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Washington State Supreme Court

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NO. 90879-6

SUPREME COURT OF THE STATE OF WASHINGTON
[Court of Appeals No. 70013-8-I]

FILMORE LLLP,
a Washington limited liability limited partnership,

Respondent,

vs.

UNIT OWNERS ASSOCIATION OF CENTRE POINTE
CONDOMINIUM,

Petitioner.

SUPPLEMENTAL BRIEF OF
RESPONDENT FILMORE LLLP

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I. IDENTITY OF RESPONDING PARTY

The respondent is Filmore LLLP (Filmore). Filmore is the plaintiff below.

II. DECISION ON APPEAL

The Appellant Unit Owners Association of Centre Pointe Condominium (Centre Pointe) has appealed the Court of Appeals' decision dated September 2, 2014 that affirmed the Whatcom County Superior Court Order Granting Summary Judgment to Respondent Filmore¹ (the Decision).

III. ISSUES PRESENTED FOR REVIEW

A. Whether the Twelfth Amendment to the Declaration is void because of Centre Pointe's failure to obtain 90% approval required by the Centre Pointe Declaration.

B. Whether the Twelfth Amendment to the Declaration is void because of Centre Pointe's failure to obtain 90% approval required by RCW 64.34.264(4).

The equitable estoppel issue is not included in this appeal as it was not included in the Petition for Review and was not briefed by

¹ Filmore LLLP v. Unit Owners Association of Centre Pointe Condominium, 183 Wn.App. 328, 333 P.3d 498 (2014).

any party.

IV. STATEMENT OF CASE/PROCEDURAL BACKGROUND

The Statement of Case and Procedural Background sections of Respondent Filmore LLLP's Response to Petition for Review are incorporated herein.

V. STANDARD OF REVIEW

The order on appeal from the Trial Court is an Order on Summary Judgment. Accordingly, this court reviews the trial court's decision *de novo*.² There is no dispute regarding any material fact and that the issue is a pure matter of law.

VI. LEGAL ARGUMENT

A. Summary of Issue — Leasing is a "Use."

Pursuant to both the Declaration and RCW 64.34, *et seq.* (WCA), if leasing is a "use" to which a unit is restricted, any amendment of the Declaration changing such use requires a 90% vote of the unit owners. The Court of Appeals recognized that the WCA did not define "use" and correctly analyzed the statute and other factors to conclude that under the WCA, leasing is a "use" pursuant to RCW 64.34.264(4). While the Court of Appeals' Opinion is correct and thorough, here the Centre Pointe Declaration

² Ski Acres, Inc. v. Kittitas County, 118 Wn.2d 852, 827 P.2d 1000 (1992).

controls: Leasing is specifically identified as one of the “uses to which any unit is restricted...” Because this Declaration specifically defines leasing as such a “use,” the Twelfth Amendment is void because it failed to obtain the required 90% vote required by the documents specific to this condominium.

B. Centre Pointe Declaration Defines Leasing as a “Use.”

Section IX “*Permitted Use; Architectural Uniformity*”³ of the Centre Pointe Declaration specifically and unambiguously defines leasing as a “use to which the units are restricted.” This entire section of the Declaration is attached as Appendix A⁴ because a review of the actual layout of this section, the titles of the sections and subsections, and the specific language establish that it was the intent of the Declarant that leasing is a “use.”

1. *Declaration Language.* Two subsections define leasing as a use requiring a supermajority to alter. First, Section 9.1.1. identifies the “Permitted Use” to be residential purposes, and expands this to include all “*other reasonable uses normally incidental to such [residential] purposes.*” Leasing of a residential unit is a reasonable use that is normally incidental to residential

³ Article IX of the Declaration.

⁴ CP 52-55.

purposes. The residents of Centre Pointe confirmed this for they had rented a significant number of their units - 35 of the units in the complex were rented in Buildings A, B and C prior to passage of the Twelfth Amendment.⁵ The Court of Appeals in Ross v. Bennett⁶ and this Court in Wilkinson v. Chiwawa Comm. Assoc.⁷ confirmed that leasing (even for short durations) is part of accepted residential use. By expanding the definition of “residential uses” to include incidental uses, leasing is a permitted use as a matter of law.

Second, Section 9.1.14 identifies leasing as one of the “Permitted Use(s)” but then restricts such use (one year lease required and the tenants are subject to the Declaration).

“Other than the foregoing, there is no restriction on the right of any Unit Owner to lease his or her Unit.”⁸

The Declaration’s plain language leaves no room for ambiguity — leasing is a **permitted use** with very limited restrictions.

The Centre Pointe Declarant fulfilled the exact requirements

⁵ CP 139-140. There are a total of 132 units in the entire condominium with 35 in Building D (Filmore’s units). CP 105-06. Mr. Molnar was told that he could only rent 4 units under the 30% cap. Based upon that, there must have been 35 units rented in Buildings A, B, and C to so limit the number of rentals in Building D. This calculation conforms with a list of rented units that was received from the Association.

⁶ 148 Wn.App. 40, 51-2, 203 P.3d 383 (2009).

⁷ 180 Wn.2d 241, 327 P.3d 614 (2014).

⁸ CP 55.

of WCA⁹ by including sections 9.1.1 and 9.1.14 to specifically delineate leasing as a “use to which a unit is restricted” in these condominiums. Under the WCA, the Declarant has exceedingly broad authority to establish the uses to which units in its condominium are restricted, thereby defining what amendments require a 90% vote.¹⁰

*Quality condominium construction needs to be encouraged to achieve the growth management act mandated urban densities and to ensure that residents... have a broad range of ownership choices.*¹¹

Such choices can only be provided if the Declarant has broad authority to create diverse residential choices, including leasing. Because the Declaration complies with the WCA, the 90% voting requirement for changes of “use” must be enforced.¹²

2. *Centre Pointe’s Position Violates Basic Contract Interpretation.* The Court of Appeals properly dismissed Centre Pointe’s argument for it ignores the specific language in 9.1.1 and .14.¹³ Centre Pointe’s proposed interpretation¹⁴ violates a basic

⁹ RCW 64.34.216(1)(n).

¹⁰ RCW 64.34.216(1)(n). Subject, of course, to Constitutional requirements, land use codes and general principles of law and equity (RCW 64.34.070).

¹¹ RCW 64.34.005(1)(b).

¹² CP 69. Section 17.3; RCW 64.34.264(4).

¹³ *Filmore* at 506.

¹⁴ That “use” can only mean either residential vs. non-residential use.

rule of contract interpretation:

*An interpretation of a contract that gives effect to all provisions is favored over an interpretation that renders a provision ineffective, and a court should not disregard language that the parties have used.*¹⁵

To reach the position Centre Pointe takes, this Court would have to:

- Ignore the unambiguous language of 9.1.14;
- Ignore the unambiguous titles of the Article and Sections defining “Uses” in 9.1;
- Ignore the unambiguous language of 9.1.1 granting to the unit owners all uses incidental to residential purposes (for leasing is certainly one);
- Interpret Section 9.1.3 - 9.1.16 as not being other use restrictions;¹⁶
- Re-write Section 17.3 to add language never intended by the Declarant.¹⁷

¹⁵ Snohomish County Public Transp. Benefit Area Corp. v. FirstGroup, 173 Wn.2d 829, 840, 271 P.3d 850 (2012).

¹⁶ If these paragraphs are not “use” restrictions, then they need not be in the Declaration for only definitions/restrictions on “use” need be in the Declaration. RCW 64.34.216(1)(n). Centre Pointe cannot assert that these would be restrictions on occupancy or alienation for that is not how they are defined in this Declaration.

¹⁷ To restrict use to just residential vs. non-residential only, 17.3 would have to be rewritten as follows (with the required revisions in **bold** and eliminated text in strikethrough):

*Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may...change...**whether a unit is restricted to residential vs.***

Judicial re-writing of private contracts is prohibited.¹⁸ If undertaken here, every unit owner in Centre Pointe would be prejudiced - what they had all read in plain English would be inexplicably altered away from what the plain language of the Declaration means.¹⁹

3. *Conclusion.* Judge Snyder's analysis and decision were simple, direct and **correct**:

"This is a restriction on an existing use."²⁰

"If you're going to restrict what they've already granted, you have to have the 90 percentage vote."²¹

The grant of summary judgment should be affirmed on this basis - the Centre Pointe Declaration identifies leasing as a "use" that is restricted and that any change in such use restriction required a 90% vote. Pursuant to Section 17.3 of the Declaration, the Twelfth Amendment is void.

C. Leasing is a "Use" Pursuant to the Act.

non-residential use the uses to which any unit is restricted, in the absence of the vote or agreement of the owner of each unit particularly affected and the owners of units to which at least ninety percent of the votes in the association are allocated...

¹⁸ Seattle Prof. Engineering Employees Ass'n. v. Boeing Co., 139 Wn.App. 824, 991 P.2d 1126 (2000) (court cannot rewrite a contract to create a new one the parties never agreed to).

¹⁹ "The most evident is that courts must read each contract as an average person would read it without giving strained or forced meaning." DeWolf & Allen: *Contract Law and Practice, Sec. 5.3, Interpretation of Contracts*, 25 Wn. Prac. 133 (2007) (citations omitted).

²⁰ *Id.* at line 24.

²¹ VP 30, lines 1-3.

Centre Pointe's sole assertion throughout this case is that the term "use" in the WCA and the Declaration must be restricted to the distinction between *residential vs. non-residential* use **only**.²² The Court of Appeals was correct in holding that there is no basis to support such a position:

*In sum, we are not persuaded that the legislature intended to narrow the term "uses" in RCW 64.34.264(4) to solely residential vs. non-residential. This interpretation conflicts with common sense and the word's plain meaning.*²³

The Decision properly enunciates the standards for judicial interpretation of a statute, looked to the correct sources to elucidate the intent of the legislature and correctly evaluated all of the factors to reach the correct legal conclusion. Two important issues need to be reiterated.

1. *The Act Requires Broad Definition of "Uses."*

a. **Consumer Protection.** Our legislature recognized that condominiums are complicated and that abuses have occurred in the condominium market and it therefore included specific and detailed heightened protections to condominium purchasers and

²² Petition for Discretionary Review to the Supreme Court, page 9; Appellant's Opening Brief to the Court of Appeals, pages 9 and 18.

²³ Fillmore at 507.

owners.²⁴ The legislature included an entire section entitled “Protection of Condominium Purchasers.”²⁵ The Official Comments to the Act bolsters this interpretation:

The best “consumer protection” that the law can provide to any purchaser is to ensure that such purchaser has an opportunity to acquire an understanding of the nature of the products which it is purchasing.

The most important rights that can be compromised through condominium ownership are restrictions upon use. Residential owners/buyers intend to live in their condominiums with certain expectations of their allowed use. Residential condominiums may have all types of restrictions on use: Seniors only, no/limited leasing, timesharing restrictions, pet or smoking restrictions, *etc.* A principal area where protection of the consumer is necessary is the clear and written disclosures of all restrictions on use and how those restrictions may be changed against the will of the unit owner.

The legislature established specific protection to accomplish this. First, **any** restrictions on use must be in the Declaration.²⁶

²⁴ One Pacific Towers Homeowners' Ass'n. v. HAL Real Estate Investments, Inc., 148 Wn.2d 319, 61 P.3d 1094 (2002). An entire section of the Act falls under the title “Protection of Condominium Purchasers.”

²⁵ RCW 64.34, Article 4.

²⁶ RCW 64.34.216(1).

Second, restrictions on use must also be listed in the public offering statement (along with a more detailed list of other restrictions). Third, any amendment of the Declaration of the “uses to which a unit is restricted” requires an affirmative vote of 90% of the unit owners.²⁷

The intent of the Act in this area is clear: Protect consumers so that they have a full understanding of any use restrictions and that such uses cannot be changed without a near unanimous vote of the unit owners. This vital consumer protection is not met if “use” is only residential vs. non-residential.

b. Statutory Language. The clarity of the language used by the legislature defines the outcome of the issue before the Court. The Decision notes that the noun “use” has a very broad definition. The statute utilizes the plural, not the singular – “uses.”²⁸ By using the plural, the legislature recognized that more than one type of use distinction could be restricted, requiring a supermajority. When defining what “uses” the Declaration must specify, the legislature modified “use” with the adjective *any* when setting the breadth of use restrictions.²⁹ “Any” is extremely broad, is in no

²⁷ RCW 64.34.264(4).

²⁸ RCW 64.34.264(4).

²⁹ RCW 64.34.216(1)(n).

means restrictive and means three or more.³⁰ But certainly “any” does not mean just one distinction between residential/non-residential as asserted by the Association. At no time did the legislature include adjectives or modifiers to the word “use” in any part of the applicable statute that would support the narrow construction advanced by Centre Pointe.

Significantly, the legislature showed that if it wanted to limit “use” to just residential vs. non-residential, it did so specifically.³¹

Note RCW 64.34.264(1) in particular:

*The Declaration may specify a smaller percentage only if all of the units are restricted exclusively to **nonresidential use**. (emphasis added)*

But the legislature did not so limit “use” when requiring a supermajority for amendment to changes of use.

2. *No Basis for Centre Pointe’s Position.*³²

Centre Pointe’s reliance upon the WCA’s requirements of the Public Offering Statement is incorrect. First, the legislature recognized the vital importance of leasing/rental restrictions and required specific disclosure as part of the primary goal to protect

³⁰ American Heritage Dictionary, Houghton, Mifflin Co., pg. 59 (1981).

³¹ The WCA modifies the word “use” with either “residential” or “non-residential” 13 times.

³² As noted by the Decision, Centre Pointe’s arguments are without merit. But to supplement the Decision, supplementation is appropriate.

consumers. Second, the section regarding renting is really focused upon the Declarant's renting which is often different from unit owners (sales offices, show units, etc.).³³ As noted by the Court of Appeals, the additional protection provided in the Public Offering Statement does not, in any manner, support a restriction of the word "use" in .264.

Similarly, the requirement that the Declaration specify all restrictions on "use, occupancy and alienation of the units..." does not support a narrow interpretation of "use" elsewhere.³⁴ Centre Pointe's argument breaks down because a qualification of use can also be a qualification of occupancy and/or alienation. While only the former would require a supermajority to change, separate disclosure of both is needed to inform the consumer of what they are buying.

3. *One Conclusion Possible: Use includes Leasing.* The Decision was correct — "use" and "uses to which any unit is restricted" in the WCA must include rental and leasing restrictions. As such, any alteration of such use restriction required a 90% vote of all the unit owners.³⁵

³³ RCW 64.34.410(1)(h).

³⁴ RCW 64.34.216(1)(n).

³⁵ RCW 64.34.264(4); Declaration, Section 17.3.

D. No Conflict with Prior Case Law.

The Decision is consistent with this Court's ruling in Shorewood West Condominium Association v. Sadri.³⁶ The primary issue in that case was the extent of the "uses" that had to be defined in the Declaration. The Shorewood association asserted that only general limitations on use are required to be in the Declaration, not specific use restrictions (*i.e.*, only residential vs. non-residential). The Court disagreed, noting almost a full page of other cases where the restrictions in declarations were much more specific. This Court then confirmed the breadth of the term "use."

"Therefore, one should read "use" in RCW 64.32.090(7) to mean all uses and not just general categories of use such as residential use or commercial use. The provisions require that all restrictions on use should be in the declaration's statement of purpose."³⁷

Recognizing rental restrictions as a restriction on use, the court confirmed such change had to be implemented through an amendment of the Declaration. The rental restriction was void.³⁸

³⁶ Shorewood West Condominium Association vs. Sadri, 140 Wn.2d 47, 992 P.2d 1008 (2000).

³⁷ *Id.* at 56. The referenced statute in the quote is the requirement under the old Act regarding the requirement to define uses in the Declaration: RCW 64.32.090(7) "A statement of the purposes for which the building and each of the apartments are intended and restricted as to use."

³⁸ *Id.* at 57.

This interpretation of the word “use” under the Horizontal Property Regime Act should be the same under the WCA. The same logic is applicable and such interpretation fulfills the primary goal to protect consumers — the meaning of “use” must be broad so that consumers know what they can and cannot do with a unit and have confidence that these uses cannot be changed without a supermajority vote of unit owners.

Amicus is incorrect in asserting inconsistency between the Decision and the cases it mentions. Both Ross³⁹ and Wilkinson⁴⁰ addressed the issue of whether short term rentals were a violation of covenants against commercial uses. In both instances the court held that short term renting is consistent with single family residential use.⁴¹ At no point did either court rule that leasing/renting does not change the use. Instead these decisions recognized that renting/leasing falls within the general use category of residential.⁴²

Both cases did hold that a change in the general plan of the

³⁹ Ross v. Bennett, 148 Wn.App. 40, 203 P.3d 383 (2009).

⁴⁰ Wilkinson v. Chiwawa Communities Ass’n., 180 Wn.2d 241, 327 P.3d 614 (2014).

⁴¹ Wilkinson at 252-53; Ross at 51-52.

⁴² There are, of course, more specific definitions of use within the residential rubric (renting/leasing, timeshare, smoking, multifamily vs. single family, etc.). The Declaration for Centre Pointe does make such a more specific delineation in 9.1.14 that must be enforced.

development cannot be adopted by a simple majority of the homeowners. This Court stated in Wilkinson:⁴³

We reject the Association's position in favor of protecting the reasonable and settled expectation of landowners in their property.

To remain consistent with that decision, this Court must hold that the 90% is required — the reasonable and settled expectations of the unit owners was their right to leasing and must be protected.⁴⁴

E. Public Interest Requires Affirmation.

1. *Speculation about Financing Not Relevant.*

The speculative claims regarding potential impacts of “use” restrictions upon financing are not before this Court and not ripe for appeal. This issue was not raised before the Trial Court or the Court of Appeals. As a matter of law, this issue cannot be adjudicated in this matter. “We do not consider issues raised first and only by *amicus*.”⁴⁵

The issue of financing was also not relevant to the adoption of the Twelfth Amendment. There is no evidence that any unit

⁴³ Wilkinson at 257. Filmore at 509-10.

⁴⁴ Note that the language in the Declaration (unlike in Wilkinson) leaves no room for interpretation or speculation: 9.1.1 and .14 include leasing as a definitive part of the general plan of the development.

⁴⁵ Mains Farm Homeowners Association v. Worthington, 121 Wn.2d 810, 826, 854 P.2d 1072 (1993) *citing* Coburn v. Seda, 101 Wn.2d 270, 279, 677 P.2d 173 (1984).

owners of Centre Pointe expressed any concern that the rental cap was needed to protect financing or equity: No meeting where such issues were raised, no documents showing financing was relevant to the Twelfth Amendment, and no mention of financing in the Twelfth Amendment.⁴⁶ Plus the fact that the unit owners were already leasing more than 30% of their units at the time the Amendment was passed establishes that no such concern existed.⁴⁷

The speculative impacts that the Twelfth Amendment might have on financing were not an issue at Centre Pointe, are not supported by the record and cannot be a basis to change the determination of the Declaration and WCA that are an issue of law.⁴⁸

⁴⁶ The self-serving Declaration of Ms. Haddad references only her concern over financing only. Her statements regarding "her belief" as to other's concerns are inadmissible as hearsay/lack of personal knowledge. Ms. Haddad's statements in her declaration are after the fact concerns included for litigation, are simply the *post hoc* statements that, at best, are this individual's thoughts that are irrelevant to this litigation and must be disregarded. Wilkinson at 261-2. Additionally the factual claims by Centre Pointe about number of units rented and FHA certification must also be disregarded. There is nothing in the record supporting these claims, these issues were not raised by Centre Pointe before, and the mere existence of this litigation prevents FHA financing, not rental restrictions.

⁴⁷ For interest sake, consider that when the Twelfth Amendment was passed, 36% of the units in the condominium complex were rented. 35 units were rented in the existing buildings, but only 97 units existed in the condominium because the units in Building D had not been created CP 104-106.

⁴⁸ Analysis of possible impacts of leasing and financing will directly conflict with the identified GMA goals incorporated into the WCA. To evaluate the actual public interests involved would require extensive factual investigation and the

2. *Consumer Protection is the Public Interest that Must be Protected.*

a. **Error by Prior Boards Not Public Interest.** The entire condominium community has been well aware that the voting percentage required for use/rental restrictions has been an issue of concern with constant recommendation to obtain 90%.⁴⁹ Failure by associations and their attorneys to follow the statute (and/or their Declarations) does not create a public interest that warrants judicial revision to the WCA.

b. **Use Must be Broad to meet Growth Management Goals.** When adopting the WCA, the legislature recognized the need to provide for a broad range of affordable housing through condominiums.⁵⁰ Affordable housing is a key goal of the Growth Management Act (GMA). Rental units are exactly the type of affordable housing that much of our state needs: The price of home ownership has skyrocketed since 2000, leaving renting as the only option many of our state's citizens have for housing. The Declarant recognized the need for this type of housing and specifically included leasing as an approved use. If the GMA's

balancing of a wide variety of conflicting public interests. That is a legislative task.

⁴⁹ CP 128-0137; 294-305.

⁵⁰ RCW 64.34.005(2).

goals of providing affordable housing (especially through in-fill, which this project is)⁵¹ are to be fulfilled, a Declarant's intent to allow for this type of housing must be protected by requiring a supermajority to take such needed use away.

Similarly, if the WCA is to be read in harmony with the GMA, it must be interpreted to protect diverse and affordable housing projects that meet the increasingly complex needs of our communities to accept ever increasing population. If "use" in the statute does not include leasing, then NIMBY's across the state can thwart affordable housing by eliminating a significant supply of multi-family housing from the rental market.

c. Use Must Mean More than Residential vs. Non-residential. The WCA's strong policy to protect consumers requires that this case be viewed in the light of a residential condominium buyer. Such buyers are looking for a home which means only those condominiums that are residential. The disclosure of the types of "uses" that are important to these buyers are whether you can lease their unit, have kids or pets, smoke, or must be of retirement age. To hold otherwise means that countless consumers who bought relying upon the either a prohibition against

⁵¹ WCA recognized the need to create higher density housing which this and other similar multi-family condominiums are. RCW 64.34.005(1).

leasing and/or the allowance of it will lose their expectation.

This Court must look ahead to the impacts that would result from adopting Centre Pointe's view. If only residential vs. non-residential use restriction must be included in the Declaration (and require a supermajority), then all other possible use restrictions need not even be referenced in the Declaration. All other possible restrictions on use could be legally adopted by the board of an association by simply amending bylaws or house rules **without a vote of the unit owners** required by the WCA.⁵² Restrictions on leasing/renting, age, rental, timeshare, smoking, or pet restrictions would be subject to the whimsy of boards of associations, potentially changing every time a new board is elected.

To allow control of use rights — real property rights — so integral to condominium owners to be taken away from the unit owners and granted to board members is inconsistent with the vital consumer protection purposes of the WCA.

F. Filmore Entitled to Attorney's Fees. Pursuant to RAP 18.1, Filmore requests this court to rule that Filmore is the prevailing party and is entitled to attorney's fees and costs on

⁵² RCW 64.34.304(1)(a). Since these would not qualify as a "use" pursuant to RCW 64.34.216(1)(n), they need not even be mentioned in the Declaration and therefore no amendment of the Declaration is necessary to change and no vote of the owners would be required.

appeal. The specific award of attorney's fees and costs should be determined by the trial court upon remand. The basis for such award is Article XIII of the Declaration⁵³ and RCW 64.34.455 and the Order on Summary Judgment (reserving award of attorney's fees to later hearing before the trial court).

VII. CONCLUSION

This Court is respectfully requested to affirm the Decision and remand for entry of an award of attorney's fees on behalf of Filmore.

Respectfully submitted this 2 day of April 2015.

BELCHER SWANSON LAW FIRM, P.L.L.C.

By 

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⁵³ Paragraph 7.4 of the Bylaws provides for attorney's fees and costs to the prevailing party.

APPENDIX A

AFTER RECORDING, RETURN TO:
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Bellingham, WA 98225
(360) 392-2880



2030404369
Page: 1 of 81
4/18/2003 2:22 PM
D/R/C \$79.00
Whatcom County, WA

Request of: WHATCOM LAND TITLE

DECLARATION
OF CONDOMINIUM SUBDIVISION AND
COVENANTS, CONDITIONS, RESTRICTIONS AND
RESERVATIONS
FOR
MILLENNIA RESIDENCES, A CONDOMINIUM

TITLE OF DOCUMENT:

GRANTOR:

GRANTEE:

ABBREV. LEGAL DESCRIPTION:

TAX PARCEL NO.:

CONDOMINIUM DECLARATION FOR
MILLENNIA RESIDENCES, A CONDOMINIUM
MILLENNIA DEVELOPMENT 2000, L.L.C.
THE GENERAL PUBLIC
PTN. LOTS 1 & 5, BLK 1 PLAT OF BAKERVIEW
ADD V 7 / PGS 40 - 45
380213 491529 0000

The Board and its agents or employees may enter any Unit or Limited Common Elements when necessary in connection with any maintenance, landscaping or construction for which the Board is responsible, or in the event of emergencies. Except in the case of an emergency, reasonable advance notice shall be given to the Unit Owner and, if applicable, to any lawful tenant or subtenant in the Unit. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association out of the Common Expense fund if the entry was due to an emergency (unless the emergency was caused by the Owner of the Unit entered, in which case the cost shall be specially assessed to the Unit entered) or for the purpose of maintenance, or repairs, to Common or Limited Common Elements where the repairs were undertaken by or under the direction or authority of the Board. If the repairs or maintenance were necessitated by or for the Unit entered or its Owners, or requested by its Owners, the costs thereof shall be specially assessed to such Unit. See also Section 8.3.2(g) of Exhibit D to this Declaration.

8.5. Board as Attorney in Fact.

Each Owner, by the act of becoming an Owner of a Unit, shall be deemed to have irrevocably appointed the Board of Directors as his or her attorney-in-fact, with full power of substitution, to take such actions as are reasonably necessary to perform the duties of the Association and Board hereunder, including, but not limited to, the duties to maintain, repair and improve the Property, to deal with the Unit upon damage or destruction, to grant licenses and easements, and to secure and distribute condemnation awards and/or insurance proceeds.

8.6. Limitations on Power of Board.

The Board of Directors shall not act on behalf of the Association to amend the Declaration in any manner that requires the vote or approval of the Unit Owners pursuant to RCW 64.34.264, to terminate the Condominium pursuant to RCW 64.34.268, or to elect members of the Board of Directors or determine the qualifications, powers, and duties, or terms of office of members of the Board of Directors pursuant to Section 8.2 hereof; but the Board of Directors may fill vacancies in its membership for the unexpired portion of any term.

ARTICLE IX

PERMITTED USES: ARCHITECTURAL UNIFORMITY

9.1. Permitted Uses.

9.1.1. Residential Use.

Other than as provided in Section 9.1.2 hereof, the buildings and Units shall be used for residential purposes only, and for common social, recreational or other reasonable uses normally incident to such purposes. The Board may also permit the use of part of a Unit for a "home office", provided that such use is consistent with all applicable laws, ordinances and regulations of any governmental authority, and further provided that such use involves no client or customer traffic. The Board may require the Unit Owner to pay any increase in the rate of insurance for the Condominium which may result from such office use, and to provide proof of adequate personal/business liability insurance coverage.

9.1.2. Commercial Use.

The Community Center building may be used for office purposes, or retail sales or commercial or professional services, provided that the same be consistent with all applicable laws, ordinances and regulations of any governmental authority. The Association shall have the authority to rent space in the Community Center Building for any lawful purpose, under such terms and conditions as the Board may deem appropriate, or to make any portions thereof available for common use.

9.1.3. Vehicle Parking.

Parking spaces are restricted to use for parking of operable, properly registered and insured automobiles, light trucks and family vans; other items and equipment may be parked or kept therein only if expressly permitted by Rules and Regulations and only in such parking areas, if any, as may be designated for such purpose by the Board of Directors. Garage parking spaces are restricted to use for parking of automobiles, motorcycles, light trucks, family vans and other similar vehicles, and for storage of such other items that pose no unreasonable health, safety or fire risks to persons or property. Vehicle repairs other than ordinary light maintenance are not permitted on the Property. The Board may require removal of any inoperative or unregistered vehicle, and any other equipment or item improperly stored in parking spaces. If the same is not removed, the Board may cause removal at the risk and expense of the owner thereof, under such reasonable procedures as may be provided by Rules and Regulations adopted by the Association. Any designated visitors parking areas shall be left open for use by visitors, guests, invitees and licensees of Unit Owners and their tenants. Handicapped spaces shall remain open for use by vehicles properly designated for handicapped use.

9.1.4. Storage Spaces.

Storage Spaces are restricted to storage of items that pose no unreasonable health, safety or fire risks to persons or property. No animals or other living organisms may be kept in Storage Spaces. Use of Storage Spaces is further governed by Sections 8.4 and 9.1.5 hereof.

9.1.5. Hazardous Substances.

A person shall maintain or store on or in the Property only such property and materials which may be legally possessed by such person. No person shall improperly store within or release from a Unit or into the Common Elements any petroleum distillates, liquid or aromatic hydrocarbons, medical wastes or infectious biological agents, acids, caustics, carcinogens, mutagens, heavy metals, or any other inflammable, toxic, explosive, radioactive, or other type of substance which may be hazardous to either the Condominium Property or to the public health or safety, or the health or safety of any lawful occupants of the Condominium community, any and all such substances being known herein as Hazardous Substances.

9.1.6. Interference with Common Elements.

No Unit Owner shall obstruct any of the Common Elements nor shall any Unit Owner place or cause or permit anything to be placed on or in any of the Common Elements (except those areas designated for storage by the Condominium Instruments) without the approval of the Board. Nothing shall be damaged, altered, constructed in or removed from the Common Elements except with the prior written consent of the Board of Directors.

9.1.7. Effect on Insurance.

Nothing shall be done or maintained in any Unit or in the Common Elements which will increase the rate of insurance on the Common Elements or Units without the prior written consent of the Board. No Owner shall permit anything to be done or maintained in his or her Unit or in the Common Elements which will result in the cancellation of insurance on any Unit or any part of the Common Elements.

9.1.8. Signs.

No sign of any kind shall be displayed to the public view on or from any Unit or Common Elements without the prior consent of the Board; provided that this section shall not apply to Declarant or Declarant's agents, nor shall it be deemed to prohibit the Owner of a Unit from displaying a sign for a period of time in which the Owner's Unit is for sale or rent. The Board may by resolution establish further policies regarding signs.

9.1.9. Animals.

The maintenance, keeping, boarding and/or raising of animals, livestock, poultry, or reptiles of any kind, regardless of number, shall be and is prohibited within any Unit or upon the Common Elements, except that the keeping of small birds, aquarium fish, well-behaved dogs and/or cats and other well-behaved animals which do not normally leave the Unit or its adjacent Limited Common Elements is permitted, subject to Rules and Regulations adopted by the Board of Directors. The owner of any animal maintained on the Property shall exercise appropriate control over the animal, and shall clean up after such animal and shall not permit deposits of fecal matter, urinary residue or foodstuffs from or for such animal to remain anywhere on the Common Elements. Any Unit Owner who keeps or maintains any animal upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Unit Owners Association, each Unit Owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such animal within the Condominium. All animals shall be registered and inoculated as required by law. The Board of Directors may establish reasonable fees not to exceed the additional costs incurred by the Unit Owners Association resulting from the presence of such animals. The Board may at any time require the removal of any animal which it finds is or has become an unreasonable source of annoyance, and may exercise this authority for specific animals even though other animals are permitted to remain. See also Section 9.1.4 hereof.

9.1.10. Offensive or Illegal Activity.

No noxious, offensive, smelly, excessively noisy or illegal activity shall be carried on in any Unit or the Common Elements, nor shall anything be done therein which is or may become a nuisance or an unreasonable source of annoyance to other Owners or other lawful occupants of the Property.

9.1.11. Antennas.

Special restrictions on the installation of television, radio and other sorts of antennas and devices are found in Section 9.1.9 in Exhibit D to this Declaration.

9.1.12. Security Systems.

In the event that either the Declarant or the Association shall install a central security system within the Condominium, no Owner shall install or maintain any alternative security system which shall interfere with the proper operation of the central system, nor shall any Unit's individual security system be

connected in any way with any such central system without the advance written approval of the Board of Directors.

9.1.13. Private Garden Areas.

In the event that private garden areas are created as Limited Common Elements allocated to any of the Units in this Condominium, or shall become permitted to exist among the General Common Elements by resolution of the Board of Directors, each such area shall be maintained by the Owner of the Unit to which it is allocated in a neat and tidy manner, consistent with such reasonable rules and regulations as the Board of Directors may promulgate with respect thereto.

9.1.14. Lease Restrictions.

Any lease agreement shall be required and deemed to provide that the terms of the lease shall be subject in all respects to the provisions of the Condominium Instruments, and that any failure by the Lessee to comply with such provisions shall be a default under the lease, entitling the Association to enforce such provisions as a real party in interest. All leases shall be in writing and a copy of each lease must be supplied to the Association. No lease shall have a term of less than one year. Other than the foregoing, there is no restriction on the right of any Unit Owner to lease his or her Unit. Any tenant or subtenant of any portion of a Unit shall be deemed to have assumed all the responsibilities of an Owner under this Section of the Declaration.

9.1.15. Assignment or Subletting.

The assignment or subleasing of a Unit shall be subject to the same limitations as are applicable to the leasing or renting thereof. An Owner or tenant may not exempt himself or herself from any liability under the Condominium Instruments by assigning or subleasing the occupancy rights to his or her Unit.

9.1.16. Timesharing.

Timesharing is not permitted in this Condominium, and no Unit in the Condominium may be conveyed or held pursuant to any timeshare plan.

9.2. Architectural Uniformity.

In order to preserve a uniform exterior appearance to the buildings, and the Common Elements visible to the public, the Board shall provide for the painting and other decorative finish of the buildings, decks, or other Common Elements, and may prohibit or regulate any modification or decoration of the decks or other Common Elements undertaken or proposed by any Owner. This power of the Board extends to screens, doors, awnings, rails or other visible portions of each Unit and any Limited Common Elements appurtenant thereto. The Board may also require use of a uniform color and style of draperies, blinds, under-draperies or drapery lining for all Units.

ARTICLE X

COMMON EXPENSES AND ASSESSMENTS