOARD MEMBER REPLACEMENT

- Robert Rabe resigned. Karen Osborn agreed to finish out his term as Secretary for the year. She will not run for a Board position again at the end of this term.
- Dale Lindamood nominated Terry Hoy to take over as Vice-Pres. Motion made, unanimously carried.
- Tom Golinski was nominated to be Co-Director for the rest of the year. Motion made, unanimously carried.
- Results of all: Terry Hoy, Vice-Pres., Karen Osborn, Secretary and Tom Golinski, Co-Director with Dale Lindamood.

JUNE MINUTES

- June 17 minutes were approved. The minutes were posted to the website on 7/22/15 by Karen Osborn.

TREASURER'S REPORT

- The report was read and approved. (Attached)

PROPERTY MANAGER'S REPORT

- Tim Sheppard had nothing to report.

FACILITIES MANAGER'S REPORT

- There will be new recycle containers in the P1 Garage. They will include one each for: Batteries, Printer Ink Cartridges, light bulbs, and plastic bags. An informational notice will be mailed to all residents.
- Another extension for the chain link fence on the South end of the building was installed on 7/15/15.
- A resident (owner) called Chico Towing to have a car towed that was in their spot. They could not come out to tow as there was a new law passed in 2013. The HOA must fill out a form giving authorization for owners or renters to have someone towed. When the tow driver comes to pick up the car, there is a form that the tow driver will provide, to be signed by the owner at the time of towing. If a car is towed in error, the resident is responsible for the fee. A motion was made to forward the form to Chico Towing by Tim Sheppard. Seconded and passed.

OLD BUSINESS

- ***HVAC Rule Adoption/MOU*** – Tim - We need to finalize the MOU as it was not done at the last board meeting. Each item was discussed and Tim Sheppard will make the changes and send it out. Karen made a motion to accept the changes, Robert seconded, unanimously carried. The HVAC Rule was adopted and the MOU requires finalization.
- ***Carpet and Paint*** - The elevators and their lobbies were installed with carpet squares. There was some mismatching thereby making large stripes noticeable. Karen will contact Floor Decorators to see what can be done to change to a more acceptable look.
    - The first floor carpet replacement bids were in. American Floors had the lowest bid. Floor Decorators did not include the removal of the baseboards. These bids were for tiles and not

EXHIBIT 3

broadloom carpet. We will go to Floor Decorators to get more samples for a broadloom carpet to use. Who would like to go to the store and pick out some samples to bring to the next board meeting? Karen Osborn and Dale Lindamood volunteered to meet Karen Yoder there. Date and time to be determined.

- ***Amendment to two-week minimum rule*** - It would require a 90% approval by all owners for a change. We can't tell people how to use their units. We need to change the declaration. Tom Golinski said we need to set rules recommending that owners not rent their units for less than two weeks. It would require a survey of the membership. Terry and Tim will create a short survey.
- ***Water Heater Audit*** – Puget Sound Energy has a company that provides an audit. We need more people to volunteer for an audit. Karen Osborn offered her two units, 311 and 413 to be audited. Tim Sheppard chose Silverdale Plumbing to do the audit and give us bids and make recommendations on options that might be available.
- ***Motorcycle Parking Options – Tim McCarthy Attorney's Letter*** -We have decided to get rid of the motorcycle parking by Mr. McCarthy's parking spot on P1, however **it will take some time.** We will try to make room on P2 for them. Maybe get a hanging bicycle rack and turn it the other way so the rack is against the West wall and not the North wall. We have a sign up list for all, but owners will win over renters. Tim Sheppard is checking on a company also to restripe the garage parking spots. We will not allow any additional motorcycles to park until we get this ironed out. We did discuss moving some of the bicycles to underneath the stairwells, however we know from past year's boards, we cannot put bikes underneath the stairwells due to Fire Department Stairwell Codes.
- **NEW BUSINESS –**
  - ***Building Insurance*** – We have a insurance rating company coming to the building to audit our building so the insurance company that we use will sufficiently cover anything listed in the policy. Tim will send us a copy of that report. The auditor will be coming on 7/27/15.
  - ***There was a courtyard fire.*** Lucas reported it. It was not on our property but did burn up a sprinkler head. There was an issue with calling the fire department but the city workers did not want that to happen as "it would cause a mess on the street out front and block traffic."
  - ***Landscaping*** – We pay $800 a month for services and they do not seem to be doing the job properly or in a timely manner. We will explore options for a replacement company. Tim Sheppard will send a new contract to the current company with including a new scope of work outlining what we expect.
  - ***Rule 12.5 and Declaration 7.2*** – It seems that these two items contradict each other. Tim Sheppard will run it by our attorney.
  - ***Multiple move ins.*** – Lucas brought up that some of the property managers want four hours to have their tenants move in so that two could move in on the same day. The end result of the discussion is that the procedure will stay as is with one move per day.
  - ***Budget*** – We are in the black.
- **ROUNDTABLE**
  - Roberta asked if we had Earthquake Insurance. She said when she bought her condo, she was told there was this type of insurance included on the building. Clarification, no, we don't have any, and never have had earthquake insurance. Should we bring it up at the annual meeting? Yes.
  - Karen Osborn reported that the floor in front of the stove in 413 is hot. Yes, the weather has been hot but there is no sun hitting that spot as she blocked the windows.
  - Clarification of Bob, Tom and Roberta's telephone numbers were given.

Next meeting, September 16, at 6 p.m.
Meeting adjourned at **9:45 p.m.**
Respectfully submitted by Karen Osborn, Secretary
Rev.: 9/17/15 ko

The 400

A Great Place to Live in Bremerton, WA

The 400 Board of Directors
Meeting Minutes September 16, 2015

Board Members in Attendance: Bob Johnson - President, Terry Hoy, Vice Pres., Roberta Cooper - Treasurer, Karen Osborn - Secretary, Dale Lindamood – Co-Director.
Also Attending: Facilities Managers - Karen Yoder, Gary Yoder, Lucas Yoder, Facilities Managers; Property Manager, Tim Sheppard **Guest:** Owner #103 Leif Bentson, Owner #408 Tim McCarthy

The meeting was called to order at 6:00 p.m.

REPORTS

- **SECRETARY:** Requested approval of July 15 Meeting Minutes and August 5, 2015 Special Meeting Minutes, approved as amended.
- **TREASURER:** Summary of the Treasurer's Report was read by Roberta Cooper. The bottom line is $263,756. We were over monthly budget $19,000 due to paying our annual insurance premium. Tim Sheppard also reported that we will be changing all accounts over to Chase Bank due to less fees charged. All accounts except the CD's will be transferred to Chase Bank. Owner/Tenant Ratio is Owner occupied 45.71% and Tenant occupancy is 54.29%
- **FACILITIES:** We have saved on average $160 a month in lighting savings for the last three years. That will finish the upgrade savings. We saved approx. $160 a month for three years. Great job all who were instrumental in this change for the better.
    - We had four instances of people just parking in any parking spot in the garage. We do have a new tow company on contract, Leo's 24-hour Service. They were picked as they have a low clearance truck that can get into our garage. Also, there is no form required to be presented by the owner, and the towing company will bill the owner of the unit that the parking spot is assigned to.
    - There are 18 welcome packets forms have not been returned as of this meeting. Tim Sheppard will send a reminder letter.
    - Tim Sheppard modified Rule 12.3 clarifying the requirement of updating leases. It was moved and seconded to approve. See Memorandum attached.
    - The security cameras software was installed to coordinate with the new computer. All running and all done. The total cost was $1470.00 to update the card reader software and to buy 100 new cards. The TV that was transferred from the Lounge is working just fine for our wonderful Facilities Managers in their office.
    - Lucas brought up that one owner would like to trade motorcycle parking with Mr. McCarthy and Mr. Hoy and then the owner would use the motorcycle on P-1. Neither party was interested in switching.
    - Robert Rabe still wants to buy the Projection TV in the theater, but we haven't replaced it yet.
    - There was an anonymous letter submitted about the state of the clean affairs.
- **OLD BUSINESS:**
    - **HVAC MOU APPROVAL -**
        - We vote to approve with two changes: add hold harmless and some verbiage about the deck. We will have an attorney fine tune it. Motion made to have an attorney look it over and that motion was approved.
    - **PAINT/CARPET REPLACEMENT –**
        - Karen Yoder, Dale Lindamood and Karen Osborn went to Floor Decorators to look at samples to replace the carpet in the whole building. They were supposed to mail us four different samples but only one came in the mail. So we have delayed the choice of the carpet.

EXHIBIT 4

        - Nail Painting has painted in several condos in the area. They recommend painting all areas. That would include 100 doors painted in place or they might need to be open. Their bid is $50,000 and we are waiting on bid from Sound Painting. Also the 400 Board requested a decorator for color choice.
        - The time set for repainting the insides by the Bach Report was set for 2017. There was another painting company that we have used before but it was recommended that we do not use them.
        - It was moved that this item be tabled until next meeting.
    - **AMENDMENTOF RULE 12.4** Owners/Tenants may not lease, rent, or sublet units for less than a two week period and as otherwise provided by law.
        - It was suggested that this be advised on by an attorney. Terry Hoy recommended that we put it all together and hammer it out at the next meeting. Review, absorb at next meeting.
    - **WATER HEATER REPLACEMENT AUDIT** – PSE came to do an energy audit of sample units. There was a possible rebate of $50 on water heaters. We will have the results at the next Board meeting.
    - **INSURANCE PREMIUM INCREASE**
        - We have a high fire insurance rating but we are getting an $11,000 cheaper rate. We are getting a $4701 insurance refund because of structure of the building and the sprinkler system. The cost is for 150,000 square feet.
        - No, we don't have earthquake insurance.
    - **LANDSCAPING CONTRACT SCOPE OF WORK**
        - This was tabled until next meeting. We need a new contract possibly going with a new company. There was a complaint about how loud the blowers are. The Harborside is using a new company.
    - **RULE 12.5/7.2 LEGAL REVIEW**
        - Discussion was had regarding a number of things.
            - Dale Lindamood's opinion is that she thinks that per RCW 64.34.20.3 our Rule 12.5 is not reasonable, permissible, or effective because it is in direct conflict with Declaration 7.2 and therefore it needs to be rescinded.
            - Prior board: Owners used amenities after renting their unit. Our current Declaration says "no they cannot."
            - Bob Johnson says his two cents worth is that all were trying to save wear and tear on building and its amenities. If you figure 70 units times two (Owner/Tenant) that is double the use. It was determined that it should be evaluated by our attorney.
    - **MOTORCYCLE UPDATE**
        - The hanging bicycle racks are up in P2. They are ready to move the motorcycle to P2 also. Lucas stated that he added the size of the motorcycles to the form to register it, and also added a line for an emergency contact.
        - Tim stated that there is a request for a new owner to trade with another owner regarding a tricycle motorcycle. This was table until next meeting.
- **NEW BUSINESS**
    - **LEGAL ADVICE**
        - It was suggested to go through the Property Manager and not The 400 Board to go to an attorney.
        - We voted on a trial period to put out vermin control due to damage to one of our owners wiring in their car. We will secure a quote from Sunrise Pest Control and try it on for size for a trial period. It was moved and seconded to approve, and passed.

- **BLACK GRIT**
  - There was a black dust/grit complaint and it has been inspected. Tim Sheppard reported that there is ghosting on the walls from an unknown source. The company Matthew Hamilton has been consulted.
- **PREVIOUS WATER DAMAGE**
  - Dale Lindamood asked for the association to repair for a previous water repair. It was voted that the association will pay for it.

Meeting adjourned at 8:25 p.m.
Next meeting, October 21, at 6 p.m.
Respectfully submitted by Karen Osborn, Secretary
Rev.: 11/17/15 ko

The 400 Board of Directors Meeting
The 400 Lounge
Wednesday, September 21, 2016 ~ 6:00 PM
Minutes

Present: Dale Lindamood, Terry Hoy, Leif Bentsen, Rob Woutat, Roberta Cooper
Property Manager: Tim Sheppard; **Facilities Manager:** Gary & Karen Yoder

1) Meeting Called to Order - Dale Lindamood called the meeting to order at 6:00 pm

2) Report of the Secretary – Leif Bentsen moved to approve the minutes of the monthly July 20th meeting and the August 19, 2016 Special Meeting. Motion passed

3) Report of the Treasurer – Roberta Cooper presented the monthly financial report

4) Property Manager Report – Tim Sheppard reported that the sink in unit 208 had backed up due to the activities in another unit. A plumber was called in who cleaned out the pipes. It was noted that sink lines should be cleaned out every couple of years.

5) Facilities Manager Report – Karen and Gary Yoder
Garage Cleaning: Yoders said the annual garage cleaning is in progress. P1 was finished. One person complained about short notice. Board felt there was plenty of advanced notice, but also discussed using different forms of media for tasks impacting building wide: Email notice 20 days out, post a 'dated' flyer on doors leading into P1, P2 and near mailboxes. Five to 10 days out, written notice is distributed to all units in building.

Window Scratched – Window scratched during previous cleaning has been taken care of by window cleaning company to the satisfaction of the unit owner.

Security Cameras – All cameras are now in place and working.

Outdoor Benches – All have received their annual teak oil application.

New Television – The new TV has been installed in the theater room. Old projector has been sold. Still have projection screen. Yoders will look into donating it to a school.

Homeless – "No Camping" signs provided by the city have been posted in the North Plaza. One remaining sign will be placed under the "overhang" where the North Plaza connects to the walkway on the east side of the building.

Fans – Additional fans have been purchased and placed in the library, lounge, and training room.

EXHIBIT 5

Fire Extinguishers – It has been recommended that fire extinguishers be replaced. Currently waiting on bids.

6) Old Business

Account signatures – Dale, Roberta, and Leif will meet Tim at 10:00, September 30th at the Chase Bank to sign signature cards at Chase and Kitsap Bank.

Landscape - Time for Fall planting. Roberta will consult with her committee in re possible plants for fall colors. Brief discussion over irrigation system. Tim will get bid from Danson Landscaping. Tim Shepard said the front hose bib was not of the type that prevents backflow.

Paint/Carpets – Tim will contact Merit Construction in re possible interior designer to help with color and carpet selection. Robert Woutat, Roberta, and Dale will serve as the selection committee.

Rodent Control – A sixth mouse was martyred last week in unit 311. Since then, there has been no activity on the four residential floors. Bait boxes will be placed at possible entry points within P1 and P2 parking areas.

Motorcycle Parking – A letter approved on Monday, September 19, 2017 was mailed to the McCarthy's attorney, formally withdrawing the board from settlement negotiations. President Dale Lindamood indicated that the letter sent to Todd Blodgett, opposing counsel on a potential motorcycle-parking lawsuit. The letter reiterated the status of the matter as closed — the Board's last best offer had been withdrawn after being rejected in its entirety — of which Mr. Blodgett was already aware, having been so notified in timely manner by former Association attorney Michelle Ein. Accordingly, he must either drop the matter or file the complaint. Leif will create a schematic showing possible parking locations for motorcycles on P2.

Water Heater Replacement – Leif moved that we proceed with tentative timeline that was shared between board members three weeks ago. Motion passed. During discussion, board agreed that a two option approach was best: Option 1, provide opportunity for owners to make a group purchase; option 2, owner can purchase and install individually, providing owner met certain criteria. Tim will seek out plumber to provide estimated costs based on purchase size. Leif and Tim will work together to get appropriate information to all owners according to timeline.

7) New Business

Declaration Review – Board discussed attorney's review and recommendations to update The 400 Declaration. Based on those recommendations, Dale moved to have attorney prepare amendments to the Declaration. Motion passed. Updating Declaration will require a vote by the Association.

Special Meeting of Owners – November 16, 2016 is the tentative date for the 400 Condo Owners Association (COA) meeting. The agenda may include the following: 2017 Budget; Gas/Water Metering; HVAC for Individual Units; Earthquake Insurance; Relocation of Motorcycle Parking; Deck Resurfacing; and Water Heater & Washing Machine Hose Replacement.

Budget – Tim presented draft budget for 2017. There are some nuances the board must consider between now and the next meeting; the possibility of a $15k carry over and the impact of the Minol contract being dropped.

Minol Sub-metering for Gas, Water & Sewage – Legal counsel has advised that the current sub-metering used to monitor gas, water and sewage is in conflict with the Declaration and needs to be dropped. Tim will contact legal counsel for recommendations in re the gap in payment that will occur when Minol is dropped and the COA bills individual owners based on the percentage of their ownership. Once the board has clarity, owners will be sent information directly about the change. It was motioned and passed that Tim Shepard will check to ensure if any legal notices are required for change of utility billing calculation

HVAC – Board discussed the merits (or lack of) covenant, declaration, or MOU protecting the association from liability; and ensuring any associated costs, including maintenance, of an HVAC system installed in a Limited Common Element are entirely the 'owners' and all future 'owners.' Dale moved to have Tim contact John Burleigh for a more detailed explanation of what a covenant can provide that a declaration provision would be deficient in. And can those items be addressed by a MOU. Terry abstained. Motion passed.

Leif moved the meeting be adjourned. Motion passed. Meeting adjourned at 8:55 pm.

The 400 Board of Directors Meeting
The 400 Lounge
Wednesday, October 19, 2016 ~ 6:00 PM

Minutes

Present: Dale Lindamood, Leif Bentsen, Rob Woutat, Roberta Cooper. **Excused:** Terry Hoy
Guest Owner: Tim McCarthy **Property Manager:** Tim Sheppard; **Facilities Manager:** Gary & Karen Yoder

1) Call to Order – Dale Lindamood called the meeting to order at 6:01 pm

2) Report of the Secretary – Leif Bentsen

Dale moved to accept the September 19, 2016 monthly board minutes. Motion passed.

Roberta Cooper moved to accept the October 4, 2016 special board meeting minutes. Motion passed.

3) Report of the Treasurer – Roberta Cooper

Reviewed and discussed some of the nuances of the monthly summary. Leif moved to accept the report. Motion passed.

As a bookkeeping matter, Dale moved to remove the expense of the new TV system in the theatre room from maintenance reserves account and place it the checking account. Motion passed.

4) Property Manager Report – Tim Sheppard

Nothing new to report

5) **Facilities Report** – Karen and Gary Yoder

a. Graffiti painted on the north wall near the emergency generator has been removed and painted over. A police report was also filed.

b. Installation of door sweeps has been completed in an effort to keep out pests.

c. Yoders now have a new smart phone capable of receiving texts.

d. Non-smoking reminders were distributed to all units. One owner didn't realize smoking on balconies was prohibited.

e. A storm warning report was issued prior to last week's potential typhoon.

f. New generic maintenance tips brochure for owners was reviewed.

g. S&W Concrete will check exterior for problems with walls and submit bid for repair.

h. Fire Solutions NW has recommended replacing and upgrading all fire extinguishers. The replacement is tentatively scheduled for July 2017.

i. Hallway lights. Board received word about the darkness of hallways. Upgraded bulbs have replaced as original bulbs burned out. To improve lighting in hallways, Dale moved to replace all bulbs in the hallways with higher wattage. Motion passed.

EXHIBIT 6

6) Old Business

Water Intrusion – Due to the heavy weather last week, Unit 305 suffered more water intrusion on its balcony from the unit above. A contractor did a site visit, but could not determine where the water was coming from. Tim will ask Pelle Door Company to do a site visit to see if the balcony doors have been properly installed.

Parking Garage Sealant – Facilities management has received two estimates, $2,200 and $600, to remove the sealant applied to parking spaces 119 and 237. The $600 estimate includes removing the handicap parking logo in three other spaces if the unit owners are willing. Dale moved to have the company with the lower bid do the job. Motion passed. The owner of the parking spaces will be billed.

Landscaping Services – Roberta reported that the landscaping service was not watering the large plant containers adjacent to the front door. She also noted that the winter pansy planting was looking pretty skimpy. Kale had been requested. Tim noted that the contract with the landscaping service required a 60-day notice for requesting new plants so the company can take advantage of a bulk purchase for other clients as well as us. Tim will follow-up with Black Lotus to see if the sparsity of winter pansies was an effort to make room for Kale. Board also discussed when to plan for the spring planting.

Carpet – Tim spoke to the Merit Company. They can provide helps with some simple designs. An interior designer, Janet Weber, www.janetweberid.com, is scheduled for a site visit at 2:00 pm, October 24, 2016. Dale and Roberta will accompany her as she does a walk-through.

Rodent Control – All quiet on the southern front. The pesky critter assault on Unit #311 appears to have ended with a full retreat. No skirmishes have been reported since the last meeting. The outdoor bait traps are also showing a decline in activity.

2017 Budget Review – Tim presented two options for 2017 budget. One would have a carry-over which could be used to lower the annual assessment. The second option would be not to use the carry-over. During the discussion of all the nuances, it was pointed out that using the carry-over would be a one-time event and not be available in following years. Dale moved to accept the budget without the carry-over. Motion passed.

7) New Business

Noise Complaint – On October 16, 2016, the board received a noise complaint from Unit #404 in re load noises from a neighbor unit occurring at all hours of the night. As per protocol, a letter was sent to the owner and tenant of the unit in question. According to the complainant there has not been any disturbing sounds since. However, it has not been determined if the noise was coming from that unit.

Attorney Document Review – Discussion about having legal counsel draft new amendments to update the declaration as outlined by counsel. Tim will contact legal counsel to follow-up as approved during September meeting.

HVAC – Legal counsel has responded to question in regard to what is the best way to protect the condo association on this issue: Memo of Understanding? Covenant? Or is it already covered by the declaration? Counsel opined that covenant would be the best protection for the association for new

HVAC. However, the covenant would not apply to units that had HVAC installed during construction of the building. Tim pointed out that the covenant document had some very specific requirements, such as legal description of the future HVAC location.

Dale moved that the covenant document be the standard requirement for all requests for HVAC in individual units and that counsel complete the legal technicalities for the covenant between the association and Terry Hoy.

Special Meeting Agenda –

Gas/Metering – Discussion revolved around when to notify members of the declaration requirement and how to incorporate the billing process without Minol into the monthly assessment. Board agreed that owners should be provided information prior to special meeting.

HVAC – explain the requirements at the meeting

Earthquake Insurance – Tim McCarthy suggested that we look at the fine print of the proposed coverage to ensure it was understood what it really would cover in regard to individual units. i.e. plumbing, electric, et al.

Motorcycle Parking – Review photos of four alternative motorcycle spaces on P2. Yoders will contact Puget Sound Energy and Fire Marshal in re proposed spaces near the electrical cabinet.

Balcony/deck resurfacing – no discussion

Water Heater Replacement – Tim McCarthy suggested that we look into washing machine hoses with a 20-year warranty. He will forward brand name to Tim Sheppard. Once new group bid arrives next week, we will begin contacting owners per the timeline approved at the previous meeting.

Budget 2017 – Budget will be presented for condo owners approval at the special meeting. This change in budget timing is due to the concerns raised at 2016 annual meeting about new assessment collections beginning in January before the budget was approved at the February meeting. Also discussed possibility of amending annual meeting to the last quarter of the fiscal year, and the possibility of moving the actual date to a time that can accommodate snow birds returning to their northern nest. Meeting and date change requires amendment approval of the association in The 400 By-laws.

8) Meeting adjourned at 9:15 pm

MEMORANDUM OF UNDERSTANDING

Between THE 400 Home Owner's Association and

Mr./Mrs./Ms._____, Unit #_____.

If approved by THE 400 Home Owner's Association Board of Directors, Mr./Mrs./Ms._____ agree to the following terms and conditions for the installation of a Heating Ventilation and Air Conditioning (HVAC) system:

A. The HVAC installation proposal shall include the measurements and weight of the outdoor unit. The outdoor unit may not exceed 31 inches in height or 36 inches in width and 13 inches depth unless otherwise approved by THE 400 Home Owner's Association.

B. The outdoor unit may not exceed 54 decibels when running at full load and must have a *"Night Time Quiet Mode"* feature which will allow it to run more quietly than normal operation. The unit owner agrees to run the unit in "Night Time Quiet Mode" during the months of July and August between the hours of 9 p.m. and 6 a.m.

C. The outdoor unit, associated electrical equipment and any piping, conduits, etc. must be painted a color matching the exterior wall adjacent to where it will be placed.

D. All outdoor units must be placed upon a sound absorbing pad designed for such equipment, and the pad shall not be affixed in any manner to the limited common area.

E. Any electrical equipment must be securely mounted to the structure in the most discrete location possible, and in a professional workman-like manner, taking every precaution to protect the buildings envelope from damage.

F. Any penetration and sealing of an exterior wall for the installation must be done in a professional manner using high grade sealants.

EXHIBIT 7

G. All condensation from the HVAC system shall be directed to an inside plumbing drain.

H. The installation, including electrical and plumbing must be done by a licensed, bonded, and insured contractor. The insurance for the installation contractor shall name THE 400 Home Owner's Association as *Additional Insured* for the purpose of installation.

I. Any damage resulting from the installation or operation of the HVAC system will be the sole responsibility of the Owner. Repairs shall be completed immediately at the Owner's expense.

J. Final installation shall be approved by a Home Owner's Association Board of Directors selected Consultant, at the Owner's expense.

K. All costs incurred by the Home Owner's Association for consulting fee's, governmental fees, licenses, etc. related to the approval/installation of an HVAC system shall be the responsibility of the Owner.

L. If, after installation of an HVAC system, a complaint is received by the Board alleging noise, vibration, or any adverse habitability condition as a result of the HVAC system, the Board will investigate. If, by a majority vote of the Board the allegation is sustained (proven), the Owner shall be responsible to immediately resolve/remedy the problem, or remove the HVAC system and restore the building to its original and approved condition at their (Owner's) expense.

M. In the event a Unit with an HVAC system is sold, the Owner will make as
a condition of sale, a requirement that the new Owner enter into this Memorandum of Understanding as a binding condition of the sale.

Memorandum of Understanding
Between THE 400 Home Owner's Association
and Mr./Mrs./Ms._____, Unit #_____.

I have read and agree to the terms and conditions of this Memorandum of Understanding:

Owner	Unit	Date
Board Member	Board Member	Board Member
Board Member	Board Member	

BRADLEY SCOTT INCORPORATED
COMMERCIAL REAL ESTATE

December 14, 2016

Mr. Terry Hoy
400 Washington Avenue, #107
Bremerton, WA 98366

Re: HVAC Installation Agreement

Dear Mr. Hoy:

As you are aware, the Board has recently approved a final version of the covenant addressing the installation of HVAC equipment installed by you in the limited common area of the Association and asked that I send it to your attention for execution.

Please sign the letter in the presence of a Notary Public so that the document may be notarized as required and return the notarized document to my attention.

If you would like, you are welcome to make an appointment to come to my office and our staff can notarize the document at no cost.

Once you have delivered the notarized covenant it will be signed by the Association President and again notarized. A copy of the fully executed document will be returned to you for your records.

Alternately, both you and the Association President may appear simultaneously at my office and we can have the document fully executed and copies provided at that time.

Thank you very much for your attention.

Best Regards,

Tim Sheppard
Property Manager

cc: The 400 Condominium Association, Board of Directors
encl.: HVAC Covenant

400 Warren Avenue • Suite 450 • Bremerton, Washington 98337-1479 • (360) 479-6900 • Fax (360) 479-5499 • (800) 479-6903
Established 1979

EXHIBIT 8

AFTER RECORDING RETURN TO:
BURLEIGH LAW, PLLC
3202 Harborview Drive, Ste 201
Gig Harbor, WA 98335

COVENANT AND HOLD HARMLESS

Grantor:	**Terry Hoy**
Grantee:	**The 400 Condominium Association**
Benefitted Parcel Legal Description:	**PTNS LOTS 1-9, BLK 4, AND PTN GOV LOT 3, S13, T24N, R1E, TOWN OF BREMERTON, KITSAP COUNTY**
Burdened Parcel Legal Description:	**UNIT 107, THE 400, A CONDOMINIUM, AS RECORDED IN VOLUME 8 OF CONDOMINIUMS, PAGES 43-55, INCLUSIVE, UNDER AUDITOR'S FILE NO. 200704090181, AND AS AMENDED IN VOLUME 8 OF CONDOMINUMS, PAGES 80 – 84, INCLUSIVE, UNDER AUDITOR'S FILE NO. 200706120452, ACCORDING TO THE DECLARATION THEREOF RECORDED UNDER AUDITOR'S FILE NO. 200704090180, AND AMENDED UNDER AUDITOR'S FILE NO. 200706120453, RECORDS OF KITSAP COUNTY, WASHINGTON.**
Tax Parcel ID:	**8179-000-107-0000 (Unit 107)**

TERRY HOY, (hereinafter referred to as the "OWNER"), for and on his own behalf and that of his heirs, executors, personal representatives, successors, tenants, agents, employees, contractors, subcontractors, invitees, licensees, administrators and assigns, jointly and severally covenant with THE 400 CONDOMINIUM ASSOCIATION, (hereinafter referred to as the "ASSOCIATION"), a Washington non-profit corporation, and its members, successors and assigns, as follows:

This Covenant shall bind and burden the following real property, which is owned by OWNER, is commonly known as Unit 107 at The 400 Condominium, (hereinafter referred to as the "Unit"), and legally described as:

UNIT 107, THE 400, A CONDOMINIUM, AS RECORDED IN VOLUME 8 OF CONDOMINIUMS, PAGES 43-55, INCLUSIVE, UNDER AUDITOR'S FILE

NO. 200704090181, AND AS AMENDED IN VOLUME 8 OF CONDOMINUMS, PAGES 80 – 84, INCLUSIVE, UNDER AUDITOR'S FILE NO. 200706120452, ACCORDING TO THE DECLARATION THEREOF RECORDED UNDER AUDITOR'S FILE NO. 200704090180, AND AMENDED UNDER AUDITOR'S FILE NO. 200706120453, RECORDS OF KITSAP COUNTY, WASHINGTON.

This Covenant shall benefit the real property commonly described as The 400, A Condominium (hereinafter referred to as the "Condominium"), a condominium intended for residential and commercial use according to the Survey Map and Plans recorded in Volume 8 of Condominiums, pages 43 through 55, inclusive, records of Kitsap County, Washington, under Auditor's No. 200704090181, and according to the Condominium Declaration recorded on April 9, 2007, under Kitsap County Auditor's No. 200704090180, and amendments thereto recorded in the records of Kitsap County, State of Washington (hereinafter referred to as the "Declaration").

OWNER shall have the right to perform certain work and make certain modifications to the Condominium (hereinafter referred to as the "Work"), as described and limited on Exhibit A which is attached hereto and incorporated herein by reference.

OWNER, at his sole expense, shall maintain and keep in good repair and renew from time to time all components of the Work. OWNER shall also pay any increased maintenance and/or insurance costs chargeable to the ASSOCIATION attributed to the Work.

In performing the Work, OWNER shall employ contractors who, prior to commencing work, shall waive all lien rights they may otherwise have against the ASSOCIATION, and who shall provide to the ASSOCIATION satisfactory evidence that they are contractors licensed by the State of Washington, that they carry the necessary bond and insurance required by the State of Washington, and that their workers are covered by workers' compensation.

Notwithstanding the improvements by OWNER allowed under this Covenant, any Common Element affected by the Work shall not be considered to be a part of the Unit or of the Limited Common Element appurtenant thereto, but shall be used and occupied solely by virtue of a license granted by the Board of Directors of the ASSOCIATION. OWNER shall be responsible for any and all damages which may be done to the Common Elements or any other part of the Condominium by OWNER or his agents and contractors in connection with, or which might otherwise result from, the Work.

If OWNER fails to perform promptly and fully any obligations imposed by this Covenant, including the requirements for noise and vibration levels, the ASSOCIATION may, after it obtains an acoustic engineer's investigation and written report documenting the noise and/or vibration levels emanating from the Work, either revoke this license, demand that OWNER immediately perform OWNER's obligations, or perform OWNER's obligations, at the ASSOCIATION's sole discretion. Any and all amounts expended by the ASSOCIATION to investigate and document noise and/or vibration levels, and/or perform any Covenant-imposed obligations, and/or revoke this Covenant, shall be the full cost responsibility of the OWNER, shall constitute a lien on the Unit payable by OWNER, and shall be collectible by the ASSOCIATION in the same manner as an assessment pursuant to Article 17 of the Declaration and any amendments thereto.

Nothing herein shall be construed as an alteration to or amendment of the Common Elements or

Limited Common Elements described in the Declaration. Nor shall anything herein be construed to preclude the ASSOCIATION's right to demand that OWNER remove, at OWNER's sole cost and expense, the Work, if deemed necessary in the ASSOCIATION's sole discretion in order for the ASSOCIATION to carry out any of its covenanted Common Element maintenance, repair, or replacement duties including deck resurfacing. This Covenant is intended only to set forth the rights and responsibilities of the parties hereto in relation to this specific Work.

To the fullest extent permitted by law, OWNER shall indemnify and hold harmless the ASSOCIATION from and against all claims, damages, liability, losses and expenses (including but not limited to attorney's fees, expended by the ASSOCIATION to defend against any claim and/or to prove its right to indemnity under this Covenant), arising directly or indirectly out of or incident to the construction, existence, use, maintenance or condition of the Work. This indemnity obligation shall apply regardless of whether or not such liability is caused in part by the ASSOCIATION, its agents or employees or another ASSOCIATION member, but shall not apply in cases where the liability is caused by the sole negligence or willful misconduct of the ASSOCIATION.

The burden and benefit of this Covenant are intended to attach and become appurtenant to the real property described in this Covenant and to be binding upon each party to this Covenant and their respective successors, heirs and assigns. This Covenant shall run with the land and shall be enforceable by the ASSOCIATION on behalf of its members, or by any member particularly aggrieved.

If either of the parties to this Covenant infringe or omit to perform any of the covenants, conditions or restrictions contained in this Covenant, and legal action is necessary to enforce this Covenant or any of its terms, then the party or parties taking such action and prevailing therein, including their heirs, successors, administrators, executors or assigns, shall be entitled to their costs and actual and reasonable attorney's fees to enforce this Covenant or its terms, whether such fees and costs are incurred before litigation, during litigation and trial, or on appeal.

DATED this_____day of_____, 20____.

THE 400 CONDOMINIUM ASSOCIATION

_____[Signed]
_____[Print Name]
_____[Title]

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

I hereby certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, and on oath stated that he/she is authorized to execute the instrument and acknowledged it as the **President of The 400 Condominium Association** to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated this_____day of_____, 20___.

_____[Signed]

_____[Print Name]

Notary Public in and for the State of
Washington, residing at _____.
My appointment expires _____.

TERRY HOY, UNIT 107

_____[Signed]

_____[Print Name]

Owner of Unit 107

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

I hereby certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

Dated this_____day of_____, 20___.

_____[Signed]

_____[Print Name]

Notary Public in and for the State of
Washington, residing at _____.
My appointment expires _____

EXHIBIT A

EXHIBIT A
Description of Work

The "Work" is the installation of a heating, ventilating and air conditioning ("HVAC") unit, pursuant to the following requirements:

1. The Owner's installation proposal, attached to this covenant, which shall meet the guidelines set forth in SSA Acoustics' "Noise Measurements & Potential Requirements for Future Split System Installations" report dated March 11, 2015, attached herein as Exhibit B, and which shall include the following:

   a) HVAC unit's operating specifications, measurements, weight, make, model, dB(A) rating, and BTU;

   b) Written drawings indicating exactly how and where the Unit will be mounted, indicating the location and size of proposed exterior penetrations and explaining how the penetrations will be sealed, indicating that all condensation shall be directed to an existing plumbing drain; and indicating that the unit shall be placed on a sound absorbing pad that is not permanently affixed to the Limited Common Area.

   c) Confirmation that installation of the HVAC system, when operating at 100%, (i) shall not produce noise levels exceeding 45dB(A) at any adjacent Unit's deck, and (ii) shall not produce vibration levels in the structure that average greater than 72 VdB (re: 1 micro- in/s) in any adjacent Unit's floor or wall;

2. Installation of the HVAC unit shall comply with all applicable permits, code requirements, and laws;

3. The entire HVAC unit's installation shall be performed by licensed, bonded, insured contractor(s).

4. All components of the HVAC unit's installation shall be located in the most discrete (in the sole discretion and opinion of the Association) location possible.

EXHIBIT B

MEMO

SSA acoustics
Clarkson • Alt Allsopp • Buck • Miller-Klein
222 Etruria St, Suite 100
Seattle, WA 98109
(206) 839-0819 – P

TO: Tim Sheppard, Bradley Scott Inc.

FROM: Josh Thede & Erik Miller-Klein, SSA Acoustics

DATE: March 11, 2015

SUBJECT: The 400 Condominiums Bremerton – Noise Measurements & Potential Requirements for Future Split System Installations

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This memorandum is a summary of our noise measurements, site observations, and suggestions for language associated with the rules for the installation of future split system type Heating, Ventilation, and Air Conditioning (HVAC) units to ensure these installations maintain the quiet current enjoyed at The 400 Condominiums.

Based on our evaluation and experience with these types of systems we have outlined suggested language for the *Homeowner Association Rules & Installation Standards*, and best practices to achieve those standards.

Environmental Noise and Vibration Criteria

These systems should not be a noise or vibration impact to any adjacent unit or degrade the current acoustical character of the community. The City of Bremerton noise code and the Federal Transit Administration (FTA) handbook standards for vibration provide a good basis of design for the community standards. To ensure these standards would maintain the acoustic quality of the community, SSA Acoustics measured the background noise levels for 72 hours on the street side and water side of the building, these results were used to compare the City of Bremerton noise code standards to the existing ambient noise levels.

<u>City of Bremerton Municipal Code</u>
The City of Bremerton Municipal Code chapter 6.32.040, Environmental sound – maximum permissible level limits states that noise from one residential property to an adjacent residential property cannot exceed 45 dB(A) between 10 PM and 7 AM on weekdays and 10 PM and 9 AM on weekends.

<u>Federal Transit Administration (FTA) Noise and Vibration Manual</u>
Vibration perceived at residences cannot exceed an average of 72 VdB (Velocity decibels; re: 1 micro-in/sec) per the Vibration Impact Criteria for frequent events.

Evaluation & Observations

We measured the noise levels with environmental noise monitors on the outside decks of units 300 and 407. These measurements began on February 12 at 4:00 P.M. and were concluded on February 16 at 4:00 P.M. Unit 300 is on the street side where noise sources included car traffic, pedestrian traffic, and parking garage noises. Unit 407 is on the water side where noise sources included boat traffic, and people on adjacent decks.

Location	Sound Pressure Levels, dB(A) Nighttime	Sound Pressure Level, dB(A) Daytime
Unit 300: Outside Deck Street Side	51 to 60 dB(A)	63 to 68 dB(A)
Unit 407: Outside Deck Water Side	41 to 45 dB(A)	44 to 47 dB(A)

The noise goal for future installations is that the outdoor units of split systems mounted on decks are not a noise or vibration impact to any adjacent residences. The recessed deck design of the building provides a partial noise barrier between units; we predicted the noise reduction from this barrier for both vertical and horizontal adjacencies.

Suggested Language: Homeowner Association Rules & Installation Standards

1. **NOISE:** New and existing exterior heat pumps and/or condensing units cannot produce noise levels that exceed 45 dB(A) at any adjacent resident's deck.

2. **VIBRATION:** New and existing exterior heat pumps and/or condensing units cannot produce vibration levels in the structure that average greater than 72 VdB (re: 1 micro-in/s) at any adjacent residence floor or wall with the system operating at 100%.

In our experience, if the HOA defines installation methods they can be held partially responsible if the installation exceeds the performance requirements. We suggest having rules and standards that outline maximum noise and vibration levels, which ensure the new equipment is not an impact to any adjacent residence. We have provided some best practices that provide options for potential installations that should satisfy the performance requirement.

Best Practices for Installation:
These best practices are based on our on-site evaluation, noise and vibration calculations, and previous experience. They do not guarantee the proposed installation will satisfy the noise and vibration criteria.

1. Outdoor Heat Pumps/ Condensing Units – select a unit that has a quiet sound rating.
   a. Maximum Sound Level Rating:
      i. Sound Pressure Level (SPL) of **58 dB(A) at 1-meter** (3.3-feet)
         1. Most common rating for split system condensing units
      ii. Equivalent to Sound Power Level (Lw) of 66 LwA, and
      iii. Equivalent to Sound Pressure Level of 54 dB(A) at 5-feet

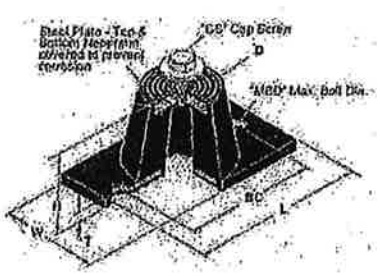
There are several different metrics that define sound levels. Sound pressure is the perceived sound level which can be measured with a microphone at a specific distance. Sound pressure is effected by distance and environment (e.g. sound reflecting or absorbing surfaces). Sound power is the total sound energy emitted by a sound producing device, it is the potential sound energy of a piece of equipment.

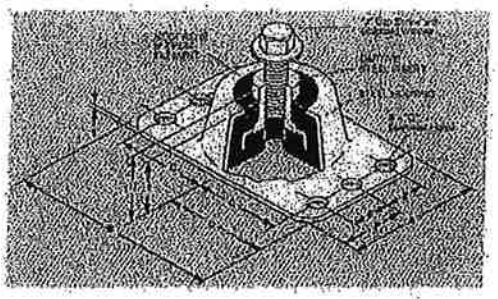
We did not designate between nighttime and daytime noise limits because equipment that meets the nighttime limits will satisfy the daytime limits. Multiple manufactures make units for your heating and cooling load requirements that can achieve the noted sound rating above with the unit operating in normal mode. Therefore, the best practices we set forth should allow these units to meet the HOA rules without the addition of a "night-time quiet mode" feature.

   b. Location:
      i. Install the unit no closer than 18" from the edge of the deck

   c. Vibration Isolation:
      i. Install the condensing unit on vibration isolation.
         1. Best: Mason Industries ND

         2. Better: Mason Industries RBA, or BR, or similar





         3. Acceptable: Neoprene waffle, or neoprene/cork pads mounted to deck with adhesive, but bolts cannot be

extended through the mounting bracket and the deck surface, available from Mason Industries as Super W or Super K pads.

ii. Use flexible braided metal condensing line from unit to wall penetration.
   1. Best: Use braided metal connection for refrigerant line into wall of unit, such as Mason Industries ULCPS-braided SS for refrigerant.

Based on our calculations a system that satisfies the sound rating and is installed as noted would produce a sound level of 42 dB(A) or less at the nearest adjacent windows or decks. This would be approximately equal to the lowest measured current background noise level on the water side of the building (41 dB(A)), and be 45% quieter than the quietest hour on the street side of the building (51 dB(A)). Note that 42 dB(A) cannot be measured at locations with ambient noise levels above 45 dB(A) (i.e. decks facing the road).

2. Indoor Units:
   a. Vibration Isolation: Wall mounted units need neoprene isolators between the unit and the wall, and neoprene tape around the perimeter to minimize vibration transfer into demising wall or structure.
      i. Neoprene isolators, such as Mason Industries HG or HMIB neoprene washer/bushings
      ii. Neoprene tape, such as Gaska V1500 medium density tape

Please review this document in detail. We are prepared to answer any questions the condominium board may have, and to review a second draft of your standards document when it is available.

Please contact us with any questions or concerns.

All the best,
SSA Acoustics, LLP

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LEVY VON BECK COMSTOCK PS

June 20, 2018 - 3:39 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	51544-0
Appellate Court Case Title:	Terry Hoy, Appellant v. The 400 Condominium Association, Respondent
Superior Court Case Number:	17-2-00867-4

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